PRIOR PRINTER'S NO. 610 PRINTER'S NO. 1188

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 601 Session of 2013

INTRODUCED BY SCARNATI, MARCH 8, 2013

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 10, 2013

AN ACT

Amending Titles 44 (Law and Justice) and 45 (Legal Notices) of the Pennsylvania Consolidated Statutes, modernizing publication of Commonwealth legal materials; providing for uniformity in electronic legal materials in the areas of designation, authentication, preservation and access; conferring powers and duties on various Commonwealth agencies; and, in publication and effectiveness of Commonwealth documents, further providing for definitions, for the Joint Committee on Documents, for general administration, for payment for documents, for distribution of publication expenses, for effect of future legislation, for publication of official codification, for deposit of documents required, for processing of deposited documents, for preliminary publication in Pennsylvania Bulletin, for permanent supplements to Pennsylvania Code, for pricing and distribution of published documents, for automatic subscriptions, for required contractual arrangements, for official text of published documents, for effective date of documents and for presumptions created.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The heading of Part I of Title 44 of the Pennsylvania Consolidated Statutes is amended to read:

PART I

PRELIMINARY PROVISIONS

[(RESERVED)]

Section 2. Part I of Title 44 is amended by adding a chapter to read:

CHAPTER 7

UNIFORM ELECTRONIC LEGAL MATERIAL ACT

Sec.

701. Short title of chapter.
702. Definitions.
703. Applicability.
704. Legal material in official electronic record.
705. Authentication of official electronic record.
706. Effect of authentication.
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708. Public access to legal material in official electronic record.
709. Standards.
710. Uniformity of application and construction.
711. Relation to Electronic Signatures in Global and National Commerce Act.

§ 701. Short title of chapter.

This chapter shall be known and may be cited as the Uniform Electronic Legal Material Act.

§ 702. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Bureau." The Legislative Reference Bureau.

"Electronic." Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Legal material." Whether or not in effect, any of the following:

(1) The Constitution of the Commonwealth of Pennsylvania.

(2) The Laws of Pennsylvania under 1 Pa.C.S. § 1103 (relating to preparation of statutes for printing).

(3) The Pennsylvania Code.

(4) A Commonwealth agency regulation that has or had the effect of law.

(5) (Reserved).

(6) Reported decisions of:

(i) the Supreme Court;

~~(ii) Superior Court;~~ <--

~~(iii) Commonwealth Court; or~~

~~(iv) a court of common pleas.~~

(II) SUPERIOR COURT; OR <--

(III) COMMONWEALTH COURT.

(7) Rules of court UNDER 42 PA.C.S. § 1722 (RELATING TO ADOPTION OF ADMINISTRATIVE AND PROCEDURAL RULES). <--

"Official publisher." As follows:

(1) For the Constitution of the Commonwealth of Pennsylvania, the bureau.

(2) For the Laws of Pennsylvania under 1 Pa.C.S. § 1105 (relating to editing statutes for printing), the bureau.

(3) For the Pennsylvania Code, the bureau.

(4) For a regulation published in the Pennsylvania Code, the bureau.

(5) (Reserved).

(6) (Reserved).

(7) For a State court decision included under paragraph

(6) of the definition of "legal material," the prothonotary of the applicable court.

(8) For rules of court UNDER 42 PA.C.S. § 1722, the Administrative Office of Pennsylvania Courts. <--

(9) (Reserved).

"Publish." To display, present or release to the public, or cause to be displayed, presented or released to the public, by the official publisher.

"Record." Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"State." A state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

§ 703. Applicability.

This chapter applies to all legal material in an electronic record that is designated as official under section 704 (relating to legal material in official electronic record).

§ 704. Legal material in official electronic record.

(a) Exclusive electronic publication.--If an official publisher publishes legal material only in an electronic record, the publisher shall:

(1) designate the electronic record as official; and

(2) comply with sections 705 (relating to authentication of official electronic record), 707 (relating to preservation and security of legal material in official electronic record) and 708 (relating to public access to legal material in official electronic record).

