

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0115.01 Thomas Morris x4218

SENATE BILL 18-109

SENATE SPONSORSHIP

Gardner, Guzman, Neville T., Sonnenberg, Williams A.

HOUSE SPONSORSHIP

Garnett and Wist, Hooton, Melton, Michaelson Jenet, Pabon, Rosenthal

Senate Committees

Business, Labor, & Technology
Finance
Appropriations

House Committees

Judiciary
Finance

A BILL FOR AN ACT

101 **CONCERNING AN AUTHORIZATION FOR NOTARIES PUBLIC TO PERFORM**
102 **NOTARIAL ACTS USING AUDIO-VIDEO COMMUNICATION, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law requires an individual who wishes to have a document notarized to appear personally before the notary public. The bill authorizes notaries public to perform a notarial act on behalf of an individual who is not in the notary's physical presence, but only with respect to an electronic document.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
March 21, 2018

SENATE
Amended 2nd Reading
March 20, 2018

To perform a "remote notarization", a notary must use a tamper-evident electronic system that conforms to standards established by rules of the secretary of state, including using real-time audio-video communications and keeping an audio-video recording of the notarization for at least 10 years. The bill establishes the standards that a notary must comply with to have satisfactory evidence of the identity of the person seeking the remote notarization. A notary is prohibited from using information collected during a remote notarization other than as allowed by applicable federal or state law.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-21-502 **as it will**
3 **become effective July 1, 2018, add** (1.5), (10.5), (11.5), and (15.5) as
4 follows:

5 **24-21-502. Definitions.** In this part 5:

6 (1.5) "CREDENTIAL" MEANS A TANGIBLE RECORD EVIDENCING THE
7 IDENTITY OF AN INDIVIDUAL.

8 (10.5) "REAL-TIME" OR "IN REAL TIME" MEANS, WITH RESPECT TO
9 AN INTERACTION BETWEEN INDIVIDUALS BY MEANS OF AUDIO-VIDEO
10 COMMUNICATIONS, THAT THE INDIVIDUALS CAN SEE AND HEAR EACH
11 OTHER SUBSTANTIALLY SIMULTANEOUSLY AND WITHOUT INTERRUPTION
12 OR DISCONNECTION. DELAYS OF A FEW SECONDS THAT ARE INHERENT IN
13 THE METHOD OF COMMUNICATION DO NOT PREVENT THE INTERACTION
14 FROM BEING CONSIDERED TO HAVE OCCURRED IN REAL TIME.

15 (11.5) "REMOTE NOTARIZATION" MEANS AN ELECTRONIC
16 NOTARIAL ACT PERFORMED WITH RESPECT ONLY TO AN ELECTRONIC
17 RECORD BY MEANS OF REAL-TIME AUDIO-VIDEO COMMUNICATION IN
18 ACCORDANCE WITH SECTION 24-21-514.5 AND RULES ADOPTED BY THE
19 SECRETARY OF STATE.

20 (15.5) "TAMPER-EVIDENT" MEANS THE USE OF A SET OF

1 APPLICATIONS, PROGRAMS, HARDWARE, SOFTWARE, OR OTHER
2 TECHNOLOGIES THAT WILL DISPLAY EVIDENCE OF ANY CHANGES MADE TO
3 AN ELECTRONIC RECORD.

4 **SECTION 2.** In Colorado Revised Statutes, **amend as it will**
5 **become effective July 1, 2018, 24-21-506** as follows:

6 **24-21-506. Personal appearance required - definition.** (1) If
7 a notarial act relates to a statement made in or a signature executed on a
8 record, the individual making the statement or executing the signature
9 shall appear personally before the notarial officer.

10 (2) FOR PURPOSES OF THIS SECTION, "APPEAR PERSONALLY"
11 MEANS:

12 (a) BEING IN THE SAME PHYSICAL LOCATION AS ANOTHER
13 INDIVIDUAL AND CLOSE ENOUGH TO SEE, HEAR, COMMUNICATE WITH, AND
14 EXCHANGE TANGIBLE IDENTIFICATION CREDENTIALS WITH THAT
15 INDIVIDUAL; OR

16 (b) INTERACTING WITH ANOTHER INDIVIDUAL BY MEANS OF
17 REAL-TIME AUDIO-VIDEO COMMUNICATION IN COMPLIANCE WITH SECTION
18 24-21-514.5 AND RULES ADOPTED BY THE SECRETARY OF STATE.

