

SENATE, No. 2299

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

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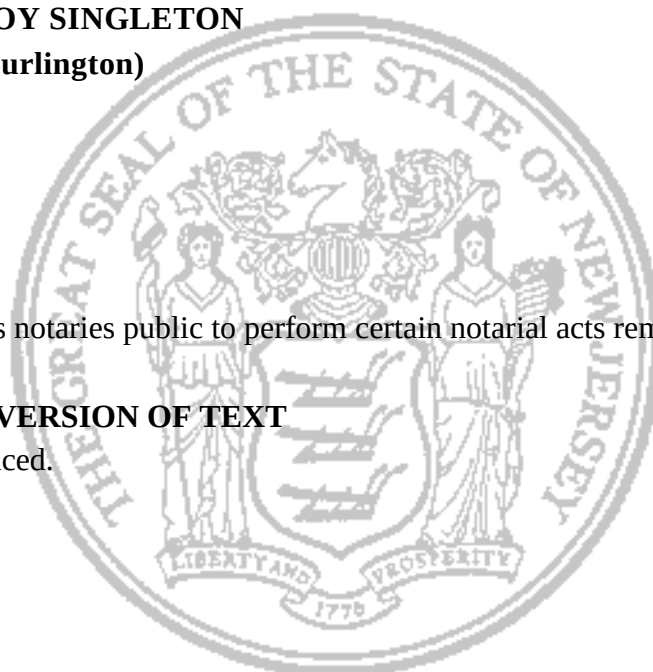
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District 30 (Monmouth and Ocean)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Authorizes notaries public to perform certain notarial acts remotely.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/19/2020)

1 **AN ACT** concerning remote notarial acts and supplementing Title 52
2 of the Revised Statutes.

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

6
7 1. Notarial Act Performed by Remotely Located Individual.

8 a. As used in this section:

9 (1) “Communication technology” means an electronic device or
10 process that:

11 (a) allows a notarial officer and a remotely located individual to
12 communicate with each other simultaneously by sight and sound;
13 and

14 (b) when necessary and consistent with other applicable law,
15 facilitates communication with a remotely located individual who
16 has a vision, hearing, or speech impairment.

17 (2) “Foreign state” means a jurisdiction other than the United
18 States, a state, or a federally recognized Indian tribe.

19 (3) “Identity proofing” means a process or service by which a
20 third person provides a notarial officer with a means to verify the
21 identity of a remotely located individual by a review of personal
22 information from public or private data sources.

23 (4) “Outside the United States” means a location outside the
24 geographic boundaries of the United States, Puerto Rico, the United
25 States Virgin Islands, and any territory, insular possession, or other
26 location subject to the jurisdiction of the United States.

27 (5) “Remotely located individual” means an individual who is
28 not in the physical presence of a notarial officer performing a
29 notarial act under subsection c. of this section.

30 b. This section does not apply to a record to the extent it is
31 governed by:

32 (1) a law governing the creation and execution of wills or
33 codicils;

34 (2) the Uniform Commercial Code other than Sections 1-107
35 and 1-206, Article 2 and Article 2A;

36 (3) a statute, regulation or other rule of law governing adoption,
37 divorce or other matters of family law.

38 c. A remotely located individual may comply with subsections
39 a. and b. of R.S.46:14-2.1 by using communication technology to
40 appear before a notarial officer.

41 d. A notarial officer located in this State may perform a
42 notarial act using communication technology for a remotely located
43 individual if:

44 (1) the notarial officer:

45 (a) has personal knowledge of the identity of the individual;

46 (b) has satisfactory evidence of the identity of the remotely
47 located

1 individual by oath or affirmation from a credible witness appearing
2 before the notarial officer; or
3 (c) has obtained satisfactory evidence of the identity of the
4 remotely located individual by using at least two different types of
5 identity proofing;
6 (2) the notarial officer is able reasonably to confirm that a record
7 before the notarial officer as the same record in which the remotely
8 located individual made a statement or on which the remotely
9 located individual executed a signature;
10 (3) the notarial officer, or a person acting on behalf of the
11 notarial officer, creates an audio-visual recording of the
12 performance of the notarial act; and
13 (4) for a remotely located individual who is located outside the
14 United States:
15 (a) the record:
16 (i) is to be filed with or relates to a matter before a public official
17 or court, governmental entity, or other entity subject to the
18 jurisdiction of the United States; or
19 (ii) involves property located in the territorial jurisdiction of the
20 United States or involves a transaction substantially connected with
21 the United States; and
22 (b) the act of making the statement or signing the record is not
23 prohibited by the foreign state in which the remotely located
24 individual is located.
25 e. If a notarial act is performed under this section, the
26 certificate of notarial act required by section 10 of P.L.1979, c.460
27 (C.52:7-19) or the certificate required by subsection c. of
28 R.S.46:14-2.1 must indicate that the notarial act was performed
29 using communication technology.
30 f. A notarial officer, a guardian, conservator, or agent of a
31 notarial officer, or a personal representative of a deceased notarial
32 officer, shall retain the audio-visual recording created under
33 paragraph (3) of subsection d. or cause the recording to be retained
34 by a repository designated by or on behalf of the person required to
35 retain the recording. Unless a different period is required by rule
36 adopted under paragraph (4) of subsection i. of this section, the
37 recording must be retained for a period of at least 10 years after the
38 recording is made.
39 g. Before a notary public performs the notary public's initial
40 notarial act under this section, the notary public must notify the
41 State Treasurer that the notary public will be performing notarial
42 acts and identify the technologies the notary public intends to use.
43 h. If the State Treasurer has established standards under
44 subsection i. of this section for approval of communication
45 technology or identity proofing, the communication technology and
46 identity proofing must conform to the standards.
47 i. The State Treasurer may adopt rules under this section
48 regarding performance of a notarial act. The rules may:

