

SENATE, No. 1249

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS

Revises the statutes concerning oaths and affidavits.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning oaths and affidavits, enacting a new title known
2 as Title 41A, and repealing parts of the statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. An additional title, Title 41A, is added to the Revised
8 Statutes as follows:

9
10 TITLE 41A
11 OATHS AND AFFIDAVITS
12 TABLE OF CONTENTS
13 CHAPTER 1. OFFICIAL OATHS

14
15 41A:1-1 Oath of Office; Form
16 41A:1-2 Oath of Allegiance; Form
17 41A:1-3 Official Oaths; Persons Required to Take
18 41A:1-4 Solemnities of Official Oaths
19 41A:1-5 Official Oaths; Who May Administer
20 41A:1-6 Signing and Filing of Judicial Oaths
21 41A:1-7 Enrollment by County Clerk

22
23 CHAPTER 2. OATHS AND AFFIDAVITS

24
25 41A:2-1 Who May Administer Oaths, Affirmations and
26 Take Affidavits
27 41A:2-2 Formalities of Oaths, Affirmations and
28 Affidavits
29 41A:2-3 Oaths and Affidavits Taken Out of State
30 41A:2-4 Certification in Place of Oath, Affidavit,
31 Affirmation or Declaration
32 41A:2-5 Oaths to Witnesses in Examinations Before
33 Legislature or Committees; Perjury
34 41A:2-6 Oaths Administered by Notaries Public in
35 Financial Institutions Matters

36
37 41A:1-1. Oath of Office, Form.
38 If no oath of office is specially prescribed by law for a particular
39 office, the form of the oath of office shall be as follows:
40 “I,, do solemnly swear (or affirm) that I will
41 faithfully, impartially and justly perform all the duties of the office
42 of to the best of my ability.”
43 Any person taking the oath of office may add the phrase “So help
44 me God.”
45 The taking of an oath of office by affirmation shall have the
46 same effect as a sworn oath of office.
47 Source: R.S.41:1-3, R.S.41:1-4, R.S.41:1-5, R.S.41:2A-6

1 41A:1-2. Oath of Allegiance; Form.

2 The oath of allegiance shall be as follows:

3 “I,, do solemnly swear (or affirm) that I will support
4 the Constitution of the United States and the Constitution of the
5 State of New Jersey, and that I will bear true faith and allegiance to
6 the same and to the Governments established in the United States
7 and in this State, under the authority of the people.”

8 Any person taking the oath of allegiance may add the phrase “So
9 help me God.”

10 The taking of an oath of allegiance by affirmation shall have the
11 same effect as a sworn oath of allegiance.

12 Source: R.S.41:1-1

13

14 41A:1-3. Official Oaths, Persons Required to Take.

15 Each of the following, prior to undertaking the duties of office,
16 shall take and sign the oath of office and the oath of allegiance set
17 forth in 41A:1-1 et seq., unless another form of Oath is specially
18 prescribed by law:

19 a. Every person elected or appointed to any public office in the
20 Executive, Legislative or Judicial branch of this State, including:

21 (1) The Governor and Lieutenant Governor;

22 (2) The Chief Justice and each Associate Justice of the Supreme
23 Court;

24 (3) Every judge of the Superior Court and the Tax Court; and

25 (4) Every judge of the Office of Administrative Law and the
26 Division of Workers' Compensation.

27 b. Every judge of a municipal court.

28 c. Every surrogate, deputy surrogate, and special deputy
29 surrogate.

30 d. Every person elected or appointed to a public office in this
31 State in any county, municipality or special district, or in any
32 department, board, commission, agency or instrumentality of any of
33 them.

34 e. Every person appointed to any office in the militia of the
35 State.

36 f. Every attorney-at-law of the State.

37 Source: R.S.41:1-2, R.S.41:1-3, R.S.41:2A-1, R.S.41:2A-4,
38 R.S.41:2A-6

39

40 41A:1-4. Solemnities of Official Oaths.

41 Any person taking the oath of allegiance or oath of office
42 prescribed by this Title may do so by uplifting a hand or by placing
43 a hand on religious scriptures. Failure to uplift a hand or to place a
44 hand on religious scriptures shall not affect the validity of the oath.