(b) Multiple publication.--An official publisher that

publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with sections 705, 707 and 708.

§ 705. Authentication of official electronic record.

An official publisher of legal material in an electronic record that is designated as official under section 704 (relating to legal material in official electronic record) shall authenticate the record. To authenticate an electronic record, the publisher must provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

§ 706. Effect of authentication.

(a) Pennsylvania.--Legal material in an electronic record that is authenticated under section 705 (relating to authentication of official electronic record) is presumed to be an accurate copy of the legal material.

(b) Other states.--If another state has adopted a law substantially similar to this chapter, legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(c) Contest.--A party contesting the authentication of legal material in an electronic record authenticated under section 705 has the burden of proving by a preponderance of the evidence that the record is not authentic.

§ 707. Preservation and security of legal material in official electronic record.

(a) Duty.--An official publisher of legal material in an electronic record that is or was designated as official under

section 704 (relating to legal material in official electronic record) shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) Requirements.--If legal material is preserved under subsection (a) in an electronic record, the official publisher shall:

(1) ensure the integrity of the record;

(2) provide for backup and disaster recovery of the record; and

(3) ensure the continuing usability of the material.

§ 708. Public access to legal material in official electronic record.

An official publisher of legal material in an electronic record that is required to be preserved under section 707 (relating to preservation and security of legal material in official electronic record) shall ensure that the material is reasonably available for use by the public on a permanent basis.

§ 709. Standards.

In implementing this chapter, an official publisher of legal material in an electronic record shall consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards regarding authentication of, preservation and security of and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;

(3) the needs of users of legal material in an electronic record;

(4) the views of governmental officials and entities and other interested persons; and

(5) to the extent practicable, methods and technologies

for the authentication of, preservation and security of and public access to, legal material which are compatible with the methods and technologies used by other official publishers in this Commonwealth and in other states that have adopted a law substantially similar to this chapter.

§ 710. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 711. Relation to Electronic Signatures in Global and National Commerce Act.

To the extent permitted by section 102 of the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7002), this chapter may supersede provisions of that act.

Section 3. Section 501 of Title 45 is amended by adding definitions to read:

§ 501. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Authenticate." To attest to the genuine nature. The term includes providing a method for a user to determine that an electronic record is unaltered.

* * *

"Electronic." Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar

capabilities.

* * *

"Publish." To present to the public in any medium.

"Record." Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

* * *

Section 4. Sections 502(a), 503, 504, 505(a), 508, 721, 722(b), (c) and (d), 723, 724(a) and (b), 726(a), 730 introductory paragraph (2) and (3), 731, 732(a), (b) and (d), 901(b), 903 and 905 of Title 45 are amended to read:

§ 502. Joint Committee on Documents.

(a) Establishment.--The Joint Committee on Documents shall consist of [five] nine governmental members and two public members. The governmental members shall be the General Counsel, the Attorney General, the Director of the Legislative Reference Bureau, the Director of the Pennsylvania Code, the President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives and the Secretary of General Services, or persons severally designated in writing by them. The public members shall be appointed by the Governor from among attorneys at law or other members of the public who represent the class who may be expected to refer to the documents published pursuant to this part. For the purposes of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929" and its supplements the joint committee shall be a departmental administrative board in the Department of General Services.

* * *

§ 503. General administration of part.

Subject to the provisions of section 732 (relating to required contractual arrangements), the manner in which the code, the permanent supplements thereto, and the bulletin, shall be [printed, reprinted, compiled, indexed, bound and distributed] published, and all other matters with respect thereto not otherwise provided for in this part shall be prescribed by regulations promulgated or orders adopted by the joint committee. The joint committee shall administer this part and Subchapter A of Chapter 3 of Title 2 (relating to regulations of Commonwealth agencies) with a view toward encouraging the widest possible dissemination of documents among the persons affected thereby which is consistent with the due administration of public affairs.

