

# ASSEMBLY REGULATED PROFESSIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 4860

# STATE OF NEW JERSEY

DATED: MAY 13, 2019

The Assembly Regulated Professions Committee reports favorably Assembly Bill No. 4860.

This bill creates the “Remote Online Notaries Public Act.”

The State Treasurer has the authority to implement rules and standards to facilitate online remote notarizations. The State Treasurer is required to develop and maintain standards for remote online notarization, including standards for credential analysis and identity proofing.

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

The bill requires a person to qualify in order to be appointed as a remote online notary public. An online remote notary public application must include the applicant’s name, certification that the applicant agrees to comply with the established standards, and email address.

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

The bill requires a remote online notary public to register with the State Treasurer and identify the technology to be used in the notary’s practice. An online remote notary public is also required to send proof of completion of the required course of instruction. The term of registration begins on the registration start date and continues as long as the notary public’s current commission remains valid.

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

A remote online notary can only perform notarial acts outside the United States if the notary has no actual knowledge that the act of making a statement or signing a record is prohibited within the jurisdiction in which the person is located. The notary public can perform notarial acts if the person placing their signature on the electronic record confirms to the notary public that the requested

notarial act is a part of a matter that is currently before a court or government entity in the United States, relates to a property in the United States, or relates to a transaction substantially connected to the United States.

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

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

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

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

The remote online notary public must attach their electronic signature and seal to an online notarial certificate in a way that renders subsequent changes to the document as evidence of tampering.

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

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

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

The bill requires a notary public whose commission is terminated to destroy any coding, disk, certificate, card, software or password

that enables the online remote notary public's electronic signature or seal to be affixed.

The bill makes it a crime of the fourth degree to knowingly obtain or destroy without prior authorization a certificate, disk, coding, card, program, software, or hardware that enables the notary public's electronic signature to be affixed. A crime of the fourth degree is ordinarily punishable by a term of imprisonment of up to 18 months or a fine of up to \$10,000, or both.

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