19 **SECTION 3.** In Colorado Revised Statutes, **add 24-21-514.5** as
20 follows:

21 **24-21-514.5. Audio-video communication - definitions.** (1) AS
22 USED IN THIS SECTION:

23 (a) "AUDIO-VIDEO COMMUNICATION" MEANS COMMUNICATION BY
24 WHICH AN INDIVIDUAL IS ABLE TO SEE, HEAR, AND COMMUNICATE WITH
25 ANOTHER INDIVIDUAL IN REAL TIME USING ELECTRONIC MEANS.

26 (b) "CREDENTIAL ANALYSIS" MEANS A PROCESS OR SERVICE THAT
27 COMPLIES WITH ANY RULES ADOPTED BY THE SECRETARY OF STATE

1 THROUGH WHICH A THIRD PARTY AFFIRMS THE VALIDITY OF A
2 GOVERNMENT-ISSUED IDENTIFICATION CREDENTIAL THROUGH THE REVIEW
3 OF PUBLIC OR PROPRIETARY DATA SOURCES.

4 (c) "DYNAMIC, KNOWLEDGE-BASED AUTHENTICATION
5 ASSESSMENT" MEANS AN IDENTITY ASSESSMENT THAT IS BASED ON A SET
6 OF QUESTIONS FORMULATED FROM PUBLIC OR PRIVATE DATA SOURCES FOR
7 WHICH THE INDIVIDUAL TAKING THE ASSESSMENT HAS NOT PREVIOUSLY
8 PROVIDED AN ANSWER AND THAT MEETS ANY RULES ADOPTED BY THE
9 SECRETARY OF STATE.

10 (d) "OUTSIDE THE UNITED STATES" MEANS A LOCATION OUTSIDE
11 THE GEOGRAPHIC BOUNDARIES OF THE UNITED STATES, PUERTO RICO, THE
12 UNITED STATES VIRGIN ISLANDS, AND ANY TERRITORY OR INSULAR
13 POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

14 (e) "PUBLIC KEY CERTIFICATE" MEANS AN ELECTRONIC
15 CREDENTIAL THAT IS USED TO IDENTIFY AN INDIVIDUAL WHO SIGNED AN
16 ELECTRONIC RECORD WITH THE CERTIFICATE.

17 (f) "REMOTE NOTARIZATION SYSTEM" MEANS ANY TECHNOLOGY
18 THAT ENABLES A NOTARY PUBLIC TO PERFORM REMOTE NOTARIZATIONS
19 IN COMPLIANCE WITH THIS PART 5 AND RULES ADOPTED BY THE
20 SECRETARY OF STATE.

21 (g) "REMOTE PRESENTATION" MEANS TRANSMISSION TO THE
22 NOTARY PUBLIC THROUGH COMMUNICATION TECHNOLOGY OF AN IMAGE
23 OF A GOVERNMENT-ISSUED IDENTIFICATION CREDENTIAL THAT IS OF
24 SUFFICIENT QUALITY TO ENABLE THE NOTARY PUBLIC TO:

25 (I) IDENTIFY THE INDIVIDUAL SEEKING THE NOTARY PUBLIC'S
26 SERVICES; AND

27 (II) PERFORM CREDENTIAL ANALYSIS.

1 (2) (a) EXCEPT AS PROVIDED IN SUBSECTION (2)(b) OF THIS
2 SECTION, A NOTARY PUBLIC MAY PERFORM A REMOTE NOTARIZATION ONLY
3 WITH RESPECT TO AN ELECTRONIC RECORD AND IN COMPLIANCE WITH THIS
4 SECTION AND ANY RULES ADOPTED BY THE SECRETARY OF STATE FOR AN
5 INDIVIDUAL WHO IS LOCATED:

6 (I) IN THIS STATE;

7 (II) OUTSIDE OF THIS STATE BUT WITHIN THE UNITED STATES; OR

8 (III) OUTSIDE THE UNITED STATES IF:

9 (A) THE NOTARY PUBLIC HAS NO ACTUAL KNOWLEDGE THAT THE
10 NOTARIAL ACT IS PROHIBITED IN THE JURISDICTION IN WHICH THE
11 INDIVIDUAL IS PHYSICALLY LOCATED AT THE TIME OF THE ACT; AND

12 (B) THE INDIVIDUAL CONFIRMS TO THE NOTARY PUBLIC THAT THE
13 REQUESTED NOTARIAL ACT AND THE RECORD RELATE TO: A MATTER THAT
14 WILL BE FILED WITH OR IS CURRENTLY BEFORE A COURT, GOVERNMENTAL
15 ENTITY, OR OTHER ENTITY IN THE UNITED STATES; PROPERTY LOCATED IN
16 THE UNITED STATES; OR A TRANSACTION SUBSTANTIALLY CONNECTED TO
17 THE UNITED STATES.

