A BILL FOR AN ACT

CONCERNING AN AUTHORIZATION FOR NOTARIES PUBLIC TO PERFORM

NOTARIAL ACTS USING AUDIO-VIDEO COMMUNICATION.

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 a notary public. The bill authorizes a notary 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.

To perform a "remote notarization", a notary must use an
electronic system that conforms to standards established by rules of the secretary of state, including using real-time audio-video communication. The bill establishes the standards that a notary must comply with to have satisfactory evidence of the identity of the individual seeking the remote notarization.

The bill also prohibits the use or sale of personal information of a remotely located individual by a remote notary and the provider of a remote notarization system except in specific, limited circumstances.

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

SECTION 1. In Colorado Revised Statutes, 24-21-502, add (1.3), (1.7), (10.5), (11.3), (11.5), (11.7), and (15.5) as follows:

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

(1.3) "AUDIO-VIDEO COMMUNICATION" MEANS COMMUNICATION BY WHICH AN INDIVIDUAL IS ABLE TO SEE, HEAR, AND COMMUNICATE WITH A REMOTELY LOCATED INDIVIDUAL IN REAL TIME USING ELECTRONIC MEANS.

(1.7) "CREDENTIAL" MEANS A TANGIBLE RECORD EVIDENCING THE IDENTITY OF AN INDIVIDUAL.

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

(11.3) "REMOTELY LOCATED INDIVIDUAL" MEANS AN INDIVIDUAL WHO IS NOT IN THE PHYSICAL PRESENCE OF THE NOTARY PUBLIC WHO PERFORMS A NOTARIAL ACT UNDER THIS SECTION.

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

(11.7) "REMOTE NOTARIZATION SYSTEM" MEANS AN ELECTRONIC
DEVICE OR PROCESS THAT:

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

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

(15.5) "TAMPER-EVIDENT" MEANS THE USE OF A SET OF
APPLICATIONS, PROGRAMS, HARDWARE, SOFTWARE, OR OTHER
TECHNOLOGIES THAT WILL DISPLAY EVIDENCE OF ANY CHANGES MADE TO
AN ELECTRONIC RECORD.

SECTION 2. In Colorado Revised Statutes, amend 24-21-506 as
follows:

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

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

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

(b) INTERACTING WITH A REMOTELY LOCATED INDIVIDUAL BY MEANS OF REAL-TIME AUDIO-VIEW COMMUNICATION IN COMPLIANCE WITH SECTION 24-21-514.5 AND RULES ADOPTED BY THE SECRETARY OF STATE.

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

24-21-514.5. Audio-video communication - definitions. (1) As used in this section:

(a) "CREDENTIAL ANALYSIS" MEANS A PROCESS OR SERVICE THAT COMPLIES WITH ANY RULES ADOPTED BY THE SECRETARY OF STATE THROUGH WHICH A THIRD PARTY AFFIRMS THE VALIDITY OF A GOVERNMENT-ISSUED IDENTIFICATION CREDENTIAL THROUGH THE REVIEW OF PUBLIC OR PROPRIETARY DATA SOURCES.

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

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

(d) "PUBLIC KEY CERTIFICATE" MEANS AN ELECTRONIC CREDENTIAL THAT IS USED TO IDENTIFY A REMOTELY LOCATED INDIVIDUAL WHO SIGNED AN ELECTRONIC RECORD WITH THE CREDENTIAL.
(e) "Remote presentation" means transmission to the notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the notary public to:

(I) identify the remotely located individual seeking the notary public's services; and

(II) perform credential analysis.

(2) (a) Except as provided in subsection (2)(b) of this section, a notary public may perform a remote notarization only with respect to an electronic record and in compliance with this section and any rules adopted by the secretary of state for a remotely located individual who is located:

(I) in this state;

(II) outside of this state but within the United States; or

(III) outside the United States if:

(A) the notary public has no actual knowledge that the notarial act is prohibited in the jurisdiction in which the remotely located individual is physically located at the time of the act; and

(B) the remotely located individual confirms to the notary public that the requested notarial act and the record relate to: a matter that will be filed with or is currently before a court, governmental entity, or other entity in the United States; property located in the United States; or a transaction substantially connected to the United States.

