SENATE, No. 3147

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED OCTOBER 22, 2018

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

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

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning remote online notaries public and
supplementing the “Uniform Electronic Transactions Act,”
P.L.2001, c.116 (C.12A:12-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

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

2. As used in this act:
   a. “Appear” or “personally appear” or “in the presence of”
   means:
      (1) being in the same physical location as another person and
      close enough to see, hear, communicate with, and exchange tangible
      identification credentials with that individual; or
      (2) interacting with another individual by means of
      communication technology that complies with the provisions of this
      act.
   b. “Communication technology” means an electronic device or
      process that allows a notary public physically located in this state
      and a remotely located individual to communicate with each other
      simultaneously by sight and sound, and which, as necessary, makes
      reasonable accommodations for individuals with vision, hearing, or
      speech impairments.
   c. "Credential analysis” means a process or service that meets
      the standards established by the Secretary of State through which a
      third person affirms the validity of a government-issued
      identification credential through review of public and proprietary
      data sources.
   d. "Electronic" means relating to technology having electrical,
      digital, magnetic, wireless, optical, electromagnetic, or similar
      capabilities.
   e. "Electronic record” means information that is created,
      generated, sent, communicated, received, or stored by electronic
      means.
   f. "Electronic seal" means information within a notarized
      electronic record that confirms the remote online notary public’s
      name, jurisdiction, identifying number, and commission expiration
      date and generally corresponds to information in notary seals used
      on paper documents.
   g. "Electronic signature” means an electronic sound, symbol, or
      process attached to or logically associated with an electronic record
      and executed or adopted by a person with the intent to sign the
      electronic document.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
h. "Identity proofing" means a process or service operating according to standards established by the Secretary of State through which a third person affirms the identity of an individual:
   (1) by means of dynamic knowledge based authentication such as a review of personal information from public or proprietary data sources; or
   (2) by means of analysis of biometric data such as, but not limited to, facial recognition, voiceprint analysis, or fingerprint analysis,
   i. “Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the laws of this State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.
   j. “Outside the United States” means outside the geographic boundaries of a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.
   k. "Principal” means an individual:
      (1) whose electronic signature is notarized in a remote online notarization; or
      (2) making an oath or affirmation or an acknowledgement other than in the capacity of a witness for the remote online notarization.
   l. "Remote online notarial certificate” is the form of an acknowledgement; jurat, verification on oath or affirmation, or verification of witness or attestation that is completed by a remote online notary public and:
      (1) contains the online notary public's electronic signature, electronic seal, title, and commission expiration date;
      (2) contains other required information concerning the date and place of the remote online notarization; and
      (3) otherwise conforms to the requirements for an acknowledgement, jurat, verification on oath or affirmation, or verification of witness or attestation under the laws of this State; and
      (4) indicates that the person making the acknowledgement, oath or affirmation appeared remotely online.
   m. "Remote online notarization” or “remote online notarial act” means a notarial act performed by means of communication technology that meets the standards adopted under this act.
   n. "Remote online notary public” means a notary public who has been authorized by the State Treasurer to perform remote online notarizations under this act.
   o. "Remote presentation” means transmission to the remote online notary public through communication technology of an
image of a government-issued identification credential that is of sufficient quality to enable the remote online notary public to:

1. identify the individual seeking the remote online notary public’s services; and
2. perform credential analysis.

p. “Remotely located individual” means an individual who is not in the physical presence of the notary.

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

4. a. The State Treasurer by rule shall develop and maintain standards for remote online notarization in accordance with this act, including but not limited to standards for credential analysis and identity proofing.
   b. In developing standards for remote online notarization, the State Treasurer shall review and consider 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).
   c. The rules shall be adopted not later than 12 months from the date of the enactment of this act, and may thereafter be modified, amended or supplemented.