18 (b) A NOTARY PUBLIC SHALL NOT PERFORM A REMOTE
19 NOTARIZATION FOR:

20 (I) A RECORD RELATING TO THE ELECTORAL PROCESS; OR

21 (II) A WILL, CODICIL, DOCUMENT PURPORTING TO BE A WILL OR
22 CODICIL, OR ANY ACKNOWLEDGMENT REQUIRED UNDER SECTION
23 15-11-502 OR 15-11-504.

24 (3) BEFORE A NOTARY PUBLIC PERFORMS THE NOTARY PUBLIC'S
25 INITIAL REMOTE NOTARIZATION, THE NOTARY PUBLIC SHALL NOTIFY THE
26 SECRETARY OF STATE THAT THE NOTARY PUBLIC WILL BE PERFORMING
27 REMOTE NOTARIZATIONS AND SHALL IDENTIFY EACH REMOTE

1 NOTARIZATION SYSTEM THAT THE NOTARY PUBLIC INTENDS TO USE. THE
2 REMOTE NOTARIZATION SYSTEM MUST CONFORM TO THIS PART 5 AND ANY
3 RULES ADOPTED BY THE SECRETARY OF STATE. THE NOTICE MUST BE
4 SUBMITTED IN THE FORMAT REQUIRED BY THE SECRETARY OF STATE AND
5 MUST:

6 (a) INCLUDE AN AFFIRMATION THAT THE NOTARY PUBLIC HAS READ
7 AND WILL COMPLY WITH THIS SECTION AND ALL RULES ADOPTED BY THE
8 SECRETARY OF STATE; AND

9 (b) BE ACCOMPANIED BY PROOF THAT THE NOTARY PUBLIC HAS
10 SUCCESSFULLY COMPLETED ANY TRAINING AND EXAMINATION REQUIRED
11 BY THE SECRETARY OF STATE.

12 (4) A NOTARY PUBLIC WHO PERFORMS A NOTARIAL ACT FOR AN
13 INDIVIDUAL BY MEANS OF AUDIO-VIDEO COMMUNICATION MUST:

14 (a) BE LOCATED WITHIN THIS STATE AT THE TIME THE NOTARIAL
15 ACT IS PERFORMED;

16 (b) EXECUTE THE NOTARIAL ACT IN A SINGLE, REAL-TIME SESSION;

17 (c) CONFIRM THAT ANY RECORD THAT IS SIGNED, ACKNOWLEDGED,
18 OR OTHERWISE PRESENTED FOR NOTARIZATION BY THE INDIVIDUAL IS THE
19 SAME RECORD SIGNED BY THE NOTARY PUBLIC;

20 (d) CONFIRM THAT THE QUALITY OF THE AUDIO-VIDEO
21 COMMUNICATION IS SUFFICIENT TO MAKE THE DETERMINATIONS REQUIRED
22 FOR THE NOTARIAL ACT UNDER THIS PART 5 AND ANY OTHER LAW OF THIS
23 STATE; AND

24 (e) IDENTIFY THE VENUE FOR THE NOTARIAL ACT AS THE
25 JURISDICTION WITHIN THIS STATE WHERE THE NOTARY PUBLIC IS
26 PHYSICALLY LOCATED WHILE PERFORMING THE ACT.

27 (5) A REMOTE NOTARIZATION SYSTEM USED TO PERFORM REMOTE

1 NOTARIZATIONS MUST:

2 (a) REQUIRE THE NOTARY PUBLIC, THE INDIVIDUAL, AND ANY
3 REQUIRED WITNESS TO ACCESS THE SYSTEM THROUGH AN
4 AUTHENTICATION PROCEDURE THAT COMPLIES WITH RULES ADOPTED BY
5 THE SECRETARY OF STATE REGARDING SECURITY AND ACCESS;

6 (b) ENABLE THE NOTARY PUBLIC TO VERIFY THE IDENTITY OF THE
7 INDIVIDUAL AND ANY REQUIRED WITNESS BY MEANS OF PERSONAL
8 KNOWLEDGE OR SATISFACTORY EVIDENCE OF IDENTITY IN COMPLIANCE
9 WITH SUBSECTION (6) OF THIS SECTION; AND

10 (c) CONFIRM THAT THE NOTARY PUBLIC, THE INDIVIDUAL, AND
11 ANY REQUIRED WITNESS ARE VIEWING THE SAME RECORD AND THAT ALL
12 SIGNATURES, CHANGES, AND ATTACHMENTS TO THE RECORD ARE MADE IN
13 REAL TIME.

