

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2370 Session of 2020

INTRODUCED BY M. K. KELLER, GREINER, GALLOWAY, RYAN, SCHLOSSBERG, STRUZZI, GROVE, SANCHEZ, DeLUCA, WILLIAMS, BARRAR, JAMES, KEEFER, HILL-EVANS, MACKENZIE, GREGORY, ROZZI, SCHLEGEL CULVER, POLINCHOCK, ISAACSON, STEPHENS, READSHAW, FRANKEL, DALEY AND MOUL, MARCH 23, 2020

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 21, 2020

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 57
2 (Notaries Public) of the Pennsylvania Consolidated Statutes,
3 in Uniform Unsworn Foreign Declarations Act, further
4 providing for heading of chapter, for short title of chapter,
5 for definitions, for applicability and for form of unsworn
6 declaration; and, in Revised Uniform Law on Notarial Acts,
7 further providing for authority to perform notarial act,
8 providing for notarial act performed by remotely located
9 individual and further providing for notification regarding
10 performance of notarial act on electronic record and
11 selection of technology.

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

14 Section 1. Chapter 62 heading and sections 6201, 6202, 6203
15 and 6206 of Title 42 of the Pennsylvania Consolidated Statutes
16 are amended to read:

CHAPTER 62

UNIFORM UNSWORN [FOREIGN]

DECLARATIONS ACT

20 § 6201. Short title of chapter.

1 This chapter shall be known and may be cited as the Uniform
2 Unsworn [Foreign] Declarations Act.

3 § 6202. Definitions.

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

7 ["Boundaries of the United States." The geographic
8 boundaries of the United States, Puerto Rico, the Virgin Islands
9 and any territory or insular possession subject to the
10 jurisdiction of the United States.]

11 "Law." Includes [the Federal or a state constitution, a
12 Federal or state] a statute, [a] judicial decision or order, [a]
13 rule of court, [an] executive order and [an] administrative
14 rule, regulation or order.

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

18 "Sign." With present intent to authenticate or adopt a
19 record:

- 20 (1) to execute or adopt a tangible symbol; or
21 (2) to attach to or logically associate with the record
22 an electronic symbol, sound or process.

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

27 "Sworn declaration." A declaration in a signed record given
28 under oath. The term includes a sworn statement, verification,
29 certificate and affidavit.

30 "Unsworn declaration." A declaration in a signed record

1 [that is] not given under oath but [is] given under penalty of
2 perjury.

3 § 6203. Applicability.

4 This chapter applies to an unsworn declaration by a declarant
5 who at the time of making the declaration is physically located
6 within or outside the boundaries of the United States whether or
7 not the location is subject to the jurisdiction of the United
8 States. [This chapter does not apply to a declaration by a
9 declarant who is physically located on property that is within
10 the boundaries of the United States and subject to the
11 jurisdiction of another country or a federally recognized Indian
12 tribe.]

13 § 6206. Form of unsworn declaration.

14 An unsworn declaration under this chapter must be in
15 substantially the following form:

16 I declare under penalty of perjury under the law of the
17 Commonwealth of Pennsylvania that the foregoing is true
18 and correct[, and that I am physically located outside
19 the geographic boundaries of the United States, Puerto
20 Rico, the Virgin Islands and any territory or insular
21 possession subject to the jurisdiction of the United
22 States].

23 [Executed] Signed on the.....day of.....,.....,
24 at.....,
25 (date)..... (month)..... (year).....
26 ([city] county or other location, and state).....
27
28 (country).....
29 (printed name).....
30 (signature).....

1 Section 2. Section 304 of Title 57 is amended by adding a
2 subsection to read:

3 § 304. Authority to perform notarial act.

4 * * *

5 (c) Certification of tangible copies.--A notarial officer
6 may certify that a tangible copy of an electronic record is a
7 true and correct copy of the electronic record.

8 Section 3. Title 57 is amended by adding a section to read:

9 § 314.1. Notarial act performed by remotely located individual.

10 (a) General rule.--A remotely located individual may comply
11 with section 306 (relating to personal appearance required) by
12 appearing before a notary public by means of communication
13 technology.

14 (b) Use of communication technology.--A notary public
15 located in this Commonwealth may perform a notarial act
16 facilitated by communication technology for a remotely located
17 individual if all of the following apply:

18 (1) The notary public:

19 (i) has personal knowledge under section 307(a)
20 (relating to identification of individual) of the
21 identity of the individual;

22 (ii) has satisfactory evidence of the identity of
23 the remotely located individual by oath or affirmation
24 from a credible witness appearing before the notary
25 public under section 307(b)(2) or under this section; or

26 (iii) is able to reasonably identify the individual
27 by at least two different types of identity proofing
28 processes or services.

29 (2) The notary public is able to reasonably identify a
30 record before the notary public as the same record:

1 (i) in which the remotely located individual made
2 the statement; or

3 (ii) on which the remotely located individual
4 executed the signature.

5 (3) The notary public, or a person acting on behalf of
6 the notary public, creates an audio-visual recording of the
7 performance of the notarial act, INCLUDING ALL INTERACTIONS <--
8 BETWEEN THE NOTARY PUBLIC AND THE REMOTELY LOCATED
9 INDIVIDUAL.

