

SENATE, No. 3082

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED OCTOBER 29, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Allows remote notarial acts using communication technology.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning remote notarial acts, and other acts for
2 executing and verifying certain documents, by notaries public
3 and certain other authorized officials using communication
4 technology and supplementing Title 52 of the Revised Statutes.

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

8
9 1. a. As used in this section:

10 “Communication technology” means an electronic device or
11 process that:

12 (1) allows a notary public or an officer authorized to take oaths,
13 affirmations, and affidavits, or to take acknowledgements, and a
14 remotely located individual to communicate with each other
15 simultaneously by sight and sound; and

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

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

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

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

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

41 “Remotely located individual” means an individual who is not in
42 the physical presence of a notary public, or an officer authorized to
43 take oaths, affirmations, and affidavits, or to take
44 acknowledgements, performing a notarial act under subsection c. of
45 this section.

46 “Satisfactory evidence” means a passport, driver’s license, or
47 government issued nondriver identification card, which is current or
48 expired not more than three years before performance of the

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

13 b. Notwithstanding the provisions of any law or regulation to
14 the contrary, a notary public appointed pursuant to the provisions of
15 the "Notaries Public Act of 1979," P.L.1979, c. 460 (C.52:7-10 et
16 seq.), or otherwise qualified and commissioned as a notary public in
17 this State, or an officer authorized to take oaths, affirmations and
18 affidavits under R.S.41:2-1 or to take acknowledgements under
19 R.S.46:14-6.1 may perform notarial acts using communication
20 technology for a remotely located individual if:

21 (1) the notary public or officer:

22 (a) has personal knowledge of the identity of the individual
23 appearing before the notary public or officer, which is based upon
24 dealings with the individual sufficient to provide reasonable
25 certainty that the individual has the identity claimed;

26 (b) has satisfactory evidence of the identity of the remotely
27 located individual by oath or affirmation from a credible witness
28 appearing before the notary public or officer; or

29 (c) has obtained satisfactory evidence of the identity of the
30 remotely located individual by using at least two different types of
31 identity proofing;

32 (2) the notary public or officer is reasonably able to confirm that
33 a record before the notary public or officer is the same record in
34 which the remotely located individual made a statement or on which
35 the remotely located individual executed a signature;

36 (3) the notary public or officer or a person acting on their behalf
37 creates an audio-visual recording of the performance of the notarial
38 act; and

39 (4) for a remotely located individual who is located outside the
40 United States:

41 (a) the record: (i) is to be filed with or relates to a matter before
42 a public official or court, governmental entity, or other entity
43 subject to the jurisdiction of the United States; or (ii) involves
44 property located in the territorial jurisdiction of the United States or
45 involves a transaction substantially connected with the United
46 States; and

1 (b) the act of making the statement or signing the record is not
2 prohibited by the foreign state in which the remotely located
3 individual is located.

4 c. A remotely located individual may comply with subsections
5 a. and b. of R.S.46:14-2.1 by using communication technology to
6 appear before a notary public appointed pursuant to the provisions
7 of the "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et
8 seq.), or otherwise qualified and commissioned as a notary public in
9 this State, or by using communication technology to appear before
10 an officer authorized to take oaths, affirmations, and affidavits
11 under R.S.41:2-1 or to take acknowledgments under R.S.46:14-6.1.

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

14 (1) the "Uniform Commercial Code," N.J.S.12A:1-101 et seq.,
15 other than N.J.S.12A:1-107, N.J.S.12A:1-206, the provisions of the
16 "Uniform Commercial Code – Sales," chapter 2 of Title 12A of the
17 New Jersey Statutes, and the provisions of the "Uniform
18 Commercial Code – Leases," chapter 2A of Title 12A of the New
19 Jersey Statutes; or

20 (2) a statute, regulation, or other rule of law governing adoption,
21 divorce, or other matters of family law.

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

27 f. A notary public appointed pursuant to the provisions of the
28 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),
29 or otherwise qualified and commissioned as a notary public in this
30 State, or an officer authorized to take oaths, affirmations and
31 affidavits under R.S.41:2-1 or to take acknowledgments under
32 R.S.46:14-6.1, a guardian, conservator, or agent of such person or,
33 if such person is deceased, a personal representative of the deceased
34 person, shall retain the audio-visual recording created under
35 paragraph (3) of subsection b. of this section or cause the recording
36 to be retained by a repository designated by or on behalf of the
37 person required to retain the recording. Unless a different period is
38 required by rule adopted pursuant to subsection g. of this section,
39 the recording must be retained for a period of at least 10 years after
40 the recording is made.

41 g. (1) Notwithstanding the provisions of the "Administrative
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
43 contrary, the State Treasurer may, in the State Treasurer's
44 discretion, adopt rules or append provisions to the manual
45 distributed pursuant to section 8 of P.L.1979, c.460 (C.52:7-17) as
46 necessary to implement the provisions of this section, which rules
47 or appended provisions may include the means of performing a
48 notarial act involving a remotely located individual using

1 communication technology; standards for communication
2 technology and identity proofing; and standards for the retention of
3 an audio-visual recording created under paragraph (3) of subsection
4 b. of this section.