14 (6) (a) A NOTARY PUBLIC SHALL DETERMINE FROM PERSONAL
15 KNOWLEDGE OR SATISFACTORY EVIDENCE OF IDENTITY AS DESCRIBED IN
16 SUBSECTION (6)(b) OF THIS SECTION THAT THE INDIVIDUAL APPEARING
17 BEFORE THE NOTARY PUBLIC BY MEANS OF AUDIO-VIDEO COMMUNICATION
18 IS THE INDIVIDUAL THAT HE OR SHE PURPORTS TO BE.

19 (b) A NOTARY PUBLIC HAS SATISFACTORY EVIDENCE OF IDENTITY
20 IF THE NOTARY PUBLIC CAN IDENTIFY THE INDIVIDUAL WHO PERSONALLY
21 APPEARS BEFORE THE NOTARY PUBLIC BY MEANS OF AUDIO-VIDEO
22 COMMUNICATION BY USING AT LEAST ONE OF THE FOLLOWING METHODS:

23 (I) THE OATH OR AFFIRMATION OF A CREDIBLE WITNESS WHO
24 PERSONALLY KNOWS THE INDIVIDUAL, IS PERSONALLY KNOWN TO THE
25 NOTARY PUBLIC, AND IS IN THE PHYSICAL PRESENCE OF THE NOTARY
26 PUBLIC OR THE INDIVIDUAL DURING THE REMOTE NOTARIZATION;

27 (II) REMOTE PRESENTATION AND CREDENTIAL ANALYSIS OF A

1 GOVERNMENT-ISSUED IDENTIFICATION CREDENTIAL THAT CONTAINS THE
2 SIGNATURE AND A PHOTOGRAPH OF THE PERSON AND THE DATA
3 CONTAINED ON THE CREDENTIAL, AND AT LEAST ONE OF THE FOLLOWING:

4 (A) A DYNAMIC, KNOWLEDGE-BASED AUTHENTICATION
5 ASSESSMENT BY A TRUSTED THIRD PARTY THAT COMPLIES WITH RULES
6 ADOPTED BY THE SECRETARY OF STATE;

7 (B) A VALID PUBLIC KEY CERTIFICATE THAT COMPLIES WITH RULES
8 ADOPTED BY THE SECRETARY OF STATE; OR

9 (C) AN IDENTITY VERIFICATION BY A TRUSTED THIRD PARTY THAT
10 COMPLIES WITH RULES ADOPTED BY THE SECRETARY OF STATE; OR

11 ==
12 (III) ANY OTHER METHOD THAT COMPLIES WITH RULES ADOPTED
13 BY THE SECRETARY OF STATE.

14 (7) WITHOUT LIMITING THE AUTHORITY OF A NOTARY PUBLIC
15 UNDER SECTION 24-21-508 TO REFUSE TO PERFORM A NOTARIAL ACT, A
16 NOTARY PUBLIC MAY REFUSE TO PERFORM A NOTARIAL ACT UNDER THIS
17 SECTION IF THE NOTARY PUBLIC IS NOT SATISFIED THAT THE
18 REQUIREMENTS OF THIS SECTION ARE MET.

19 (8) THE CERTIFICATE OF NOTARIAL ACT FOR A REMOTE
20 NOTARIZATION MUST, IN ADDITION TO COMPLYING WITH THE
21 REQUIREMENTS OF SECTION 24-21-515, INDICATE THAT THE NOTARIAL ACT
22 WAS PERFORMED USING AUDIO-VIDEO COMMUNICATION TECHNOLOGY.

