

ASSEMBLY, No. 3903

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 23, 2020

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

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Assemblyman Benson

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 introduced.



(Sponsorship Updated As Of: 3/25/2020)

A3903 DOWNEY, HOUGHTALING

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1 AN ACT concerning remote notarial acts for the duration of the
2 Public Health Emergency and State of Emergency declared by
3 the Governor in Executive Order 103 of 2020.

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

7
8 1. a. As used in this section:

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

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

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

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

23 “Notarial act” means any official act performed by a notary
24 public under the laws of this State, which shall include the
25 following acts: taking acknowledgments; administering oaths and
26 affirmations; executing jurats or other verification; taking proofs of
27 deed; and executing protests for non-payment.

28 “Outside the United States” means a location outside the
29 geographic boundaries of the United States, Puerto Rico, the United
30 States Virgin Islands, and any territory, insular possession, or other
31 location subject to the jurisdiction of the United States.

32 “Remotely located individual” means an individual who is not in
33 the physical presence of a notary public performing a notarial act
34 under subsection c. of this section.

35 “Satisfactory evidence” means a passport, driver’s license, or
36 government issued nondriver identification card, which is current or
37 expired not more than three years before performance of the
38 notarial act; another form of government identification issued to an
39 individual, which is current or expired not more than three years
40 before performance of the notarial act, contains the signature or a
41 photograph of the individual, and is satisfactory to the notary
42 public; or a verification on oath or affirmation of a credible witness
43 personally appearing before the notary public and known to the
44 notary public or whom the notary public can identify on the basis of
45 a passport, driver’s license, or government issued nondriver
46 identification card, which is current or expired not more than three
47 years before performance of the notarial act.

1 b. Notwithstanding the provisions of any law or regulation to
2 the contrary, during the Public Health Emergency and State of
3 Emergency declared by the Governor in Executive Order 103 of
4 2020, a notary public appointed pursuant to the provisions of the
5 "Notaries Public Act of 1979," P.L.1979, c. 460 (C.52:7-10 et seq.),
6 or otherwise qualified and commissioned as a notary public in this
7 State may perform notarial acts using communication technology
8 for a remotely located individual if:

9 (1) the notary public:

10 (a) has personal knowledge of the identity of the individual
11 appearing before the notary public, which is based upon dealings
12 with the individual sufficient to provide reasonable certainty that
13 the individual has the identity claimed;

14 (b) has satisfactory evidence of the identity of the remotely
15 located individual by oath or affirmation from a credible witness
16 appearing before the notary public; or

17 (c) has obtained satisfactory evidence of the identity of the
18 remotely located individual by using at least two different types of
19 identity proofing;

20 (2) the notary public is reasonably able to confirm that a record
21 before the notary public is the same record in which the remotely
22 located individual made a statement or on which the remotely
23 located individual executed a signature;

24 (3) the notary public, or a person acting on behalf of the notary
25 public, creates an audio-visual recording of the performance of the
26 notarial act; and

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

29 (a) the record: (i) is to be filed with or relates to a matter before
30 a public official or court, governmental entity, or other entity
31 subject to the jurisdiction of the United States; or (ii) involves
32 property located in the territorial jurisdiction of the United States or
33 involves a transaction substantially connected with the United
34 States; and

35 (b) the act of making the statement or signing the record is not
36 prohibited by the foreign state in which the remotely located
37 individual is located.

38 c. During the Public Health Emergency and State of
39 Emergency declared by the Governor in Executive Order 103 of
40 2020, a remotely located individual may comply with subsections a.
41 and b. of R.S.46:14-2.1 by using communication technology to
42 appear before a notary public.

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

45 (1) a law governing the creation and execution of wills or
46 codicils;

47 (2) the Uniform Commercial Code other than Sections 1-107
48 and 1-206, Article 2 and Article 2A; or

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

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

8 f. A notary public, a guardian, conservator, or agent of a notary
9 public, or a personal representative of a deceased notary public,
10 shall retain the audio-visual recording created under paragraph (3)
11 of subsection b. of this section or cause the recording to be retained
12 by a repository designated by or on behalf of the person required to
13 retain the recording. Unless a different period is required by rule
14 adopted pursuant to subsection g. of this section, the recording must
15 be retained for a period of at least 10 years after the recording is
16 made.

17 g. Notwithstanding the provisions of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
19 contrary, the State Treasurer may, in her discretion, adopt rules or
20 append provisions to the manual distributed pursuant to section 8 of
21 P.L.1979, c.460 (C.52:7-17) as necessary to implement the
22 provisions of this section, which rules or appended provisions may
23 include the means of performing a notarial act involving a remotely
24 located individual using communication technology; standards for
25 communication technology and identity proofing; and standards for
26 the retention of an audio-visual recording created under paragraph
27 (3) of subsection b. of this section. Any rule adopted or provisions
28 appended to the manual pursuant to this subsection shall be
29 effective for a period not to exceed the duration of the Public Health
30 Emergency and State of Emergency declared by the Governor in
31 Executive Order 103 of 2020.

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

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STATEMENT

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39 This bill allows, for the duration of the Public Health Emergency
40 and State of Emergency declared by the Governor in Executive
41 Order 103 of 2020, a notary public appointed pursuant to the
42 provisions of the "Notaries Public Act of 1979," P.L.1979, c. 460
43 (C.52:7-10 et seq.), or otherwise qualified and commissioned as a
44 notary public in this State to perform notarial acts using
45 communication technology for a remotely located individual.