(b) A notary public shall not use a remote notarization system to notarize:
(I) A RECORD RELATING TO THE ELECTORAL PROCESS; OR

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

(3) BEFORE A NOTARY PUBLIC PERFORMS THE NOTARY PUBLIC'S
INITIAL NOTARIZATION USING A REMOTE NOTARIZATION SYSTEM, THE
NOTARY PUBLIC SHALL NOTIFY THE SECRETARY OF STATE THAT THE
NOTARY PUBLIC WILL BE PERFORMING REMOTE NOTARIZATIONS AND
SHALL IDENTIFY EACH REMOTE NOTARIZATION SYSTEM THAT THE NOTARY
PUBLIC INTENDS TO USE. THE REMOTE NOTARIZATION SYSTEM MUST
CONFORM TO THIS PART 5 AND ANY RULES ADOPTED BY THE SECRETARY
OF STATE. THE NOTICE MUST BE SUBMITTED IN THE FORMAT REQUIRED BY
THE SECRETARY OF STATE AND MUST:

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

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

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

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

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

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

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

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

(5) A REMOTE NOTARIZATION SYSTEM USED TO PERFORM REMOTE NOTARIZATIONS MUST:

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

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

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

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

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

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

(II) REMOTE PRESENTATION AND CREDENTIAL ANALYSIS OF A
GOVERNMENT-ISSUED IDENTIFICATION CREDENTIAL, AND THE DATA
CONTAINED ON THE CREDENTIAL, THAT CONTAINS THE SIGNATURE AND A
PHOTOGRAPH OF THE REMOTELY LOCATED INDIVIDUAL, AND AT LEAST ONE
OF THE FOLLOWING:

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

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

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

(III) ANY OTHER METHOD THAT COMPLIES WITH RULES ADOPTED
BY THE SECRETARY OF STATE.
(7) Without limiting the authority of a notary public under section 24-21-508 to refuse to perform a notarial act, a notary public may refuse to perform a notarial act under this section if the notary public is not satisfied that the requirements of this section are met.

(8) The certificate of notarial act for a remote notarization must, in addition to complying with the requirements of section 24-21-515, indicate that the notarial act was performed using audio-video communication technology.

(9) (a) A notary public shall create an audio-video recording of a remote notarization if:

(I) the notary public first discloses to the remotely located individual the fact of the recording and the details of its intended storage, including where and for how long it will be stored;

(II) the remotely located individual explicitly consents to both the recording and the storage of the recording; and

(III) the recording is stored and secured in compliance with rules adopted by the secretary of state.

(b) The audio-video recording required by this subsection (9) must be in addition to the journal entry for the notarial act where required by section 24-21-519. The recording must include the information described in this subsection (9)(b), but must not include any other information. Any other information included on the recording is not admissible in any Colorado court of law, legal proceeding, or administrative hearing for any purpose, nor is the information admissible in any proceeding in any other
COLORADO LAW APPLIES WITH RESPECT TO REMOTE NOTARIZATION. THE RECORDING MUST INCLUDE:


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

(III) IF THE REMOTELY LOCATED INDIVIDUAL FOR WHOM THE NOTARIAL ACT IS BEING PERFORMED IS IDENTIFIED BY PERSONAL KNOWLEDGE, AN EXPLANATION BY THE NOTARY PUBLIC AS TO HOW THE NOTARY PUBLIC KNOWS THE REMOTELY LOCATED INDIVIDUAL AND HOW LONG THE NOTARY PUBLIC HAS KNOWN THE REMOTELY LOCATED INDIVIDUAL; AND

(IV) IF THE REMOTELY LOCATED INDIVIDUAL FOR WHOM THE NOTARIAL ACT IS BEING PERFORMED IS IDENTIFIED BY A CREDIBLE WITNESS:

(A) A STATEMENT BY THE NOTARY PUBLIC AS TO HOW THE
NOTARY PUBLIC KNOWS THE CREDIBLE WITNESS AND HOW LONG THE
NOTARY PUBLIC HAS KNOWN THE CREDIBLE WITNESS; AND

(B) AN EXPLANATION BY THE CREDIBLE WITNESS AS TO HOW THE
CREDIBLE WITNESS KNOWS THE REMOTELY LOCATED INDIVIDUAL AND
HOW LONG THE CREDIBLE WITNESS HAS KNOWN THE REMOTELY LOCATED
INDIVIDUAL.

(c) THE PROVISIONS OF SECTION 24-21-519 THAT RELATE TO THE
SECURITY, INSPECTION, COPYING, AND RETENTION AND DISPOSITION OF A
NOTARY PUBLIC'S JOURNAL APPLY EQUALLY TO THE SECURITY,
INSPECTION, COPYING, AND RETENTION AND DISPOSITION OF AUDIO-VIDEO
RECORDINGS ALLOWED BY THIS SECTION.

