

ASSEMBLY, No. 4860

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED JANUARY 15, 2019

Sponsored by:

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

SYNOPSIS

Concerns remote online notaries public; provides for acknowledgment and proof via communication technology; creates criminal offense.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/17/2019)

1 AN ACT concerning remote online notaries public and
2 supplementing the “Uniform Electronic Transactions Act,”
3 P.L.2001, c.116 (C.12A:12-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. This act shall be known and may be cited as the “Remote
9 Online Notaries Public Act.”
10

11 2. As used in this act:

12 a. “Appear” or “personally appear” or “in the presence of”
13 means:

14 (1) being in the same physical location as another person and
15 close enough to see, hear, communicate with, and exchange tangible
16 identification credentials with that individual; or

17 (2) interacting with another individual by means of
18 communication technology that complies with the provisions of this
19 act.

20 b. “Communication technology” means an electronic device or
21 process that allows a notary public physically located in this state
22 and a remotely located individual to communicate with each other
23 simultaneously by sight and sound, and which, as necessary, makes
24 reasonable accommodations for individuals with vision, hearing, or
25 speech impairments.

26 c. “Credential analysis” means a process or service that meets
27 the standards established by the Secretary of State through which a
28 third person affirms the validity of a government-issued
29 identification credential through review of public and proprietary
30 data sources.

31 d. “Electronic” means relating to technology having electrical,
32 digital, magnetic, wireless, optical, electromagnetic, or similar
33 capabilities.

34 e. “Electronic record” means information that is created,
35 generated, sent, communicated, received, or stored by electronic
36 means.

37 f. “Electronic seal” means information within a notarized
38 electronic record that confirms the remote online notary public's
39 name, jurisdiction, identifying number, and commission expiration
40 date and generally corresponds to information in notary seals used
41 on paper documents.

42 g. “Electronic signature” means an electronic sound, symbol, or
43 process attached to or logically associated with an electronic record
44 and executed or adopted by a person with the intent to sign the
45 electronic document.

46 h. “Identity proofing” means a process or service operating
47 according to standards established by the Secretary of State through
48 which a third person affirms the identity of an individual:

1 (1) by means of dynamic knowledge based authentication such
2 as a review of personal information from public or proprietary data
3 sources; or

4 (2) by means of analysis of biometric data such as, but not
5 limited to, facial recognition, voiceprint analysis, or fingerprint
6 analysis,

7 i. "Notarial act" means an act, whether performed with respect
8 to a tangible or electronic record, that a notarial officer may
9 perform under the laws of this State. The term includes taking an
10 acknowledgment, administering an oath or affirmation, taking a
11 verification on oath or affirmation, witnessing or attesting a
12 signature, certifying or attesting a copy, and noting a protest of a
13 negotiable instrument.

14 j. "Outside the United States" means outside the geographic
15 boundaries of a state or commonwealth of the United States, the
16 District of Columbia, Puerto Rico, the United States Virgin Islands,
17 and any territory or insular possession subject to the jurisdiction of
18 the United States.

19 k. "Principal" means an individual:

20 (1) whose electronic signature is notarized in a remote online
21 notarization; or

22 (2) making an oath or affirmation or an acknowledgement other
23 than in the capacity of a witness for the remote online notarization.

24 1. "Remote online notarial certificate" is the form of an
25 acknowledgement; jurat, verification on oath or affirmation, or
26 verification of witness or attestation that is completed by a remote
27 online notary public and:

28 (1) contains the online notary public's electronic signature,
29 electronic seal, title, and commission expiration date;

30 (2) contains other required information concerning the date and
31 place of the remote online notarization; and

32 (3) otherwise conforms to the requirements for an
33 acknowledgement, jurat, verification on oath or affirmation, or
34 verification of witness or attestation under the laws of this State;
35 and

36 (4) indicates that the person making the acknowledgement, oath
37 or affirmation appeared remotely online.

38 m. "Remote online notarization" or "remote online notarial act"
39 means a notarial act performed by means of communication
40 technology that meets the standards adopted under this act.

41 n. "Remote online notary public" means a notary public who
42 has been authorized by the State Treasurer to perform remote online
43 notarizations under this act.

