

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2508

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 2021

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2508 (1R).

This bill 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.

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. 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.

COURSE OF STUDY. The committee amendments require that a non-attorney applicant for an initial commission as a notary public would be required to comply with all educational requirements that the State Treasurer sets forth in rules adopted pursuant to the “Administrative Procedure Act,” P.L.1969, c.410 (C.52:14B-1 et seq.). The State Treasurer would prescribe and approve a course of study to foster and confirm applicants’ understanding of the principles and standards that govern notarial practices. Applicants would be required to acknowledge that they have read and understood the Notary Public Manual and complete any other educational programs that the Treasurer may require.

Under the amendments, the State Treasurer would also prescribe and approve a continuing education course for non-attorney applicants seeking a renewal of a commission.

FEE FOR COMMISSION OR RENEWAL. The bill as amended requires the State Treasurer to collect a fee of \$25 for each appointment or renewal. 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. The bill provides that 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.

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. 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.

NOTARIAL ACTS EXCLUDED AND INCLUDED UNDER THIS BILL. As referred to committee, the bill excludes certain records from notarization through the use of communication technology. Excluded under the bill are 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 maintain these exclusions, but provide an exception for wills and codicils under certain circumstances. Under the amendments, a notarial act performed on a tangible record that is governed by a law governing the creation of wills and codicils may be performed through the use of communication technology if the notarial act is performed in accordance with the bill's requirements for remote notarization.

"PAPER REMOTE NOTARIZATION." The committee amendments clarify that a notarial officer may take an acknowledgement by means of communication technology of a signature on a tangible record that *is in the physical presence* of the notary. In this situation, the signatory fully executes the document and sends it to the notarial officer, who then proceeds with the remote session to take the acknowledgement and complete the certificate. This process is sometimes known as Paper Remote Notarization.

"PAPER REMOTE INK NOTARIZATION." The amendments provide that a notarial officer may also perform a notarial act by means of communication technology on a tangible record that *is not physically present* before the notarial officer, but instead is in the possession of the remote individual. This process is sometimes known as Paper Remote Ink Notarization.

REMOTE OATHS. The bill clarifies that, in addition to the remote notarization of acknowledgements, a notary may also administer an oath remotely.

ELECTRONIC RECORDS UNDER THE "UNIFORM ELECTRONIC TRANSACTIONS ACT." Currently, the "Uniform Electronic Transactions Act," P.L.2001, c.116 (C.12A:12-1 et seq.) applies to electronic records and electronic signatures relating to a transaction, with certain exceptions. These exceptions include, among others, 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 delete these provisions. Thus, under the bill as amended, the Uniform Electronic Transaction Act would apply to electronic records and electronic signatures relating to provisions of the Uniform Commercial Code; wills or codicils; and adoption, divorce, or other matters of family law.

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.

RULES AND REGULATIONS. As referred to committee, the bill had authorized the State Treasurer to publish provisions in the New Jersey Notary Public Manual concerning requirements for carrying out notarial acts involving a remotely located individual. The bill had also authorized the State Treasurer to promulgate rules and regulations for carrying out such notarial acts. The committee amendments delete the provision concerning publication of these requirements in the Notary Public Manual. Thus, as amended, the bill provides that any State Treasurer requirements for carrying out notarial acts involving a remotely located individual must be promulgated by rules and regulations. Under the bill as amended, before adopting, amending, or repealing any such rule or regulation, 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.

NOTARIAL ACTS ON BEHALF OF INDIVIDUAL PHYSICALLY LOCATED OUTSIDE THE STATE. The committee amendments add a provision specifying that a notarial officer may perform a notarial act using communication technology for a remotely located individual that meets the requirements of the bill regardless of whether the remotely located individual is physically located in this State. The amendments also provide that a notarial act performed using communication technology for a remotely located individual is deemed performed in New Jersey and is governed by New Jersey law. In addition, the amendments provide that it is the intent of the Legislature that, to the fullest extent allowed by the Full Faith and Credit Clause of the United States Constitution and the laws of the

50 states and the District of Columbia, a notarial act performed in this State shall be recognized, be enforceable, and have the same effect under the law of the 50 states as if performed by a notarial officer of those jurisdiction.

