

# SENATE, No. 2336

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

**Sponsored by:**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

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**District 11 (Monmouth)**

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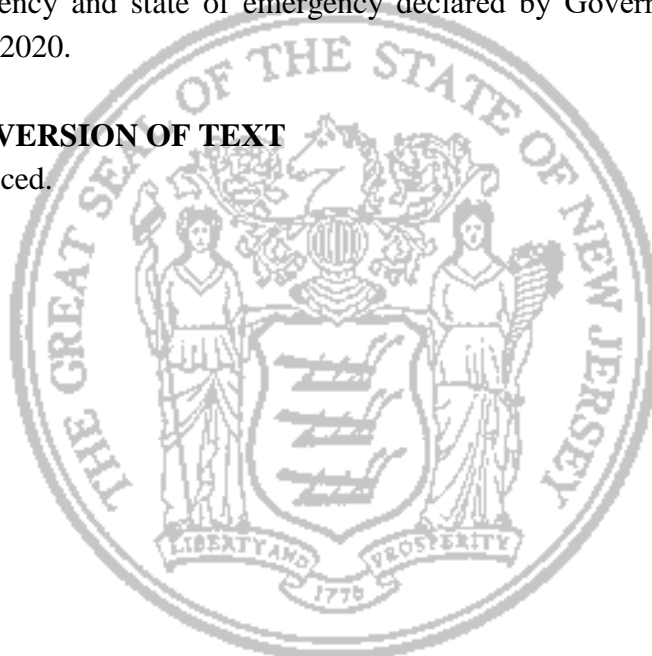
**Senators A.M.Bucco and Addiego**

**SYNOPSIS**

Allows remote notarial acts, and other acts executing and verifying certain documents, by notaries public and other authorized officials during public health emergency and state of emergency declared by Governor's Executive Order 103 of 2020.

**CURRENT VERSION OF TEXT**

As introduced.



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

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 for the duration of the public health emergency and  
5 state of emergency declared by the Governor in Executive Order  
6 103 of 2020.

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

10  
11 1. a. As used in this section:

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

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

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

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

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

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

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

16       b. Notwithstanding the provisions of any law or regulation to  
17 the contrary, during the public health emergency and state of  
18 emergency declared by the Governor in Executive Order 103 of  
19 2020, a notary public appointed pursuant to the provisions of the  
20 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),  
21 or otherwise qualified and commissioned as a notary public in this  
22 State or an officer authorized to take oaths, affirmations and  
23 affidavits under R.S.41:2-1 or to take acknowledgments under  
24 R.S.46:14-6.1 may perform notarial acts using communication  
25 technology for a remotely located individual if:

26       (1) the notary public or officer:

27       (a) has personal knowledge of the identity of the individual  
28 appearing before the notary public or officer, which is based upon  
29 dealings with the individual sufficient to provide reasonable  
30 certainty that the individual has the identity claimed;

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

34       (c) has obtained satisfactory evidence of the identity of the  
35 remotely located individual by using at least two different types of  
36 identity proofing;

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

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

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

46       (a) the record: (i) is to be filed with or relates to a matter before  
47 a public official or court, governmental entity, or other entity  
48 subject to the jurisdiction of the United States; or (ii) involves

1 property located in the territorial jurisdiction of the United States or  
2 involves a transaction substantially connected with the United  
3 States; and

4 (b) the act of making the statement or signing the record is not  
5 prohibited by the foreign state in which the remotely located  
6 individual is located.

7 c. During the public health emergency and state of emergency  
8 declared by the Governor in Executive Order 103 of 2020, a  
9 remotely located individual may comply with subsections a. and b.  
10 of R.S.46:14-2.1 by using communication technology to appear  
11 before a notary public appointed pursuant to the provisions of the  
12 "Notaries Public Act of 1979," P.L.1979, c.460 (C.52:7-10 et seq.),  
13 or otherwise qualified and commissioned as a notary public in this  
14 State, or by using communication technology to appear before an  
15 officer authorized to take oaths, affirmations, and affidavits under  
16 R.S.41:2-1 or to take acknowledgments under R.S.46:14-6.1.

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

19 (1) the "Uniform Commercial Code," N.J.S.12A:1-101 et seq.,  
20 other than N.J.S.12A:1-107, N.J.S.12A:1-206, the provisions of the  
21 "Uniform Commercial Code – Sales," chapter 2 of Title 12A of the  
22 New Jersey Statutes, and the provisions of the "Uniform  
23 Commercial Code – Leases," chapter 2A of Title 12A of the New  
24 Jersey Statutes; or

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

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

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

46 g. (1) Notwithstanding the provisions of the "Administrative  
47 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
48 contrary, the State Treasurer may, in her discretion, adopt rules or

1 append provisions to the manual distributed pursuant to section 8 of  
2 P.L.1979, c.460 (C.52:7-17) as necessary to implement the  
3 provisions of this section, which rules or appended provisions may  
4 include the means of performing a notarial act involving a remotely  
5 located individual using communication technology; standards for  
6 communication technology and identity proofing; and standards for  
7 the retention of an audio-visual recording created under paragraph  
8 (3) of subsection b. of this section.

