

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 79 Session of 2011

INTRODUCED BY GREENLEAF, KITCHEN, TARTAGLIONE AND WASHINGTON,  
JANUARY 12, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, OCTOBER 1, 2012

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in bases of jurisdiction  
3 and interstate and international procedure, providing for  
4 foreign depositions and subpoenas; and repealing provisions  
5 relating to foreign depositions and evidence. ←

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

8 ~~Section 1. Sections 5326 and 5328 of Title 42 of the~~ ←  
9 ~~Pennsylvania Consolidated Statutes are repealed.~~

10 SECTION 1. SECTION 5326 OF TITLE 42 OF THE PENNSYLVANIA ←  
11 CONSOLIDATED STATUTES IS REPEALED:

12 [§ 5326. Assistance to tribunals and litigants outside this  
13 Commonwealth with respect to depositions.

14 (a) General rule.--A court of record of this Commonwealth  
15 may order a person who is domiciled or is found within this  
16 Commonwealth to give his testimony or statement or to produce  
17 documents or other things for use in a matter pending in a  
18 tribunal outside this Commonwealth. The order may be made upon

1 the application of any interested person or in response to a  
2 letter rogatory and may prescribe the practice and procedure,  
3 which may be wholly or in part the practice and procedure of the  
4 tribunal outside this Commonwealth, for taking the testimony or  
5 statement or producing the documents or other things. To the  
6 extent that the order does not prescribe otherwise, the practice  
7 and procedure shall be in accordance with that of the court of  
8 this Commonwealth issuing the order. The order may direct that  
9 the testimony or statement be given, or document or other thing  
10 produced, before a person appointed by the court. The person  
11 appointed shall have power to administer any necessary oath.

12 (b) Voluntary compliance.--A person within this Commonwealth  
13 may voluntarily give his testimony or statement or produce  
14 documents or other things for use in a matter before a tribunal  
15 outside this Commonwealth.]

16 ~~§ 5328. Proof of official records.~~

17 ~~(a) Domestic record. An official record kept within the~~  
18 ~~United States, or any state, district, commonwealth, territory,~~  
19 ~~insular possession thereof, or the Panama Canal Zone, the Trust~~  
20 ~~Territory of the Pacific Islands, or an entry therein, when~~  
21 ~~admissible for any purpose, may be evidenced by an official~~  
22 ~~publication thereof or by a copy attested by the officer having~~  
23 ~~the legal custody of the record, or by his deputy, and~~  
24 ~~accompanied by a certificate that the officer has the custody.~~  
25 ~~The certificate may be made by a judge of a court of record~~  
26 ~~having jurisdiction in the governmental unit in which the record~~  
27 ~~is kept, authenticated by the seal of the court, or by any~~  
28 ~~public officer having a seal of office and having official~~  
29 ~~duties in the governmental unit in which the record is kept,~~  
30 ~~authenticated by the seal of his office.~~

1       ~~(b) Foreign record. A foreign official record, or an entry~~  
2 ~~therein, when admissible for any purpose, may be evidenced by an~~  
3 ~~official publication or copy thereof, attested by a person~~  
4 ~~authorized to make the attestation, and accompanied by a final~~  
5 ~~certification as to the genuineness of the signature and~~  
6 ~~official position:~~

7           ~~(1) of the attesting person; or~~

8           ~~(2) of any foreign official whose certificate of~~  
9 ~~genuineness of signature and official position either:~~

10           ~~(i) relates to the attestation; or~~

11           ~~(ii) is in a chain of certificates of genuineness of~~  
12 ~~signature and official position relating to the~~  
13 ~~attestation.~~

14 ~~A final certification may be made by a secretary of embassy or~~  
15 ~~legation, consul general, consul, vice consul, or consular agent~~  
16 ~~of the United States, or a diplomatic or consular official of~~  
17 ~~the foreign country assigned or accredited to the United States.~~  
18 ~~If reasonable opportunity has been given to all parties to~~  
19 ~~investigate the authenticity and accuracy of the documents, the~~  
20 ~~tribunal may, for good cause shown, admit an attested copy~~  
21 ~~without final certification or permit the foreign official~~  
22 ~~record to be evidenced by an attested summary with or without a~~  
23 ~~final certification.~~

24       ~~(c) Alternative method for certain domestic and foreign~~  
25 ~~records. The statutes, codes, written laws, executive acts, or~~  
26 ~~legislative or judicial proceedings of any domestic or foreign~~  
27 ~~jurisdiction or governmental unit thereof may also be evidenced~~  
28 ~~by any publication proved to be commonly accepted as proof~~  
29 ~~thereof in the tribunals having jurisdiction in that~~  
30 ~~governmental unit.~~



1 "Foreign jurisdiction." A state other than Pennsylvania.