23 (9) THE FOLLOWING SHORT-FORM CERTIFICATES OF REMOTE
24 NOTARIZATIONS ARE SUFFICIENT FOR THE PURPOSES INDICATED, IF
25 COMPLETED WITH THE INFORMATION REQUIRED BY SECTION 24-21-515 (1)
26 AND (2) AND SUBSECTION (8) OF THIS SECTION:

27 (a) FOR A VERIFICATION ON OATH OR AFFIRMATION BY AN

1 INDIVIDUAL MAKING A PERSONAL APPEARANCE BY USE OF AUDIO-VIDEO
2 COMMUNICATION TECHNOLOGY:

3 STATE OF _____

4 COUNTY OF _____

5 SIGNED AND SWORN TO (OR AFFIRMED) BEFORE ME BY USE

6 OF AUDIO-VIDEO COMMUNICATION TECHNOLOGY ON

7 (DATE) BY (NAME(S) OF INDIVIDUAL(S)) , WHO

8 DECLARED THAT (HE)(SHE)(THEY) (IS)(ARE) LOCATED IN

9 (LOCATION OF INDIVIDUAL) [AND THAT THIS RECORD IS

10 PART OF OR PERTAINS TO A MATTER THAT IS TO BE FILED

11 WITH OR IS BEFORE A COURT, GOVERNMENTAL ENTITY, OR

12 OTHER ENTITY LOCATED IN THE UNITED STATES OR

13 INVOLVES PROPERTY LOCATED IN, OR A TRANSACTION

14 SUBSTANTIALLY CONNECTED WITH, THE UNITED STATES].

15 _____

16 SIGNATURE OF NOTARIAL OFFICER

17 STAMP

18 (_____ (TITLE OF OFFICE) _____)

19 MY COMMISSION EXPIRES: _____

20 (b) FOR AN ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY BY AN

21 INDIVIDUAL MAKING A PERSONAL APPEARANCE BY USE OF AUDIO-VIDEO

22 COMMUNICATION TECHNOLOGY:

23 STATE OF _____

24 COUNTY OF _____

25 THIS RECORD WAS ACKNOWLEDGED BEFORE ME BY USE OF

26 AUDIO-VIDEO COMMUNICATION TECHNOLOGY ON (DATE)

27 BY (NAME(S) OF INDIVIDUAL(S)) , WHO DECLARED THAT

1 (HE)(SHE)(THEY) (IS)(ARE) LOCATED IN (LOCATION OF
2 INDIVIDUAL) [AND THAT THIS RECORD IS PART OF OR
3 PERTAINS TO A MATTER THAT IS TO BE FILED WITH OR IS
4 BEFORE A COURT, GOVERNMENTAL ENTITY, OR OTHER
5 ENTITY LOCATED IN THE UNITED STATES OR INVOLVES
6 PROPERTY LOCATED IN, OR A TRANSACTION SUBSTANTIALLY
7 CONNECTED WITH, THE UNITED STATES].

8 _____
9 SIGNATURE OF NOTARIAL OFFICER
10 ((TITLE OF OFFICE))

11 MY COMMISSION EXPIRES: _____

12 (c) FOR AN ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY
13 BY AN INDIVIDUAL MAKING A PERSONAL APPEARANCE BY USE OF
14 AUDIO-VIDEO COMMUNICATION TECHNOLOGY:

15 STATE OF _____
16 COUNTY OF _____

17 THIS RECORD WAS ACKNOWLEDGED BEFORE ME BY USE OF
18 AUDIO-VIDEO COMMUNICATION TECHNOLOGY ON (DATE)
19 BY (NAME(S) OF INDIVIDUAL(S)) AS (TYPE OF AUTHORITY,
20 SUCH AS OFFICER OR TRUSTEE) OF (NAME OF PARTY ON
21 BEHALF OF WHOM RECORD WAS EXECUTED), WHO
22 DECLARED THAT (HE)(SHE)(THEY) (IS)(ARE) LOCATED IN
23 (LOCATION OF INDIVIDUAL) [AND THAT THIS RECORD IS
24 PART OF OR PERTAINS TO A MATTER THAT IS TO BE FILED
25 WITH OR IS BEFORE A COURT, GOVERNMENTAL ENTITY, OR
26 OTHER ENTITY LOCATED IN THE UNITED STATES, OR
27 INVOLVES PROPERTY LOCATED IN, OR A TRANSACTION

1 SUBSTANTIALLY CONNECTED WITH, THE UNITED STATES].

2 _____

3 SIGNATURE OF NOTARIAL OFFICER

4 STAMP

5 (_____ (TITLE OF OFFICE) _____)