5 (2) Before adopting, amending, or repealing any such rule or
6 appended provision pursuant to this subsection, the State Treasurer
7 shall consider the most recent standards regarding the performance
8 of a notarial act with respect to a remotely located individual
9 promulgated by national standard-setting organizations such as the
10 Mortgage Industry Standards Maintenance Organization and the
11 recommendations of the National Association of Secretaries of
12 State.

13
14 2. This act shall take immediately.

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16
17 STATEMENT

18
19 This bill authorizes a notary public or other notarial officer to
20 perform notarial acts using communication technology for a
21 remotely located individual. The bill applies to:

22 (1) 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; and

26 (2) an officer authorized to take oaths, affirmations, and
27 affidavits under R.S.41:2-1 or to take acknowledgements under
28 R.S.46:14-6.1.

29 Under the bill, such notary public or officer may perform notarial
30 acts using communication technology for a remotely located
31 individual if:

32 (1) the notary public or officer:

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

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

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

43 (2) the notary public or officer is reasonably able to confirm that
44 a record before the notary public or officer is the same record in
45 which the remotely located individual made a statement or on which
46 the remotely located individual executed a signature;

1 (3) the notary public or officer or a person acting on their behalf
2 creates an audio-visual recording of the performance of the notarial
3 act; and

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

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

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

15 Currently, subsection a. of R.S.46:14-2.1 requires the maker of a
16 deed or other instrument to appear in person before a notary public
17 or officer in order to acknowledge the deed or other instrument.
18 Subsection b. of R.S.46:14-2.1 requires a subscribing witness to
19 appear in person before a notary public or officer in order to prove a
20 deed or other instrument. The bill provides that a remotely located
21 individual may comply with these statutory requirements by using
22 communication technology to appear before the notary public or
23 officer.

24 The bill defines “satisfactory evidence” as a passport, driver’s
25 license, or government issued nondriver identification card, which
26 is current or expired not more than three years before performance
27 of the notarial act; another form of government identification issued
28 to an individual, which is current or expired not more than three
29 years before performance of the notarial act, contains the signature
30 or a photograph of the individual, and is satisfactory to the notary
31 public or officer; or a verification on oath or affirmation of a
32 credible witness personally appearing before the notary public or
33 officer and known to the notary public or officer or whom the
34 notary public or officer can identify on the basis of a passport,
35 driver’s license, or government issued nondriver identification card,
36 which is current or expired not more than three years before
37 performance of the notarial act.

38 The bill defines “identity proofing” as a process or service by
39 which a third person provides a notary public or officer with a
40 means to verify the identity of a remotely located individual by a
41 review of personal information from public or private data sources.

42 The bill excludes a record to the extent it is governed by:

43 (1) the “Uniform Commercial Code,” N.J.S.12A:1-101 et seq,
44 other than N.J.S.12A:1-107, N.J.S.12A:1-206, the provisions of the
45 “Uniform Commercial Code – Sales,” chapter 2 of Title 12A of the
46 New Jersey Statutes, and the provisions of the “Uniform
47 Commercial Code – Leases,” chapter 2A of Title 12A of the New
48 Jersey Statutes; or

- 1 (2) a statute, regulation, or other rule of law governing adoption,
2 divorce or other matters of family law.
- 3 The officers authorized to take oaths, affirmations and affidavits
4 under R.S.41:2-1 are:
- 5 - the Chief Justice of the Supreme Court, any of the justices of
6 the Supreme Court, or judges of Superior Court or other courts of
7 record of this State;
 - 8 - municipal court judges;
 - 9 - clerks of all courts;
 - 10 - members of county boards of chosen freeholders, and their
11 clerks;
 - 12 - county surrogates, registers of deeds and mortgages, county
13 clerks and their deputies;
 - 14 - county sheriffs;
 - 15 - mayors or aldermen of cities, towns or boroughs or
16 commissioners of commission-governed municipalities;
 - 17 - municipal clerks;
 - 18 - members of the State Legislature;
 - 19 - attorneys-at-law and counsellors-at-law of this State; and
 - 20 - certified court reporters, as defined in section 10 of P.L.1940,
21 c.175 (C.45:15B-10).
- 22 The officers authorized to take acknowledgements under
23 R.S.46:14-6.1 are:
- 24 - attorneys-at-law;
 - 25 - notaries public;
 - 26 - county clerks and deputy county clerks;
 - 27 - registers of deeds and mortgages and deputy registers;
 - 28 - surrogates and deputy surrogates;
 - 29 - officers of the United States, of a state, territory or district of the
30 United States, or of a foreign nation authorized at the time and
31 place of the acknowledgment or proof by the laws of that
32 jurisdiction to take acknowledgments or proofs;
 - 33 - foreign commissioners of deeds for New Jersey within the
34 jurisdiction of the commission; and
 - 35 - foreign service or consular officers or other representatives of
36 the United States to any foreign nation, within the territory of that
37 nation.