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

17 (3) Any rule adopted or provisions appended to the manual  
18 pursuant to this subsection shall be effective for a period not to  
19 exceed the duration of the public health emergency and state of  
20 emergency declared by the Governor in Executive Order 103 of  
21 2020.

22

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

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26

27

#### STATEMENT

28

29 This bill allows remote notarial acts, and other acts executing  
30 and verifying certain documents, by notaries public and other  
31 authorized officials during the public health emergency and state of  
32 emergency declared by the Governor's Executive Order 103 of  
33 2020.

34 Under the bill, a notary public appointed pursuant to the  
35 provisions of the "Notaries Public Act of 1979," P.L.1979, c.460  
36 (C.52:7-10 et seq.), or otherwise qualified and commissioned as a  
37 notary public in this State, or an officer authorized to take oaths,  
38 affirmations, and affidavits under R.S.41:2-1 or to take  
39 acknowledgements under R.S.46:14-6.1, may perform notarial acts  
40 using communication technology for a remotely located individual  
41 if:

42 (1) the notary public or officer:

43 (a) has personal knowledge of the identity of the individual  
44 appearing before the notary public or officer;

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

1 (c) has obtained satisfactory evidence of the identity of the  
2 remotely located individual by using at least two different types of  
3 identity proofing;

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

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

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

13 (a) the record: (i) is to be filed with or relates to a matter before  
14 a public official or court, governmental entity, or other entity  
15 subject to the jurisdiction of the United States; or (ii) involves  
16 property located in the territorial jurisdiction of the United States or  
17 involves a transaction substantially connected with the United  
18 States; and

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

22 Under the bill, a remotely located individual may comply with  
23 the requirements of subsections a. and b. of R.S.46:14-2.1 by using  
24 communication technology to appear before a notary public or  
25 officer.

26 The bill would not apply to a record to the extent it is governed  
27 by:

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

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

36 If a notarial act is performed under the bill, the certificate and  
37 name affixation required by current law would be required to  
38 indicate that the notarial act was performed using communication  
39 technology.

40 The bill requires a notary public or officer, a guardian,  
41 conservator, or agent of such person, or, if the person is deceased, a  
42 personal representative of the deceased person, to retain the audio-  
43 visual recording or cause the recording to be retained by a  
44 repository designated by or on behalf of the person required to  
45 retain the recording. Unless a different period is required by rule  
46 adopted by the State Treasurer under the bill, the recording must be  
47 retained for a period of at least 10 years after the recording is made.

1 The officers authorized to take oaths, affirmations and affidavits  
2 under R.S.41:2-1 are:

- 3 - the Chief Justice of the Supreme Court, any of the justices of  
4 the Supreme Court, or judges of Superior Court or other courts of  
5 record of this State;
- 6 - municipal court judges;
- 7 - clerks of all courts;
- 8 - members of county boards of chosen freeholders, and their  
9 clerks;
- 10 - county surrogates, registers of deeds and mortgages, county  
11 clerks and their deputies;
- 12 - county sheriffs;
- 13 - mayors or aldermen of cities, towns or boroughs or  
14 commissioners of commission-governed municipalities;
- 15 - municipal clerks;
- 16 - members of the State Legislature;
- 17 - attorneys-at-law and counsellors-at-law of this State; and
- 18 - certified court reporters, as defined in section 10 of P.L.1940,  
19 c.175 (C.45:15B-10).

20 The officers authorized to take acknowledgements under  
21 R.S.46:14-6.1 are:

- 22 - attorneys-at-law;
- 23 - notaries public;
- 24 - county clerks and deputy county clerks;
- 25 - registers of deeds and mortgages and deputy registers;
- 26 - surrogates and deputy surrogates;
- 27 - officers of the United States, of a state, territory or district of  
28 the United States, or of a foreign nation authorized at the  
29 time and place of the acknowledgment or proof by the laws  
30 of that jurisdiction to take acknowledgments or proofs;
- 31 - foreign commissioners of deeds for New Jersey within the  
32 jurisdiction of the commission; and
- 33 - foreign service or consular officers or other representatives of  
34 the United States to any foreign nation, within the territory of  
35 that nation.

36 The bill would take effect immediately and expire upon  
37 rescission of Executive Order No. 103 of 2020 by the Governor.