6 MY COMMISSION EXPIRES: _____

7 (d) FOR WITNESSING OR ATTESTING A SIGNATURE BY AN
8 INDIVIDUAL MAKING A PERSONAL APPEARANCE BY USE OF AUDIO-VIDEO
9 COMMUNICATION TECHNOLOGY:

10 STATE OF _____

11 COUNTY OF _____

12 SIGNED OR ATTESTED BEFORE ME BY USE OF AUDIO-VIDEO
13 COMMUNICATION TECHNOLOGY ON (DATE) BY (NAME(S)
14 OF INDIVIDUAL(S)), WHO DECLARED THAT
15 (HE)(SHE)(THEY) (IS)(ARE) LOCATED IN (LOCATION OF
16 INDIVIDUAL) [AND THAT THIS RECORD IS PART OF OR
17 PERTAINS TO A MATTER THAT IS TO BE FILED WITH OR IS
18 BEFORE A COURT, A GOVERNMENTAL ENTITY, OR OTHER
19 ENTITY LOCATED IN THE UNITED STATES, OR INVOLVES
20 PROPERTY LOCATED IN, OR A TRANSACTION SUBSTANTIALLY
21 CONNECTED WITH, THE UNITED STATES].

22 _____

23 SIGNATURE OF NOTARIAL OFFICER

24 STAMP

25 (_____ (TITLE OF OFFICE) _____)

26 MY COMMISSION EXPIRES: _____

27 (10) (a) (I) A NOTARY PUBLIC SHALL CREATE AN AUDIO-VIDEO

1 RECORDING OF THE PERFORMANCE OF THE REMOTE NOTARIZATION. A
2 NOTARY PUBLIC, OR A GUARDIAN, CONSERVATOR, OR PERSONAL
3 REPRESENTATIVE OF AN INCAPACITATED OR DECEASED NOTARY PUBLIC,
4 SHALL RETAIN THE AUDIO-VIDEO RECORDING OF THE PERFORMANCE OF
5 THE REMOTE NOTARIZATION FOR AT LEAST FIVE YEARS IN ACCORDANCE
6 WITH RULES ADOPTED BY THE SECRETARY OF STATE; EXCEPT THAT
7 INSTEAD OF RETAINING THE RECORDING AS REQUIRED BY THIS SUBSECTION
8 (10)(a)(I), THE RECORDING MAY BE HELD BY A REPOSITORY DESIGNATED
9 BY OR ON BEHALF OF THE NOTARY PUBLIC.

10 (II) THE NOTARY PUBLIC MUST, AT THE OUTSET OF THE NOTARIAL
11 SESSION, DISCLOSE TO THE INDIVIDUAL THAT THE NOTARIAL SESSION WILL
12 BE RECORDED AND OBTAIN THE INDIVIDUAL'S CONSENT TO PROCEED.

13 (III) THE RECORDING MUST BE STORED AND SECURED IN
14 COMPLIANCE WITH RULES ADOPTED BY THE SECRETARY OF STATE.

15 (b) THE AUDIO-VIDEO RECORDING REQUIRED BY THIS SECTION
16 MUST BE IN ADDITION TO THE JOURNAL ENTRY FOR THE NOTARIAL ACT
17 REQUIRED BY SECTION 24-21-519 AND MUST INCLUDE:

18 (I) AT THE COMMENCEMENT OF THE RECORDING, A RECITATION BY
19 THE NOTARY PUBLIC OF INFORMATION SUFFICIENT TO IDENTIFY THE
20 NOTARIAL ACT;

21 (II) A DECLARATION BY THE INDIVIDUAL THAT THE INDIVIDUAL'S
22 SIGNATURE ON THE RECORD IS KNOWINGLY AND VOLUNTARILY MADE;

23 (III) ALL ACTIONS AND SPOKEN WORDS OF THE INDIVIDUAL, THE
24 NOTARY PUBLIC, AND ANY REQUIRED WITNESS DURING THE ENTIRE
25 NOTARIAL ACT;

26 (IV) IF THE INDIVIDUAL FOR WHOM THE NOTARIAL ACT IS BEING
27 PERFORMED IS IDENTIFIED BY PERSONAL KNOWLEDGE, AN EXPLANATION

