

E-notary bill raises concerns over consumer data privacy and sales

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In this March 29 file photo, the logo for Facebook appears on screens at the Nasdaq MarketSite in New York's Times Square. (Photo by Richard Drew, AP)

While Mark Zuckerberg of Facebook prepares to testify to Congress and offer yet another apology for Facebook's inability to protect user data, lawmakers at Colorado's state Capitol are working on a bill that some claim would open up yet another opportunity for misuse of consumer data.

The latest to run afoul of those concerns: [Senate Bill 109](#), a bill to allow optional remote, electronic notarization of legal documents.

The bill is the culmination of two years of work by its sponsors, Republican Sen. Bob Gardner of Colorado Springs and House Assistant Minority Leader Cole Wist of Centennial. Both are commissioners with the [Uniform Law Commission](#), a nationwide group that has been working on draft legislation on what's known as remote notarization.

Current law requires someone who wants a document notarized to appear in person with the notary. Senate Bill 109 would allow a notary, using an audio-video recording of the transaction and with a tamper-proof system okayed by the secretary of state, to notarize electronic documents. The bill requires the notary to retain the audio-video recording for a minimum of 10 years.

Remote notaries already operate in a number of states, including Texas and Nevada. The advantage to allowing a new optional licensure for Colorado notaries, according to Michael Chodos, an attorney with [Notarize.com](#), is that local companies prefer to deal with local notaries, in part because of the trust relationship built up over time.

Gardner told Colorado Politics that his bill closely follows the model legislation developed by the Uniform Law Commission. He tried a similar bill last year that failed but was asked by the secretary of state to assemble a group of interested parties to work out the next version. That included title companies, the Colorado Bar Association, a representative from the secretary of state, mortgage bankers and other bankers and the notary association.

The difference between last year and this year was in how the bill dealt with retention of records as well as privacy issues.

But one line in the bill that has privacy advocates concerned about what could happen to the data collected in an online notary system. They claim the guardrails aren't there for those who might abuse that information.

The bill's section on prohibited acts says a remote notary cannot sell information unless it's "in accordance with consent obtained in the manner required by applicable law" from the person who owns that information.

Currently, information collected in a notary transaction, which is a written process, is maintained by the notary but not shared or put on the internet and sold, according to Republican Rep. Terri Carver of Fountain. Senate Bill 109 would allow the sharing or sale of information that has never before existed within the notary process.

Opponents point to privacy notices such as one from [First American Title](#), a nationwide company with offices in nine Colorado counties. Their notice says the company can store customer data "indefinitely," even after the business relationship has ended. It can be provided to affiliated companies, the notice says, including those that provide marketing services on the company's behalf.

Those who oppose the bill in its current form include other title companies and the American Civil Liberties Union. Denise Maes, the ACLU's policy director, told Colorado Politics that "we see it as an invasion of privacy because of all the information they can collect and sell. They can do whatever they want with that information," she said. "It's a timely conversation to have about privacy."

The bill doesn't close off opportunities to sell data, Maes pointed out. "Without closing the door, it's virtually opened."

Chodos said data privacy is already protected by federal and state laws and said it would be further protected by another Wist bill, [House Bill 1128](#). That measure dictates what companies can do with data, how long to keep and how to dispose of information and records, policies on how the information is kept safe, and how data breaches must be handled.

He also pointed out that the bill dictates consent by the customer in accordance with existing law. "You don't want to create a separate set of privacy rules for notarial transactions" that can cover a wide range of documents, he said, including financial and government forms, even child permission slips, in some circumstances.

Gardner called the privacy discussion legitimate, although he is troubled by the "hysteria" over the issue and vexed that people would believe he had not thought deeply about the privacy issues. "If someone has a better formulation for privacy protections, I'm happy to look at it."

Carver believes the bill is premature and would prefer to wait for the final version from the Uniform Law Commission. It makes sense for states to have similar laws on remote transactions, she told Colorado Politics.

"Wouldn't you want a bill with a valid process for remote notarization (across the country)?" she asked.

Senate Bill 109 is scheduled for the House Judiciary Committee Tuesday afternoon.