

Second Regular Session 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 372

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AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 24-2-1-4, AS AMENDED BY P.L.128-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 4. (a) Subject to the limitations of this chapter, a person who uses a mark in Indiana may file in the office of the secretary, in a manner that complies with the requirements of the secretary, an electronic application for registration of the mark. The electronic application must include the following information:

- (1) The name and business address of the person applying for registration of the mark, and:
  - (A) if the applicant is a corporation, the state of incorporation;
  - (B) if the applicant is a partnership, the:
    - (i) state in which the partnership is organized; and
    - (ii) names of the general partners, as specified by the secretary; or
  - (C) if the applicant is another form of legal entity, the jurisdiction in which the legal entity was organized.
- (2) The:
  - (A) goods or services on or in connection with which the mark is used;
  - (B) mode or manner in which the mark is used on or in connection with the goods or services; and

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- (C) class in which the goods or services fall.
- (3) The date on which the mark was first used anywhere and the date on which the mark was first used in Indiana by the applicant or the applicant's predecessor in business.
- (4) A statement that:
- (A) the applicant is the owner of the mark;
  - (B) the mark is in use; and
  - (C) to the knowledge of the person verifying the **electronic** application, another person:
    - (i) has not registered the mark, either federally or in Indiana; or
    - (ii) does not have the right to use the mark either in the identical form or in such near resemblance to the form as to be likely, if applied to the goods or services of the other person, to cause deception, confusion, or mistake.
- (b) The secretary may also require on an **electronic** application:
- (1) a statement indicating whether an application to register a mark, parts of a mark, or a composite of a mark, has been filed by the applicant or a predecessor in the interest of the applicant in the United States Patent and Trademark Office. If an application has previously been filed in the United States Patent and Trademark Office, the applicant must provide full particulars with respect to the previous application, including the:
    - (A) filing date and serial number of each application;
    - (B) status of each application; and
    - (C) reason or reasons for the refusal of the application or the nonregistration of the mark if an application to register the mark was finally refused registration or if an application to register the mark has not resulted in a registration; and
  - (2) a drawing of the mark that complies with the requirements of the secretary.
- (c) The electronic application must be signed and verified under oath, affirmation, or declaration subject to perjury laws by:
- (1) the applicant;
  - (2) a member of the applicant firm or applicant limited liability company; or
  - (3) an officer of the applicant corporation, association, or other form of legal entity.

The **electronic** application must be accompanied by one (1) sample image showing actual use of the mark. The **electronic** application must be accompanied by an application fee payable to the secretary.

SECTION 2. IC 24-2-1-4.5, AS AMENDED BY P.L.128-2017,

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SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 4.5. (a) If a person files an electronic application for registration of a mark and pays the appropriate application fee described in section 15.3 of this chapter, the secretary may examine the **electronic** application for conformity with this chapter.

(b) An applicant must provide additional information requested by the secretary, including a description of a design mark.

(c) An applicant may make or authorize the secretary to make reasonable amendments to an electronic application that are requested by the secretary or are considered by the applicant to be advisable to respond to a rejection or an objection.

(d) The secretary may require an applicant to submit a new electronic application if the secretary determines amendments to the **electronic** application are necessary and the applicant does not make or authorize the secretary to make amendments under subsection (c).

(e) The secretary may require an applicant to disclaim a component of a mark that is not eligible for registration, and an applicant may voluntarily disclaim a component of a mark for which registration is sought. A disclaimer does not prejudice or affect the applicant's rights:

- (1) existing at the time of application or arising after ~~the~~ application **is made** in the disclaimed matter; or
- (2) on another application if the disclaimed matter is or becomes distinctive of the applicant's goods or services.

(f) If an applicant is not entitled to registration of a mark under this chapter, the secretary shall advise the applicant of the reason the applicant is not entitled to registration of the mark. The applicant has a reasonable time specified by the secretary:

- (1) to reply to the reason the applicant is not entitled to registration; or
- (2) to amend the **electronic** application.

If the applicant replies to the secretary or amends the **electronic** application within the reasonable time, the secretary shall reexamine the **electronic** application.

(g) The procedure under subsection (f) may be repeated until:

- (1) the secretary finally refuses registration of the mark; or
- (2) the applicant fails to reply or amend the **electronic** application within the time specified by the secretary, at which time the secretary shall consider the application to have been withdrawn.

(h) If the secretary issues a final order refusing the registration of a mark, an applicant may bring a civil action in a court with jurisdiction to compel the registration of the mark. A court may order the secretary to register a mark, without costs to the secretary, on proof that all



statements in the **electronic** application are true and the mark is entitled to registration.

(i) If two (2) or more applications are concurrently processed by the secretary for registration of the same or confusingly similar marks for the same or related goods or services, the secretary shall grant priority to the applications in order of filing. If a previously filed application is granted a registration, the other application or applications must be rejected. A rejected applicant may bring an action for cancellation of the previously registered mark based upon previous or superior rights to the mark under section 10 of this chapter.

SECTION 3. IC 24-2-1-6, AS AMENDED BY P.L.128-2017, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 6. (a) Registration of a mark under this chapter is effective for a term of five (5) years from the date of registration.

(b) If a person who registers a mark under subsection (a) files an electronic application not more than six (6) months before the expiration of the five (5) year term, in a manner complying with the requirements of the secretary, the registration may be renewed for an additional five (5) year term commencing at the end of the expiring five (5) year term.

(c) A renewal fee payable to the secretary must accompany the **electronic** application for renewal of the registration.

(d) A registration may be renewed for successive periods of five (5) years in the manner described in subsection (b).

(e) The secretary shall notify the registrants of marks of the necessity of renewal within the year next preceding the expiration of the five (5) years from the date of the registration by writing to the last known electronic mail address or, if none, the last known address of the registrants.

(f) An **electronic** application for renewal under this chapter for a mark registered under this chapter or a mark registered under a prior law, must include:

- (1) a verified statement that the mark has been and remains in use; and
- (2) an image of the mark on or in connection with the good or service.

SECTION 4. IC 24-2-1-7, AS AMENDED BY P.L.135-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 7. A registration in force on July 1, 2006, continues in full force and effect for the unexpired term of the registration and may be renewed by:

- (1) filing an **electronic** application for renewal with the secretary;

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and

(2) paying the renewal fee;

in the manner described in section 6 of this chapter not more than six (6) months before the expiration of the registration.

SECTION 5. IC 24-2-1-8.5, AS ADDED BY P.L.135-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 8.5. (a) A registrant or an applicant who changes the name of the person to whom the mark is issued or for whom an **electronic** application is filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of a recording fee.

(b) The secretary may issue a new certificate of registration or an assigned application in the name of the assignee. The secretary may issue a new certificate of registration in the name of the assignee for the remainder of the term of the:

(1) certificate of registration; or

(2) most recent renewal of the certificate of registration.

SECTION 6. IC 24-2-1-10, AS AMENDED BY P.L.135-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 10. The secretary shall cancel from the register in whole or in part:

(1) a registration for which the secretary receives a voluntary request for cancellation from the registrant or the assignee of record;

(2) all registrations granted under this chapter and not renewed under section 6 of this chapter;

(3) a registration for which a court of competent jurisdiction finds that:

(A) the registered mark has been abandoned;

(B) the registrant is not the owner of the mark;

(C) the registration was granted improperly;

(D) the registration was obtained fraudulently;

(E) the registered mark is or has become the generic name for the good or the service, or a part of the good or the service, for which the mark was registered; or

(F) the registered mark is so similar to a mark registered by another person on the principal register in the United States Patent and Trademark Office as to be likely to cause deception, confusion, or mistake between the marks, and the mark registered in the United States Patent and Trademark Office was filed before the filing of the **electronic** application for registration by the registrant under this chapter. However,



a mark may not be canceled under this clause if the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including Indiana; or  
 (4) a registration if a court of competent jurisdiction orders cancellation of the registration on any ground.

