

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on State, Veterans, & Military Affairs.

HB19-1167 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

3       **"SECTION 1.** In Colorado Revised Statutes, **amend** 24-21-501  
4 as follows:

5       **24-21-501. Short title.** The short title of this part 5 is the "Revised  
6 Uniform Law on Notarial ~~Acts~~ ACTS (2018)".

7       **SECTION 2.** In Colorado Revised Statutes, 24-21-504, **add** (4)  
8 as follows:

9       **24-21-504. Authority to perform notarial act.** (4) A NOTARIAL  
10 OFFICER MAY CERTIFY THAT A TANGIBLE COPY OF AN ELECTRONIC RECORD  
11 IS AN ACCURATE COPY OF THE ELECTRONIC RECORD.

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

14       **24-21-514.5. Notarial act performed by remotely located  
15 individual - definitions - rules.** (1) AS USED IN THIS SECTION, UNLESS  
16 THE CONTEXT OTHERWISE REQUIRES:

17           (a) "COMMUNICATION TECHNOLOGY" MEANS AN ELECTRONIC  
18 DEVICE OR PROCESS THAT:

19           (I) ALLOWS A NOTARY PUBLIC AND A REMOTELY LOCATED  
20 INDIVIDUAL TO COMMUNICATE WITH EACH OTHER SIMULTANEOUSLY BY  
21 SIGHT AND SOUND; AND

22           (II) WHEN NECESSARY AND CONSISTENT WITH OTHER APPLICABLE  
23 LAW, FACILITATES COMMUNICATION WITH A REMOTELY LOCATED  
24 INDIVIDUAL WHO HAS A VISION, HEARING, OR SPEECH IMPAIRMENT.

25           (b) "FOREIGN STATE" MEANS A JURISDICTION OTHER THAN THE  
26 UNITED STATES, A STATE, OR A FEDERALLY RECOGNIZED INDIAN TRIBE.

27           (c) "IDENTITY PROOFING" MEANS A PROCESS OR SERVICE BY WHICH  
28 A THIRD PERSON PROVIDES A NOTARY PUBLIC WITH A MEANS TO VERIFY  
29 THE IDENTITY OF A REMOTELY LOCATED INDIVIDUAL BY A REVIEW OF  
30 PERSONAL INFORMATION FROM PUBLIC OR PRIVATE DATA SOURCES.

31           (d) "OUTSIDE THE UNITED STATES" MEANS A LOCATION OUTSIDE  
32 THE GEOGRAPHIC BOUNDARIES OF THE UNITED STATES, PUERTO RICO, THE  
33 UNITED STATES VIRGIN ISLANDS, AND ANY TERRITORY, INSULAR  
34 POSSESSION, OR OTHER LOCATION SUBJECT TO THE JURISDICTION OF THE  
35 UNITED STATES.

36           (e) "REMOTELY LOCATED INDIVIDUAL" MEANS AN INDIVIDUAL  
37 WHO IS NOT IN THE PHYSICAL PRESENCE OF THE NOTARY PUBLIC WHO  
38 PERFORMS A NOTARIAL ACT UNDER SUBSECTION (3) OF THIS SECTION.

39           (2) A REMOTELY LOCATED INDIVIDUAL MAY COMPLY WITH

1 SECTION 24-21-506 BY USING COMMUNICATION TECHNOLOGY TO APPEAR  
2 BEFORE A NOTARY PUBLIC.

3 (3) A NOTARY PUBLIC LOCATED IN THIS STATE MAY PERFORM A  
4 NOTARIAL ACT USING COMMUNICATION TECHNOLOGY FOR A REMOTELY  
5 LOCATED INDIVIDUAL IF:

6 (a) THE NOTARY PUBLIC:

7 (I) HAS PERSONAL KNOWLEDGE UNDER SECTION 24-21-507 (1) OF  
8 THE IDENTITY OF THE INDIVIDUAL;