- 1 (1) prescribe the means of performing a notarial act involving a
2 remotely located individual using communication technology;
3 (2) establish standards for communication technology and
4 identity proofing;
5 (3) establish requirements or procedures to approve providers of
6 communication technology and the process of identity proofing; and
7 (4) establish standards and a period for the retention of an audio-
8 visual recording created under paragraph (3) of subsection d. of this
9 section.
- 10 j. Before adopting, amending, or repealing a rule governing
11 performance of a notarial act with respect to a remotely located
12 individual, the State Treasurer must consider:
- 13 (1) the most recent standards regarding the performance of a
14 notarial act with respect to a remotely located individual
15 promulgated by national standard-setting organizations such as the
16 Mortgage Industry Standards Maintenance Organization and the
17 recommendations of the National Association of Secretaries of
18 State;
19 (2) standards, practices, and customs of other jurisdictions that
20 have laws substantially similar to this section; and
21 (3) the views of governmental officials and entities and other
22 interested persons.

23
24 2. This act shall take effect on the 90th day following
25 enactment.
26

27
28 STATEMENT
29

30 This bill would allow notaries public to perform certain notarial
31 acts remotely.

32 Under the bill, a remotely located individual would be allowed to
33 use communication technology to appear before a notarial officer.
34 A notarial officer located in this State would be authorized to
35 perform a notarial act using communication technology for a
36 remotely located individual if:

- 37 (1) the notarial officer:
38 (a) has personal knowledge of the identity of the individual;
39 (b) has satisfactory evidence of the identity of the remotely
40 located
41 individual by oath or affirmation from a credible witness appearing
42 before the notarial officer; or
43 (c) has obtained satisfactory evidence of the identity of the
44 remotely located individual by using at least two different types of
45 identity proofing;
46 (2) the notarial officer is able reasonably to confirm that a record
47 before the notarial officer is the same record in which the remotely

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

3 (3) the notarial officer, or a person acting on behalf of the
4 notarial officer, creates an audio-visual recording of the
5 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:

9 (i) is to be filed with or relates to a matter before a public official
10 or court, governmental entity, or other entity subject to the
11 jurisdiction of the United States; or

12 (ii) involves property located in the territorial jurisdiction of the
13 United States or involves a transaction substantially connected with
14 the United States; and

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

18 If a notarial act is performed remotely, the certificate of notarial
19 act required by section 10 of P.L.1979, c.460 (C.52:7-19) or the
20 certificate required by subsection c. of R.S.46:14-2.1 must indicate
21 that the notarial act was performed using communication
22 technology.

23 A notarial officer, a guardian, conservator, or agent of a notarial
24 officer, or a personal representative of a deceased notarial officer,
25 would be required to retain the audio-visual recording created under
26 the bill, or cause it to be retained by a repository designated by or
27 on behalf of the person required to retain the recording. Unless a
28 different period is required by rule adopted under the bill, the
29 recording must be retained for a period of at least 10 years after the
30 recording is made.

31 The bill provides that the State Treasurer may adopt rules
32 regarding performance of a notarial act. The rules may:

33 (1) prescribe the means of performing a notarial act involving a
34 remotely located individual using communication technology;

35 (2) establish standards for communication technology and
36 identity proofing;

37 (3) establish requirements or procedures to approve providers of
38 communication technology and the process of identity proofing; and

39 (4) establish standards and a period for the retention of an audio-
40 visual recording.

41 Before adopting, amending, or repealing a rule governing
42 performance of a notarial act with respect to a remotely located
43 individual, the State Treasurer must consider:

44 (1) the most recent standards regarding the performance of a
45 notarial act with respect to a remotely located individual
46 promulgated by national standard-setting organizations such as the
47 Mortgage Industry Standards Maintenance Organization and the

- 1 recommendations of the National Association of Secretaries of
- 2 State;
- 3 (2) standards, practices, and customs of other jurisdictions that
- 4 have laws substantially similar to this section; and
- 5 (3) the views of governmental officials and entities and other
- 6 interested persons.