

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4250

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 20, 2020

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 4250.

This bill revises the law concerning the qualifications and duties of notaries public and other notarial officers. The bill also authorizes electronic signatures.

DEFINITIONS. The bill provides definitions of terms, including, among others, “acknowledgment,” “electronic signature,” and “notarial act.” The term “electronic signature” is defined as an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

APPOINTMENT AND QUALIFICATIONS. Under current law, a person desiring to be appointed and commissioned as a notary public must apply to the State Treasurer on a form endorsed by a member of the Legislature. As introduced, the bill had eliminated the requirement that a member of the Legislature endorse the form. The committee amendments restore the requirement that a member of the Legislature must endorse the form. The committee amendments also provide that all applications for commission as a notary public must be submitted electronically.

As amended, the bill provides that, in order to be commissioned as a notary public, among other provisions a person must be at least 18; must not be disqualified to receive a commission pursuant to other provisions of the bill; must be a legal resident of the State or have a place of employment or practice in the State, or be an employee of a business with its domicile or primary place of business in this State and perform his employment duties remotely from a state adjoining this State.

The bill as introduced had required that a notary public complete a six-hour course of study for a new application, or a three-hour continuing education course for a renewal application. The committee amendments delete these requirements.

FEE FOR COMMISSION OR RENEWAL. Under current law, the State Treasurer collects a fee of \$25 for each appointment or renewal. The committee amendments increase the fee for each commission

or renewal to \$50, and provide that the fee is payable by credit card, debit card, or electronic funds transfer.

OATH OF OFFICE. Under current law, within three months of the receipt of a commission the notary public must take and subscribe an oath before the clerk of the county in which he resides. The bill as introduced had allowed the oath to be taken before any officer authorized to administer oaths pursuant to current law. The committee amendments provide that the oath may be taken either before the county clerk or before a member of the Legislature. The committee amendments also provide that the oath must be taken within 45 days of the receipt of the commission.

DISQUALIFICATION. The bill provides that the Treasurer may deny an application, refuse to renew a commission, or suspend, revoke, or otherwise limit the commission of a notary public for any act or omission demonstrating that the individual lacks the honesty, integrity, competence, or reliability necessary to act as a notary public. These grounds specifically include, among others, a fraudulent, dishonest, or deceitful misstatement or omission in the application; a finding against the applicant in a legal proceeding or disciplinary action based on fraud, dishonesty, or deceit, including but not limited to certain criminal convictions; the use of false or misleading advertising representing that the notary is authorized to engage in work that the notary is not so authorized to engage in; and, in the case of a notary who is not an attorney, giving legal advice or acting as an immigration consultant or expert on immigration matters.

MANUAL. The bill requires the State Treasurer to maintain an on-line manual setting forth the functions, duties, and responsibilities of a notary public, including the statutes, rules, regulations, and ethical requirements.

OFFICIAL STAMP. The bill sets various requirements concerning a notary public's official stamp, including a provision for an official stamp for a notarial act regarding an electronic record. The bill provides that if the stamping device is lost or stolen, the notary public must notify the State Treasurer within 10 days. The committee amendments require that if a notarial act regarding an electronic record is performed by a notary public, an official stamp must be attached to or logically associated with the certificate.

REQUIREMENTS FOR NOTARIAL ACTS. Under the bill, a notarial officer who takes a verification of a statement on oath or affirmation must determine from personal knowledge or satisfactory evidence of the identity of the individual that the individual making the verification has the identity claimed. As amended by the committee, if a notarial act relates to a statement made in, or a signature executed on, a record, the individual must either appear personally before the notarial officer or may use communication technology to appear before the notarial officer. The amendments

also provide that a verification of oath or affirmation of a credible witness may take place either by the witness personally appearing before the notarial officer, or by the witness using communication technology to appear.

EXCLUSIONS FROM COMMUNICATIONS TECHNOLOGY. As introduced, the bill had excluded certain records from notarization through the use of communication technology. These included certain provisions under the Uniform Commercial Code, laws governing the creation and execution of wills or codicils, and statutes, regulations, or other rules of law governing adoption, divorce, or other matters of family law. The committee amendments remove the exclusion of wills and codicils, so that remote notarization through the use of communication technology could be used for these records.