[§ 504. Payment for documents.

Payments for documents published by authority of this part shall be made to the Department of General Services, which shall pay the same into the State Treasury through the Department of Revenue to the credit of the appropriations of the bureau and the department in such proportions as the joint committee shall specify.]

§ 505. Distribution of publication expenses.

(a) General rule.--In order to reimburse the Legislative Reference Bureau for the cost of administering this part and in order to reimburse the Department of General Services for the expenses of the joint committee and for the costs incurred in [printing and distributing the publications provided for in] publication under Subchapter B of Chapter 7 (relating to publication of documents) which are neither recovered by the sale of such publications to an agency under section 729

(relating to publication of individual documents) [and section 731 (relating to automatic subscriptions) or to the public under section 504 (relating to payment for documents)] nor paid by appropriations made directly to the bureau or the department for the costs and expenses of such [administration, printing and distribution] publication, every government unit issuing, prescribing or promulgating documents published by authority of this part shall be billed at least quarterly by the bureau and the Department of General Services, upon a cost basis, at such amounts as the joint committee with the approval of the Executive Board shall determine, for such costs and expenses. Amounts payable under this section for reimbursing the bureau and the department for the costs [of administration and printing and distribution] shall be credited to the appropriations of the bureau and the department respectively, and shall be paid out of the moneys in the General Fund, special operating funds, or other funds of the State Treasury currently appropriated to each such issuing, prescribing or promulgating government unit.

* * *

§ 508. Effect of future legislation.

No subsequent statute shall be held to supersede or modify the [provisions of] act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, or this part except to the extent that such statute shall do so expressly.

§ 721. Publication of official codification.

It shall be the duty of the Legislative Reference Bureau, subject to the policy supervision and direction of the joint committee, to arrange through the Department of General Services for the prompt [printing and distribution] publication of the code, the permanent supplements thereto and the bulletin, in the

manner and at the times required in accordance with this subchapter and regulations promulgated hereunder.

§ 722. Deposit of documents required.

* * *

(b) Disposition of copies.--Upon such filing one copy shall be immediately available for public inspection and copying under regulations promulgated by the joint committee, which copy shall be retained by the bureau for one year after the publication thereof, whereupon it shall be forwarded to the Pennsylvania Historical and Museum Commission for preservation in the Commonwealth archives. The other copy shall be [transmitted immediately to the Department of General Services, or to a printer designated by it,] processed for publication as provided in this subchapter.

(c) Effect of failure to file.--Every agency, the Administrative Office of Pennsylvania Courts and the clerk or prothonotary of the Supreme Court shall cause to be transmitted to the bureau for deposit as herein provided two certified duplicate original copies of all documents issued, prescribed or promulgated by the agency or the unified judicial system which are required by or pursuant to this subchapter or any other provision of law to be deposited or published, or both, under this part; in default of which any such document[, except a document rendered entirely void by such default pursuant to 2 Pa.C.S. § 308 (relating to unfiled administrative regulations invalid) or any similar provision of law,] shall be effective only to the extent provided in section 903 of this title (relating to effective date of documents). If an agency and the bureau disagree concerning the form or format of a document required or authorized to be deposited with the bureau, the

agency may refer the matter to the joint committee, which shall resolve the conflict pursuant to the standards and procedures provided by section [723 of this title] 723(a) (relating to processing of deposited documents).

[(d) Home rule charter documents and optional plans of government.--

(1) The clerk of the city council of any city of the first class shall cause a certified copy of the full text of any home rule charter or amendment or repeal as approved by the electors to be filed in the Department of Community Affairs (and in the office of the secretary of the board of public education, in the case of a charter provision affecting the school district of the city) immediately following the final certification of the return of the votes cast on the question of the adoption, amendment or repeal of a home rule charter.

(2) In the case of any other political subdivision authorized to adopt a home rule charter or optional plan of government, the county board of elections shall file the documents relating thereto in the Department of Community Affairs and in other public offices as provided by the act of April 13, 1972 (P.L.184, No.62), known as the "Home Rule Charter and Optional Plans Law."