10 (4) If the remotely located individual is located
11 outside the United States, all of the following apply:

12 (i) The record:

13 (A) is to be filed with or relates to a matter
14 before a court, governmental entity, public official
15 or other entity under the jurisdiction of the United
16 States; or

17 (B) involves:

18 (I) property located in the territorial
19 jurisdiction of the United States; or

20 (II) a transaction substantially connected
21 with the United States.

22 (ii) The act of making the statement or signing the
23 record is not prohibited by the foreign state where the
24 remotely located individual is located.

25 (c) Notarial certificate.--If a notarial act is subject to
26 this section, the certificate of notarial act required by
27 section 315 (relating to certificate of notarial act) and the
28 short form certificate under section 316 (relating to short form
29 certificates) must indicate that the notarial act was performed
30 by means of communication technology.

1 (d) Sufficiency.--A short form certificate under section 316
2 for a notarial act subject to this section is sufficient if
3 either of the following apply:

4 (1) The short form certificate is in the form provided
5 by section 316 and contains a statement substantially as
6 follows:

7 "This notarial act involved the use of communication
8 technology."

9 (2) The certificate complies with the regulations
10 promulgated under subsection (g) (1).

11 (e) Audio-visual recording.--The following apply:

12 (1) This subsection applies to:

13 (i) a notary public;

14 (ii) a guardian, a conservator or an agent of a
15 notary public; or

16 (iii) a personal representative of a deceased notary
17 public.

18 (2) A person under paragraph (1) shall retain the audio-
19 visual recording created under subsection (b) (3) or cause the
20 recording to be retained by a repository designated by or on
21 behalf of the notary public. The person shall retain the
22 recording:

23 (i) for at least 10 years after the recording is
24 created; or

25 (ii) as otherwise required by the regulations
26 promulgated under subsection (g) (4).

27 (f) Notification.--The following apply:

28 (1) Before a notary public performs the notary public's
29 initial notarial act under this section, the notary public
30 must notify the department that the notary public will be

1 performing notarial acts facilitated by communication
2 technology and identify the technology.

3 (2) If the department has established standards for
4 approval of communication technology or identity proofing
5 under subsection (g) and section 327 (relating to
6 regulations), the communication technology and identity
7 proofing must conform to the standards.

8 (g) Regulations.--In addition to matters listed in section
9 327, the department ~~may~~ SHALL promulgate regulations regarding <--
10 performance of a notarial act performed under this section. The
11 regulations ~~may~~ SHALL do all of the following: <--

12 (1) Prescribe the means of performing a notarial act
13 involving communication technology to communicate with a
14 remotely located individual.

15 (2) Establish standards for communication technology and
16 identity proofing. This paragraph includes the use of
17 credential analysis, dynamic knowledge-based authentication,
18 biometrics and other means of identification.

19 (3) Establish requirements or procedures to approve
20 providers of communication technology and the process of
21 identity proofing.

22 (4) Establish standards and periods for the retention of
23 an audio-visual recording created under subsection (b)(3) of
24 the performance of a notarial act.

25 (h) Promotion of uniformity.--Before promulgating, amending
26 or repealing regulations about the performance of a notarial act
27 with respect to a remotely located individual, the department
28 shall consider, if consistent with this chapter, all of the
29 following:

30 (1) The most recent standards regarding the performance

1 of a notarial act with respect to remotely located
2 individuals promulgated by a national standard-setting
3 organization. This paragraph includes the National
4 Association of Secretaries of State.

5 (2) Standards, practices and customs of other
6 jurisdictions that enact a statutory provision substantially
7 similar to this section.

8 (3) The views of governmental officials and entities and
9 other interested persons.

10 (i) Definitions.--As used in this section, the following
11 words and phrases shall have the meanings given to them in this
12 subsection unless the context clearly indicates otherwise:

13 "Communication technology." An electronic device or process
14 that:

15 (1) allows a notary public located in this Commonwealth
16 and a remotely located individual to communicate with each
17 other simultaneously by sight and sound; and

18 (2) makes reasonable accommodations for an individual
19 with a vision, hearing or speech impairment in accordance
20 with law.

21 "Foreign state." A jurisdiction other than the United
22 States, a state or a federally recognized Indian tribe.

23 "Identity proofing." A process or service by which a third
24 person provides a notary public with a means to verify the
25 identity of a remotely located individual by a review of
26 personal information from public or private data sources.

27 "Outside the United States." A location outside the
28 geographic boundaries of:

29 (1) the United States;

30 (2) Puerto Rico;

1 THE REQUIREMENTS OF 57 PA.C.S. § 314.1 OR DETERMINES THAT THE
2 USE OF THE TECHNOLOGY SHOULD BE DELAYED PENDING AN EVALUATION OF
3 THE TECHNOLOGY. THIS SECTION SHALL EXPIRE UPON THE ADOPTION OF
4 REGULATIONS BY THE DEPARTMENT OF STATE AS REQUIRED BY 57 PA.C.S.
5 § 314.1(H) (2) .

6 Section ~~5~~ 6. This act shall take effect immediately.

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