

**Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 12-0718.01 Jennifer Berman x3286

HOUSE BILL 12-1274

HOUSE SPONSORSHIP

Swerdfeger,

SENATE SPONSORSHIP

Jahn,

House Committees
State, Veterans, & Military Affairs
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF NOTARIES PUBLIC.**

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://www.leg.state.co.us/billsummaries>.)

The bill modifies the secretary of state's regulation of notaries public by:

- ! Allowing, in the secretary of state's discretion, electronic filing of applications and renewals;
- ! Clarifying the disciplinary and nondisciplinary actions that the secretary of state may take against a notary public;
- ! Disallowing the use of a seal embosser; and

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

! Updating the information a notary public includes on his or her official notary seal.

The bill also transfers fees collected in connection with the regulation of notaries public from the notary administration cash fund to the department of state cash fund.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 12-55-102 as
3 follows:

4 **12-55-102. Definitions.** As used in this part 1, unless the context
5 otherwise requires:

6 (1) "Attested" means subscribed, signed, acknowledged, sworn to,
7 affirmed, certified, verified, or attested to and includes other words and
8 phrases that have a substantially similar meaning.

9 ~~(1.1)~~ (2) "Electronic" means relating to technology having
10 electrical, digital, magnetic, wireless, optical, electromagnetic, or similar
11 capabilities.

12 ~~(1.2)~~ (3) "Electronic record" means a record containing
13 information that is created, generated, sent, communicated, received, or
14 stored by electronic means.

15 ~~(1.3)~~ (4) "Electronic signature" means an electronic sound,
16 symbol, or process attached to or logically associated with an electronic
17 record and executed or adopted by a person with the intent to sign the
18 electronic record.

19 (5) "FACSIMILE" MEANS ANY COPY, PHOTOCOPY, FACSIMILE,
20 REPLICA, OR OTHER REPRODUCTION OF A DOCUMENT.

21 ~~(1.4)~~ (6) "Misdemeanor involving dishonesty" means a violation
22 of, or a conspiracy to violate, a civil or criminal law involving fraud,
23 dishonesty, bribery, perjury, larceny, theft, robbery, extortion, forgery,

1 counterfeiting, embezzlement, misappropriation of property, or any other
2 offense adversely affecting such person's fitness to serve as a notary
3 public.

4 ~~(1.5)~~ (7) "Notarial acts" means those acts that a notary public is
5 empowered to perform pursuant to section 12-55-110 (1).

6 ~~(2)~~ (8) "Notarization" means the performance of a notarial act.

7 ~~(3)~~ (9) "Notary" or "notary public" means any individual
8 appointed and commissioned to perform notarial acts.

9 **SECTION 2.** In Colorado Revised Statutes, **amend** 12-55-102.5
10 as follows:

11 **12-55-102.5. Disposition of fees.** (1) ~~All fees collected by the~~
12 ~~office of the secretary of state pursuant to this article shall be collected~~
13 THE SECRETARY OF STATE SHALL COLLECT ALL FEES PURSUANT TO THIS
14 ARTICLE in the manner required by section 24-21-104 (3), C.R.S., and
15 ~~transmitted~~ SHALL TRANSMIT THEM to the state treasurer, who shall credit
16 the same to the ~~notary administration~~ DEPARTMENT OF STATE cash fund,
17 ~~which fund is hereby created in the state treasury~~ CREATED IN SECTION
18 24-21-104 (3) (b), C.R.S.

19 (2) The general assembly shall make annual appropriations from
20 the ~~notary administration~~ DEPARTMENT OF STATE cash fund for
21 expenditures of the secretary of state incurred in the performance of the
22 secretary of state's duties under this article.

23 (3) ~~Pursuant to section 24-36-114, C.R.S., all interest derived~~
24 ~~from the deposit and investment of moneys in the notary administration~~
25 ~~cash fund shall be credited to the general fund.~~

26 (4) ~~Notwithstanding any provision of this section to the contrary,~~
27 ~~on April 20, 2009, the state treasurer shall deduct five hundred~~

1 ~~seventy-five thousand dollars from the notary administration cash fund~~
2 ~~and transfer such sum to the general fund.~~

3 (5) ON THE EFFECTIVE DATE OF THIS SUBSECTION (5), THE STATE
4 TREASURER SHALL TRANSFER THE UNEXPENDED AND UNENCUMBERED
5 BALANCE OF THE NOTARY ADMINISTRATION CASH FUND TO THE
6 DEPARTMENT OF STATE CASH FUND.