SECTION 7. IC 24-2-1-11, AS AMENDED BY P.L.128-2017, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 11. (a) The secretary may adopt rules under IC 4-22-2 to establish:

- (1) a classification of goods and services for convenience of administration of this chapter but not to limit or extend an applicant's or registrant's rights; and
- (2) a single **electronic** application for registration of a mark that:
  - (A) may include each good upon which a mark is used;
  - (B) may include each service with which a mark is used; and
  - (C) must indicate the appropriate class or classes of the goods or services.

To the extent practical, the classification of goods or services should conform to the classification of goods or services adopted by the United States Patent and Trademark Office.

(b) If a single **electronic** application includes goods or services that fall within multiple classes, the secretary may require payment of a fee for each class.

SECTION 8. IC 33-42-0.5-1, AS ADDED BY P.L.128-2017, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) The following definitions in this chapter apply throughout this article.

- (1) "Acknowledgment" means:
  - (A) a principal's declaration, before a notarial officer, that a record has been signed for the purpose stated in the record; or
  - (B) if the record was signed in a representative capacity, a declaration by the individual, before a notarial officer, that the individual signed the record with the proper authority and signed it as the act of the individual or entity identified in the record.
- (2) "Credential" has the meaning set forth in IC 9-13-2-39.7.
- (3) "In a representative capacity" means acting:
  - (A) as an authorized agent, officer, representative, or trustee of another person;
  - (B) in any capacity provided for or stated in a record;
  - (C) as an agent or attorney in fact for a principal; or



- (D) in any other authorized capacity.
- (4) "Notarial act" means any act that a notarial officer may perform. The term includes the following acts:
  - (A) Taking an acknowledgment.
  - (B) Administering an affirmation or oath.
  - (C) Taking a verification on an oath or affirmation.
  - (D) Attesting to or witnessing a signature.
  - (E) Attesting to or certifying a copy of a document or record.
  - (F) Noting a protest of a negotiable record.
- (5) "Notarial officer" means a notary public or any other individual authorized to perform a notarial act.
- (6) "Notary public" means an individual commissioned to perform a notarial act by the secretary of state.
- (7) "Official seal" means an image, affixed to or embossed upon, a record.
- (8) "Person" means:
  - (A) an agency;
  - (B) an association;
  - (C) a business trust;
  - (D) a corporation;
  - (E) an estate;
  - (F) an individual;
  - (G) an instrumentality;
  - (H) a joint venture;
  - (I) a limited liability company;
  - (J) a partnership;
  - (K) a public corporation;
  - (L) a trust;
  - (M) a statutory trust;
  - (N) any other legal or commercial entity; or
  - (O) any local or state government:
    - (i) agency; or
    - (ii) instrumentality.
- (9) "Principal" means an individual:
  - (A) whose signature is notarized; and
  - (B) an individual taking an oath or affirmation from a notary public.
- (10) "Record" means retrievable information that is:
  - (A) memorialized upon a tangible medium; or
  - (B) stored electronically.
- (11) "Sign" means to:
  - (A) adopt or execute with a tangible symbol; or



(B) associate or attach an electronic process, sound, or symbol to a record;

with the intent to adopt or authenticate a record:

(12) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record:

(13) "Stamping device" means a physical device capable of affixing or embossing a record with an official seal:

(14) "State" means any state of the United States; the District of Columbia; or any territory or possession subject to the jurisdiction of the United States:

(15) "Verification on an oath or affirmation" means a declaration that a statement in a record is true:

**(b) Amendments to this article that are effective after June 30, 2017, do not affect the validity or effect of a notarial act performed under this article before July 1, 2019.**

**(c) This article applies only to a notary public commissioned or recommissioned after June 30, 2019.**

**(d) To the extent that IC 26-2-8 conflicts with this article, IC 26-2-8 is controlling.**

SECTION 9. IC 33-42-0.5-2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 2. "Acknowledgment" means:**

**(1) a principal's declaration, before a notarial officer, that a record has been signed for the purpose stated in the record; or**

**(2) if the record was signed in a representative capacity, a declaration by the individual, before a notarial officer, that the individual signed the record with the proper authority and signed it as the act of the individual or entity identified in the record.**

SECTION 10. IC 33-42-0.5-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 3. "Appearance" or "appear", with respect to a notarial act, refers to an individual's presence before a notarial officer by:**

**(1) being:**

**(A) physically present before the notarial officer;**

**(B) able to interact with the notarial officer; and**

**(C) able to physically exchange tangible credentials or other documentation with the notarial officer; or**

**(2) the use of audio visual communication.**

SECTION 11. IC 33-42-0.5-4 IS ADDED TO THE INDIANA





CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 4. "Assurance" means a surety bond or the functional equivalent of a surety bond that covers a notary public's acts or omissions during the course of the notary public's commission.**

SECTION 12. IC 33-42-0.5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 5. "Audio visual communication" means real time, two-way, visual and auditory communication through technology.**

SECTION 13. IC 33-42-0.5-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 6. "Credential" means a valid, government issued form of identification that bears:**

- (1) a photograph; and**
- (2) the signature;**

**of the individual identified.**

SECTION 14. IC 33-42-0.5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 7. "Credential analysis" means a process or service:**

- (1) approved by the secretary of state;**
- (2) performed by a third person; and**
- (3) through which review of public and proprietary data sources provides confidence concerning the validity of a credential.**

SECTION 15. IC 33-42-0.5-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 8. "Credible witness" means an individual who:**

- (1) appears before a notarial officer;**
- (2) swears or affirms that the signer of a document is the individual whom the signer claims to be; and**
- (3) is known personally to the signer of the document and the notarial officer.**

SECTION 16. IC 33-42-0.5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 9. "Dynamic knowledge based authentication assessment" means a questionnaire that:**

- (1) consists of questions about a principal that:**
  - (A) are derived from private and public sources; and**
  - (B) have not been previously answered by the principal;**



- (2) is answered by the principal; and**
- (3) is reviewed by a remote notary public to assist in verifying the identity of the principal.**

SECTION 17. IC 33-42-0.5-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 10. "Electronic" means relating to technology that has electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.**

SECTION 18. IC 33-42-0.5-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 11. "Electronic notarial certificate" means the part of or attachment to an electronic record that:**

- (1) is completed by a notarial officer;**
- (2) bears the notarial officer's:**
  - (A) electronic signature; and**
  - (B) electronic seal; and**
- (3) states the facts attested to by the notarial officer in a notarial act.**

SECTION 19. IC 33-42-0.5-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 12. "Electronic record" means a record communicated, created, generated, received, sent, or stored by electronic means.**

SECTION 20. IC 33-42-0.5-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 13. "Electronic seal" means information that:**

- (1) is specific to an individual notary public;**
- (2) is attached to or associated with a notarized electronic record; and**
- (3) contains:**
  - (A) the words, "notary public";**
  - (B) the words, "state of Indiana";**
  - (C) the word, "seal";**
  - (D) the notary public's name as it appears on the notary public's commission certificate;**
  - (E) the words, "commission number", followed by the commission number of the notary public; and**
  - (F) the words, "my commission expires", followed by the expiration date of the notary public's commission.**

SECTION 21. IC 33-42-0.5-14 IS ADDED TO THE INDIANA



CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 14. "Electronic signature" means an electronic process, sound, or symbol that is adopted by an individual for the purpose of electronically signing an electronic record.**

SECTION 22. IC 33-42-0.5-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 15. "Exclusive control" means exclusively having, at all times, direct physical or intellectual custody of:**

- (1) a password to access; or**
- (2) the ability to use another secure means of authentication of;**

**an electronic record.**

SECTION 23. IC 33-42-0.5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 16. "Identity proofing" means a process or service:**

- (1) that is approved by the secretary of state; and**
  - (2) through which review by a third person of personal information:**
    - (A) about an individual; and**
    - (B) obtained from public and proprietary data sources;**
- affirms the identity of the individual.**

**The term may include dynamic knowledge based authentication assessment.**

SECTION 24. IC 33-42-0.5-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 17. "In a representative capacity" means acting:**

- (1) as an authorized agent, officer, representative, or trustee of another person;**
- (2) in any capacity as:**
  - (A) provided by law; and**
  - (B) stated in a record;**
- (3) as an agent or attorney in fact for a principal; or**
- (4) in any other authorized capacity.**

SECTION 25. IC 33-42-0.5-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 18. "Notarial act" means the following acts with respect to either a tangible or an electronic record:**



- (1) Taking an acknowledgment.
- (2) Administering an oath or affirmation.
- (3) Taking a verification on an oath or affirmation.
- (4) Attesting to or witnessing a signature.
- (5) Attesting to or certifying a copy of:
  - (A) a tangible document or record; or
  - (B) an electronic document or record.
- (6) Noting a protest of a negotiable record.
- (7) Any other act authorized by common law or the custom of merchants.