5. a. A notary public or an applicant for appointment as a notary public under P.L., c. ___(now pending as this bill) may apply to the State Treasurer to be appointed and commissioned as a remote online notary public in the manner provided by this section.
   b. A person qualifies to be appointed as a remote online notary public by:
      1. satisfying the qualification requirements for appointment as a notary public under this act and the “Notaries Public Act of 1979”, P.L.1979, c.460 (C.52:7-10 et seq);
      2. paying the application fee described by subsection d. of this section; and
      3. electronically submitting to the State Treasurer an application in the form prescribed by the State Treasurer that satisfies the State Treasurer that the applicant is qualified.
   c. The application required by subsection b. of this section shall include:
      1. the applicant's name to be used in acting as a notary public;
      2. a certification that the applicant will comply with the State Treasurer's standards developed under this act; and
      3. an e-mail address of the applicant.
d. The State Treasurer may charge a fee for an application submitted under this section in an amount necessary to administer this act.

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

f. A remote online notary public:

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

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

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

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

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

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

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

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

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

(3) any other information, evidence, or declaration required by the State Treasurer.
e. Upon the applicant’s fulfillment of the requirements for registration under this act, the State Treasurer shall approve the registration and issue to the applicant a unique registration number.

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

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

a. In this State;

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

c. Outside the United States if:

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

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

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

b. relates to property located in the United States; or

c. relates to a transaction substantially connected to the United States.

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

1. the date and time of the notarization;

2. the type of notarial act;

3. the type, the title, or a description of the electronic record or proceeding;

4. the printed name and address of each principal involved in the transaction or proceeding;

5. evidence of identity of each principal involved in the transaction or proceeding in the form of:

a. a statement that the person is personally known to the remote online notary public;

b. a notation of the type of identification document provided to the remote online notary public;

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

d. the printed name and address of each credible witness swearing to or affirming the person's identity; and for each credible
witness not personally known to the remote online notary public, a
description of the type of identification documents provided to the
remote online notary public; and
(e) the fee, if any, charged for the notarization.
b. The remote online notary public shall create an audio and
video copy of the performance of the notarial act.
c. The remote online notary public shall take reasonable steps
to:
(1) insure the integrity, security, and authenticity of remote
online notarizations;
(2) maintain a backup for the electronic journal required by
subsection a. of this section and the recording required by
subsection b. of this section; and
(3) protect the backup record from unauthorized use.
d. The electronic journal required by subsection a. of this
section and the recording required by subsection b. of this section
shall be maintained for at least 10 years after the date of the
transaction or proceeding.
e. The remote online notary public may designate as custodian
of the recording and the electronic journal:
(1) the employer of the remote online notary public if evidenced
by a record signed by the remote online notary public and the
employer; or
(2) a repository meeting the standards established by the State
Treasurer.
f. The State Treasurer shall establish:
(1) standards for the retention of a video and audio copy of the
performance of the notarial act;
(2) procedures for preservation of the audio and video copy and
the electronic journal if the remote online notary public dies or is
adjudicated incompetent or if the remote online notary public’s
commission or authority to perform notarial acts is otherwise
terminated; and
(3) standards for third party repositories for the retention of the
audio and video copy of the performance of the notarial act.

9. a. A remote online notary public shall keep the remote
online notary public's electronic journal, electronic signature, and
electronic seal secure. The remote online notary public may not
allow another person to use the remote online notary public's,
electronic signature, or electronic seal.
b. A remote online notary public shall attach the remote online
notary public's electronic signature and seal to the remote online
notarial certificate of an electronic record in a manner that renders
any subsequent change or modification to the electronic record to
be evident.
c. A remote online notary public shall immediately notify an
appropriate law enforcement agency and the State Treasurer of the
theft or vandalism of the remote online notary public's electronic journal, electronic signature, or electronic seal. A remote online notary public shall immediately notify the State Treasurer of the loss or use by another person of the remote online notary public's electronic journal, electronic signature, or electronic seal.

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

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

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

      (2) each of the following:

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

         (b) credential analysis; and

         (c) identity proofing.

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

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

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

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

12. a. Except as provided by subsection b. of this section, a remote online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the remote online notary public's official electronic signature or seal. The remote online notary public shall certify compliance with this subsection to the State Treasurer.
b. A former remote online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described by subsection a. of this section if the former remote online notary public is recommissioned as a remote online notary public with the same electronic signature and seal within three months after the former remote online notary public's former commission terminated.

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

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

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

STATEMENT

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 must qualify 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 their operation as a notary. The online remote notary public must also send proof that they have completed 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 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 insure 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 has their commission 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.

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