

[First Reprint]

**ASSEMBLY, No. 3903**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED MARCH 23, 2020

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**SYNOPSIS**

Allows remote notarial acts during Public Health Emergency and State of Emergency declared by Governor in Executive Order 103 of 2020.

**CURRENT VERSION OF TEXT**

As amended by the Senate on April 13, 2020.

(Sponsorship Updated As Of: 4/13/2020)

1 AN ACT concerning remote notarial acts <sup>1</sup>, and other acts for  
 2 executing and verifying certain documents, by notaries public  
 3 and certain other authorized officials using communication  
 4 technology<sup>1</sup> for the duration of the <sup>1</sup>**【Public Health Emergency】**  
 5 public health emergency<sup>1</sup> and <sup>1</sup>**【State】 state**<sup>1</sup> of <sup>1</sup>**【Emergency】**  
 6 emergency<sup>1</sup> declared by the Governor in Executive Order 103 of  
 7 2020.

8  
 9 **BE IT ENACTED** by the Senate and General Assembly of the State  
 10 of New Jersey:

11  
 12 1. a. As used in this section:

13 “Communication technology” means an electronic device or  
 14 process that:

15 (1) allows a notary public <sup>1</sup>or an officer authorized to take oaths,  
 16 affirmations, and affidavits, or to take acknowledgements,<sup>1</sup> and a  
 17 remotely located individual to communicate with each other  
 18 simultaneously by sight and sound; and

19 (2) when necessary and consistent with other applicable law,  
 20 facilitates communication with a remotely located individual who  
 21 has a vision, hearing, or speech impairment.

22 “Foreign state” means a jurisdiction other than the United  
 23 States, a state, or a federally recognized Indian tribe.

24 “Identity proofing” means a process or service by which a third  
 25 person provides a notary public <sup>1</sup>or an officer authorized to take  
 26 oaths, affirmations, and affidavits, or to take acknowledgements<sup>1</sup> with  
 27 a means to verify the identity of a remotely located individual by a  
 28 review of personal information from public or private data sources.

29 “Notarial act” means any official act performed by a notary  
 30 public <sup>1</sup>**【under the laws of this State, which】** appointed pursuant to  
 31 the provisions of the "Notaries Public Act of 1979," P.L.1979, c.460  
 32 (C.52:7-10 et seq.), or otherwise qualified and commissioned as a  
 33 notary public in this State, or performed by an officer authorized to  
 34 take oaths, affirmations and affidavits under R.S.41:2-1 or to take  
 35 acknowledgments under R.S.46:14-6.1. “Notarial act”<sup>1</sup> shall include  
 36 the following <sup>1</sup>**【acts】**<sup>1</sup>: taking acknowledgments; administering  
 37 oaths and affirmations; executing jurats or other verification; taking  
 38 proofs of deed; and executing protests for non-payment.

39 “Outside the United States” means a location outside the  
 40 geographic boundaries of the United States, Puerto Rico, the United  
 41 States Virgin Islands, and any territory, insular possession, or other  
 42 location subject to the jurisdiction of the United States.

43 “Remotely located individual” means an individual who is not in  
 44 the physical presence of a notary public <sup>1</sup>, or an officer authorized to

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate floor amendments adopted April 13, 2020.

1 take oaths, affirmations, and affidavits, or to take acknowledgements,<sup>1</sup>  
2 performing a notarial act under subsection c. of this section.

3 “Satisfactory evidence” means a passport, driver’s license, or  
4 government issued nondriver identification card, which is current or  
5 expired not more than three years before performance of the  
6 notarial act; another form of government identification issued to an  
7 individual, which is current or expired not more than three years  
8 before performance of the notarial act, contains the signature or a  
9 photograph of the individual, and is satisfactory to the notary public  
10 or officer authorized to take oaths, affirmations, and affidavits, or  
11 authorized to take acknowledgements<sup>1</sup>; or a verification on oath or  
12 affirmation of a credible witness personally appearing before the  
13 notary public or officer<sup>1</sup> and known to the notary public or  
14 officer<sup>1</sup> or whom the notary public or officer<sup>1</sup> can identify on the  
15 basis of a passport, driver’s license, or government issued nondriver  
16 identification card, which is current or expired not more than three  
17 years before performance of the notarial act.

18 b. Notwithstanding the provisions of any law or regulation to  
19 the contrary, during the **1[Public Health Emergency]** public health  
20 emergency<sup>1</sup> and **1[State]** state<sup>1</sup> of **1[Emergency]** emergency<sup>1</sup>  
21 declared by the Governor in Executive Order 103 of 2020, a notary  
22 public appointed pursuant to the provisions of the "Notaries Public  
23 Act of 1979," P.L.1979, c. 460 (C.52:7-10 et seq.), or otherwise  
24 qualified and commissioned as a notary public in this State or an  
25 officer authorized to take oaths, affirmations and affidavits under  
26 R.S.41:2-1 or to take acknowledgements under R.S.46:14-6.1<sup>1</sup> may  
27 perform notarial acts using communication technology for a  
28 remotely located individual if:

29 (1) the notary public or officer<sup>1</sup>:

30 (a) has personal knowledge of the identity of the individual  
31 appearing before the notary public or officer<sup>1</sup>, which is based upon  
32 dealings with the individual sufficient to provide reasonable  
33 certainty that the individual has the identity claimed;

34 (b) has satisfactory evidence of the identity of the remotely  
35 located individual by oath or affirmation from a credible witness  
36 appearing before the notary public or officer<sup>1</sup> ; or

37 (c) has obtained satisfactory evidence of the identity of the  
38 remotely located individual by using at least two different types of  
39 identity proofing;