9 (II) HAS SATISFACTORY EVIDENCE OF THE IDENTITY OF THE  
10 REMOTELY LOCATED INDIVIDUAL BY OATH OR AFFIRMATION FROM A  
11 CREDIBLE WITNESS APPEARING BEFORE THE NOTARY PUBLIC UNDER  
12 SECTION 24-21-507 (2) OR UNDER THIS SECTION; OR

13 (III) HAS OBTAINED SATISFACTORY EVIDENCE OF THE IDENTITY OF  
14 THE REMOTELY LOCATED INDIVIDUAL BY USING AT LEAST TWO DIFFERENT  
15 TYPES OF IDENTITY PROOFING;

16 (b) THE NOTARY PUBLIC IS ABLE REASONABLY TO CONFIRM THAT  
17 A RECORD BEFORE THE NOTARY PUBLIC IS THE SAME RECORD IN WHICH THE  
18 REMOTELY LOCATED INDIVIDUAL MADE A STATEMENT OR ON WHICH THE  
19 REMOTELY LOCATED INDIVIDUAL EXECUTED A SIGNATURE;

20 (c) THE NOTARY PUBLIC, OR A PERSON ACTING ON BEHALF OF THE  
21 NOTARY PUBLIC, CREATES AN AUDIO-VISUAL RECORDING OF THE  
22 PERFORMANCE OF THE NOTARIAL ACT; AND

23 (d) FOR A REMOTELY LOCATED INDIVIDUAL WHO IS LOCATED  
24 OUTSIDE THE UNITED STATES:

25 (I) THE RECORD:

26 (A) IS TO BE FILED WITH OR RELATED TO A MATTER BEFORE A  
27 PUBLIC OFFICIAL OR COURT, GOVERNMENTAL ENTITY, OR OTHER ENTITY  
28 SUBJECT TO THE JURISDICTION OF THE UNITED STATES; OR

29 (B) INVOLVES PROPERTY LOCATED IN THE TERRITORIAL  
30 JURISDICTION OF THE UNITED STATES OR INVOLVES A TRANSACTION  
31 SUBSTANTIALLY CONNECTED WITH THE UNITED STATES; AND

32 (II) THE ACT OF MAKING THE STATEMENT OR SIGNING THE RECORD  
33 IS NOT PROHIBITED BY THE FOREIGN STATE IN WHICH THE REMOTELY  
34 LOCATED INDIVIDUAL IS LOCATED.

35 (4) IF A NOTARIAL ACT IS PERFORMED UNDER THIS SECTION, THE  
36 CERTIFICATE OF NOTARIAL ACT REQUIRED BY SECTION 24-21-515 AND THE  
37 SHORT-FORM CERTIFICATE PROVIDED IN SECTION 24-21-516 MUST  
38 INDICATE THAT THE NOTARIAL ACT WAS PERFORMED USING  
39 COMMUNICATION TECHNOLOGY.

40 (5) A SHORT-FORM CERTIFICATE PROVIDED IN SECTION 24-21-516  
41 FOR A NOTARIAL ACT SUBJECT TO THIS SECTION IS SUFFICIENT IF IT:

42 (a) COMPLIES WITH RULES ADOPTED UNDER SUBSECTION (8)(a) OF  
43 THIS SECTION; OR

44 (b) IS IN THE FORM PROVIDED BY SECTION 24-21-516 AND  
45 CONTAINS A STATEMENT SUBSTANTIALLY AS FOLLOWS: "THIS NOTARIAL

1 ACT INVOLVED THE USE OF COMMUNICATION TECHNOLOGY."

2 (6) A NOTARY PUBLIC, A GUARDIAN, CONSERVATOR, OR AGENT OF  
3 A NOTARY PUBLIC, OR A PERSONAL REPRESENTATIVE OF A DECEASED  
4 NOTARY PUBLIC SHALL RETAIN THE AUDIO-VISUAL RECORDING CREATED  
5 UNDER SUBSECTION (3)(c) OF THIS SECTION OR CAUSE THE RECORDING TO  
6 BE RETAINED BY A REPOSITORY DESIGNATED BY OR ON BEHALF OF THE  
7 PERSON REQUIRED TO RETAIN THE RECORDING. UNLESS A DIFFERENT  
8 PERIOD IS REQUIRED BY RULE ADOPTED UNDER SUBSECTION (8)(d) OF THIS  
9 SECTION, THE RECORDING MUST BE RETAINED FOR A PERIOD OF AT LEAST  
10 TEN YEARS AFTER THE RECORDING IS MADE.