45 Source: R.S.41:1-4 and R.S.41:1-5

46

47 41A:1-5. Official Oaths, Who May Administer.

- 1 a. The oath of office and oath of allegiance of the Governor
2 and the Lieutenant Governor, elect or acting, shall be administered
3 by the Chief Justice or an Associate Justice of the Supreme Court,
4 or a member of the Senate. If the Legislature is in session, the oaths
5 shall be administered in the presence of the Senate and General
6 Assembly at the place they designate.
- 7 b. The oath of office and oath of allegiance of a member of the
8 Senate or of the General Assembly shall be administered by a
9 fellow member of the same house.
- 10 c. The oath of office and oath of allegiance of the Clerk of the
11 Supreme Court, Clerk of the Superior Court, Secretary of State or
12 Attorney General, shall be administered by the Chief Justice or an
13 Associate Justice of the Supreme Court, or by a judge of the
14 Superior Court or the Tax Court.
- 15 d. The oath of office and oath of allegiance of the Chief Justice
16 or an Associate Justice of the Supreme Court shall be administered
17 by a Justice of the Supreme Court;
- 18 e. The oath of office and oath of allegiance of a judge of the
19 Superior Court or Tax Court shall be administered by a Justice of
20 the Supreme Court or by a judge of the Superior Court or Tax
21 Court;
- 22 f. The oath of office and oath of allegiance of a judge of a
23 municipal court or any surrogate, deputy surrogate or special deputy
24 surrogate shall be administered by a judge of the Superior Court or
25 the Tax Court.
- 26 g. If no other provision is made by law for the administration
27 of the oath of office or the oath of allegiance for any State elective
28 or appointive office, the oaths may be administered by:
- 29 (1) The Governor or Lieutenant Governor;
30 (2) A member of the Legislature;
31 (3) The Chief Justice or any Associate Justice of the Supreme
32 Court;
33 (4) A judge of the Superior Court or Tax Court;
34 (5) A judge of the Office of Administrative Law or the Division
35 of Workers' Compensation;
36 (6) The county clerk of any county.
37 (7) A commissioned officer of the United States Armed Forces,
38 provided that the signed oath contains a recital that the oath was
39 administered by a commissioned officer, a specification of the
40 officer's rank and official designation, and a statement that the
41 officer taking the oath is a commissioned officer in the United
42 States Armed Forces.
- 43 h. If no other provision is made by law for the administration
44 of the oath of office or the oath of allegiance for any elective or
45 appointive office in any county, municipality, school district, or
46 other local government agency, board, committee, commission or
47 other entity, these oaths may be administered by any of the
48 following officers:

1 (1) Any of the officers enumerated in subsection g. of this
2 section;

3 (2) Judges of municipal court;

4 (3) Mayors and other elected municipal officers;

5 (4) Surrogates, registers of deeds and mortgages, county clerks
6 and their deputies;

7 (5) Municipal clerks and clerks of boards of chosen freeholders;

8 (6) Sheriffs of any county;

9 (7) County Executives, members of the Board of Chosen
10 Freeholders, and other elected county officials;

11 (8) Clerks of all courts;

12 (9) Notaries public;

13 (10) Commissioners of deeds;

14 (11) Attorneys-at-law of this State;

15 (12) Certified court reporters, as defined in section 10 of
16 P.L.1940, c.175 (C.45:15B-10).

17 Source: R.S.41:2-4, R.S.41:2-5, R.S.41:2-6, R.S.41:2-7, R.S.41:2-8,
18 R.S.41:2-10, R.S.41:2-14, R.S.41:2-15, Section 3 of P.L.1948,
19 c.335 (C.41:2A-3).

20

21 41A:1-6. Signing and Filing of Judicial Oaths.

22 The signed oaths of every Supreme Court Justice, judge of the
23 Superior Court and judge of the Tax Court shall be filed in the
24 office of the Secretary of State.

25 Source: Section 4 of P.L.1948, c.335 (C.41:2A-4)

26

27 41A:1-7. Enrollment by County Clerk.

