https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A3903

T&E

P.L. 2020, CHAPTER 26, ***approved April 14, 2020***
Assembly, No. 3903 ***(First Reprint)***

AN ACT concerning remote notarial acts [1], and other acts for executing and verifying certain documents, by notaries public and certain other authorized officials using communication technology[1] for the duration of the [1]**[**Public Health Emergency**]** public health emergency[1] and [1]**[**State**]** state[1] of [1]**[**Emergency**]** emergency[1] 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 [1]or an officer authorized to take oaths, affirmations, and affidavits, or to take acknowledgements,[1] 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 [1]or an officer authorized to take oaths, affirmations, and affidavits, or to take acknowledgements[1] 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 [1]**[**under the laws of this State, which**]** 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, or performed by an officer authorized to take oaths, affirmations and affidavits under R.S.41:2-1 or to take acknowledgments under R.S.46:14-6.1. "Notarial act"[1] shall include the following [1]**[**acts**]**[1]: 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 [1], or an officer authorized to take oaths, affirmations, and affidavits, or to take acknowledgements,[1] 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 [1]or officer authorized to take oaths, affirmations, and affidavits, or

authorized to take acknowledgements[1]; or a verification on oath or affirmation of a credible witness personally appearing before the notary public [1]or officer[1] and known to the notary public [1]or officer[1] or whom the notary public [1]or officer[1] 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 [1][Public Health Emergency] public health emergency[1] and [1][State] state[1] of [1][Emergency] emergency[1] 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 [1]or an officer authorized to take oaths, affirmations and affidavits under R.S.41:2-1 or to take acknowledgements under R.S.46:14-6.1[1] may perform notarial acts using communication technology for a remotely located individual if:

(1) the notary public [1]or officer[1]:

(a) has personal knowledge of the identity of the individual appearing before the notary public [1]or officer[1], 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 [1]or officer[1] ; 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 [1]or officer[1] is reasonably able to confirm that a record before the notary public [1]or officer[1] 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 [1][,] or officer[1] or a person acting on [1]their[1] behalf [1][of the notary public,][1] 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 [1][Public Health Emergency] public health emergency[1] and [1][State] state[1] of [1][Emergency] emergency[1] 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 [1]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, or by using communication technology to appear before an officer authorized to take oaths, affirmations, and affidavits under R.S.41:2-1 or to take acknowledgments under R.S.46:14-6.1[1].

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

(1) [1][a law governing the creation and execution of wills or codicils;

(2)][1] the [1][Uniform Commercial Code] "Uniform Commercial Code," N.J.S.12A:1-101 et seq.,[1] other than [1][Sections 1-107 and 1-206, Article 2 and Article 2A] N.J.S.12A:1-107, N.J.S.12A:1-206, the provisions of the "Uniform Commercial Code - Sales," chapter 2 of Title 12A of the New Jersey Statutes, and the provisions of the "Uniform Commercial Code - Leases," chapter 2A of Title 12A of the New Jersey Statutes[1]; or

[1][(3)] (2)[1] 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 [1]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, or an officer authorized to take oaths, affirmations and affidavits under R.S.41:2-1 or to take acknowledgments under R.S.46:14-6.1[1], a guardian, conservator, or agent of [1][a notary public, or] such person or, if such person is deceased,[1] a personal representative of [1][a] the deceased [1][notary public] person[1], 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. [1](1)[1] 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.

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

(3)[1] 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 [1][Public Health Emergency] public health emergency[1] and [1][State] state[1] of [1][Emergency] emergency[1] 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.

Allows remote notarial acts during Public Health Emergency and State of Emergency declared by Governor in Executive Order 103 of 2020.