11 (7) BEFORE A NOTARY PUBLIC PERFORMS THE NOTARY PUBLIC'S  
12 INITIAL NOTARIAL ACT UNDER THIS SECTION, THE NOTARY PUBLIC MUST  
13 NOTIFY THE SECRETARY OF STATE THAT THE NOTARY PUBLIC WILL BE  
14 PERFORMING NOTARIAL ACTS WITH RESPECT TO REMOTELY LOCATED  
15 INDIVIDUALS AND IDENTIFY THE TECHNOLOGIES THE NOTARY PUBLIC  
16 INTENDS TO USE. IF THE SECRETARY OF STATE HAS ESTABLISHED  
17 STANDARDS UNDER SUBSECTION (8) OF THIS SECTION AND SECTION  
18 24-21-527 FOR APPROVAL OF COMMUNICATION TECHNOLOGY OR IDENTITY  
19 PROOFING, THE COMMUNICATION TECHNOLOGY AND IDENTITY PROOFING  
20 MUST CONFORM TO THE STANDARDS.

21 (8) IN ADDITION TO ADOPTING RULES UNDER SECTION 24-21-527,  
22 THE SECRETARY OF STATE MAY ADOPT RULES UNDER THIS SECTION  
23 REGARDING PERFORMANCE OF A NOTARIAL ACT. THE RULES MAY:

24 (a) PRESCRIBE THE MEANS OF PERFORMING A NOTARIAL ACT  
25 INVOLVING A REMOTELY LOCATED INDIVIDUAL USING COMMUNICATION  
26 TECHNOLOGY;

27 (b) ESTABLISH STANDARDS FOR COMMUNICATION TECHNOLOGY  
28 AND IDENTITY PROOFING;

29 (c) ESTABLISH REQUIREMENTS OR PROCEDURES TO APPROVE  
30 PROVIDERS OF COMMUNICATION TECHNOLOGY AND THE PROCESS OF  
31 IDENTITY PROOFING; AND

32 (d) ESTABLISH STANDARDS AND A PERIOD FOR THE RETENTION OF  
33 AN AUDIO-VISUAL RECORDING CREATED UNDER SUBSECTION (3)(c) OF THIS  
34 SECTION.

35 (9) BEFORE ADOPTING, AMENDING, OR REPEALING A RULE  
36 GOVERNING PERFORMANCE OF A NOTARIAL ACT WITH RESPECT TO A  
37 REMOTELY LOCATED INDIVIDUAL, THE SECRETARY OF STATE MUST  
38 CONSIDER:

39 (a) THE MOST RECENT STANDARDS REGARDING THE PERFORMANCE  
40 OF A NOTARIAL ACT WITH RESPECT TO A REMOTELY LOCATED INDIVIDUAL  
41 PROMULGATED BY NATIONAL STANDARD-SETTING ORGANIZATIONS AND  
42 THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF SECRETARIES  
43 OF STATE;

44 (b) STANDARDS, PRACTICES, AND CUSTOMS OF OTHER  
45 JURISDICTIONS THAT HAVE LAWS SUBSTANTIALLY SIMILAR TO THIS

1 SECTION; AND  
2 (c) THE VIEWS OF GOVERNMENTAL OFFICIALS AND ENTITIES AND  
3 OTHER INTERESTED PERSONS.

4 (10) TO BE ELIGIBLE TO DIRECTLY FACILITATE A NOTARIAL ACT  
5 USING COMMUNICATION TECHNOLOGY FOR A REMOTELY LOCATED  
6 INDIVIDUAL, THE PROVIDER OF THE COMMUNICATION TECHNOLOGY MUST:

7 (a) HAVE AND MAINTAIN A USUAL PLACE OF BUSINESS IN THIS  
8 STATE OR, IF REQUIRED, APPOINT A REGISTERED AGENT IN THIS STATE  
9 PURSUANT TO SECTION 7-90-701; OR

10 (b) FILE A STATEMENT OF FOREIGN ENTITY AUTHORITY NAMING A  
11 REGISTERED AGENT IN THIS STATE PURSUANT TO SECTION 7-90-803.