44 o. "Remote presentation" means transmission to the remote
45 online notary public through communication technology of an
46 image of a government-issued identification credential that is of
47 sufficient quality to enable the remote online notary public to:

1 (1) identify the individual seeking the remote online notary
2 public's services; and

3 (2) perform credential analysis.

4 p. "Remotely located individual" means an individual who is
5 not in the physical presence of the notary.

6
7 3. The State Treasurer is authorized to adopt rules necessary to
8 implement P.L., c. (C.)(now pending as this bill), including
9 rules to facilitate remote online notarizations and develop standards
10 as set forth in section 4 of this act.

11
12 4. a. The State Treasurer by rule shall develop and maintain
13 standards for remote online notarization in accordance with this act,
14 including but not limited to standards for credential analysis and
15 identity proofing.

16 b. In developing standards for remote online notarization, the
17 State Treasurer shall review and consider standards established by
18 the National Association of Secretaries of State (NASS), and
19 national standard setting bodies such as the Mortgage Industry
20 Standards and Maintenance Organization (MISMO).

21 c. The rules shall be adopted not later than 12 months from the
22 date of the enactment of this act, and may thereafter be modified,
23 amended or supplemented.

24
25 5. a. A notary public or an applicant for appointment as a
26 notary public under P.L., c. (C.)(now pending as this bill) may
27 apply to the State Treasurer to be appointed and commissioned as a
28 remote online notary public in the manner provided by this section.

29 b. A person qualifies to be appointed as a remote online notary
30 public by:

31 (1) satisfying the qualification requirements for appointment as
32 a notary public under this act and the "Notaries Public Act of
33 1979", P.L.1979, c.460 (C.52:7-10 et seq);

34 (2) paying the application fee described by subsection d. of this
35 section; and

36 (3) electronically submitting to the State Treasurer an
37 application in the form prescribed by the State Treasurer that
38 satisfies the State Treasurer that the applicant is qualified.

39 c. The application required by subsection b. of this section
40 shall include:

41 (1) the applicant's name to be used in acting as a notary public;

42 (2) a certification that the applicant will comply with the State
43 Treasurer's standards developed under this act; and

44 (3) an e-mail address of the applicant.

45 d. The State Treasurer may charge a fee for an application
46 submitted under this section in an amount necessary to administer
47 this act.

1 e. The technology selected by a remote online notary public for
2 remote online notarizations must conform to the State Treasurer's
3 standards developed under this act.

4 f. A remote online notary public:

5 (1) is a notary public for purposes of the "Notaries Public Act of
6 1979", P.L. 1979, c.460 (C.52:7-10 et seq) and is subject to that act
7 to the same extent as a notary public appointed and commissioned
8 under that act;

9 (2) may perform notarial acts as provided by the "Notaries
10 Public Act of 1979", P.L. 1979, c.460 (C.52:7-10 et seq) in addition
11 to performing remote online notarizations; and

12 (3) may perform an remote online notarization authorized under
13 this act.
14

15 6. a. A notary public commissioned in this State may become
16 a remote online notary public in accordance with
17 P.L., c. (C.)(now pending as this bill). Before a notary performs
18 a remote online notarization the notary shall register with the State
19 Treasurer in accordance with provisions for registration as a remote
20 online notary and identify the technology that the electronic notary
21 public intends to use, which shall conform to any rules or
22 regulations adopted by the State Treasurer. The State Treasurer
23 may require the posting of a surety bond before a notary is
24 commissioned as a remote online notary public.

25 b. Before each registration to perform electronic notarial acts,
26 an individual shall complete a course of instruction of a number of
27 hours approved by the State Treasurer and pass an examination
28 based on the course. The content of the course shall include notarial
29 rules, procedures, and ethical obligations pertaining to electronic
30 notarization in this act or in the "Notaries Public Act of 1979", P.L.
31 1979, c.460 (C.52:7-10 et seq).

32 c. The term of registration to perform electronic notarial acts
33 shall begin on the registration starting date set by the State
34 Treasurer and shall continue as long as the notary public's current
35 commission remains valid.