1 BY THE NOTARY PUBLIC AS TO HOW HE OR SHE KNOWS THE INDIVIDUAL
2 AND HOW LONG HE OR SHE HAS KNOWN THE INDIVIDUAL;

3 (V) IF THE INDIVIDUAL FOR WHOM THE NOTARIAL ACT IS BEING
4 PERFORMED IS IDENTIFIED BY A CREDIBLE WITNESS:

5 (A) A STATEMENT BY THE NOTARY PUBLIC AS TO HOW THE
6 NOTARY PUBLIC KNOWS THE CREDIBLE WITNESS AND HOW LONG HE OR SHE
7 HAS KNOWN THE CREDIBLE WITNESS; AND

8 (B) AN EXPLANATION BY THE CREDIBLE WITNESS AS TO HOW HE OR
9 SHE KNOWS THE INDIVIDUAL AND HOW LONG HE OR SHE HAS KNOWN THE
10 INDIVIDUAL; AND

11 (VI) IF THE INDIVIDUAL HAS SO REQUESTED, AN ACCURATE AND
12 COMPLETE IMAGE OF THE ENTIRE RECORD THAT WAS VIEWED AND SIGNED
13 BY THE INDIVIDUAL AND NOTARY PUBLIC.

14 (c) THE PROVISIONS OF SECTION 24-21-519, RELATED
15 RESPECTIVELY TO SECURITY, INSPECTION, COPYING, AND RETENTION AND
16 DISPOSITION OF A NOTARY PUBLIC'S JOURNAL, APPLY TO SECURITY,
17 INSPECTION, COPYING, AND RETENTION AND DISPOSITION OF AUDIO-VIDEO
18 RECORDINGS REQUIRED BY THIS SECTION.

19 (d) AN AUDIO-VIDEO RECORDING OF A NOTARIAL ACT IS NOT
20 ADMISSIBLE AS EVIDENCE IN ANY LEGAL OR REGULATORY PROCEEDING
21 FOR A PURPOSE OR WITH RESPECT TO AN ISSUE UNRELATED TO THE
22 NOTARIAL ACT OR A PERSON'S CONDUCT RELATING TO THE NOTARIAL ACT,
23 THE TRANSACTION, ACT, OR RECORD TO WHICH THE NOTARIAL ACT
24 RELATES, OR LEGAL OR REGULATORY MATTERS RELATING TO THE NOTARY
25 PUBLIC'S COMPLIANCE WITH APPLICABLE NOTARIAL LAW.

26 (e) A PERSON SHALL USE AND SAFEGUARD CUSTOMER DATA
27 RECEIVED IN CONNECTION WITH A NOTARIAL ACT ONLY IN ACCORDANCE

1 WITH APPLICABLE LAW.

2 (11) REGARDLESS OF THE PHYSICAL LOCATION OF THE INDIVIDUAL
3 AT THE TIME OF THE NOTARIAL ACT, THE VALIDITY OF A REMOTE
4 NOTARIZATION PERFORMED BY A NOTARY IN THIS STATE IS GOVERNED BY
5 THE LAWS OF THIS STATE, INCLUDING ANY RULES ADOPTED BY THE
6 SECRETARY OF STATE PURSUANT TO THIS PART 5.

7 **SECTION 4.** In Colorado Revised Statutes, 24-21-515, **amend**
8 **as it will become effective July 1, 2018, (4)** as follows:

9 **24-21-515. Certificate of notarial act. (4)** By executing a
10 **certificate of a notarial act, a notarial officer certifies that the officer has**
11 **complied with the requirements and made the determinations specified in**
12 **sections 24-21-504, 24-21-505, and 24-21-506 AND, IF APPLICABLE,**
13 **SECTION 24-21-514.5.**

14 **SECTION 5.** In Colorado Revised Statutes, 24-21-519, **amend**
15 **as it will become effective July 1, 2018, (2)** as follows:

16 **24-21-519. Journal. (2)** (a) A journal may be created on a
17 tangible medium or in an electronic format. If a journal is maintained on
18 a tangible medium, it must be a permanent, bound register with numbered
19 pages. If a journal is maintained in an electronic format, it must be in a
20 permanent, tamper-evident electronic format complying with the rules of
21 the secretary of state.

22 (b) A NOTARY PUBLIC THAT PERFORMS A REMOTE NOTARIZATION
23 SHALL MAINTAIN A JOURNAL IN AN ELECTRONIC FORMAT WITH REGARD TO
24 EACH REMOTE NOTARIZATION. THE JOURNAL MUST INCLUDE THE
25 ELECTRONIC SIGNATURE OF THE INDIVIDUAL FOR EACH REMOTE
26 NOTARIZATION.

