

P.L. 2020, CHAPTER 26, *approved April 14, 2020*
 Assembly, No. 3903 (*First Reprint*)

1 **AN ACT** concerning remote notarial acts ¹, and other acts for
 2 executing and verifying certain documents, by notaries public
 3 and certain other authorized officials using communication
 4 technology¹ for the duration of the ¹**【Public Health Emergency】**
 5 public health emergency¹ and ¹**【State】 state**¹ of ¹**【Emergency】**
 6 emergency¹ 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 ¹or an officer authorized to take oaths,
 16 affirmations, and affidavits, or to take acknowledgements,¹ 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 ¹or an officer authorized to take
 26 oaths, affirmations, and affidavits, or to take acknowledgements¹ 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 ¹**【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”¹ shall include
 36 the following ¹**【acts】**¹: 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

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:

¹Senate floor amendments adopted April 13, 2020.

1 States Virgin Islands, and any territory, insular possession, or other
2 location subject to the jurisdiction of the United States.

3 “Remotely located individual” means an individual who is not in
4 the physical presence of a notary public ¹, or an officer authorized to
5 take oaths, affirmations, and affidavits, or to take acknowledgements.¹
6 performing a notarial act under subsection c. of this section.

7 “Satisfactory evidence” means a passport, driver’s license, or
8 government issued nondriver identification card, which is current or
9 expired not more than three years before performance of the
10 notarial act; another form of government identification issued to an
11 individual, which is current or expired not more than three years
12 before performance of the notarial act, contains the signature or a
13 photograph of the individual, and is satisfactory to the notary public
14 ¹or officer authorized to take oaths, affirmations, and affidavits, or
15 authorized to take acknowledgements¹; or a verification on oath or
16 affirmation of a credible witness personally appearing before the
17 notary public ¹or officer¹ and known to the notary public ¹or
18 officer¹ or whom the notary public ¹or officer¹ can identify on the
19 basis of a passport, driver’s license, or government issued nondriver
20 identification card, which is current or expired not more than three
21 years before performance of the notarial act.

22 b. Notwithstanding the provisions of any law or regulation to
23 the contrary, during the ¹**【Public Health Emergency】** public health
24 emergency¹ and ¹**【State】** state¹ of ¹**【Emergency】** emergency¹
25 declared by the Governor in Executive Order 103 of 2020, a notary
26 public appointed pursuant to the provisions of the "Notaries Public
27 Act of 1979,” P.L.1979, c. 460 (C.52:7-10 et seq.), or otherwise
28 qualified and commissioned as a notary public in this State ¹or an
29 officer authorized to take oaths, affirmations and affidavits under
30 R.S.41:2-1 or to take acknowledgements under R.S.46:14-6.1¹ may
31 perform notarial acts using communication technology for a
32 remotely located individual if:

33 (1) the notary public ¹or officer¹:

34 (a) has personal knowledge of the identity of the individual
35 appearing before the notary public ¹or officer¹, which is based upon
36 dealings with the individual sufficient to provide reasonable
37 certainty that the individual has the identity claimed;

38 (b) has satisfactory evidence of the identity of the remotely
39 located individual by oath or affirmation from a credible witness
40 appearing before the notary public ¹or officer¹ ; or

41 (c) has obtained satisfactory evidence of the identity of the
42 remotely located individual by using at least two different types of
43 identity proofing;

44 (2) the notary public ¹or officer¹ is reasonably able to confirm
45 that a record before the notary public ¹or officer¹ is the same record

1 in which the remotely located individual made a statement or on
2 which the remotely located individual executed a signature;

3 (3) the notary public **'[.] or officer'** or a person acting on
4 **'their'** behalf **'[of the notary public,]'** creates an audio-visual
5 recording of the performance of the notarial act; and

6 (4) for a remotely located individual who is located outside the
7 United States:

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

14 (b) the act of making the statement or signing the record is not
15 prohibited by the foreign state in which the remotely located
16 individual is located.

17 c. During the **'[Public Health Emergency] public health**
18 **emergency'** and **'[State] state'** of **'[Emergency] emergency'**
19 declared by the Governor in Executive Order 103 of 2020, a
20 remotely located individual may comply with subsections a. and b.
21 of R.S.46:14-2.1 by using communication technology to appear
22 before a notary public 'appointed pursuant to the provisions of the
23 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),
24 or otherwise qualified and commissioned as a notary public in this
25 State, or by using communication technology to appear before an
26 officer authorized to take oaths, affirmations, and affidavits under
27 R.S.41:2-1 or to take acknowledgments under R.S.46:14-6.1¹.

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

30 (1) **'[a law governing the creation and execution of wills or**
31 **codicils;**

32 (2)**]**¹ the **'[Uniform Commercial Code] "Uniform Commercial**
33 **Code," N.J.S.12A:1-101 et seq.,'** other than **'[Sections 1-107 and 1-**
34 **206, Article 2 and Article 2A] N.J.S.12A:1-107, N.J.S.12A:1-206,**
35 the provisions of the "Uniform Commercial Code – Sales," chapter 2
36 of Title 12A of the New Jersey Statutes, and the provisions of the
37 "Uniform Commercial Code – Leases," chapter 2A of Title 12A of the
38 New Jersey Statutes¹; or

39 **'[(3)] (2)'**¹ a statute, regulation or other rule of law governing
40 adoption, divorce or other matters of family law.

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

46 f. A notary public 'appointed pursuant to the provisions of the
47 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),

1 or otherwise qualified and commissioned as a notary public in this
2 State, or an officer authorized to take oaths, affirmations and
3 affidavits under R.S.41:2-1 or to take acknowledgments under
4 R.S.46:14-6.1¹, a guardian, conservator, or agent of ¹**["a notary**
5 **public, or"]** such person or, if such person is deceased,¹ a personal
6 representative of ¹**["a the deceased "notary public] person¹**, shall
7 retain the audio-visual recording created under paragraph (3) of
8 subsection b. of this section or cause the recording to be retained by
9 a repository designated by or on behalf of the person required to
10 retain the recording. Unless a different period is required by rule
11 adopted pursuant to subsection g. of this section, the recording must
12 be retained for a period of at least 10 years after the recording is
13 made.

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

25 ¹**(2)** Before adopting, amending, or repealing any such rule or
26 appended provision pursuant to this subsection, the State Treasurer
27 shall consider the most recent standards regarding the performance of
28 a notarial act with respect to a remotely located individual
29 promulgated by national standard-setting organizations such as the
30 Mortgage Industry Standards Maintenance Organization and the
31 recommendations of the National Association of Secretaries of State.

32 ¹**(3)**¹ Any rule adopted or provisions appended to the manual
33 pursuant to this subsection shall be effective for a period not to
34 exceed the duration of the ¹**["Public Health Emergency] public**
35 **health emergency¹** and ¹**["State] state¹** of ¹**["Emergency]**
36 **emergency¹** declared by the Governor in Executive Order 103 of
37 2020.

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

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