ASSEMBLY, No. 3903

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 23, 2020

Sponsored by:
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District 11 (Monmouth)
Assemblyman ERIC HOUGHTALING
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District 7 (Burlington)
Senator DECLAN J. O’SCANLON, JR.
District 13 (Monmouth)

Co-Sponsored by:
Assemblmen Benson, Zwicker, Senators A.M. Bucco, Addiego, Bateman, Cardinale, Doherty, Pennacchio, Singer and Testa

SYNOPSIS

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 4/13/2020)
AN ACT concerning remote notarial acts for the duration of the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. a. As used in this section:

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

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

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

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

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

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

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

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

“Satisfactory evidence” means a passport, driver’s license, or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the notary public; or a verification on oath or affirmation of a credible witness personally appearing before the notary public and known to the notary public or whom the notary public can identify on the basis of a passport, driver’s license, or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act.
b. Notwithstanding the provisions of any law or regulation to the contrary, during the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020, a notary public appointed pursuant to the provisions of the "Notaries Public Act of 1979," P.L.1979, c. 460 (C.52:7-10 et seq.), or otherwise qualified and commissioned as a notary public in this State may perform notarial acts using communication technology for a remotely located individual if:

(1) the notary public:
   (a) has personal knowledge of the identity of the individual appearing before the notary public, which is based upon dealings with the individual sufficient to provide reasonable certainty that the individual has the identity claimed;
   (b) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public; or
   (c) has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

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

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

(4) for a remotely located individual who is located outside the United States:
   (a) the record: (i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or (ii) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and
   (b) the act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

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

d. This section shall not apply to a record to the extent it is governed by:
   (1) a law governing the creation and execution of wills or codicils;
   (2) the Uniform Commercial Code other than Sections 1-107 and 1-206, Article 2 and Article 2A; or
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(3) a statute, regulation or other rule of law governing adoption,
divorce or other matters of family law.
e. If a notarial act is performed under this section, the
certificate required by subsection c. of R.S.46:14-2.1 and name
affixation required by section 10 of P.L.1979, c.460 (C.52:7-19)
shall indicate that the notarial act was performed using
communication technology.
f. A notary public, a guardian, conservator, or agent of a notary
public, or a personal representative of a deceased notary public,
shall retain the audio-visual recording created under paragraph (3)
of subsection b. of this section or cause the recording to be retained
by a repository designated by or on behalf of the person required to
retain the recording. Unless a different period is required by rule
adopted pursuant to subsection g. of this section, the recording must
be retained for a period of at least 10 years after the recording is
made.
g. Notwithstanding the provisions of the “Administrative
Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the
contrary, the State Treasurer may, in her discretion, adopt rules or
append provisions to the manual distributed pursuant to section 8 of
P.L.1979, c.460 (C.52:7-17) as necessary to implement the
provisions of this section, which rules or appended provisions may
include the means of performing a notarial act involving a remotely
located individual using communication technology; standards for
communication technology and identity proofing; and standards for
the retention of an audio-visual recording created under paragraph
(3) of subsection b. of this section. Any rule adopted or provisions
appended to the manual pursuant to this subsection shall be
effective for a period not to exceed the duration of the Public Health
Emergency and State of Emergency declared by the Governor in
Executive Order 103 of 2020.

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

STATEMENT

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