28 Upon taking the oath of allegiance and oath of office, the county
29 clerk shall enroll his own name and the time of his being sworn into
30 office, and transmit a copy of the enrollment to the Secretary of
31 State for filing.

32 Source: R.S.41:2-15, R.S.41:2-12

33

34 41A:2-1. Who May Administer Oaths, Affirmations, and Take
35 Affidavits.

36 a. All ordinary oaths, affirmations and affidavits, other than
37 oaths, affirmations and affidavits required to be taken or made in
38 open court, may be taken by or made before any of the following:

39 (1) the Governor or Lieutenant Governor;

40 (2) a Chief Justice or an Associate Justice of the Supreme Court;

41 (3) a member of the Legislature;

42 (4) a judge of the Superior Court or the Tax Court;

43 (5) Judges of municipal court;

44 (6) Mayors and other elected municipal officers;

45 (7) Surrogates, registers of deeds and mortgages, county clerks,
46 and their deputies;

47 (8) Municipal clerks, clerks of boards of chosen freeholders;

48 (9) Sheriffs of any county;

1 (10) County Executives, members of the board of chosen
2 freeholders, and other elected county officials;

3 (11) Clerks of all courts;

4 (12) Notaries public;

5 (13) Commissioners of deeds;

6 (14) Attorneys-at-law of this State;

7 (15) Certified court reporters, as defined in section 10 of
8 P.L.1940, c.175 (C.45:15B-10); and

9 (16) a commissioned officer of the United States Armed Forces,
10 provided that the signed oath contains a recital that the oath was
11 administered by a commissioned officer, a specification of the
12 officer's rank and official designation, and a statement that the
13 officer taking the oath is a commissioned officer in the United
14 States Armed Forces.

15 b. State investigators attached to the Division of Criminal
16 Justice and county detectives and investigators attached to the
17 office of a county prosecutor may administer oaths or take
18 affirmations and affidavits only in relation to a matter involving a
19 violation of the criminal laws of this State.

20 Source: R.S.41:2-1, R.S.41:2-3, Section 1 of P.L.1939,
21 c.276 (C.41:2-3.1), Section1 of P.L.1982, c. 221 (C.41:2-3.2)

22

23 41A:2-2. Formalities of Oaths, Affirmations and Affidavits.

24 a. Any person required or permitted by law to take an oath or
25 to make an affidavit may instead make a solemn affirmation in the
26 following form or its equivalent:

27 "I,, do solemnly affirm the truth of what I say."

28 b. Any person taking an oath or making an affirmation or
29 affidavit required or permitted by law may do so by uplifting a hand
30 or by placing a hand on religious scriptures. The failure to uplift a
31 hand or to place a hand on religious scriptures shall not affect the
32 validity of the oath.

33 c. It shall not be necessary to the validity or sufficiency of any
34 oath, affirmation, declaration or affidavit that it is certified under
35 the official seal of the officer before whom it is made.

36 Source: R.S.41:1-6, R.S.41:1-7

37

38 41A:2-3. Oaths, Affirmations and Affidavits Taken Out of
39 State.

40 a. Any oath, affirmation, or affidavit required or permitted by
41 the law of this State to be made, when made outside of the State,
42 may be administered or taken by the following:

43 (1) By any notary public of the State, territory, or country in
44 which the oath, affirmation or affidavit is made; or

45 (2) By any officer authorized by the laws of this State to take an
46 acknowledgment of deeds in the State, territory, or country in which
47 the acknowledgment if being taken.

1 b. The jurat or certificate of an oath, affirmation or affidavit
2 made outside the State shall contain:

3 (1) the officer's official designation annexed to his signature;
4 and

5 (2) a statement that the notary or officer is authorized by the law
6 of that jurisdiction to administer an oath or take an affirmation or
7 affidavit; and

8 (3) the officer's official seal, if the affixation of a seal is
9 required by the law of the officer's jurisdiction.

10 The inclusion of these recitals in the jurat or certificate shall be
11 sufficient proof that the person before whom the oath, affirmation
12 or affidavit was made is a notary or officer.

13 Source: R.S.41:2-17

14

15 41A:2-4. Certification in Place of Oath, Affidavit, Affirmation
16 or Declaration.