36 d. An individual registering to perform electronic notarial acts
37 shall submit to the State Treasurer an application in a format
38 prescribed by the State Treasurer which includes:

39 (1) proof of successful completion of the course and
40 examination required under subsection b. of this section;

41 (2) disclosure of any and all license or commission revocations
42 or other disciplinary actions against the registrant; and

43 (3) any other information, evidence, or declaration required by
44 the State Treasurer.

45 e. Upon the applicant's fulfillment of the requirements for
46 registration under this act, the State Treasurer shall approve the
47 registration and issue to the applicant a unique registration number.

1 f. The State Treasurer may reject a registration application if
2 the applicant fails to comply with any provisions of this act.

3

4 7. A remote online notary public physically located in this
5 State may perform a remote online notarial act using
6 communication technology in accordance with P.L., c. (C.)(now
7 pending as this bill) and any rules or regulations adopted by the
8 State Treasurer for a remotely located individual who is physically
9 located:

10 a. In this State;

11 b. Outside this State but within the United States; or

12 c. Outside the United States if:

13 (1) The remote online notary public has no actual knowledge
14 that the act of making the statement or signing the record is
15 prohibited in the jurisdiction in which the person is located; and

16 (2) The person placing his or her electronic signature on the
17 electronic record confirms to the remote online notary public that
18 the requested remote online notarial act and the electronic record:

19 (a) are part of or pertain to a matter that is to be filed with or is
20 currently before a court, governmental entity or other entity in the
21 United States;

22 (b) relates to property located in the United States; or

23 (c) relates to a transaction substantially connected to the United
24 States

25

26 8. a. A remote online notary public shall keep a secure
27 electronic journal of each remote online notarial act performed by
28 the remote online notary public. The electronic journal must contain
29 for each remote online notarization:

30 (1) the date and time of the notarization;

31 (2) the type of notarial act;

32 (3) the type, the title, or a description of the electronic record or
33 proceeding;

34 (4) the printed name and address of each principal involved in
35 the transaction or proceeding;

36 (5) evidence of identity of each principal involved in the
37 transaction or proceeding in the form of:

38 (a) a statement that the person is personally known to the
39 remote online notary public;

40 (b) a notation of the type of identification document provided to
41 the remote online notary public;

42 (c) a record of the identity verification made under this act, if
43 applicable;

44 (d) the printed name and address of each credible witness
45 swearing to or affirming the person's identity; and for each credible
46 witness not personally known to the remote online notary public, a
47 description of the type of identification documents provided to the
48 remote online notary public; and

- 1 (e) the fee, if any, charged for the notarization.
- 2 b. The remote online notary public shall create an audio and
- 3 video copy of the performance of the notarial act.
- 4 c. The remote online notary public shall take reasonable steps
- 5 to:
- 6 (1) insure the integrity, security, and authenticity of remote
- 7 online notarizations;
- 8 (2) maintain a backup for the electronic journal required by
- 9 subsection a. of this section and the recording required by
- 10 subsection b. of this section; and
- 11 (3) protect the backup record from unauthorized use.
- 12 d. The electronic journal required by subsection a. of this
- 13 section and the recording required by subsection b. of this section
- 14 shall be maintained for at least 10 years after the date of the
- 15 transaction or proceeding.
- 16 e. The remote online notary public may designate as custodian
- 17 of the recording and the electronic journal:
- 18 (1) the employer of the remote online notary public if evidenced
- 19 by a record signed by the remote online notary public and the
- 20 employer; or
- 21 (2) a repository meeting the standards established by the State
- 22 Treasurer.
- 23 f. The State Treasurer shall establish:
- 24 (1) standards for the retention of a video and audio copy of the
- 25 performance of the notarial act;
- 26 (2) procedures for preservation of the audio and video copy and
- 27 the electronic journal if the remote online notary public dies or is
- 28 adjudicated incompetent or if the remote online notary public's
- 29 commission or authority to perform notarial acts is otherwise
- 30 terminated; and
- 31 (3) standards for third party repositories for the retention of the
- 32 audio and video copy of the performance of the notarial act.
- 33
- 34 9. a. A remote online notary public shall keep the remote
- 35 online notary public's electronic journal, electronic signature, and
- 36 electronic seal secure. The remote online notary public may not
- 37 allow another person to use the remote online notary public's,
- 38 electronic signature, or electronic seal.
- 39 b. A remote online notary public shall attach the remote online
- 40 notary public's electronic signature and seal to the remote online
- 41 notarial certificate of an electronic record in a manner that renders
- 42 any subsequent change or modification to the electronic record to
- 43 be evident.
- 44 c. A remote online notary public shall immediately notify an
- 45 appropriate law enforcement agency and the State Treasurer of the
- 46 theft or vandalism of the remote online notary public's electronic
- 47 journal, electronic signature, or electronic seal. A remote online
- 48 notary public shall immediately notify the State Treasurer of the

