

ASSEMBLY, No. 3864

STATE OF NEW

JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

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Assemblywoman Reynolds-Jackson

SYNOPSIS

Authorizes notaries public to perform certain notarial acts remotely.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning remote notarial acts and supplementing Title 52 of the Revised Statutes.

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

1. Notarial Act Performed by Remotely Located Individual.

a. As used in this section:

(1) "Communication technology" means an electronic device or process that:

(a) allows a notarial officer and a remotely located individual to communicate with each other simultaneously by sight and sound; and

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

(2) "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(3) "Identity proofing" means a process or service by which a third person provides a notarial officer with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(4) "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.

(5) "Remotely located individual" means an individual who is not in the physical presence of a notarial officer performing a notarial act under subsection c. of this section.

b. This section does 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;

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

c. 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 notarial officer.

d. A notarial officer located in this State may perform a notarial act using communication technology for a remotely located individual if:

(1) the notarial officer:

(a) has personal knowledge of the identity of the individual;

(b) has satisfactory evidence of the identity of the remotely located

individual by oath or affirmation from a credible witness appearing before the notarial officer; 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 notarial officer is able reasonably to confirm that a record before the notarial officer as the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(3) the notarial officer, or a person acting on behalf of the notarial officer, 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.

e. If a notarial act is performed under this section, the certificate of notarial act required by section 10 of P.L.1979, c.460 (C.52:7-19) or the certificate required by subsection c. of R.S.46:14-2.1 must indicate that the notarial act was performed using communication technology.

f. A notarial officer, a guardian, conservator, or agent of a notarial officer, or a personal representative of a deceased notarial officer, shall retain the audio-visual recording created under

paragraph (3) of subsection d. 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 under paragraph (4) of subsection i. of this section, the recording must be retained for a period of at least 10 years after the recording is made.

g. Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the State Treasurer that the notary public will be performing notarial acts and identify the technologies the notary public intends to use.

h. If the State Treasurer has established standards under subsection i. of this section for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

i. The State Treasurer may adopt rules under this section regarding performance of a notarial act. The rules may:

(1) prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(2) establish standards for communication technology and identity proofing;

(3) establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(4) establish standards and a period for the retention of an audio-visual recording created under paragraph (3) of subsection d. of this section.

j. Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the State Treasurer must consider:

(1) 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;

(2) standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

(3) the views of governmental officials and entities and other interested persons.

2. This act shall take effect on the 90th day following enactment.

STATEMENT

This bill would allow notaries public to perform certain notarial acts remotely.

Under the bill, a remotely located individual would be allowed to use communication technology to appear before a notarial officer. A notarial officer located in this State would be authorized to perform a notarial act using communication technology for a remotely located individual if:

- (1) the notarial officer:
 - (a) has personal knowledge of the identity of the individual;
 - (b) has satisfactory evidence of the identity of the remotely located

individual by oath or affirmation from a credible witness appearing before the notarial officer; 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 notarial officer is able reasonably to confirm that a record before the notarial officer as the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(3) the notarial officer, or a person acting on behalf of the notarial officer, 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.

If a notarial act is performed remotely, the certificate of notarial act required by section 10 of P.L.1979, c.460 (C.52:7-19) or the certificate required by subsection c. of R.S.46:14-2.1 must indicate that the notarial act was performed using communication technology.

A notarial officer, a guardian, conservator, or agent of a notarial officer, or a personal representative of a deceased notarial officer, would be required to retain the audio-visual recording created under the bill, or cause it 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 under the bill, the recording must be retained for a period of at least 10 years after the recording is made.

The bill provides that the State Treasurer may adopt rules regarding performance of a notarial act. The rules may:

- (1) prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
- (2) establish standards for communication technology and identity proofing;
- (3) establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and
- (4) establish standards and a period for the retention of an audio-visual recording.

Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the State Treasurer must consider:

- (1) 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;
- (2) standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and
- (3) the views of governmental officials and entities and other interested persons.