17 Any person required or permitted by law to take an oath or to
18 make an affirmation or affidavit before an administering officer,
19 may instead make a written certification in the following form:

20 "I,....., hereby certify that the foregoing statements
21 made by me are true. I am aware that if any of the foregoing
22 statements made by me are willfully false, I am subject to
23 punishment."

24 The certification shall include the person's signature and the date
25 the certification was made.

26 Source: New (See R.1:4-4)

27

28 41A:2-5. Oaths to Witnesses in Examinations Before
29 Legislature or Committees; Perjury.

30 The President of the Senate, the Speaker of the General
31 Assembly and the chairman of a committee of the whole, or of any
32 select or standing committee of either house of the Legislature, are
33 respectively empowered to administer oaths and affirmations to
34 witnesses, in any matter or case under their examination. Any
35 person who willfully makes a false statement under oath or
36 affirmation shall be guilty of perjury or false swearing under
37 N.J.S.2C:28-1 or N.J.S.2C:28-2.

38 Source: R.S.41:2-2

39

40 41A:2-6. Oaths Administered by Notaries Public in Financial
41 Institutions Matters.

42 a. A notary public who is a stockholder, director, officer,
43 employee or agent of a financial institution or other corporation
44 may administer an oath to any other stockholder, director, officer,
45 employee or agent of the corporation.

46 b. A notary public employed by a financial institution may
47 follow directions or policies of the employer which provide that
48 during the hours of the notary public's employment by the financial

1 institution the notary public shall not administer oaths except in the
2 course of the business of the employer.

3 As used in this section, "financial institution" means a State or
4 federally chartered bank, savings bank, savings and loan association
5 or credit union.

6 Source: R.S.41:2-3
7

8 2. To the extent this act contains provisions not inconsistent
9 with those of prior laws it shall be construed as a continuation of
10 such prior laws and relevant case law interpreting or applying those
11 provisions shall be preserved.
12

13 3. The following are repealed:

14 Revised Statutes:

15 R.S.41:1-1 through R.S.41:1-7 both inclusive;

16 R.S.41:2-1 through R.S.41:2-3 both inclusive;

17 R.S.41:2-4 through R.S.41:2-8 both inclusive;

18 R.S.41:2-10 through R.S.41:2-15 both inclusive;

19 R.S.41:2-17 through R.S.41:2-20 both inclusive;

20 R.S.41:3-1;

21 R.S.41:3-2.

22 Pamphlet Laws:

23 Section 1 of P.L.1939, c. 276 (C.41:2-3.1);

24 Section 1 of P.L.1982, c. 221 (C.41:2-3.2);

25 Section 1 of P.L.1948, c.335 (C.41:2A-1);

26 Section 3 of P.L.1948, c.335 (C.41:2A-3);

27 Section 4 of P.L.1948, c.335 (C.41:2A-4);

28 Section 1 of P.L.1951, c.351 (C.41:2A-6).
29

30 4. This act shall take effect on the 90th day following enactment
31 and shall apply to all oaths or affidavits taken or administered on or
32 after the effective date.
33

34 35 STATEMENT 36

37 This bill would clarify and reorganize the statutes concerning
38 oaths and affidavits set out in Title 41 of the Revised Statutes. The
39 bill would replace the current Title 41 with a new title, Title 41A.
40 The bill was recommended by the New Jersey Law Revision
41 Commission, which has found the current statutes on oaths and
42 affidavits to be repetitive and confusing.

43 The bill concerns two types of oaths: (1) *official oaths* (oaths of
44 office taken by public officials), set out in chapter 1 of the new
45 Title, and (2) "*ordinary*" *oaths and affidavits* (asserting
46 truthfulness), set out in chapter 2.

47 Chapter 1: Official Oaths

1 Chapter 1 of the new Title 41A concerns official oaths. Under
2 the New Jersey Constitution, “every State officer” before taking
3 office must “take and subscribe an oath or affirmation to support
4 the Constitution of this State and of the United States and to
5 perform the duties of his office faithfully, impartially and justly to
6 the best of his ability.” (N.J. Const., Art. VII, sec. 1, para. 1.) The
7 statutes have historically separated this requirement into two
8 components: an “oath of office” encompassing the provision
9 concerning performance of the duties of the office, and an “oath of
10 allegiance” encompassing the provision to support the State and
11 United States constitutions. This bill continues this separation.