(3) The Department of Community Affairs shall, within ten days after receipt of any home rule charter or amendment or repeal or any optional plan of government as approved by the electors of any part of this Commonwealth, certify two duplicate original copies of the full text thereof and deposit such certified copies with the Legislative Reference Bureau.]

§ 723. Processing of deposited documents.

(a) Review of deposited text.--The bureau, or a qualified contractor selected by the bureau with the approval of the joint committee, may review any or all documents deposited with the bureau before they are released for publication, and may prepare in active cooperation with an agency a revised text of any document relating to the administrative regulations of the agency which conforms fully to the format established for the code, which eliminates all obsolete, unnecessary or unauthorized material, which has been prepared in such a manner as to lend to the published code as a whole uniformity of style and clarity of expression, and which does not effect any change in the substance of the deposited text of such regulations. [Whenever any such revised text with respect to each agency is prepared, two duplicate original copies thereof, with proof of service of a third copy thereof upon the executive officer, chairman or secretary of such agency, shall be filed by the bureau with the joint committee, and shall immediately be made available by the bureau for public inspection and copying.

(b) Status of revised text.--Such revised text shall become the agency text of such regulations for the purposes of this part ten days after such filing unless, within such ten-day period, the agency shall file with the joint committee written objections to such revised text. In that event, the joint committee shall consult with the agency, shall make such alterations, if any, in such revised text as may be necessary in order to retain the substance of the deposited text of such regulations in a manner consistent with the standards of the code, and shall by order prescribe the text of such regulations which shall become the agency text thereof for the purposes of

this part.]

§ 724. Preliminary publication in Pennsylvania Bulletin.

(a) General rule.--Except as provided in subsection (c), all documents required or authorized by section 702 (relating to contents of Pennsylvania Code) to be codified in the code, and all other documents required or authorized by section 725 (relating to additional contents of Pennsylvania Bulletin) to be published, shall be published in the first available issue of an official gazette, known as the "Pennsylvania Bulletin," [printed] published after the filing of such documents by the Legislative Reference Bureau.

(b) Frequency and format of bulletin.--The bulletin shall be published at least once each week and shall contain all previously unpublished documents duly filed prior to the closing date and hour of the issue, which date and hour shall appear upon the first page of such issue. All issues of the bulletin shall contain a table of contents. A cumulative index shall be published at least once each three months. The joint committee may provide for more frequent publication of the bulletin and indices as circumstances may require. There shall be [printed] published with each document a notation of the date of filing thereof.

* * *

§ 726. Permanent supplements to Pennsylvania Code.

(a) General rule.--At least once each year all documents required or authorized pursuant to section 702 (relating to contents of Pennsylvania Code) to be codified in the code which have been filed with the bureau pursuant to this part shall be permanently integrated into the code by [the] publication [of looseleaf pages or pocket parts for or other appropriate

permanent supplements to or reissues of the code as published] pursuant to section 721 (relating to publication of official codification). The index to the code shall be similarly supplemented [or reissued].

* * *

§ 730. Pricing and distribution of published documents.

The prices to be charged for individual copies of and subscriptions to the code, the permanent supplements thereto and the bulletin, for reprints and bound volumes thereof and for pamphlet regulations, statements of policy, general rules and rules of court, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the Commonwealth, and the number of copies which shall be distributed free for official use, shall be set by regulations promulgated by the joint committee. Without limiting the generality of the foregoing, such regulations may provide for volume discounts available to established law book publishers who agree to incorporate fully the code, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution and may provide for the free reciprocal exchange of publications between this Commonwealth and other states and foreign jurisdictions and for the free distribution upon request of [at least one copy of] every publication printed under authority of this part to each:

* * *

[(2) Member of the General Assembly at the post office address specified by him.

(3) Law school library which pursuant to rules of court receives copies of reproduced briefs and records filed in the Supreme Court of Pennsylvania.