7 **SECTION 3.** In Colorado Revised Statutes, 12-55-104, **amend**
8 (2); and **add** (5) and (6) as follows:

9 **12-55-104. Application - rules.** (2) The application shall include
10 a ~~handwritten~~ sample of the applicant's official signature, the applicant's
11 typed legal name, and the affirmation as provided in section 12-55-105.
12 ~~The application may also contain the applicant's electronic signature if the~~
13 ~~applicant is issued a journal.~~

14 (5) IN ACCORDANCE WITH SECTION 24-21-111 (1), C.R.S., THE
15 SECRETARY OF STATE MAY REQUIRE, AT THE SECRETARY OF STATE'S
16 DISCRETION, THE APPLICATION REQUIRED BY THIS SECTION, AND ANY
17 RENEWAL OF THE APPLICATION, TO BE MADE BY ELECTRONIC MEANS
18 DESIGNATED BY THE SECRETARY OF STATE. THE SECRETARY OF STATE
19 MAY PROMULGATE RULES FOR USE OF THE ELECTRONIC FILING SYSTEM IN
20 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

21 (6) IN ACCORDANCE WITH SECTION 42-1-211, C.R.S., THE
22 DEPARTMENT OF STATE AND THE DEPARTMENT OF REVENUE SHALL ALLOW
23 FOR THE EXCHANGE OF INFORMATION BETWEEN THE SYSTEMS USED BY
24 THE DEPARTMENTS TO COLLECT INFORMATION ON LEGAL NAMES,
25 RESIDENTIAL ADDRESSES, AND SIGNATURES OF ALL APPLICANTS FOR
26 DRIVER'S LICENSES OR STATE IDENTIFICATION CARDS.

27 **SECTION 4.** In Colorado Revised Statutes, 12-55-107, **amend**

1 (1) introductory portion and (2); and **add** (1) (i), (1) (j), and (2.5) as
2 follows:

3 **12-55-107. Revocation of commission.** (1) The secretary of state
4 or the secretary of state's designee may deny the application of any person
5 for appointment or reappointment ~~issue a letter of admonition, suspend~~
6 ~~a commission, or revoke the commission of any notary public during such~~
7 ~~notary's term of appointment,~~ OR TAKE DISCIPLINARY OR
8 NONDISCIPLINARY ACTION AGAINST A NOTARY PUBLIC if the notary public:

9 (i) FAILS TO COMPLY WITH ANY TERM OF SUSPENSION IMPOSED
10 UNDER THIS SECTION; OR

11 (j) PERFORMS ANY NOTARIAL ACT WHEN THE NOTARY PUBLIC'S
12 COMMISSION IS SUSPENDED.

13 (2) ~~The secretary of state or the secretary of state's designee may~~
14 ~~revoke a notary's commission under the provisions of this part 1 only if~~
15 ~~action is taken pursuant to article 4 of title 24, C.R.S.~~ FOR THE PURPOSES
16 OF THIS SECTION, DISCIPLINARY ACTION MAY INCLUDE THE FOLLOWING:

17 (a) REVOCATION OF THE NOTARY PUBLIC'S COMMISSION;

18 (b) SUSPENSION OF THE NOTARY PUBLIC'S COMMISSION FOR A
19 SPECIFIED PERIOD OF TIME, OR UNTIL THE FULFILLMENT OF A CONDITION,
20 SUCH AS NOTARY RETRAINING, OR BOTH.

21 (2.5) FOR THE PURPOSES OF THIS SECTION, NONDISCIPLINARY
22 ACTION INCLUDES THE ISSUANCE OF A LETTER OF ADMONITION, WHICH
23 MAY BE PLACED IN THE NOTARY PUBLIC'S FILE. THE SECRETARY OF STATE
24 OR THE SECRETARY OF STATE'S DESIGNEE MAY ISSUE A LETTER OF
25 ADMONITION TO A NOTARY PUBLIC WHEN A COMPLAINT OR INVESTIGATION
26 RESULTS IN A FINDING OF MISCONDUCT THAT, IN THE SECRETARY OF
27 STATE'S DISCRETION, DOES NOT WARRANT INITIATION OF A DISCIPLINARY

1 PROCEEDING.

2 **SECTION 5.** In Colorado Revised Statutes, **amend** 12-55-108 as
3 follows:

4 **12-55-108. Reappointment - failure to be reappointed.** Every
5 notary public, before or at the expiration of ~~such~~ THE notary's
6 commission, may submit an application for reappointment ~~by submitting~~
7 ~~the same~~ ALONG WITH ONLY THE information and ~~documents as required~~
8 ~~by~~ DOCUMENTATION NECESSARY TO REFLECT ANY CHANGES TO THE
9 INFORMATION SUBMITTED IN THE NOTARY'S ORIGINAL APPLICATION, FILED
10 PURSUANT TO sections 12-55-104 and 12-55-105, for the initial
11 application. The secretary of state shall then determine whether ~~the person~~
12 ~~shall be reappointed~~ OR NOT TO REAPPOINT THE PERSON as a notary public.
13 If the secretary of state determines ~~such notary shall not be reappointed~~
14 NOT TO REAPPOINT THE APPLICANT, the applicant may appeal ~~such~~ THE
15 determination pursuant to article 4 of title 24, C.R.S.