12 Currently, several separate statutes in chapters 1 and 2 of Title
13 41 govern official oaths for various State officers. For example,
14 R.S.41:1-2 concerns the governor and persons appointed or elected
15 legislative, executive or judicial office; R.S.41:2A-1 concerns
16 Justices of the Supreme Court and judges of the Superior Court and
17 Tax Court.

18 Section 41A:1-1 of this bill would combine the provisions of the
19 source laws into a single section pertaining to the oath of office.
20 This language tracks the language established in the New Jersey
21 Constitution. However, this new section would clarify that the
22 words “so help me God,” which are not included in the
23 constitutional text, would be optional.

24 Section 41A:1-2 of the bill would largely continue what is
25 currently N.J.S.A.41:1-1, pertaining to the oath of allegiance. Like
26 section 41A:1-1, this section would also clarify that the words “so
27 help me God,” which are not included in the constitutional text,
28 would be optional. The section also provides that taking an oath of
29 office by affirmation would have the same effect as a sworn oath of
30 office.

31 Section 41A:1-3 of the bill would consolidate into one statutory
32 section all officials who are required to take official oaths. The bill
33 refers to these officials as follows:

34 “Every person elected or appointed to any public office in the
35 Executive, Legislative or Judicial branch of this State, including:

36 (1) The Governor and Lieutenant Governor;
37 (2) The Chief Justice and each Associate Justice of the Supreme
38 Court;

39 (3) Every judge of the Superior Court and the Tax Court; and

40 (4) Every judge of the Office of Administrative Law and the
41 Division of Workers' Compensation.

42 b. Every judge of a municipal court.

43 c. Every surrogate, deputy surrogate, and special deputy
44 surrogate.

45 d. Every person elected or appointed to a public office in this
46 State in any county, municipality or special district, or in any
47 department, board, commission, agency or instrumentality of any of
48 them.

1 e. Every person appointed to any office in the militia of the
2 State.

3 f. Every attorney-at-law of the State.”

4 Section 41A:1-4 of the bill, concerning the solemnity of the oath,
5 clarifies that raising a hand or placing a hand on religious scriptures
6 is not required.

7 Section 41A:1-5 consolidates into one section the various
8 officials who may administer official oaths to particular persons.
9 This section provides, among others, that the Governor’s official
10 oath shall be administered by a Justice of the Supreme Court or a
11 member of the Senate; the oath of a member of the Legislature shall
12 be administered by a fellow member of the same house; the oath of
13 the Secretary of State or Attorney General shall be administered by
14 a Justice of the Supreme Court or a judge of the Superior Court or
15 the Tax Court; the oath of the Chief Justice or an Associate Justice
16 of the Supreme Court shall be administered by a Justice of the
17 Supreme Court; the oath of a Superior Court or Tax Court judge by
18 a Justice of the Supreme Court or a Superior Court or Tax Court
19 judge; and the oath of a municipal court judge by a Superior Court
20 or Tax Court judge. The section also provides that if no other
21 provision of law specifies the person who will administer an official
22 oath for State office, the oaths may be administered by the
23 Governor, Lieutenant Governor, a member of the Legislature, a
24 Supreme Court Justice, Superior Court or Tax Court Judge, a judge
25 of the Office of Administrative Law or the Division of Workers’
26 Compensation, the county clerk of any county or a commissioned
27 officer of the United States Armed Forces.

28 In addition, section 41A:1-5 provides that in the case of county
29 and local officials, if no other provision of law specifies the person
30 who will administer the oath, it may be administered by any of the
31 persons authorized to administer oaths for State offices or by certain
32 other persons, including municipal court judges, mayors, surrogates,
33 county clerks, notaries public and attorneys.

34

35 Chapter 2: “Ordinary” Oaths and Affidavits

36 This bill would also create a chapter 2 of Title 41A, which would
37 govern “ordinary” oaths and affidavits (those that assert
38 truthfulness).