§ 731. Automatic subscriptions.

Except as otherwise provided by regulations promulgated by the joint committee, whenever the Pennsylvania Public Utility Commission, the Department of Banking, the Insurance Department or any other agency assesses, pursuant to authority expressly conferred by law, the cost or any substantial part thereof of the regulation or supervision of any class of persons directly against such class of persons, such agency shall purchase from the Department of General Services in the name of each such person:

(1) a subscription to the bulletin; and

(2) a subscription to the title or part thereof of the code and the permanent supplements thereto relating to the regulation or supervision of such class of persons;

and shall include in its assessment bills issued to each such class of persons the estimated cost (notwithstanding any other provision of law requiring such assessment to be retrospective) and the net unrecovered cost attributable to any preceding period, of complying with this section.]

§ 732. Required contractual arrangements.

(a) General rule.--[Except as otherwise provided by statute finally enacted after July 1, 1969 applicable to public printing and binding generally] <u>The following shall be published by the bureau or by a contractor under subsection (b)</u>:

(1) the code;

(2) the permanent supplements thereto published pursuant to section 726 (relating to permanent supplements to Pennsylvania Code);

(3) pamphlet copies of regulations, statements of policy, general rules and rules of court published pursuant

to section 729 (relating to publication of individual documents); and

(4) the bulletin (unless the application of this section to the bulletin is found to be impracticable by the joint committee after notice in the bulletin and opportunity for hearing) published pursuant to section 724 (relating to preliminary publication in Pennsylvania Bulletin) and section 725 (relating to additional contents of Pennsylvania Bulletin)[;

shall be printed or reproduced under contract with a contractor unaffiliated with the Commonwealth].

(b) [Competitive bidding.--Every such contract] Selection of contractor.--A contract under subsection (a) shall be given[, after] in one of the following manners:

(1) After reasonable public invitation for proposals, to the lowest responsible bidder below such maximum price and under such regulations as shall be prescribed by the joint committee.

(2) After investigation and public hearing by the joint committee, to a sole source contractor selected by the joint committee.

* * *

[(d) Definitions.--For the purposes of this section the terms "printed" or "reproduced" shall not include mimeographed, multilithed or reproduced by any similar in-house process or produced by computer.]

§ 901. Official text of published documents.

* * *

[(b) Home rule charter documents and optional plans of government.--Notwithstanding subsection (a), the text of any

home rule charter amendment or repeal or any optional plan of government, as published as provided in Subchapter B of Chapter 7, shall from the date of such publication be prima facie evidence of the text of the home rule charter, amendment or repeal, or of the plan of government approved by the electors.]

§ 903. Effective date of documents.

No otherwise valid document which is required by or pursuant to this part or by any other provision of law to be published under this part, shall be valid as against any person who has not had actual knowledge thereof until such publication has been effected. Publication shall be deemed to have been effected upon the deposit of the bulletin or the permanent supplement to the code containing such document in the United States mail for distribution. The issue date of the bulletin and of the permanent supplement to the code shall be the day of such deposit, and, in the case of the bulletin, such date shall be [printed] indicated prominently upon the first page of each issue thereof.

§ 905. Presumptions created.

The publication in the code, the permanent supplements thereto, or the bulletin of any document shall create a rebuttable presumption:

(1) That it was duly issued, prescribed or promulgated.

[(2) That it was approved as to legality, if so required by 2 Pa.C.S. § 305 (relating to approval as to legality) by the Department of Justice.]

(3) That there has been compliance with all [requirements of Subchapter A of Chapter 3 of Title 2 (relating to regulations of Commonwealth agencies) and of this part and the regulations promulgated thereunder] of the

following applicable to such document [have been complied with]:

(i) Section 612 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(ii) The act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(iii) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(iv) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(v) This part.

(vi) 1 Pa. Code Pt. I (relating to Joint Committee on Documents).

Section 5. This act shall take effect in 60 days.