

**ASSEMBLY, No. 3903**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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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)**

**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.



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.

32  
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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#### 37 STATEMENT

38  
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.