SECTION 26. IC 33-42-0.5-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 19. "Notarial officer" means an individual authorized under IC 33-42-9-7(a) to perform a notarial act.**

SECTION 27. IC 33-42-0.5-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 20. "Notary public" means an individual commissioned by the secretary of state to perform a notarial act.**

SECTION 28. IC 33-42-0.5-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 21. "Official seal" means either of the following:**

- (1) A physical image that is affixed to or embossed upon a tangible record.
- (2) An electronic image that is attached to or associated with an electronic record.

SECTION 29. IC 33-42-0.5-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 22. "Person" means:**

- (1) an agency;
- (2) an association;
- (3) a business trust;
- (4) a corporation;
- (5) an estate;
- (6) an individual;
- (7) an instrumentality;
- (8) a joint venture;
- (9) a limited liability company;
- (10) a partnership;
- (11) a public corporation;



- (12) a trust;
- (13) a statutory trust;
- (14) any other legal or commercial entity; or
- (15) any local or state government:
  - (A) agency; or
  - (B) instrumentality.

SECTION 30. IC 33-42-0.5-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 23. (a) "Principal" means an individual:**

- (1) whose signature is reflected on a document that is notarized;
- (2) who has taken an oath or affirmation administered by a notarial officer; or
- (3) whose signature is reflected on a document that is notarized after the individual has taken an oath or affirmation administered by a notarial officer.

**(b) Except as provided in subsection (c), for purposes of a remote notarial act, "principal" means an individual:**

- (1) whose electronic signature is reflected on a document that is notarized and contained in an electronic record;
- (2) who has taken an oath or affirmation administered by a remote notary public; or
- (3) whose electronic signature is reflected on a document that is notarized and contained in an electronic record after an individual has taken an oath or affirmation administered by a remote notary public.

**(c) A principal, for purposes of a remote notarial act, does not include an individual who has taken an oath or affirmation administered by a remote notary public in the capacity of a witness for a remote notarial act.**

SECTION 31. IC 33-42-0.5-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 24. "Public key infrastructure" means a method of enabling a user of an unsecured public computer network, including the Internet, to securely and privately exchange data and money through a public and private cryptographic key pair that is obtained and shared through a trusted certificate authority, providing for a:**

- (1) digital certificate that is able to identify an individual or organization; and
- (2) directory service that is able to store and, if necessary,



**revoke the digital certificate.**

SECTION 32. IC 33-42-0.5-25 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 25. "Record" means retrievable information that is:**

- (1) memorialized upon a tangible medium; or**
- (2) stored electronically.**

SECTION 33. IC 33-42-0.5-26 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 26. "Remote notarial act" means a notarial act described in section 18(1) through 18(5) of this chapter:**

- (1) performed through audio visual communication; and**
- (2) involving an electronic record.**

SECTION 34. IC 33-42-0.5-27 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 27. "Remote notary public" means a notary public who is authorized by the secretary of state to perform a remote notarial act under IC 33-42-17.**

SECTION 35. IC 33-42-0.5-28 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 28. "Remote presentation" means an electronic transmission:**

- (1) by a principal;**
- (2) to a remote notary public; and**
- (3) of an image:**
  - (A) of a credential; and**
  - (B) that is of sufficient quality to allow for use of the image in credential analysis to identify the principal.**

SECTION 36. IC 33-42-0.5-29 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 29. "Sign" means:**

- (1) to adopt or execute a record with a tangible symbol; or**
- (2) to:**
  - (A) associate with; or**
  - (B) attach to;**

**a record an electronic process, sound, or symbol; with the intent to adopt or authenticate the record.**

SECTION 37. IC 33-42-0.5-30 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 30. "Signature" means a tangible symbol or an electronic process, sound, or symbol that evidences**



**the signing of a record.**

SECTION 38. IC 33-42-0.5-31 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 31. "Stamping device" means:**

- (1) a physical device capable of affixing or embossing a tangible record with an official seal; or**
- (2) an electronic device or process capable of pairing an electronic seal with an electronic record.**

SECTION 39. IC 33-42-0.5-32 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 32. "State" means a state of the United States, the District of Columbia, or a territory or possession subject to the jurisdiction of the United States.**

SECTION 40. IC 33-42-0.5-33 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 33. "Surety" means an entity that:**

- (1) is licensed or authorized to do the business described in subdivision (2) in Indiana; and**
- (2) guarantees the legal liability of a notary public for:**
  - (A) debt;**
  - (B) default; or**
  - (C) failure to perform a duty of a notary public.**

SECTION 41. IC 33-42-0.5-34 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 34. "Technology" means an application, a device, or a program that allows a notarial officer to perform a:**

- (1) notarial act electronically; or**
- (2) remote notarial act.**

SECTION 42. IC 33-42-0.5-35 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 35. "Verification on an oath or affirmation" means a declaration that a statement in a record is true.**

SECTION 43. IC 33-42-9-1, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1. (a) The governor may appoint ~~notaries~~ a notary public if the public interest would be promoted by the appointment.**

**(b) A notarial officer may perform ~~the following~~ notarial acts.**

- (1) Taking an acknowledgment.**
- (2) Administering an oath or affirmation.**

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- (3) Taking a verification on an oath or affirmation.
- (4) Attesting or witnessing a signature.
- (5) Attesting or certifying a copy.
- (6) Noting a protest of a negotiable instrument.
- (7) Any additional act authorized by common law or the custom of merchants.

SECTION 44. IC 33-42-9-2, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) A notarial officer who:

- (1) takes an acknowledgment of a record;
- (2) takes a verification of statement on an oath or affirmation; or
- (3) attests or witnesses to a signature;

shall determine, from personal knowledge or satisfactory evidence, that the individual appearing before the **notarial** officer has the identity claimed and that the signature on the record is the signature of the individual.

(b) A notarial officer who attests to or certifies a copy of a record or item shall verify that the copy is an accurate, full, and true reproduction or transcription of the record or item.

SECTION 45. IC 33-42-9-4, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) A notarial officer has personal knowledge of an individual's identity if the:

- (1) individual is personally known to the notarial officer; or
- (2) notarial officer has transacted sufficient, prior business with the individual to know the individual's identity.

(b) If a notarial officer does not have personal knowledge of an individual's identity, ~~a~~ **the** notarial officer may authenticate the identity of ~~an~~ **the** individual through one (1) of the following means:

- (1) An inspection of any of the following that, if expired, has not been expired for more than three (3) years:
  - (A) The individual's passport.
  - (B) The individual's driver's license.
  - (C) The individual's government issued identification card.
  - (D) A credential that:
    - (i) is not described in clauses (A) through (C);
    - (ii) is government issued; and
    - (iii) contains a photograph of the individual.
- (2) A verification on an oath or affirmation by a credible witness who:
  - (A) personally:
    - (i) appears before the notarial officer; and

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- (ii) is personally known by the notarial officer; or
- (B) is identified to the notarial officer by a credential described in subdivision (1).