16 **SECTION 6.** In Colorado Revised Statutes, **amend** 12-55-109 as
17 follows:

18 **12-55-109. Certificate of appointment - recording.** (1) IF A
19 PERSON MEETS THE APPLICATION REQUIREMENTS OF SECTIONS 12-55-104
20 AND 12-55-105, the secretary of state ~~is authorized to~~ MAY issue a
21 certificate of authority qualifying ~~said~~ THE person as a notary public. The
22 certificate ~~shall also~~ MUST state the date of expiration of the commission
23 and any other fact concerning ~~such~~ THE notary public ~~which~~ THAT is
24 required by the laws of this state.

25 (2) A notary public may record his OR HER certificate of authority
26 in any county of this state and, after ~~such~~ THE recording, the county clerk
27 and recorder of ~~such~~ THE county may issue a certificate that ~~such~~ THE

1 person is a notary public, the date of expiration of his OR HER
2 commission, and any other fact concerning ~~such~~ THE notary public ~~which~~
3 THAT is required by the laws of this state.

4 (3) A notary public may exhibit to the judge or clerk of any court
5 of record his OR HER certificate of authority, and the ~~said~~ judge or clerk
6 may thereupon issue a certificate that ~~such~~ THE person is a notary public,
7 the date of expiration of his OR HER commission, and any other fact
8 concerning ~~such~~ THE notary ~~which~~ THAT is required by the laws of this
9 state.

10 **SECTION 7.** In Colorado Revised Statutes, 12-55-111, **amend**
11 (2) introductory portion as follows:

12 **12-55-111. Journal.** (2) For each notarial act, a notary's journal
13 ~~may~~ SHALL contain the following information:

14 **SECTION 8.** In Colorado Revised Statutes, 12-55-112, **amend**
15 (1), (2), (4), (4.5) introductory portion, (4.5) (a), and (6); and **repeal** (3)
16 as follows:

17 **12-55-112. Official signature - rubber stamp seal - seal**
18 **embosser - notary's electronic signature.** (1) At the time of
19 notarization, a notary public shall sign ~~such notary's~~ HIS OR HER official
20 signature on every notary certificate or, in the case of an electronic
21 record, a notary public shall affix his or her electronic signature.

22 (2) Under or near ~~such notary's~~ HIS OR HER official signature on
23 every notary certificate, a notary public shall ~~rubber stamp or emboss~~
24 clearly and legibly ~~such notary's~~ STAMP HIS OR HER official seal. The
25 official notary seal shall contain only the outline of the seal AND THE
26 FOLLOWING INFORMATION CONTAINED WITHIN THE OUTLINE OF THE SEAL:

27 (a) The PRINTED LEGAL name of the notary; ~~exactly as such notary~~

1 ~~writes his or her official signature;~~

2 (b) THE NOTARY'S IDENTIFICATION NUMBER, THE NOTARY'S
3 COMMISSION EXPIRATION DATE, the words "STATE OF COLORADO";
4 and

5 (c) The words "NOTARY PUBLIC".

6 (3) ~~Under or near such notary's official signature on every notary~~
7 ~~certificate, a notary public shall write or stamp "my commission expires~~
8 ~~(commission expiration date)".~~

9 (4) ~~Every notary public may provide, keep, and use a seal~~
10 ~~embosser engraved to show such notary's name and the words "NOTARY~~
11 ~~PUBLIC" and "STATE OF COLORADO". The indentations made by the~~
12 ~~seal embosser shall not be applied on the document where the notary~~
13 ~~certificate appears in a manner that will render illegible or incapable of~~
14 ~~photographic reproduction any of the printed marks or writing~~ A NOTARY
15 PUBLIC SHALL NOT PROVIDE, KEEP, OR USE A SEAL EMBOSSER.

16 (4.5) In the case of notarization of an electronic record, the
17 application of a notary's electronic signature in lieu of a handwritten
18 signature and rubber stamp seal ~~or seal embosser~~ is sufficient. A notary
19 shall not use an electronic signature unless:

20 (a) The notary uses a journal if maintaining ~~such~~ THE journal is
21 required by section 12-55-111; and

22 (6) For purposes of this section, "notary certificate" means a
23 certificate or other statement of a notary relating to a notarial act
24 performed by ~~such~~ THE notary.

