

# ASSEMBLY, No. 3864

## STATE OF NEW JERSEY

### 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

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**Assemblyman ERIC HOUGHTALING**

**District 11 (Monmouth)**

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**District 10 (Ocean)**

**Senator ROBERT W. SINGER**

**District 30 (Monmouth and Ocean)**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Assemblywoman Reynolds-Jackson**

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

- 1 i. The State Treasurer may adopt rules under this section  
2 regarding performance of a notarial act. The rules may:
- 3 (1) prescribe the means of performing a notarial act involving a  
4 remotely located individual using communication technology;
- 5 (2) establish standards for communication technology and  
6 identity proofing;
- 7 (3) establish requirements or procedures to approve providers of  
8 communication technology and the process of identity proofing; and
- 9 (4) establish standards and a period for the retention of an  
10 audio-visual recording created under paragraph (3) of subsection d.  
11 of this section.
- 12 j. Before adopting, amending, or repealing a rule governing  
13 performance of a notarial act with respect to a remotely located  
14 individual, the State Treasurer must consider:
- 15 (1) the most recent standards regarding the performance of a  
16 notarial act with respect to a remotely located individual  
17 promulgated by national standard-setting organizations such as the  
18 Mortgage Industry Standards Maintenance Organization and the  
19 recommendations of the National Association of Secretaries of  
20 State;
- 21 (2) standards, practices, and customs of other jurisdictions that  
22 have laws substantially similar to this section; and
- 23 (3) the views of governmental officials and entities and other  
24 interested persons.
- 25
- 26 2. This act shall take effect on the 90<sup>th</sup> day following  
27 enactment.  
28  
29

30 STATEMENT  
31

- 32 This bill would allow notaries public to perform certain notarial  
33 acts remotely.
- 34 Under the bill, a remotely located individual would be allowed to  
35 use communication technology to appear before a notarial officer.  
36 A notarial officer located in this State would be authorized to  
37 perform a notarial act using communication technology for a  
38 remotely located individual if:
- 39 (1) the notarial officer:
- 40 (a) has personal knowledge of the identity of the individual;
- 41 (b) has satisfactory evidence of the identity of the remotely  
42 located  
43 individual by oath or affirmation from a credible witness appearing  
44 before the notarial officer; or
- 45 (c) has obtained satisfactory evidence of the identity of the  
46 remotely located individual by using at least two different types of  
47 identity proofing;

1 (2) the notarial officer is able reasonably to confirm that a  
2 record before the notarial officer as the same record in which the  
3 remotely located individual made a statement or on which the  
4 remotely located individual executed a signature;

5 (3) the notarial officer, or a person acting on behalf of the  
6 notarial officer, creates an audio-visual recording of the  
7 performance of the notarial act; and

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

10 (a) the record:

11 (i) is to be filed with or relates to a matter before a public  
12 official

13 or court, governmental entity, or other entity subject to the  
14 jurisdiction of the United States; or

15 (ii) involves property located in the territorial jurisdiction of the  
16 United States or involves a transaction substantially connected with  
17 the United States; and

18 (b) the act of making the statement or signing the record is not  
19 prohibited by the foreign state in which the remotely located  
20 individual is located.

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

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

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

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

38 (2) establish standards for communication technology and  
39 identity proofing;

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

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

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

- 1       (1) the most recent standards regarding the performance of a  
2 notarial act with respect to a remotely located individual  
3 promulgated by national standard-setting organizations such as the  
4 Mortgage Industry Standards Maintenance Organization and the  
5 recommendations of the National Association of Secretaries of  
6 State;
- 7       (2) standards, practices, and customs of other jurisdictions that  
8 have laws substantially similar to this section; and
- 9       (3) the views of governmental officials and entities and other  
10 interested persons.