(c) A notarial officer may require an individual to provide additional identification or information before performing a notarial act.

SECTION 46. IC 33-42-9-6, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) A principal may appoint or direct another individual to sign a record if the principal is physically unable to sign the record personally.

(b) A notarial officer shall note the principal's use of an appointed or designated signatory on any record executed in the manner described in subsection (a) by:

- (1) clearly labeling the appointee or designee's signature;
- (2) clearly labeling the name of the principal; and
- (3) including or using language that conveys the principal's intent to use an ~~assigned~~ **appointed** or designated signatory.

SECTION 47. IC 33-42-9-7, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) A notarial act may be performed by the following individuals:

- (1) Notaries public.
- (2) An official court reporter acting under IC 33-41-1-6.
- (3) Judges and justices of Indiana courts.
- (4) The secretary of state.
- (5) The clerk of the supreme court.
- (6) Mayors, clerks, clerk-treasurers of towns and cities, township trustees, in their respective towns, cities, and townships.
- (7) Clerks of circuit courts and master commissioners in their respective counties.
- (8) Judges of United States district courts of Indiana, in their respective jurisdictions.
- (9) United States commissioners appointed for any United States district court of Indiana, in their respective jurisdictions.
- (10) A precinct election officer (as defined in IC 3-5-2-40.1) and an absentee voter board member appointed under IC 3-11-10 or IC 3-11.5-4, for any purpose authorized under IC 3.
- (11) A member of the Indiana election commission, a co-director of the election division, or an employee of the election division as defined under IC 3-6-4.2.
- (12) County auditors in their respective counties.
- (13) Any member of the Indiana general assembly anywhere in

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Indiana.

(14) The adjutant general of the Indiana National Guard, specific active duty members, reserve duty members, or civilian employees of the Indiana National Guard designated by the adjutant general of the Indiana National Guard for any purpose related to the service of an active duty or reserve member of the Indiana National Guard.

(b) The signature and title of an individual performing a notarial act in ~~this state~~ **Indiana** is prima facie evidence of the fact that:

- (1) the signature is genuine; and
- (2) the individual holds the designated title.

SECTION 48. IC 33-42-9-8, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) A notarial act performed in another state is presumed valid and has the same effect as a notarial act performed by a notarial officer of Indiana if the notarial act performed in ~~that the~~ **other** state is performed by:

- (1) a notary public of ~~that the other~~ state;
- (2) a judge, clerk, or deputy clerk of the **other** state; or
- (3) any other individual authorized by the law of the **other** state to perform notarial acts.

(b) The signature and title of an individual performing a notarial act in another state is prima facie evidence of the fact that:

- (1) the signature is genuine; and
- (2) the individual holds the designated title.

(c) The signature of a notarial officer described in subsection (a)(1) or (a)(2) conclusively establishes the authority of the **notarial** officer to perform the notarial act.

SECTION 49. IC 33-42-9-9, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe is presumed valid and has the same effect as a notarial act performed by a notarial officer of Indiana if the notarial act is:

- (1) performed within the territory of the **Indian** tribe; and
- (2) performed by:
  - (A) a notary public of the **Indian** tribe;
  - (B) a judge, clerk, or deputy clerk of the **Indian** tribe; or
  - (C) any other individual authorized by the laws of the **Indian** tribe to perform the notarial act.

(b) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized

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Indian tribe are prima facie evidence of the fact that:

- (1) the signature is genuine; and
- (2) the individual holds the designated title.

(c) The signature and title of a notarial officer described in subsection **(a)(1) or (a)(2)** conclusively establish the authority of the **notarial** officer to perform the notarial act.

SECTION 50. IC 33-42-9-10, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) A notarial act performed under federal law shall be presumed valid and has the same effect as a notarial act performed by a notarial officer of Indiana if the notarial act performed under federal law is performed by:

- (1) a judge, clerk, or deputy clerk of a court;
- (2) an individual who is authorized to perform **the notarial acts act** under federal law and is:
  - (A) presently serving in the armed forces of the United States; or
  - (B) performing duties under the authority of the armed forces of the United States;
- (3) an individual designated as a notarial officer by the United States Department of State for the purpose of performing notarial acts overseas;
- (4) a commissioned officer with the rank of:**
  - (A) second lieutenant or higher in the active service of the:**
    - (i) United States Army; or**
    - (ii) United States Marine Corps; or**
  - (B) ensign or higher in the active service of the:**
    - (i) United States Coast Guard; or**
    - (ii) United States Navy; or**
- ~~(4)~~ **(5) any other individual authorized by federal law to perform the notarial act.**

(b) The signature and title of an individual acting under federal authority while performing a notarial act are prima facie evidence of the fact that:

- (1) the signature is genuine; and
- (2) the individual holds the designated title.

(c) The signature and title of ~~an~~ **a notarial** officer described in subsection (a)(1), (a)(2), or (a)(3) conclusively establish the authority of the **notarial** officer to perform the notarial act.

SECTION 51. IC 33-42-9-11, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. (a) As used in this section, "foreign" means a

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government other than the United States, a state, or a federally recognized Indian tribe.

(b) If a notarial act is performed under the authority of and in the jurisdiction of:

- (1) a foreign state;
  - (2) a constituent component of a foreign state; or
  - (3) an international or multinational governmental organization;
- the notarial act is presumed valid and has the same effect as a notarial act performed by a notarial officer of Indiana.

(c) If evidence of authority and title of office appear in a digest of law or comparable listing, the authority of an officer with that title to perform notarial acts is conclusively established.

(d) The signature and official seal of an individual holding an office described in subsection (c) are prima facie evidence of the authenticity of:

- (1) the signature; and
- (2) the title of the office holder.

(e) An apostille in the form:

- (1) prescribed by the Hague Convention of October 5, 1961; and
- (2) issued by a foreign state that is a party to the convention described in subdivision (1);

establishes that the signature of the ~~notarial~~ officer is genuine and that the officer holds the indicated office.

(f) A consular authentication:

- (1) issued by an individual designated as a notarizing officer:
  - (1) ~~(A)~~ **(A)** by the United States Department of State; **and**
  - (2) ~~(B)~~ **(B)** for notarial acts performed overseas; **and**
- (2) **affixed or attached to the record associated with the execution of a notarial act;**

conclusively establishes that the signature of the notarial officer is genuine and that the ~~notarial~~ officer holds the indicated office. ~~when affixed or attached to the record associated with the executed notarial act.~~

SECTION 52. IC 33-42-9-12, AS ADDED BY P.L.128-2017, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 12. (a) A notarial act must be authenticated by a certificate bearing the date of the notarial act and the signature of the notarial officer. A properly completed certificate must conform to the following conditions:

- (1) The certificate must be completed contemporaneously with the performance of the notarial act.
- (2) The certificate must be signed and dated by the notarial

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officer. If the notarial officer is a notary public, the certificate must be signed in the manner on file with the secretary of state for the specific notary public.

(3) The certificate must identify the jurisdiction in which the notarial act is performed **as follows:**

**(A) For a notarial act that is not a remote notarial act, the county and state in which the principal appears before the notarial officer.**

**(B) For a remote notarial act, the information required by IC 33-42-17-7(a)(3).**

(4) The certificate must display the title of the notarial officer.

(5) If the notarial officer is a notary public, the certificate must display:

(A) the expiration date of the notary public's commission; and

(B) the county of the notary public's commission.

(b) A notary public who performs a notarial act **on a tangible record** shall: ~~do the following:~~

(1) affix, display, or emboss the ~~notary's~~ **notary public's** official seal; and

(2) print or type the notary public's name underneath the notary public's signature on a certificate of acknowledgment, jurat, or other official record unless the name of the notary public:

(A) appears in printed form on the record; or

(B) appears as part of the notary public's **official** seal; and is legible when the record is photocopied.