39 Section 41A:2-1 of the chapter would consolidate the lists of
40 individuals authorized to administer “ordinary” oaths and affidavits.
41 Currently these individuals are listed in several different sections of
42 law.

43 Section 41A:2-1 lists those individuals who would be authorized
44 to administer an “ordinary” oath or affidavit, which is an identical
45 list to those individuals who are authorized to administer an official
46 oath found in section 41A:1-5. This would be a clarification of
47 current law. According to the Commission report, “the list of
48 authorized officials in the source sections overlapped and caused

1 confusion. There does not appear to be any reason why an official
2 authorized to administer an official oath may not also administer an
3 ordinary oath.”

4 The Commission report notes that this section is not an exclusive
5 list of officials specifically authorized to administer oaths and
6 affidavits, and that statutes outside of Title 41 which authorize other
7 officials under certain circumstances are still valid. For example,
8 the Commissioner of Banking and Insurance is authorized to
9 examine under oath the officers of foreign banks (N.J.S.A.17:9A-
10 325), and the Secretary of Higher Education is authorized to
11 administer oaths with regard to any matter pertaining to higher
12 education (N.J.S.A.18A:3B-34). This bill would not alter these
13 other statutory provisions.

14 Section 41A:2-2 clarifies that a person may make an affirmation
15 instead of an oath. It also eliminates the provision in R.S.41:1-6
16 that refers to a “declaration.” The Commission’s report states that
17 “there does not appear to be any difference between an affirmation
18 and declaration.”

19 Section 41A:2-3 continues the source section N.J.S.A.41:2-17.
20 The section provides the manner in which any oath, affirmation, or
21 affidavit required or permitted by the law of this State to be made
22 may be administered or taken out of State.

23 Section 41A:2-4 adds a new provision authorizing a
24 “certification in lieu of oath.” This provision is modeled on R.1:4-
25 4(b) of the Rules Governing the Courts of the State of New Jersey.
26 This section provides that any person who takes an oath or makes
27 an affirmation or affidavit before an administering officer may
28 instead make a written certification in the following form:

29 “I,....., hereby certify that the foregoing statements
30 made by me are true. I am aware that if any of the foregoing
31 statements made by me are willfully false, I am subject to
32 punishment.”

33 Section 41A:2-5 of the bill would continue N.J.S.A.41:2-2 which
34 provides that the President of the Senate, the Speaker of the General
35 Assembly and the chairman of a committee of the whole, or of any
36 select or standing committee of either house of the Legislature, are
37 respectively empowered to administer oaths and affirmations to
38 witnesses, in any matter or case under their examination. This
39 section also provides that any person who willfully makes a false
40 statement under oath or affirmation shall be guilty of perjury or
41 false swearing under N.J.S.2C:28-1 or N.J.S.2C:28-2.

42 Under the bill, section 41A:2-6 would continue N.J.S.A.41:2-3,
43 which provides that a notary public who is a stockholder, director,
44 officer, employee or agent of a financial institution or other
45 corporation may administer an oath to any other stockholder,
46 director, officer, employee or agent of the corporation. The section
47 also provides that a notary public employed by a financial
48 institution may follow directions or policies of the employer which

1 provide that during the hours of the notary public's employment by
2 the financial institution the notary public would not be permitted to
3 administer oaths except in the course of the business of the
4 employer.

5 Section 2 of the bill provides that to the extent the bill contains
6 provisions not inconsistent with those of prior laws it shall be
7 construed as a continuation of such prior laws. This provision is
8 intended to clarify that existing case law, common practices and
9 interpretations pertaining to oaths and affidavits, to the extent they
10 are not inconsistent with this bill, would still be lawful and
11 permissible after the enactment of this bill.

12 Section 3 of the bill repeals Title 41, which in addition to those
13 statutes replaced by the provisions of this bill includes obsolete
14 provisions regarding the council of proprietors of West Jersey,
15 provisions concerning perjury and false swearing which have been
16 obviated by the enactment of the Criminal Code (Title 2C), and
17 provisions concerning coroners (an office which no longer exists).