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

(11) TO BE ELIGIBLE FOR APPROVAL BY THE SECRETARY OF STATE
UNDER SECTION 24-21-527 (1)(h), A PROVIDER OF A REMOTE
NOTARIZATION SYSTEM OR STORAGE SYSTEM MUST:

(a) CERTIFY TO THE SECRETARY OF STATE THAT THE PROVIDER
AND THE SYSTEM COMPLY WITH THE REQUIREMENTS OF THIS SECTION AND
THE RULES ADOPTED UNDER SECTION 24-21-527;

(b) MAINTAIN A USUAL PLACE OF BUSINESS IN THIS STATE OR, IF A
FOREIGN ENTITY, APPOINT AND MAINTAIN A REGISTERED AGENT, IN
ACCORDANCE WITH SECTION 7-90-701 OR PURSUANT TO A STATEMENT OF
FOREIGN ENTITY AUTHORITY IN ACCORDANCE WITH SECTION 7-90-803,
WITH AUTHORITY TO ACCEPT SERVICE OF PROCESS IN CONNECTION WITH
A CIVIL ACTION OR OTHER PROCEEDING; AND

(c) NOT USE OR SELL OR OFFER TO SELL TO ANOTHER PERSON ANY PERSONAL INFORMATION IDENTIFYING A REMOTELY LOCATED INDIVIDUAL AND OBTAINED UNDER THIS SECTION, EXCEPT:

(I) TO FACILITATE PERFORMANCE OF A NOTARIAL ACT;

(II) TO EFFECT, ADMINISTER, ENFORCE, SERVICE, OR PROCESS A RECORD PROVIDED BY OR ON BEHALF OF THE INDIVIDUAL OR THE TRANSACTION OF WHICH THE RECORD IS A PART;

(III) TO COMPLY WITH THIS PART 5 AND THE RULES ADOPTED PURSUANT TO THIS PART 5 OR OTHER APPLICABLE FEDERAL, STATE, OR LOCAL LAW, OR TO COMPLY WITH A LAWFUL SUBPOENA OR COURT ORDER;

OR

(IV) IN CONNECTION WITH A PROPOSED OR ACTUAL SALE, MERGER, TRANSFER, OR EXCHANGE OF ALL OR A PORTION OF A BUSINESS OR OPERATING UNIT OF THE PROVIDER IF THE PERSONAL INFORMATION CONCERNS ONLY CUSTOMERS OF THE BUSINESS OR UNIT.

SECTION 4. In Colorado Revised Statutes, 24-21-515, amend

(3)(d) and (4) as follows:

24-21-515. Certificate of notarial act. (3) A certificate of a notarial act is sufficient if it meets the requirements of subsections (1) and (2) of this section and:

(d) Sets forth the actions of the notarial officer and the actions THAT are sufficient to meet the requirements of the notarial act as provided in sections 24-21-505, 24-21-506, and 24-21-507 AND, IF APPLICABLE, SECTION 24-21-514.5 or law of this state other than this part 5.

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

SECTION 5. In Colorado Revised Statutes, 24-21-519, amend
(2) as follows:

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

(b) A NOTARY PUBLIC WHO PERFORMS A REMOTE NOTARIZATION
SHALL MAINTAIN A JOURNAL IN AN ELECTRONIC FORMAT WITH REGARD TO
EACH REMOTE NOTARIZATION. THE JOURNAL MUST INCLUDE THE
ELECTRONIC SIGNATURE OF THE REMOTELY LOCATED INDIVIDUAL FOR
EACH REMOTE NOTARIZATION.

SECTION 6. In Colorado Revised Statutes, 24-21-527, amend
(1)(e); and add (1)(g) and (1)(h) as follows:

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

(e) Include provisions to prevent fraud or mistake in the
performance of notarial acts; and

(g) PRESCRIBE THE MANNER OF PERFORMING NOTARIAL ACTS
USING AUDIO-VIDEO COMMUNICATION TECHNOLOGY, INCLUDING
PROVISIONS TO ENSURE THE SECURITY, INTEGRITY, AND ACCESSIBILITY OF
RECORDS RELATING TO THOSE ACTS; AND

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

SECTION 7. Act subject to petition - effective date -
applicability. (1) This act takes effect at 12:01 a.m. on the day following
the expiration of the ninety-day period after final adjournment of the
general assembly (August 5, 2020, if adjournment sine die is on May 6,
2020); except that, if a referendum petition is filed pursuant to section 1
(3) of article V of the state constitution against this act or an item, section,
or part of this act within such period, then the act, item, section, or part
will not take effect unless approved by the people at the general election
to be held in November 2020 and, in such case, will take effect on the
date of the official declaration of the vote thereon by the governor.

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