(c) If a notarial act is performed on a public record by a notarial officer other than a notary public, the information described in subsection (a)(2) through (a)(4) must be affixed, displayed, or embossed upon the certificate and accompanied by ~~an~~ **the notarial officer's** official seal.

**(d) If a notarial act is performed on an electronic record by a notary public:**

**(1) the electronic notarial certificate must contain the information described in subsection (a)(2) through (a)(5); and**

**(2) the notary public's electronic seal must be attached to or associated with the electronic notarial certificate.**

**(e) If a notarial act is performed on an electronic record by a notarial officer other than a notary public:**

**(1) the electronic notarial certificate must contain the information described in subsection (a)(2) through (a)(4); and**

**(2) the notarial officer's official seal must be attached to or associated with the electronic notarial certificate.**



~~(d)~~ **(f)** A certificate of a notarial act **or an electronic notarial certificate** is sufficient if it meets the requirements described in subsections (a) and (b) and:

- (1) is in a form permitted by the laws of this state;
- (2) is in a form permitted by the laws of the jurisdiction in which the notarial act was performed; or
- (3) sets forth the actions of the notarial officer.

~~(e)~~ **(g)** By executing a certificate of a notarial act **or an electronic notarial certificate**, a notarial officer certifies that the **notarial officer** has complied with ~~the requirements of~~ this chapter.

~~(f)~~ **(h)** A notarial officer may not affix a signature to or associate a certificate **of a notarial act or an electronic notarial certificate** with a record until a notarial act has been performed.

~~(g)~~ **(i)** ~~All notarized records must have~~ A certificate **of a notarial act or an electronic notarial certificate must be** attached to or associated with them. ~~The affixing, attaching, or associating of certificates to notarial acts must conform to each tangible record or electronic record in a manner consistent with the applicable requirements of subsections (a) through (d).~~ **(f).**

~~(h)~~ **(j)** An official:

- (1) certificate of a notarial act bearing a notary public's notarial officer's official seal; or**
- (2) electronic notarial certificate bearing a notarial officer's electronic seal;**

constitutes presumptive evidence of the facts stated in cases, where, by law, the ~~notary public~~ **notarial officer** is authorized to certify facts.

~~(i)~~ **(k)** A notarial officer may subsequently correct any information included or omitted from a certificate **of a notarial act or an electronic notarial certificate** executed by the notarial officer.

~~(j)~~ **(l)** Changes or corrections may never be made to the impression of an official seal.

SECTION 53. IC 33-42-10-1 IS REPEALED [EFFECTIVE JULY 1, 2019]. ~~Sec. 1. This chapter applies only to a notary commissioned or recommissioned after December 31, 2017.~~

SECTION 54. IC 33-42-10-3, AS ADDED BY P.L.128-2017, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A notary public is responsible for the security of any stamping device used for notarial acts by the notary public.

(b) A notary public shall not allow any other person to make use of the stamping device used by the notary public. ~~when performing notarial acts.~~

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- (c) Upon the:
- (1) expiration;
  - (2) resignation; or
  - (3) revocation;

of the notary public's commission, the notary public shall damage, deface, destroy, erase, or secure the stamping device in a manner that precludes any further use of the **stamping** device.

- (d) Upon the:
- (1) adjudication of incompetency; or
  - (2) death;

of a notary public, the notary public's guardian or personal representative shall preclude any further use of the **stamping** device by disabling the **stamping** device as described in subsection (c).

(e) If a **stamping** device is lost or stolen, the notary public or notary public's guardian or personal representative shall promptly notify the secretary of state's office upon learning of the loss or theft.

SECTION 55. IC 33-42-12-1, AS ADDED BY P.L.128-2017, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) As used in this section, "assurance" means a surety bond or the functional equivalent of a surety bond that covers a notary public's acts or omissions during the course of the notary public's commission.

- (b) As used in this section, "surety" means an entity that:
- (1) is licensed or authorized to do the business described in subdivision (2) in Indiana; and
  - (2) guarantees the legal liability of a notary public for:
    - (A) debt;
    - (B) default; or
    - (C) failure to perform a duty of a notary public.

(e) (a) An individual qualified under subsection (d) (b) may apply to the secretary of state for a commission as a notary public. The applicant shall provide the information required by the rules established by the secretary of state, if any. ~~and pay a filing fee.~~

- (d) (b) An applicant for a commission as a notary public must:
- (1) be at least eighteen (18) years of age;
  - (2) be a citizen or permanent legal resident of the United States;
  - (3) be a resident of or primarily employed in Indiana;
  - (4) not be disqualified to receive a commission under IC 33-42-13;
  - (5) satisfy all educational requirements; and
  - (6) have passed the examination described in section 2 of this chapter.

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~~(e)~~ (c) An applicant applying for a commission **as a notary public** or reapplying for a subsequent commission shall:

- (1) complete an electronic application and provide all necessary information required by the secretary of state;
- (2) pay a nonrefundable ~~filing~~ **processing** fee of five dollars (\$5);
- (3) execute an oath of office and comply with any associated requirements imposed by the secretary of state;
- (4) obtain an assurance in the amount of twenty-five thousand dollars (\$25,000);
- (5) submit, or have submitted by the surety on the applicant's behalf, an electronic copy of the assurance not later than thirty (30) days after the effective date of the assurance; and
- (6) submit an electronic signature sample to the secretary of state.

~~(f)~~ (d) A notary public may perform notarial acts only during a period covered by a valid assurance on file with the secretary of state.

~~(g)~~ (e) A surety must notify the secretary of state of a payment made under a notary public's assurance not later than thirty (30) days after issuing ~~a~~ **the** payment to a claimant.

~~(h)~~ (f) The secretary of state shall ~~issue~~ **grant** a commission **as a notary public** to an applicant who fully complies with this section. ~~for~~ **The term of a commission granted under this subsection is eight (8) years.**

~~(i)~~ (g) A commission granted under this section authorizes the notary public to perform notarial acts within the state of Indiana. The commission does not provide the notary public with any immunity or benefit.

~~(j)~~ ~~A person~~ (h) **An individual** may not have more than one (1) active Indiana **commission as a notary public** ~~commission~~ at a time.

~~(k)~~ (i) For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, a ~~notary public~~ **commission as a notary public** is not a lucrative office.

SECTION 56. IC 33-42-12-3, AS ADDED BY P.L.128-2017, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A notary public shall notify the secretary of state not later than thirty (30) days after any change to the following information associated with the notary public:

- (1) Name.
- ~~(2)~~ ~~Residential address:~~
- ~~(3)~~ ~~(2)~~ Mailing address.
- ~~(4)~~ ~~(3)~~ Personal electronic mail address.
- ~~(5)~~ ~~(4)~~ Personal telephone number.
- ~~(6)~~ ~~(5)~~ Employer's:

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- (A) ~~Address:~~ **address;**  
 (B) ~~Name:~~ **name; and**  
 (C) ~~Telephone~~ **telephone** number.

(b) A notary public shall file the following documents with the secretary of state upon any change to the notary **public's** name on file with the secretary of state's office:

- (1) A rider or other record issued by the ~~notary's~~ **notary public's** surety reflecting the change of name.  
 (2) An example of the ~~notary's~~ **notary public's** new, official signature.

(c) A notary public shall notify the secretary of state of the following occurrences not later than fourteen (14) days after they occur:

- (1) The notary public is convicted of a felony offense involving deceit, dishonesty, or fraud.  
 (2) The notary public is found to have acted deceitfully, dishonestly, or fraudulently in any disciplinary action or legal proceeding.  
 (3) The notary public has a ~~notary~~ **notary public** commission as a **notary public** denied, restricted, or revoked in a state other than Indiana.