40 (2) the notary public or officer<sup>1</sup> is reasonably able to confirm  
41 that a record before the notary public or officer<sup>1</sup> is the same record  
42 in which the remotely located individual made a statement or on  
43 which the remotely located individual executed a signature;

44 (3) the notary public **1[,]** or officer<sup>1</sup> or a person acting on  
45 their<sup>1</sup> behalf **1[of the notary public,]**<sup>1</sup> creates an audio-visual  
46 recording of the performance of the notarial act; and

1 (4) for a remotely located individual who is located outside the  
2 United States:

3 (a) the record: (i) is to be filed with or relates to a matter before  
4 a public official or court, governmental entity, or other entity  
5 subject to the jurisdiction of the United States; or (ii) involves  
6 property located in the territorial jurisdiction of the United States or  
7 involves a transaction substantially connected with the United  
8 States; and

9 (b) the act of making the statement or signing the record is not  
10 prohibited by the foreign state in which the remotely located  
11 individual is located.

12 c. During the <sup>1</sup>**Public Health Emergency** public health  
13 emergency<sup>1</sup> and <sup>1</sup>**State** state<sup>1</sup> of <sup>1</sup>**Emergency** emergency<sup>1</sup>  
14 declared by the Governor in Executive Order 103 of 2020, a  
15 remotely located individual may comply with subsections a. and b.  
16 of R.S.46:14-2.1 by using communication technology to appear  
17 before a notary public <sup>1</sup>appointed pursuant to the provisions of the  
18 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),  
19 or otherwise qualified and commissioned as a notary public in this  
20 State, or by using communication technology to appear before an  
21 officer authorized to take oaths, affirmations, and affidavits under  
22 R.S.41:2-1 or to take acknowledgments under R.S.46:14-6.1<sup>1</sup>.

23 d. This section shall not apply to a record to the extent it is  
24 governed by:

25 (1) <sup>1</sup>**a law governing the creation and execution of wills or**  
26 **codicils;**

27 (2) <sup>1</sup>**the Uniform Commercial Code** "Uniform Commercial  
28 Code," N.J.S.12A:1-101 et seq.,<sup>1</sup> other than <sup>1</sup>**Sections 1-107 and 1-**  
29 **206, Article 2 and Article 2A** N.J.S.12A:1-107, N.J.S.12A:1-206,  
30 the provisions of the "Uniform Commercial Code – Sales," chapter 2  
31 of Title 12A of the New Jersey Statutes, and the provisions of the  
32 "Uniform Commercial Code – Leases," chapter 2A of Title 12A of the  
33 New Jersey Statutes<sup>1</sup>; or

34 <sup>1</sup>**(3)** <sup>1</sup>**(2)** a statute, regulation or other rule of law governing  
35 adoption, divorce or other matters of family law.

36 e. If a notarial act is performed under this section, the  
37 certificate required by subsection c. of R.S.46:14-2.1 and name  
38 affixation required by section 10 of P.L.1979, c.460 (C.52:7-19)  
39 shall indicate that the notarial act was performed using  
40 communication technology.

41 f. A notary public <sup>1</sup>appointed pursuant to the provisions of the  
42 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),  
43 or otherwise qualified and commissioned as a notary public in this  
44 State, or an officer authorized to take oaths, affirmations and  
45 affidavits under R.S.41:2-1 or to take acknowledgments under  
46 R.S.46:14-6.1<sup>1</sup>, a guardian, conservator, or agent of <sup>1</sup>**a notary**  
47 **public, or** such person or, if such person is deceased,<sup>1</sup> a personal

1 representative of <sup>1</sup>**[a]** the deceased <sup>1</sup>**[notary public]** person<sup>1</sup>, shall  
2 retain the audio-visual recording created under paragraph (3) of  
3 subsection b. of this section or cause the recording to be retained by  
4 a repository designated by or on behalf of the person required to  
5 retain the recording. Unless a different period is required by rule  
6 adopted pursuant to subsection g. of this section, the recording must  
7 be retained for a period of at least 10 years after the recording is  
8 made.

9 g. <sup>1</sup>(1)<sup>1</sup> Notwithstanding the provisions of the “Administrative  
10 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the  
11 contrary, the State Treasurer may, in her discretion, adopt rules or  
12 append provisions to the manual distributed pursuant to section 8 of  
13 P.L.1979, c.460 (C.52:7-17) as necessary to implement the  
14 provisions of this section, which rules or appended provisions may  
15 include the means of performing a notarial act involving a remotely  
16 located individual using communication technology; standards for  
17 communication technology and identity proofing; and standards for  
18 the retention of an audio-visual recording created under paragraph  
19 (3) of subsection b. of this section.

20 <sup>1</sup>(2) Before adopting, amending, or repealing any such rule or  
21 appended provision pursuant to this subsection, the State Treasurer  
22 shall consider the most recent standards regarding the performance of  
23 a notarial act with respect to a remotely located individual  
24 promulgated by national standard-setting organizations such as the  
25 Mortgage Industry Standards Maintenance Organization and the  
26 recommendations of the National Association of Secretaries of State.

27 <sup>1</sup>(3)<sup>1</sup> Any rule adopted or provisions appended to the manual  
28 pursuant to this subsection shall be effective for a period not to  
29 exceed the duration of the <sup>1</sup>**[Public Health Emergency]** public  
30 health emergency<sup>1</sup> and <sup>1</sup>**[State]** state<sup>1</sup> of <sup>1</sup>**[Emergency]**  
31 emergency<sup>1</sup> declared by the Governor in Executive Order 103 of  
32 2020.

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34 2. This act shall take immediately and shall expire upon  
35 rescission of Executive Order No. 103 of 2020 by the Governor.