2 "Foreign subpoena." A subpoena issued under authority of a  
3 court of record of a foreign jurisdiction.

4 "Person." An individual, corporation, business trust,  
5 estate, trust, partnership, limited liability company,  
6 association, joint venture, public corporation, government or  
7 governmental subdivision, agency or instrumentality or any other  
8 legal or commercial entity.

9 "Prothonotary." The term includes a clerk of court, where  
10 applicable.

11 "State." A state of the United States, the District of  
12 Columbia, Puerto Rico, the United States Virgin Islands, a  
13 federally recognized Indian tribe or any territory or insular  
14 possession subject to the jurisdiction of the United States.

15 "Subpoena." A document, however denominated, issued under  
16 authority of a court of record requiring a person to:

17 (1) attend and give testimony at a deposition, hearing  
18 or trial;

19 (2) produce and permit inspection and copying of  
20 designated books, documents, records, electronically stored  
21 information or tangible things in the possession, custody or  
22 control of the person; or

23 (3) permit inspection of premises under the control of  
24 the person.

25 § 5334. Principles of construction.

26 In applying and construing this subchapter, consideration  
27 shall be given to the need to promote uniformity of the law with  
28 respect to its subject matter among states that enact it.

29 § 5335. Issuance of subpoena.

30 (a) General rule.--To request issuance of a subpoena under

1 this section, a party must submit a foreign subpoena to a  
2 prothonotary in the jurisdiction in which the person who is the  
3 subject of the order resides, is employed or regularly transacts  
4 business in person. A request for the issuance of a subpoena  
5 under this subchapter does not constitute an appearance in the  
6 courts of this Commonwealth.

7 (b) Duty of prothonotary.--A prothonotary in receipt of a  
8 foreign subpoena shall, in accordance with that court's  
9 procedure, promptly issue a subpoena for service upon the person  
10 to whom the foreign subpoena is directed.

11 (c) Contents of subpoena.--A subpoena under subsection (b)  
12 must:

13 (1) Incorporate the terms used in the foreign subpoena.

14 (2) Contain or be accompanied by the names, addresses  
15 and telephone numbers of all counsel of record in the  
16 proceeding to which the subpoena relates and of any party not  
17 represented by counsel.

18 (D) VOLUNTARY COMPLIANCE.--A PERSON WITHIN THIS COMMONWEALTH ←  
19 NOT SERVED WITH A SUBPOENA UNDER THIS SECTION MAY VOLUNTARILY  
20 GIVE HIS TESTIMONY OR STATEMENT OR PRODUCE DOCUMENTS OR OTHER  
21 THINGS FOR USE IN A MATTER BEFORE A TRIBUNAL OUTSIDE THIS  
22 COMMONWEALTH.

23 § 5336. Pennsylvania rules applicable.

24 The Pennsylvania Rules of Civil Procedure and any statutes  
25 relating to service of subpoenas and compliance with subpoenas  
26 shall apply to all subpoenas issued under this subchapter. Such  
27 rules shall include, but are not limited to, the following:

28 No. 4009.21 (relating to Subpoena Upon a Person Not a  
29 Party for Production of Documents and Things. Prior Notice.  
30 Objections).

1 No. 4009.22 (relating to Service of Subpoena).

2 No. 4009.23 (relating to Certificate of Compliance By a  
3 Person Not a Party. Notice of Documents or Things Received).

4 No. 4009.24 (relating to Notice of Intent to Serve  
5 Subpoena. Objection to Subpoena. Forms).

6 No. 4009.25 (relating to Certificate Prerequisite to  
7 Service of Subpoena. Form).

8 No. 4009.26 (relating to Subpoena to Produce Documents or  
9 Things. Form).

10 No. 4009.27 (relating to Certificate of Compliance.  
11 Form).

12 § 5337. Application to court.

13 (a) General rule.--An application to a court for a  
14 protective order or to enforce, quash or modify a subpoena  
15 issued by a prothonotary under section 5335 (relating to  
16 issuance of subpoena) must comply with the rules and statutes of  
17 this Commonwealth and be submitted to the court that ordered  
18 service of the subpoena.

19 (b) Authority for order.--Upon application, the court may  
20 proceed as provided by the applicable rules and laws of this  
21 Commonwealth, including, but not limited to: section 4132  
22 (relating to attachment and summary punishment for contempt);  
23 Chapter 59 (relating to depositions and witnesses); Pa.R.C.P.  
24 Nos. 4011 (relating to Limitation of Scope of Discovery and  
25 Deposition) and 4012 (relating to Protective Orders).

26 Section 3. The addition of 42 Pa.C.S. Ch. 53 Subch. B.1  
27 applies to requests for discovery in cases pending on the  
28 effective date of this section.

29 Section 4. This act shall take effect in 60 days.