(d) The commission of a notary public who is **no longer:**

- (1) ~~no longer~~ a citizen or resident of Indiana; or  
 (2) primarily employed by the state of Indiana;

shall be treated as resigned.

SECTION 57. IC 33-42-13-1, AS ADDED BY P.L.128-2017, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) The secretary of state may **do any of the following with respect to a commission under IC 33-42-12:**

- (1) Deny **the commission.**  
 (2) Refuse ~~to renew;~~ **a subsequent commission.**  
 (3) Revoke **the commission.**  
 (4) Suspend ~~or~~ **the commission.**  
 (5) Impose a condition ~~upon~~

**a on the commission.** ~~granted under IC 33-42-12.~~

**(b) The secretary of state may investigate any violation of this chapter by a notary public.**

~~(b)~~ **(c)** An action described in subsection (a) may be taken against any notary public for any act or omission that demonstrates a deficiency in competence, honesty, integrity, or reliability, ~~Additional acts that may result in one (1) or more sanctions are as follows:~~ **including the following:**

- (1) Any failure to comply with ~~the requirements of~~ this article or rules adopted under this article.

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- (2) Any deceitful, dishonest, or fraudulent statement or omission made during the application for a commission **as a notary public.**
- (3) Any conviction for a felony offense or a crime involving deceit, dishonesty, or fraud.
- (4) An adverse ruling or admission of liability in any legal proceeding pertaining to deceit, dishonesty, or fraud.
- (5) Any failure to discharge any duty required of a notary public.
- (6) Any use of false or misleading advertisements.
- (7) Use of any false or misleading statement claiming a right or privilege that the notary public does not have.
- (8) Any ~~denial, refusal to renew, revocation, suspension, or conditioning~~ **of the following with respect to a commission as a notary public commission** in another state:
  - (A) Denial of the commission.**
  - (B) Refusal of a subsequent commission.**
  - (C) Revocation of the commission.**
  - (D) Suspension of the commission.**
  - (E) Imposition of a condition on the commission.**
- (9) Any violation of a rule or requirement that:
  - (A) pertains to a notary public; and
  - (B) is required by the secretary of state.
- (10) Any failure to maintain an assurance as described in IC 33-42-12.

(c) If the secretary of state ~~denies, refuses to renew, revokes, suspends, or imposes a condition~~ **acts under subsection (a)** on an applicant or notary public's commission, the affected party is entitled to timely notice and a hearing as described in IC 4-21.5.

(d) The secretary of state's decision to discipline an applicant or notary public as described in this section does not prevent a person from pursuing any civil or criminal cause of action against the offending applicant or notary public.

SECTION 58. IC 33-42-13-3, AS ADDED BY P.L.128-2017, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A commission as a notary public does not allow a person to ~~perform~~ **do** the following:

- (1) Provide legal advice or otherwise practice law.
- (2) Act as an immigration consultant or provide advice on immigration matters.
- (3) Represent a person in an administrative or judicial proceeding related to citizenship or immigration.
- (4) Use an initial or name, other than the initial or name under which the notary public has been commissioned, to sign an

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acknowledgment.

(5) ~~At the time the notary takes the~~ **Take an** acknowledgment or ~~administers~~ **administer** an oath to any person the notary public knows **at the time** to be:

(A) adjudicated mentally incompetent; or

(B) under a guardianship described in IC 29-3.

(6) Take an acknowledgment from any person who is blind without first reading the record to the person who is blind.

(7) Take the acknowledgment of any person who does not speak or understand the English language unless the nature and effect of the record is translated into a language the person speaks or understands.

(8) Take the acknowledgment of a record without witnessing a signature or receiving an acknowledgment from the principal that the signature is authentic.

(9) Take a verification of an affidavit or oath in the absence of an affirmation of truth by the affiant.

(10) Perform a notarial act for:

(A) oneself;

(B) one's spouse; or

(C) any party;

that may directly benefit any person described in clauses (A) through (C).

(b) A notary public may not engage in false or deceptive advertising.

(c) A notary public, other than an attorney licensed to practice law in Indiana, may not use the term "notario" or "notario publico".

(d) Except as provided in subsection (g), a notary public may not advertise or represent that the notary public can draft legal documents, provide legal advice, or otherwise practice law. Any notary public who advertises notarial services shall include the following statement in each advertisement:

"I am not an attorney licensed to practice law in Indiana. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities."

(e) The **disclaimer statement** described in subsection (d) shall be translated into every language used in an advertisement.

(f) If size or space restrictions make it impossible for the **disclaimer statement** to be incorporated into an advertisement, the **disclaimer statement** described in subsection (d) shall be prominently displayed at the site ~~of where~~ **where the notarial service act is performed**. A display described in this subsection must be shown before the performance of a notarial act.

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(g) Subsections (c) through (f) do not apply to a notary public who is licensed to practice law in Indiana.

(h) Unless otherwise permitted by law, a notary public may not withhold access to or possession of an original record provided by a person seeking the performance of a notarial act by a notary public.

(i) A notary public who violates this chapter may have the notary public's commission revoked by a judge with jurisdiction in the county in which the notary public resides or is primarily employed.

~~(j)~~ **The secretary of state may:**

~~(1)~~ investigate any violation of this chapter by a notary public; and

~~(2)~~ revoke the commission of a notary public as described in section ~~1~~ of this chapter.

~~(k)~~ **(j)** A notary public whose commission has been revoked may not reapply for a new commission until five (5) years after the revocation.

~~(l)~~ **(k)** A notary public who has been convicted of notario publico deception under section 4 of this chapter may not reapply for a new commission.

~~(m)~~ **(l)** If the secretary of state revokes the commission of a notary public, the notary public may not reapply for a new commission for five (5) years.

SECTION 59. IC 33-42-13-4, AS ADDED BY P.L.128-2017, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. **(a)** A person who knowingly or intentionally:

(1) advertises notarial services without using the ~~disclaimer statement~~ described in section 3(d) of this chapter;

(2) advertises notarial services while claiming to be an expert on immigration matters without being a designated entity as described in 8 CFR 245 a.11; or

(3) accepts payment in exchange for providing legal advice or any other assistance that requires legal analysis, judgment, or interpretation of the law;

commits notario publico deception, a Class A misdemeanor.

**(b)** It is a defense to a prosecution under this section that a notary public is also licensed to practice law in Indiana.

SECTION 60. IC 33-42-14-1, AS ADDED BY P.L.128-2017, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. **(a)** A notary public may charge a fee of not more than ten dollars (\$10) for each of the following notarial acts:

(1) Taking an acknowledgment.

(2) Administering an affirmation or oath.

(3) Attesting to or witnessing a signature.



(4) Taking a verification on an oath or affirmation.

(5) Attesting to or certifying a copy.

(b) Fees for notarial acts not described in subsection (a) are negotiable.

(c) If a fee is charged for a notarial act, the notary public shall display, in advance, a list of the fees that the notary public will charge.

(d) Notarial acts that:

(1) are performed as part of the notary public's employment; or

(2) do not require record keeping;

are subject to private agreement and are not governed by this section.

(e) A notary public may charge a reasonable fee for traveling to perform a notarial act. The travel fee requested may not exceed the federal travel fees established by the United States General Services Administration.

(f) Except as provided in subsection (g), ~~a person~~ **an individual** who is a:

(1) public official; or

(2) deputy or appointee of a public official;

may not charge for ~~services as a notary public~~ **notarial acts performed by the individual** in connection with any official business of ~~that office~~ **the public official** or any other office belonging to the governmental unit in which the ~~person~~ **individual** serves.