25 **SECTION 9.** In Colorado Revised Statutes, **amend** 12-55-114 as
26 follows:

27 **12-55-114. Change of name or address.** (1) Every notary public

1 shall ~~send or have delivered notice to~~ NOTIFY the secretary of state within
2 thirty days after ~~such notary~~ HE OR SHE changes ~~the~~ HIS OR HER NAME,
3 BUSINESS ADDRESS, OR RESIDENTIAL address. ~~of such notary's business or~~
4 ~~residence in this state~~ IN THE CASE OF A NAME CHANGE, THE NOTARY
5 PUBLIC SHALL INCLUDE A SAMPLE OF THE NOTARY'S HANDWRITTEN
6 OFFICIAL SIGNATURE ON THE NOTICE. PURSUANT TO SECTION 24-21-104
7 (3), C.R.S., THE SECRETARY OF STATE SHALL DETERMINE THE AMOUNT OF,
8 AND COLLECT, the fee, payable to the secretary of state, for recording
9 notice of change of NAME OR address.

10 (2) ~~Every notary public shall send or have delivered notice to the~~
11 ~~secretary of state within thirty days after such notary changes such~~
12 ~~notary's name, including with the notification a sample of such notary's~~
13 ~~handwritten official signature that contains such notary's surname and at~~
14 ~~least the initial of such notary's first name. The fee payable to the~~
15 ~~secretary of state for recording notice of change of notary's name shall be~~
16 ~~determined and collected pursuant to section 24-21-104 (3), C.R.S.~~

17 **SECTION 10.** In Colorado Revised Statutes, 24-21-104, **amend**
18 (3) (b); and **repeal** (3) (i) as follows:

19 **24-21-104. Fees of secretary of state.** (3) (b) The department of
20 state shall adjust its fees so that the revenue generated from the fees
21 approximates its direct and indirect costs, including the cost of
22 maintenance and improvements necessary for the distribution of
23 electronic records; except that the department may reduce its fees to
24 generate revenue in an amount less than costs if necessary pursuant to
25 section 24-75-402 (3). Such costs shall not include the costs paid by the
26 amounts appropriated by the general assembly from the general fund to
27 the department of state for elections pursuant to section 24-21-104.5.

1 Such fees shall remain in effect for the fiscal year following the
2 adjustment. All fees collected by said department ~~except moneys~~
3 ~~collected pursuant to article 55 of title 12, C.R.S.~~, shall be transmitted to
4 the state treasurer, who shall credit the same to the department of state
5 cash fund, which fund is hereby created. All moneys credited to the
6 department of state cash fund shall be used as provided in this section and
7 shall not be deposited in or transferred to the general fund of this state or
8 any other fund. The moneys credited to the department of state cash fund
9 shall be available for appropriation by the general assembly to the
10 department of state in the general appropriation bill or pursuant to section
11 24-9-105 (2).

12 (i) ~~All moneys collected by the office of the secretary of state~~
13 ~~pursuant to article 55 of title 12, C.R.S.~~, shall be transmitted to the state
14 treasurer and credited to the notary administration cash fund, created in
15 section 12-55-102.5, C.R.S.

16 **SECTION 11.** In Colorado Revised Statutes, 42-1-211, **add** (1.9)
17 as follows:

18 **42-1-211. Colorado state titling and registration system.**
19 (1.9) (a) IN ACCORDANCE WITH SECTION 12-55-104 (6), C.R.S., THE
20 DEPARTMENT OF REVENUE AND THE DEPARTMENT OF STATE SHALL ALLOW
21 FOR THE EXCHANGE OF INFORMATION ON LEGAL NAMES AND SIGNATURES
22 BETWEEN THE SYSTEMS USED BY THE DEPARTMENT OF REVENUE AND THE
23 NOTARY PUBLIC FILING SYSTEM MAINTAINED BY THE DEPARTMENT OF
24 STATE FOR THE PURPOSE OF ELECTRONIC FILING OF NOTARY APPLICATIONS
25 AND RENEWALS.

26 (b) FOR PURPOSES OF THIS SUBSECTION (1.9), "SYSTEMS USED BY
27 THE DEPARTMENT OF REVENUE" MEANS, BUT IS NOT LIMITED TO, THE

1 COLORADO STATE TITLING AND REGISTRATION SYSTEM, THE DRIVER'S
2 LICENSE DATABASE, AND THE MOTOR VEHICLE REGISTRATION DATABASE.

3 **SECTION 12. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2012 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.