

[First Reprint]

ASSEMBLY, No. 3903

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 23, 2020

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Assemblyman ERIC HOUGHTALING

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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 amended by the Senate on April 13, 2020.

(Sponsorship Updated As Of: 4/13/2020)

1 AN ACT concerning remote notarial acts ¹, and other acts for
2 executing and verifying certain documents, by notaries public
3 and certain other authorized officials using communication
4 technology¹ for the duration of the ¹**【Public Health Emergency】**
5 public health emergency¹ and ¹**【State】 state**¹ of ¹**【Emergency】**
6 emergency¹ declared by the Governor in Executive Order 103 of
7 2020.

8
9 **BE IT ENACTED** by the Senate and General Assembly of the State
10 of New Jersey:

11
12 1. a. As used in this section:

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

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

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

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

24 “Identity proofing” means a process or service by which a third
25 person provides a notary public ¹or an officer authorized to take
26 oaths, affirmations, and affidavits, or to take acknowledgements¹ with
27 a means to verify the identity of a remotely located individual by a
28 review of personal information from public or private data sources.

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

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

43 “Remotely located individual” means an individual who is not in
44 the physical presence of a notary public ¹, or an officer authorized to

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted April 13, 2020.

1 take oaths, affirmations, and affidavits, or to take acknowledgements,¹
2 performing a notarial act under subsection c. of this section.

3 “Satisfactory evidence” means a passport, driver’s license, or
4 government issued nondriver identification card, which is current or
5 expired not more than three years before performance of the
6 notarial act; another form of government identification issued to an
7 individual, which is current or expired not more than three years
8 before performance of the notarial act, contains the signature or a
9 photograph of the individual, and is satisfactory to the notary public
10 or officer authorized to take oaths, affirmations, and affidavits, or
11 authorized to take acknowledgements¹; or a verification on oath or
12 affirmation of a credible witness personally appearing before the
13 notary public or officer¹ and known to the notary public or
14 officer¹ or whom the notary public or officer¹ can identify on the
15 basis of a passport, driver’s license, or government issued nondriver
16 identification card, which is current or expired not more than three
17 years before performance of the notarial act.

18 b. Notwithstanding the provisions of any law or regulation to
19 the contrary, during the **1**Public Health Emergency **1** public health
20 emergency¹ and **1**State **1** state¹ of **1**Emergency **1** emergency¹
21 declared by the Governor in Executive Order 103 of 2020, a notary
22 public appointed pursuant to the provisions of the "Notaries Public
23 Act of 1979," P.L.1979, c. 460 (C.52:7-10 et seq.), or otherwise
24 qualified and commissioned as a notary public in this State or an
25 officer authorized to take oaths, affirmations and affidavits under
26 R.S.41:2-1 or to take acknowledgements under R.S.46:14-6.1¹ may
27 perform notarial acts using communication technology for a
28 remotely located individual if:

29 (1) the notary public or officer¹:

30 (a) has personal knowledge of the identity of the individual
31 appearing before the notary public or officer¹, which is based upon
32 dealings with the individual sufficient to provide reasonable
33 certainty that the individual has the identity claimed;

34 (b) has satisfactory evidence of the identity of the remotely
35 located individual by oath or affirmation from a credible witness
36 appearing before the notary public or officer¹ ; or

37 (c) has obtained satisfactory evidence of the identity of the
38 remotely located individual by using at least two different types of
39 identity proofing;

40 (2) the notary public or officer¹ is reasonably able to confirm
41 that a record before the notary public or officer¹ is the same record
42 in which the remotely located individual made a statement or on
43 which the remotely located individual executed a signature;

44 (3) the notary public **1**,, **1** or officer¹ or a person acting on
45 their¹ behalf **1**of the notary public,**1** creates an audio-visual
46 recording of the performance of the notarial act; and

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

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

9 (b) the act of making the statement or signing the record is not
10 prohibited by the foreign state in which the remotely located
11 individual is located.

12 c. During the ¹**【Public Health Emergency】** public health
13 emergency¹ and ¹**【State】** state¹ of ¹**【Emergency】** emergency¹
14 declared by the Governor in Executive Order 103 of 2020, a
15 remotely located individual may comply with subsections a. and b.
16 of R.S.46:14-2.1 by using communication technology to appear
17 before a notary public ¹appointed pursuant to the provisions of the
18 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),
19 or otherwise qualified and commissioned as a notary public in this
20 State, or by using communication technology to appear before an
21 officer authorized to take oaths, affirmations, and affidavits under
22 R.S.41:2-1 or to take acknowledgments under R.S.46:14-6.1¹.

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

25 (1) ¹**【a law governing the creation and execution of wills or**
26 **codicils;**

27 (2) ¹**【the ¹【Uniform Commercial Code】 "Uniform Commercial**
28 **Code," N.J.S.12A:1-101 et seq.,¹ other than ¹【Sections 1-107 and 1-**
29 **206, Article 2 and Article 2A】 N.J.S.12A:1-107, N.J.S.12A:1-206,**
30 **the provisions of the "Uniform Commercial Code – Sales," chapter 2**
31 **of Title 12A of the New Jersey Statutes, and the provisions of the**
32 **"Uniform Commercial Code – Leases," chapter 2A of Title 12A of the**
33 **New Jersey Statutes**¹; or

34 ¹**【(3)】** ¹**【(2)】** a statute, regulation or other rule of law governing
35 adoption, divorce or other matters of family law.

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

41 f. A notary public ¹appointed pursuant to the provisions of the
42 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),
43 or otherwise qualified and commissioned as a notary public in this
44 State, or an officer authorized to take oaths, affirmations and
45 affidavits under R.S.41:2-1 or to take acknowledgments under
46 R.S.46:14-6.1¹, a guardian, conservator, or agent of ¹**【a notary**
47 **public, or】** such person or, if such person is deceased,¹ a personal

1 representative of ¹**[a]** the deceased ¹**[notary public]** person¹, shall
2 retain the audio-visual recording created under paragraph (3) of
3 subsection b. of this section or cause the recording to be retained by
4 a repository designated by or on behalf of the person required to
5 retain the recording. Unless a different period is required by rule
6 adopted pursuant to subsection g. of this section, the recording must
7 be retained for a period of at least 10 years after the recording is
8 made.

9 g. ¹(1)¹ Notwithstanding the provisions of the “Administrative
10 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the
11 contrary, the State Treasurer may, in her discretion, adopt rules or
12 append provisions to the manual distributed pursuant to section 8 of
13 P.L.1979, c.460 (C.52:7-17) as necessary to implement the
14 provisions of this section, which rules or appended provisions may
15 include the means of performing a notarial act involving a remotely
16 located individual using communication technology; standards for
17 communication technology and identity proofing; and standards for
18 the retention of an audio-visual recording created under paragraph
19 (3) of subsection b. of this section.

20 ¹(2) Before adopting, amending, or repealing any such rule or
21 appended provision pursuant to this subsection, the State Treasurer
22 shall consider the most recent standards regarding the performance of
23 a notarial act with respect to a remotely located individual
24 promulgated by national standard-setting organizations such as the
25 Mortgage Industry Standards Maintenance Organization and the
26 recommendations of the National Association of Secretaries of State.

27 ¹(3)¹ Any rule adopted or provisions appended to the manual
28 pursuant to this subsection shall be effective for a period not to
29 exceed the duration of the ¹**[Public Health Emergency]** public
30 health emergency¹ and ¹**[State]** state¹ of ¹**[Emergency]**
31 emergency¹ declared by the Governor in Executive Order 103 of
32 2020.

33

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