(g) Subsection (f) does not apply to a person or transaction authorized **by another statute** to charge a fee for **performing** notarial ~~services by another statute.~~ **acts.**

SECTION 61. IC 33-42-16-2, AS ADDED BY P.L.128-2017, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a)** The secretary of state ~~may~~ **shall** adopt rules under IC 4-22-2 ~~in order~~ to implement this article, ~~The including~~ **rules may: to do the following:**

(1) Prescribe the process for conditioning, denying, granting, renewing, revoking, or suspending **the following:**

**(A) A commission as a notary public.** ~~commission.~~

**(B) A remote notary public registration.**

(2) Prescribe standards ~~designed~~ to ensure the trustworthiness of individuals applying for or in possession of **the following:**

**(A) A commission as a notary public.** ~~and~~

**(B) A remote notary public registration.**

(3) Establish processes for accepting and approving assurances.

**(4) Prescribe the manner by which notarial acts are performed with respect to tangible records and electronic records.**

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(5) Ensure that a change to or tampering with a record bearing an electronic notarial certificate is self-evident.

(6) Specify requirements to ensure the secure creation, storage, transmission, and authentication of electronic records, electronic seals, and electronic signatures.

(7) Establish standards for approval of the following for use in Indiana:

(A) Audio visual communication technology.

(B) Identity proofing.

(C) Credential analysis.

(D) Dynamic knowledge based authentication.

(E) Biometrics.

(F) Other methods of identification.

(8) Establish standards related to electronic notarial certificates.

(b) When adopting, amending, or repealing rules governing electronic records or remote notarial acts, the secretary of state shall consider the following:

(1) Recent standards regarding electronic records issued by national bodies, including the National Association of Secretaries of State.

(2) The customs, practices, and standards of other jurisdictions.

(3) Actions of other governmental entities and officials.

(c) The administrative rules for remote notarial acts must be in effect before the secretary of state approves vendors of technology under IC 33-42-17-6.

(d) Remote notary public applications will not be accepted for processing until the administrative rules are in effect and vendors of technology are approved by the secretary of state.

SECTION 62. IC 33-42-16-3, AS ADDED BY P.L.128-2017, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. A commission as a notary public in effect on ~~January~~ **July** 1, 2018, continues until its date of expiration. A notary public who applies or reapplies for a commission on or after ~~January~~ **July** 1, 2018, is subject to this ~~chapter.~~ **article.**

SECTION 63. IC 33-42-16-4 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 4: ~~This chapter does not affect the ongoing validity or effect of a notarial act performed before January 1, 2018.~~

SECTION 64. IC 33-42-17 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

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**Chapter 17. Remote Notarial Acts**

**Sec. 1. (a)** This chapter applies only to a remote notarial act performed after June 30, 2019.

**(b)** To the extent that this chapter conflicts with another provision of this article concerning remote notarial acts, this chapter is controlling.

**Sec. 2. (a)** A notary public may perform a remote notarial act only after registering as a remote notary public with the secretary of state.

**(b)** A notary public is eligible to register under subsection (a) if the notary public:

- (1)** holds a current commission as a notary public in Indiana;
- (2)** complies with the continuing education requirements described in IC 33-42-12-2, and prescribed under IC 33-42-16-2;
- (3)** is able to competently:
  - (A)** operate audiovisual communication technology; and
  - (B)** use identity proofing and credential analysis technology; and
- (4)** pays a registration fee in the amount of five dollars (\$5).

**(c)** The registration fee described in subsection (b) is in addition to the processing fee described in IC 33-42-12-1(c).

**(d)** Unless a registration under this section is revoked under IC 33-42-13, the term of registration:

- (1)** begins on the registration starting date set by the secretary of state; and
- (2)** expires on the date on which the remote notary public's current commission ends.

**(e)** A remote notary public whose registration expires under subsection (d) may not perform a remote notarial act until the remote notary public has reregistered under this section.

**(f)** A notary public is not required to perform remote notarial acts.

**(g)** A remote notary public may perform a remote notarial act only if the remote notary public is physically present in Indiana at the time the remote notarial act is performed.

**Sec. 3. (a)** A remote notary public:

- (1)** is a notary public subject to IC 33-42-12 to the same extent as a notary public who is not registered under this chapter;
- (2)** may perform notarial acts under IC 33-42-9 in addition to performing remote notarial acts; and
- (3)** may perform remote notarial acts in accordance with this



chapter.

(b) A remote notary public who is physically present in Indiana may perform the following notarial acts as remote notarial acts:

- (1) Taking an acknowledgment.
- (2) Administering an affirmation or oath.
- (3) Taking a verification on an oath or affirmation.
- (4) Attesting to or witnessing a signature.
- (5) Attesting to or certifying a copy of a document or record.

(c) A remote notary public may use audiovisual communication technology in performance of a remote notarial act described in subsection (b) if the remote notary public has first:

- (1) selected an audiovisual communication technology that has been approved by the secretary of state under rules adopted under IC 4-22-2; and
- (2) notified the secretary of state of the selection.

(d) Subject to subsection (e), a remote notarial act performed:

- (1) by a remote notary public commissioned in Indiana; and
- (2) using audiovisual communication technology described in subsection (c);

is considered to have been performed in Indiana, regardless of the physical location of the principal at the time the remote notarial act is performed, and is governed by Indiana law.

(e) A remote notary public may perform a remote notarial act using audiovisual communication technology described in subsection (c) for a principal that is present:

- (1) in Indiana;
- (2) outside Indiana, but within the United States; or
- (3) outside the United States if:
  - (A) the requested notarial act is not prohibited in the jurisdiction where the principal is present at the time of the remote notarial act; and
  - (B) the remote notarial act concerns a matter that:
    - (i) is before a court, a governmental entity, or another entity in;
    - (ii) concerns a property located in; or
    - (iii) relates to a transaction substantially connected to a territory or jurisdiction of;
 the United States.

(f) A remote notarial act that is performed using audiovisual communication technology described in subsection (c) must be captured by an audiovisual recording, regardless of whether the requested remote notarial act is completed.





(g) Before performing a remote notarial act described in subsections (b) and (c), a remote notary public shall inform the participating parties that the remote notarial act will be captured by an audiovisual recording.

(h) An audiovisual recording of a remote notarial act must include the following:

(1) A recitation of the following by the remote notary public:

(A) Identifying information sufficient to identify the specific remote notarial act performed.

(B) A statement explaining one (1) of the following:

(i) That the principal's identity is authenticated through the remote notary public's personal knowledge of the principal's identity.

(ii) That the identity of the principal is authenticated by a credible witness.

(2) A confirmation by the principal that the principal's electronic signature is freely and voluntarily issued.

(i) Regardless of the physical location of the principal at the time of the notarial act, the validity of a remote notarization performed by a remote notary public commissioned in Indiana must be determined under the laws of this state.

Sec. 4. (a) If a remote notarial act relates to a statement made in or a signature executed on a record, the principal shall appear before the remote notary public:

(1) physically; or

(2) by means of audiovisual communication described in section 6 of this chapter.

(b) Any appearance described in subsection (a)(2) is considered to be an in person appearance for purposes of this chapter.

Sec. 5. The identity of the principal in a remote notarial act may be verified by either of the following:

(1) The remote notary public's personal knowledge of the principal's identity.

(2) A credible witness's knowledge of the principal's identity.

(3) All of the following:

(A) Remote presentation by the principal of a credential identifying the principal.

(B) Credential analysis and visual inspection by the remote notary public of the credential described in clause (A).

(C) Identity proofing of the principal, which may include a dynamic knowledge based authentication assessment or use of a public key infrastructure.



(4) Another method that uses technology that meets or exceeds the standards for approval established by the secretary of state under IC 33-42-16-2.