27 **SECTION 6.** In Colorado Revised Statutes, 24-21-525 **as it will**

1 **become effective July 1, 2018, add (8) as follows:**

2 **24-21-525. Prohibited acts.** (8) A PERSON SHALL NOT SELL,
3 OFFER FOR SALE, OR USE ANY INFORMATION COLLECTED IN THE COURSE OF
4 PERFORMING A REMOTE NOTARIZATION FOR ANY PURPOSE OTHER THAN:

- 5 (a) COMPLETING THE NOTARIAL ACT OR RELATED ACTIVITIES;
- 6 (b) COMPLYING WITH APPLICABLE LAW;
- 7 (c) AS PERMITTED BY APPLICABLE FEDERAL OR STATE LAW; OR
- 8 (d) IN ACCORDANCE WITH CONSENT OBTAINED, IN THE MANNER
9 REQUIRED BY APPLICABLE LAW, FROM THE PERSON TO WHOM SUCH
10 INFORMATION RELATES.

11 **SECTION 7.** In Colorado Revised Statutes, 24-21-527 **as it will**
12 **become effective July 1, 2018, amend (1)(e); and add (1)(g) and (1)(h)**
13 **as follows:**

14 **24-21-527. Rules.** (1) The secretary of state may adopt rules to
15 implement this part 5 in accordance with article 4 of this title 24. Rules
16 adopted regarding the performance of notarial acts with respect to
17 electronic records may not require, or accord greater legal status or effect
18 to, the implementation or application of a specific technology or technical
19 specification. The rules may:

20 (e) Include provisions to prevent fraud, ~~or mistake~~ ENSURE FRAUD
21 DETERRENCE, PROMOTE SECURITY, AND PREVENT MISTAKES in the
22 performance of notarial acts; ~~and~~

23 (g) PRESCRIBE THE MANNER OF PERFORMING NOTARIAL ACTS
24 USING AUDIO-VIDEO COMMUNICATION, INCLUDING PROVISIONS TO
25 ENSURE:

26 (I) THE SECURITY AND INTEGRITY OF THOSE ACTS AND OF
27 NONPUBLIC PERSONAL INFORMATION;

1 (II) THE MAXIMUM AMOUNT OF PRIVACY FOR THE INDIVIDUAL
2 SEEKING THE NOTARIAL ACT WITHOUT COMPROMISING THE LAWFUL USES
3 OF THE NOTARIAL ACT; AND

4 (III) THAT THE NOTARIAL ACTS COMPLY WITH ALL APPLICABLE
5 STATE LAWS GOVERNING NOTARIES PUBLIC, INCLUDING SPECIFICALLY
6 COMPLIANCE WITH SECTION 24-21-514.5 (10)(d) AND (10)(e) REGARDING
7 LIMITS ON THE USE OF AUDIO-VIDEO RECORDINGS AND CUSTOMER DATA;
8 AND

9 (h) PRESCRIBE REQUIREMENTS FOR THE APPROVAL AND USE OF
10 REMOTE NOTARIZATION SYSTEMS.

11 **SECTION 8. Appropriation.** (1) For the 2018-19 state fiscal
12 year, \$42,895 is appropriated to the department of state. This
13 appropriation is from the department of state cash fund created in section
14 24-21-104 (3)(b), C.R.S. To implement this act, the department may use
15 this appropriation as follows:

16 (a) \$16,128 for use by information technology services for
17 personal services;

18 (b) \$21,589 for use by the business and licensing division for
19 personal services, which amount is based on an assumption that the
20 division will require an additional 0.5 FTE; and

21 (c) \$5,178 for use by the business and licensing division for
22 operating expenses.

23 **SECTION 9. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect January 1, 2019; except that, if a
25 referendum petition is filed pursuant to section 1 (3) of article V of the
26 state constitution against this act or an item, section, or part of this act
27 within the ninety-day period after final adjournment of the general

1 assembly, then the act, item, section, or part will not take effect unless
2 approved by the people at the general election to be held in November
3 2018 and, in such case, will take effect on January 1, 2019, or on the date
4 of the official declaration of the vote thereon by the governor, whichever
5 is later.

6 (2) This act applies to conduct occurring on or after the applicable
7 effective date of this act.