1 loss or use by another person of the remote online notary public's
2 electronic journal, electronic signature, or electronic seal.

3
4 10. a. A remote online notary public may perform a remote
5 online notarization authorized under P.L., c. (C.)(now pending
6 as this bill) that meets the requirements of this act and rules adopted
7 regardless of whether the principal is physically located in this State
8 at the time of the remote online notarization.

9 b. In performing a remote online notarization, a remote online
10 notary public shall verify the identity of a person creating an
11 electronic signature at the time that the signature is taken by using
12 communication technology that meets the requirements of this act
13 and rules adopted pursuant thereto. Identity may be verified by:

14 (1) the remote online notary public's personal knowledge of the
15 person creating the electronic signature; or

16 (2) each of the following:

17 (a) remote presentation by the person creating the electronic
18 signature of a government-issued identification credential,
19 including a passport or driver's license, that contains the signature
20 and a photograph of the person;

21 (b) credential analysis; and

22 (c) identity proofing.

23 c. The remote online notary public shall take reasonable steps
24 to ensure that the communication technology used in a remote
25 online notarization is secure from unauthorized interception.

26 d. The remote online notarial certificate for a remote online
27 notarization must state that the person making the
28 acknowledgement or making the oath appeared remotely online.

29 e. A remote online notarial act meeting the requirements of this
30 act satisfies the requirement of any law of this State relating to a
31 notarial act that requires a principal to appear or personally appear
32 before a notary or that the notarial act be performed in the presence
33 of a notary.

34
35 11. A remote online notary public or the remote online notary
36 public's employer may charge a fee for performance of remote
37 online notarization.

38
39 12. a. Except as provided by subsection b. of this section, a
40 remote online notary public whose commission terminates shall
41 destroy the coding, disk, certificate, card, software, or password
42 that enables electronic affixation of the remote online notary
43 public's official electronic signature or seal. The remote online
44 notary public shall certify compliance with this subsection to the
45 State Treasurer.

46 b. A former remote online notary public whose commission
47 terminated for a reason other than revocation or a denial of renewal
48 is not required to destroy the items described by subsection a. of

1 this section if the former remote online notary public is
2 recommissioned as a remote online notary public with the same
3 electronic signature and seal within three months after the former
4 remote online notary public's former commission terminated.

5
6 13. A person who, without authorization, knowingly obtains,
7 conceals, damages, or destroys the certificate, disk, coding, card,
8 program, software, or hardware enabling a remote online notary
9 public to affix an official electronic signature or seal commits a
10 crime of the fourth degree.

11
12 14. This act modifies, limits, and supersedes the "Electronic
13 Signatures in Global and National Commerce Act," Pub.L.106-229
14 (15 U.S.C. s.7001 et seq.), but does not modify, limit, or supersede
15 Section 101(a) of that act (15 U.S.C. s.7001(a)), or authorize
16 electronic delivery of any of the notices described in Section 103(b)
17 of that act (15 U.S.C. s.7003(b)).

18
19 15. This act shall take effect immediately but shall remain
20 inoperative for 14 months to permit the State Treasurer to
21 promulgate the rules and standards set forth in sections 3 and 4 of
22 this act within 12 months.