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. The bill as amended provides that the State Treasurer would collect a nonrefundable fee of \$25 for each commission or renewal. In collecting the fee, the Treasurer would be required to accept the use of a credit card, debit card, or electronic funds transfer.

REPEALERS. The bill repeals several sections of law that would be obviated by the bill: section 7 of P.L.1979, c.460 (C.52:7-16) (requiring the county clerk to attach a certificate of authority to notaries' certificates of proof, acknowledgements or affidavits); 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.

EFFECTIVE DATE. The committee amendments modify several provisions in the effective date. Under the amendments, sections 6 and 7 of the bill (course of study, continuing education, and examination) would take effect on the 365th day following enactment. The remainder of the bill would take effect on the 90th day following enactment. The amended bill provides that the State Treasurer may take any anticipatory administrative action in advance as shall be necessary for the implementation of the bill.

This bill, as amended by this committee, this bill is identical to the Assembly Bill No. 4250 (3R), which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

-- Require that a non-attorney applicant for an initial commission as a notary public would be required to comply with all educational requirements that the State Treasurer sets forth in rules adopted pursuant to the “Administrative Procedure Act,” P.L.1969, c.410 (C.52:14B-1 et seq.) concerning a course of study to foster and confirm applicants’ understanding of the principles and standards that govern notarial practices. The State Treasurer would also prescribe and approve a continuing education course for non-attorney applicants seeking a renewal of a commission.

-- Require State Treasurer to collect a nonrefundable fee of \$25 for each appointment or renewal.

-- Allow records concerning wills and codicils to be notarized remotely under certain circumstances. The bill excludes certain records from notarization through the use of communication technology, such as 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. However, the committee amendments set out an exception for wills and codicils as follows: a notarial act performed on a tangible record that is governed by a law governing the creation of wills and codicils may be performed through the use of communication technology if the notarial act is performed in accordance with the bill’s requirements for remote notarization.

-- Clarify that a notarial officer may take an acknowledgement by means of communication technology of a signature on a tangible record that *is in the physical presence* of the notary. In this situation, the signatory fully executes the document and sends it to the notarial officer, who then proceeds with the remote session to take the acknowledgement and complete the certificate. This process is sometimes known as Paper Remote Notarization.

-- Clarify that a notarial officer may perform a notarial act by means of communication technology on a tangible record that is *not physically present* before the notary public, but instead is in the possession of the remote individual. This process is sometimes known as Paper Remote Ink Notarization.

-- Clarify that, in addition to performing the remote notarization of acknowledgements, a notary may also administer an oath remotely.

-- Remove the exclusion of certain matters under the Uniform Electronic Transactions Act. Under the amendments, the Uniform Electronic Transaction Act would apply to electronic records and electronic signatures concerning 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.

-- Delete provision concerning publication of certain requirements for notaries in the Notary Public Manual, providing that any such requirements be promulgated by rule or regulation.

-- Specify that a notarial officer may perform a notarial act using communication technology for a remotely located individual regardless of whether the remotely located individual is physically located in this State. The amendments also provide that a notarial act performed using communication technology for a remotely located individual is deemed performed in New Jersey and is governed by New Jersey law.

-- Provide that it is the intent of the Legislature that, to the fullest extent allowed by the Full Faith and Credit Clause of the United States Constitution and the laws of the 50 states and the District of Columbia, a notarial act performed in this State shall be recognized, be enforceable, and have the same effect under the law of the 50 states as if performed by a notarial officer of those jurisdictions.

-- Provide that sections 6 and 7 of the bill (course of study, continuing education, and examination) would take effect on the 365th day following enactment; that the remainder of the bill would take effect on the 90th day following enactment; and that the State Treasurer may take any anticipatory administrative action in advance as shall be necessary for the implementation of the bill.

-- Make technical changes to clarify certain language and renumber certain provisions.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.