12 **SECTION 4.** In Colorado Revised Statutes, 24-21-520, **add** (4)  
13 as follows:

14 **24-21-520. Notification regarding performance of notarial act**  
15 **on electronic record - selection of technology - acceptance of tangible**  
16 **copy of electronic record.** (4) A COUNTY CLERK AND RECORDER MAY  
17 ACCEPT FOR RECORDING A TANGIBLE COPY OF AN ELECTRONIC RECORD  
18 CONTAINING A NOTARIAL CERTIFICATE AS SATISFYING ANY REQUIREMENT  
19 THAT A RECORD ACCEPTED FOR RECORDING BE AN ORIGINAL, IF THE  
20 NOTARIAL OFFICER EXECUTING THE NOTARIAL CERTIFICATE CERTIFIES  
21 THAT THE TANGIBLE COPY IS AN ACCURATE COPY OF THE ELECTRONIC  
22 RECORD.

23 **SECTION 5.** In Colorado Revised Statutes, 24-21-525, **add** (8)  
24 as follows:

25 **24-21-525. Prohibited acts - rules.** (8) (a) A NOTARY PUBLIC AND  
26 COMMUNICATION TECHNOLOGY, AS DEFINED IN SECTION 24-21-514.5,  
27 USED BY THE NOTARY PUBLIC SHALL USE ALL PERSONAL INFORMATION  
28 COLLECTED IN THE COURSE OF PERFORMING A NOTARIAL ACT FOR A  
29 REMOTELY LOCATED INDIVIDUAL AS FOLLOWS:

30 (I) TO COMPLETE THE NOTARIAL ACT AND RELATED ACTIVITIES; OR  
31 (II) IN ACCORDANCE WITH APPLICABLE LAW.

32 (b) CONSISTENT WITH THE REQUIREMENTS OF SECTION 6-1-713.5,  
33 A NOTARY PUBLIC SHALL IMPLEMENT AND MAINTAIN TECHNICAL  
34 CONTROLS REASONABLY DESIGNED TO PROTECT PERSONAL INFORMATION  
35 COLLECTED IN THE COURSE OF PERFORMING A NOTARIAL ACT FOR A  
36 REMOTELY LOCATED INDIVIDUAL FROM UNAUTHORIZED ACCESS,  
37 MODIFICATION, DISCLOSURE, AND DESTRUCTION.

38 (c) THE ATTORNEY GENERAL MAY PROMULGATE RULES,  
39 CONSISTENT WITH APPLICABLE LAW, CONCERNING REQUIREMENTS FOR  
40 DISCLOSURE OF INTENDED USES AND FOR CONSUMER CONSENT REGARDING  
41 THE USE AND SECURITY OF PERSONAL INFORMATION COLLECTED IN THE  
42 COURSE OF PERFORMING A NOTARIAL ACT FOR A REMOTELY LOCATED  
43 INDIVIDUAL.

44 **SECTION 6. Act subject to petition - effective date.** This act  
45 takes effect at 12:01 a.m. on the day following the expiration of the

1       ninety-day period after final adjournment of the general assembly (August  
2       2, 2019, if adjournment sine die is on May 3, 2019); except that, if a  
3       referendum petition is filed pursuant to section 1 (3) of article V of the  
4       state constitution against this act or an item, section, or part of this act  
5       within such period, then the act, item, section, or part will not take effect  
6       unless approved by the people at the general election to be held in  
7       November 2020 and, in such case, will take effect on the date of the  
8       official declaration of the vote thereon by the governor.".

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