23 24 25 STATEMENT

26
27 This bill creates the "Remote Online Notaries Public Act."
28 The State Treasurer has the authority to implement rules and
29 standards to facilitate online remote notarizations. The State
30 Treasurer is required to develop and maintain standards for remote
31 online notarization, including standards for credential analysis and
32 identity proofing.

33 The bill provides the State Treasurer 12 months to adopt and
34 enact the rules and encourages consideration of standards
35 established by the National Association of Secretaries of State
36 (NASS) and national standard setting bodies such as the Mortgage
37 Industry Standards and Maintenance Organization (MISMO). The
38 bill would take effect immediately to begin that process but remain
39 inoperative until 2 months after the 12 month period.

40 The bill requires a person must qualify to be appointed as a
41 remote online notary public. An online remote notary public
42 application must include the applicant's name, certification that the
43 applicant agrees to comply with the established standards, and
44 email address.

45 Once the requirements are met, a remote online notary public is
46 imbued with the same rights and privileges of a commissioned
47 notary public.

1 The bill requires a remote online notary public to register with
2 the State Treasurer and identify the technology to be used in their
3 operation as a notary. The online remote notary public must also
4 send proof that they have completed the required course of
5 instruction. The term of registration begins on the registration start
6 date and continues as long as the notary public's current
7 commission remains valid.

8 A remote online notary public may perform notarial acts for a
9 person who is physically located in this State or remotely located.

10 A remote online notary can only perform notarial acts outside the
11 United States if the notary has no actual knowledge that the act of
12 making a statement or signing a record is prohibited within the
13 jurisdiction in which the person is located. The notary public can
14 perform notarial acts if the person placing their signature on the
15 electronic record confirms to the notary public that the requested
16 notarial act is a part of a matter that is currently before a court or
17 government entity in the United States, relates to a property in the
18 United States, or relates to a transaction substantially connected to
19 the United States.

20 The bill requires a remote online notary public to keep a secure
21 electronic journal of notarized documents. The journal must include
22 the date and time of notarization, the type of notarial act, a
23 description of the electronic document/proceeding, the information
24 of each principal involved in the proceeding and evidence of the
25 identity of each principal involved in the proceeding. A recording
26 of any video and audio conference can be the basis for satisfactory
27 evidence of identification. The record must also include the fee, if
28 any charged, for the notarization. The electronic journal must be
29 maintained for a least ten years after the date of the transaction or
30 proceeding.

31 The remote online notary public is required to take reasonable
32 steps to insure the integrity and security of online notarizations,
33 maintain a backup for the electronic record, and protect the backup
34 record from unauthorized use.

35 The remote online notary public has the ability to designate a
36 custodian of the recordings in a manner that complies with
37 standards set forth by the State Treasurer. The standards shall
38 include procedures for the preservation of the audio and video copy
39 of the notarized document and the electronic journal in the
40 circumstance the notary public dies, is adjudicated to be
41 incompetent, or has their commission terminated.

42 The remote online notary public's electronic signature must be
43 kept secure and used only to perform online notarial acts. The
44 notary may not allow another person to use the notary's electronic
45 signature.

46 The remote online notary public must attach their electronic
47 signature and seal to an online notarial certificate in a way that

1 renders subsequent changes to the document as evidence of
2 tampering.

3 A remote online notary public must immediately report any loss,
4 theft, or vandalism of the electronic signature.

5 The principal is not required to be physically located in the State
6 at the time of the online notarization. The remote online notary
7 must verify the identity of the person creating the electronic
8 signature at the time the signature is taken. The remote online
9 notary must take reasonable steps to verify the communication
10 technology for the online notarization is secure from unauthorized
11 use.

12 The electronic certification for the notarization must include
13 information that indicates the notarization was completed online.

14 The bill requires a notary public whose commission is terminated
15 to destroy any coding, disk, certificate, card, software or password
16 that enables the online remote notary public's electronic signature
17 or seal to be affixed.

18 The bill makes it a crime of the fourth degree to knowingly
19 obtain or destroy without prior authorization a certificate, disk,
20 coding, card, program, software, or hardware that enables the notary
21 public's electronic signature to be affixed.

22 This bill is based on model legislation proposed by the Mortgage
23 Bankers Association and the American Land Title Association.