REMOTELY LOCATED INDIVIDUALS. The bill provides that a notarial officer may perform a notarial act using communications technology for a person who is not in the notarial officer's physical presence if the notarial officer has personal knowledge or satisfactory evidence of the individual's identity and if the notarial officer creates an audio-visual recording of the performance of the notarial act. The bill as amended provides that unless a different period is required by rule or regulation adopted by the State Treasurer or a provision published by the Treasurer in the New Jersey Notary Public Manual, the audio-visual recording must be retained for a period of at least 10 years.

The bill as amended provides that the Treasurer may publish provisions in the New Jersey Notary Public Manual that:

- (1) prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
- (2) establish standards for communication technology. Before adopting, amending, or repealing such a rule or regulation or publishing a provision in the Notary Public Manual concerning the standards, the Treasurer would be required to consider the standards promulgated by national standard-setting organizations such as the Mortgage Industry Standards Maintenance Organization and the National Association of Secretaries of State, in addition to the standards, practices and customs of other jurisdictions and the views of governmental officials and entities and other interested persons.

As introduced, the bill had required that the promulgation of any standards for communication technology promulgated by the State Treasurer would be accomplished by the adoption of rules and regulations under the Administrative Procedure Act. The amendments allow the Treasurer to promulgate the standards by publishing them in the New Jersey Notary Public Manual.

CERTIFICATE FORM. The bill sets out short form certificates of notarial acts and specifies that the forms are sufficient for the purposes indicated if the other requirements of law are satisfied.

JOURNAL. Under the bill, notaries public must maintain a journal of all notarial acts performed, either in a tangible medium or electronic format. For each notarial act, the notary public must record the date and time, the type of notarial act, the name and address of each person for whom the notarial act is performed, a statement concerning the evidence of identity of the individual, and a list of all fees charged for the notarial act. If a notary public's journal is lost or stolen, the notary public must notify the State Treasurer within 10 days. The notary public must either retain the journal for 10 years after the performance of the last notarial act chronicled in the journal or transmit the journal to the Department of the Treasury or a repository approved by the Treasurer.

FEES. Under current law, fees for the services performed by a notarial officer are set by statute in N.J.S.22A:4-14. The bill provides that the fees for these services would instead be fixed by the State Treasurer by regulation.

REPEALERS. The bill as amended repeals several sections of law that would either be obviated by the bill or are currently obsolete: section 7 of P.L.1979, c.460 (C.52:7-16) (concerning certain duties of the county clerk regarding notaries); sections 1 and 2 of P.L.1981, c.487 (C.52:7-20 and C.52:7-21) (concerning criminal convictions that bar appointment and reappointment as a notary public); and R.S.52:6-15 through R.S.52:6-22 (an obsolete statute concerning foreign commissioners of deeds).

BACKGROUND. This bill is based on a 2014 report of the New Jersey Law Revision Commission which, in turn, was based on the Uniform Law Commission's 2010 "Revised Uniform Law on Notarial Acts" (RULONA). This bill also incorporates the Uniform Law Commission's 2018 revision of the RULONA as well as various other provisions intended to improve the notarial process.

COMMITTEE AMENDMENTS:

1. Restore the requirement in current law that a person desiring to be appointed and commissioned as a notary public must apply to the State Treasurer on a form endorsed by a member of the Legislature.
2. Increase the fee for each commission or renewal from the current \$25 to \$50, and provide that the Treasurer shall accept the use of a credit card, debit card, or electronic funds transfer.
3. Provide that the oath of office may either be taken before the county clerk or a member of the Legislature, and require that the oath be taken within 45 days of the receipt of the commission.
4. Eliminate the bill's requirements for a course of study for a new application for a notary public commission and a continuing education course for a renewal application.

5. Require that if a notarial act regarding an electronic record is performed by a notary public, an official stamp must be attached to or logically associated with the certificate.

6. Allow individuals to either appear personally before the notarial officer or use communication technology to appear before the officer.

7. Allow verification of oath or affirmation of a credible witness to take place using communication technology.

8. Allow the use of communication technology for notarization of records concerning wills and codicils.

9. Allow the State Treasurer to promulgate standards for communication technology by publishing them in the New Jersey Notary Public Manual, rather than requiring the promulgation of rules and regulations pursuant to the Administrative Procedure Act.

10. Repeal obsolete statutes concerning foreign commissioners of deeds.

11. Make various technical changes and minor corrections.