**Sec. 6. (a) Technology used by a remote notary public for use in performing remote notarial acts must first be approved by the secretary of state.**

**(b) The secretary of state may approve technology described in subsection (a) only if the:**

**(1) technology:**

**(A) is tamper evident;**

**(B) allows a remote notarial act to be completed in accordance with this article;**

**(C) conforms to rules adopted by the secretary of state under IC 4-22-2; and**

**(D) if the technology is to be used for a remote notarial act described in section 4(a) of this chapter, allows for audiovisual communication between the parties; and**

**(2) vendor of the technology described in subdivision (1):**

**(A) uses a traditional or cloud based backup strategy that is acceptable to the secretary of state for use as a record keeper for any record that is related to a remote notarial act; and**

**(B) signs an agreement with the owner of the backup strategy described in clause (A) that, in the event that the vendor ceases business operations, the owner is required to release to the secretary of state any record described in clause (A).**

**(c) A remote notary public:**

**(1) may select one (1) or more technologies approved by the secretary of state under this section to perform remote notarial acts; and**

**(2) may not be required to use a particular technology not previously selected by the remote notary public.**

**(d) A remote notary public shall do the following:**

**(1) Take reasonable steps to ensure that audiovisual technology used in a remote notarial act is secure from unauthorized interception.**

**(2) Not later than thirty (30) days after the change occurs, notify the secretary of state of any change in technology used by the remote notary public to perform remote notarial acts.**

**Sec. 7. (a) An electronic notarial certificate of a remote notarial act must:**



- (1) specify that the notarial act is a remote notarial act;
- (2) include a space in which a remote notary public may indicate whether the principal in the remote notarial act appeared before the remote notary public under section 4(a)(1) or 4(a)(2) of this chapter; and

(3) specify the:

(A) city and county in Indiana in which the remote notary public is physically located when the remote notary public performs the remote notarial act; and

(B) city, county, state or province, and country in which the principal is physically located when the principal signs the document.

(b) Completion of either of the following forms satisfies the requirements of this section:

"State of Indiana

County of \_\_\_\_\_

City of \_\_\_\_\_

I certify that the attached or associated electronic record entitled \_\_\_\_\_ and dated \_\_\_\_\_ was signed by the principal \_\_\_\_\_ who was located in this city \_\_\_\_\_, county \_\_\_\_\_, state or province \_\_\_\_\_, and country \_\_\_\_\_ and notarized by me, the remote notary public, on this date \_\_\_\_\_ in this city and county \_\_\_\_\_, Indiana.

Signed \_\_\_\_\_, remote notary public.

Printed name of remote notary public \_\_\_\_\_

Date notary public commission expires \_\_\_\_\_".

"State of Indiana

County of \_\_\_\_\_

City of \_\_\_\_\_

I certify that the attached or associated electronic record entitled \_\_\_\_\_ and dated \_\_\_\_\_ was acknowledged and signed by the principal \_\_\_\_\_ who was located in this city \_\_\_\_\_, county \_\_\_\_\_, state or province \_\_\_\_\_, and country \_\_\_\_\_ and who appeared by audio visual communication on this date, was notarized by me, the remote notary public, on this date \_\_\_\_\_ in this city and county \_\_\_\_\_, Indiana.



Signed \_\_\_\_\_, remote notary public.

Printed name of remote notary public \_\_\_\_\_

Date notary public commission expires \_\_\_\_\_".

**Sec. 8. (a) A remote notary public who performs a remote notarial act shall personally do the following:**

- (1) Enter each remote notarial act in an electronic journal.
- (2) Maintain the electronic journal.
- (3) Keep the electronic journal in the exclusive control of the remote notary public.
- (4) Use commercially reasonable means to prevent unauthorized access to the electronic journal.
- (5) Provide for the lawful copying and inspection of the electronic journal.

**(b) An employer may not perform the responsibilities described in subsection (a) on behalf of a remote notary public.**

**(c) A remote notary public may maintain more than one (1) electronic journal.**

**(d) The following apply to an electronic journal:**

- (1) Access to the information contained in the electronic journal must be contingent upon the use of a password or other secure means of authentication.
- (2) It must be possible to print or produce a tangible record of any entry logged in the electronic journal.

**(e) A journal entry for each remote notarial act must consist of the following:**

- (1) The date and time of the remote notarial act.
- (2) The type of remote notarial act.
- (3) A title or description of the electronic record for each remote notarial act.
- (4) The full name of the principal.
- (5) A description of the manner by which the identity of the principal was authenticated or verified.
- (6) A description of any credential and the credential's corresponding date of expiration used to authenticate or verify the identity of the principal.

**(7) A listing of:**

- (A) every type of fee; and
- (B) every fee amount;

**charged by the remote notary public for each remote notarial act.**

**(8) Any other information required by the secretary of state.**

**(f) A remote notary public shall not delete, destroy, overwrite,**



or render inaccessible an electronic journal unless the remote notary public is ordered to do so by the secretary of state or judicial order.

(g) Upon a remote notary public's learning that an electronic journal is lost, stolen, or compromised, the remote notary public shall notify the secretary of state.

(h) A remote notary public who resigns or whose commission expires shall maintain the contents of an electronic journal for at least five (5) years after the performance of the last recorded remote notarial act.

**Sec. 9. (a)** A remote notary public may charge a fee of not more than fifteen dollars (\$15) for each remote notarial act.

(b) A remote notary public may charge a reasonable fee to recover expenses related to copying of:

- (1) electronic journal entries; or
- (2) audiovisual recording of remote notarial acts.

**Sec. 10. (a)** A remote notarial act performed by a remote notary public is presumed valid, regardless of the failure of the remote notary public to perform a duty or meet a requirement of this chapter.

(b) The presumed validity under subsection (a) of a remote notarial act does not do the following:

- (1) Apply to a remote notarial act that is:
  - (A) performed by an unauthorized individual; or
  - (B) described in IC 33-42-13-3(a)(10).
- (2) Prevent an injured party from seeking:
  - (A) the invalidation of a record or transaction reliant upon an incomplete remote notarial act; or
  - (B) another remedy under state or federal law.

**Sec. 11.** The secretary of state shall maintain on the secretary of state's Internet web site an electronic data base of active:

- (1) remote notaries public; and
- (2) vendors of technology that are approved by the secretary of state under section 6 of this chapter.

**Sec. 12. (a)** An individual performing a notarial act as described in IC 33-42-9-8, IC 33-42-9-9, IC 33-42-9-10, or IC 33-42-9-11 may not perform the notarial act as a remote notarial act unless:

- (1) the individual performing the remote notarial act is:
  - (A) a notary public commissioned by the secretary of state under IC 33-42-2; and
  - (B) registered as a remote notary public under section 2 of this chapter;



**(2) the remote notarial act is performed in accordance with this chapter; and**

**(3) the individual performing the remote notarial act complies with this chapter.**

**(b) A remote notarial act performed in accordance with this chapter is considered to have been performed in Indiana, regardless of the physical location of the principal at the time the remote notarial act is performed.**

SECTION 65. IC 35-43-5-23, AS ADDED BY P.L.128-2017, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 23. (a) The following terms are defined for this section:

(1) "Acknowledgment" has the meaning set forth in ~~IC 33-42-0.5-1(1)~~. **IC 33-42-0.5-2.**

(2) "Notarial officer" has the meaning set forth in ~~IC 33-42-0.5-1(5)~~. **IC 33-42-0.5-19.**

(b) A notarial officer who, with intent to defraud, knowingly or intentionally:

(1) affixes a person's signature to a blank affidavit or certificate of acknowledgment; and

(2) delivers that affidavit or certificate to another person;

with the intent that it be used as an affidavit or acknowledgment commits notary fraud, a Level 6 felony.

(c) A person who knowingly or intentionally uses an affidavit or certificate described in subsection (b) for any purpose commits notarial fraud, a Level 6 felony.

SECTION 66. [EFFECTIVE JULY 1, 2018] **(a) An action taken by the secretary of state before July 1, 2018, to assess, receipt, or collect a trademark application filing fee under IC 24-2-1-4 is legalized and validated.**

**(b) This SECTION expires July 1, 2023.**

SECTION 67. **An emergency is declared for this act.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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