

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2508

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2020

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2508.

This bill, as amended, revises the law concerning the qualifications and duties of notaries public and other notarial officers. The bill also authorizes electronic signatures for notarial acts as well as various notarial acts to be performed with remotely located individuals. The Assembly counterpart to this bill, Assembly Bill No. 4250, was also previously amended by the Assembly Judiciary Committee, adopted on July 20, 2020, as detailed in this statement.

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. A person desiring to be appointed and commissioned as a notary public is required to apply to the State Treasurer on a form endorsed by a member of the Legislature. As introduced, this bill and the Assembly counterpart bill had eliminated the requirement that a member of the Legislature endorse the form. The Assembly Judiciary Committee amendments restored the requirement that a member of the Legislature endorse the form. Those committee amendments also provided that all applications for commission as a notary public be submitted electronically. The Assembly committee amendments are incorporated into the Senate bill.

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; or must be a legal resident of the State, 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 the duties of employment remotely from a home office or a co-working space.

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 Assembly Judiciary Committee amendments deleted these requirements in the counterpart bill, and the amendments to the Senate bill do the same.

FEE FOR COMMISSION OR RENEWAL. Under current law, the State Treasurer collects a fee of \$25 for each appointment or renewal. The Assembly Judiciary Committee amendments increased the fee for each commission or renewal to \$50, which is included in the Senate bill as well. The bill also requires that the State Treasurer accept the use of a credit card, debit card, or electronic funds transfer to pay the fee.

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. See R.S.41:2-1. The Assembly Judiciary Committee amendments to the counterpart bill changed this, so that the oath could be taken either before the appropriate county clerk or before a member of the Legislature. Those amendments also provided that the oath be taken within 45 days of the receipt of the commission. However, the committee amendments to both bills adopted today restore the three-month period within which a notary public is required to take the oath, as well as the requirement to be sworn in only by a county clerk by eliminating the ability to be sworn into office by a member of the Legislature.

DISQUALIFICATION. The bill provides that the State 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 or commissioned notary public 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. For a notarial act performed by a notary public involving a tangible record, an official stamp would be affixed to or embossed on a certificate evidencing details of the act near the signature of the notary public. For a notarial act involving an electronic record, the stamp would be attached to or logically associated with the certificate, so long as this certificate indicates the notary public's name and commission expiration date, and the title "Notary Public, State of New Jersey."

The stamping device for official stamps would be considered the property of the notary public, even if an employer purchased the device, and the notary public would be responsible for keeping it secure. If the stamping device was lost or stolen, the notary public would be required to notify the State Treasurer within 10 days of the loss or theft.

REQUIREMENTS FOR NOTARIAL ACTS. Under the bill, a notarial officer who takes an acknowledgment of a record, a verification of a statement on oath or affirmation, or witnesses a signature, could only do so based on personal knowledge or satisfactory evidence of the identity of the individual appearing before the notarial officer, whether in person or appearing before the notarial officer remotely through the use of communication technology. Additionally, the Assembly Judiciary Committee amendments to the counterpart bill provided that a verification of oath or affirmation of a credible witness could take place either by the witness personally appearing before the notarial officer or by the witness using communication technology to appear, and this is added to the Senate bill.

NOTARIAL ACTS EXCLUDED FROM REMOTE EXECUTION. 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 Assembly Judiciary Committee amended the bill to remove the exclusion pertaining to wills and codicils, so that remote notarization through the use of communication technology could be used for executing these records, which is now being done in the Senate bill.

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 notarial officer would be required to retain the

recording, personally or through a designated repository, for a period of at least 10 years, unless a different period was required by any rule, regulation, or provision published by the State Treasurer.

As amended by the Assembly Judiciary Committee in the counterpart bill, and being incorporated into the Senate bill, there are provisions providing that the Treasurer may publish provisions in the New Jersey Notary Public Manual concerning requirements for carrying out notarial acts involving a remotely located individual, in addition to promulgating rules and regulations for carrying out such acts. Before adopting, amending, or repealing any such rule or regulation, or publishing a provision in the Notary Public Manual, the State 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 with substantial similar laws concerning remote act, along with the views of governmental officials and entities and other interested persons.

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, a notary public is required to 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 individual for whom the notarial act is performed, information concerning 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 of the loss or theft. 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 State Treasurer.

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

REPEALERS. The bill repeals several sections of law that would either be obviated by the bill or are currently obsolete: R.S.52:6-15 through R.S.52:6-22 (obsolete statutes concerning foreign commissioners of deeds); and 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).

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.

This bill, as amended by this committee, is identical to the Second Reprint of Assembly Bill No. 4250, also amended and reported by the committee today.

The committee amendments to the bill:

- 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, and require all applications be submitted electronically;

- increase the fee for each commission or renewal from the current \$25 to \$50, and provide that the State Treasurer is required to accept the use of a credit card, debit card, or electronic funds transfer to pay the fee;

- eliminate the requirement for qualification as a notary public that a person be a citizen of the United States;

- permit a person who is an employee of a business with its domicile or primary place of business in this State, and who performs employment duties remotely from a home office or a co-working space to be eligible to be a notary public;

- eliminate the requirements for a mandatory six-hour course of study for a new application and an examination to become a notary public, and a three-hour continuing education course for a renewal application, and replacing these with a requirement to comply with any educational requirements that the State Treasurer includes in the Notary Public Manual;

- provide that a notary public take and subscribe the oath of office within three months of commission, by the clerk of the county in which the notary public resides, or where a nonresident maintains his office or is employed in this State, instead of allowing the taking of an oath before any officer lawfully authorized to administer oaths;

- reestablish the requirement, removed from the bill as introduced, that a county clerk, following an administration of the oath of office, give notice to any notary public who is also not a licensed attorney to refrain from using the title of lawyer or attorney-at-law, or equivalent terms in any language which mean or imply that the notary public is a lawyer or attorney-at-law, and a form of such notice is required with any advertising by that notary public;

- reestablish the ability of the State Treasurer, removed from the bill as introduced, to cancel and revoke a notary public's appointment if the notary public fails to take and subscribe the required oath of office within three months of receiving the commission of office;

- reestablish an existing process under current law, removed from the bill as introduced, that a commissioned notary public could request

and receive from the county clerk where the notary public was qualified certificates of commission and qualification for filing with other county clerks;

- for a notary public who adopts a new name, require that the statement filed with the State Treasurer regarding the new name indicate whether it was adopted through marriage, civil union, or by a change of name proceeding or otherwise, and any other information the State Treasurer requires;

- clarify the various notarial acts that may be performed with, and witnesses by, persons appearing before a notarial officer remotely using communication technology, and allowing the creation and execution of documents concerning wills and codicils;

- permit standards for remote notarial acts to be published in the Notary Public Manual, as well as other provisions to implement the re-titled "New Jersey Law on Notarial Act," P.L.1979, c.460 (C.52:7-10 et seq.);

- eliminate a foreign commissioner of deeds for New Jersey as an officer authorized to take acknowledgments or proofs in this State, or in any other state or foreign jurisdiction;

- save from repeal section 7 of P.L.1979, c.460 (C.52:7-16), which concern certain duties of county clerks regarding notaries public; and

- revise the title to reflect the repeal of several sections of law, as described in the statement above.