

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 25

**PRINTER'S NO.** 1551

**AMOUNT**

No Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

April 22, 2013

**PRIME SPONSOR**

Representative Grell

**HISTORY OF BILL**

Referred to JUDICIARY, April 22, 2013  
Reported as committed, April 23, 2013  
First consideration, April 23, 2013  
Laid on the table, April 23, 2013  
Removed from table, April 24, 2013  
Second consideration, May 6, 2013  
Re-committed to APPROPRIATIONS, May 6, 2013  
(Remarks see House Journal Page ), May 6, 2013  
Re-reported as committed, May 7, 2013  
Third consideration and final passage, May 7, 2013 (197-0)  
(Remarks see House Journal Page ), May 7, 2013

In the Senate

Referred to JUDICIARY, May 24, 2013  
Reported as committed, June 11, 2013  
First consideration, June 11, 2013  
Second consideration, June 17, 2013  
Re-referred to APPROPRIATIONS, June 17, 2013  
Re-reported as committed, June 29, 2013

**DESCRIPTION AND PURPOSE OF BILL**

House Bill 25 amends Title 42 (Judicial Code) by adding a new Chapter 62 entitled, Uniform Unsworn Foreign Declaration Act. The bill also amends Title 57 (Notaries Public) by adding a new Chapter 3 entitled, Revised Uniform Law on Notarial Acts. The bill addresses the practice of taking declarations; these declarations are taken by notaries public.

Uniform Unsworn Foreign Declarations Act

The new Chapter 62 under Title 42 applies to unsworn declarations by a person who, at the time of making the declaration, is outside the boundaries of the United States. It does not apply to a person who is physically located within the United States. The chapter provides for the procedure by which the unsworn declaration, executed outside the United States, is allowed to be used in the Commonwealth.

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The provisions of the chapter do not apply to the following declarations:

- 1) Depositions;
- 2) An oath of office;
- 3) An oath or affirmation required to be given before an official other than a notary public;
- 4) A declaration relating to real property required to be recorded; and
- 5) An oath or affirmation relating to self-proved wills.

The bill provides that, except for the five exceptions listed above, if a state law requires or permits the use of a sworn declaration, an unsworn declaration meeting the requirements of Chapter 62 of Title 42 shall have the same effect as a sworn declaration. If the law requires a sworn declaration to be in a certain medium, then the unsworn declaration must be in the same medium. The bill provides that a form be executed stating, under the penalty of perjury, the information provided is true and correct and that the person is physically located outside the boundaries of the United States.

### Revised Uniform Law on Notarial Acts

The bill codifies various provisions of state law related to notaries public and repeals various existing statutes on the subject of notaries public.

It defines "acknowledgment," "notarial officer," "notary public," "sign," and "record."

The bill requires that a notary public shall determine that the person coming before the notary public has the identity of the person claimed and that the signature is valid. With respect to copies of records, the bill requires the notary public to determine a copy is a complete and accurate representation of the original.

The bill authorizes a notary public to determine the identity of the person by using documents including a birth certificate, a passport, a driver's license or another form of government identification and if necessary, the notary public may require the person to produce additional information related to identity.

It gives notaries public the discretion to refuse to perform a notarial act if they are not satisfied that the person coming before them is competent, or that the person's signature is not knowingly or voluntarily made, or that the person coming before them is the person claimed.

The bill provides that a notarial act may be performed by:

- 1) A judge;
- 2) A clerk, prothonotary, or a deputy;
- 3) A recorder of deeds;
- 4) A notary public;
- 5) A member of the minor judiciary; and
- 6) An individual authorized by law to perform notarial acts.

The bill stipulates that a notarial act performed outside of the Commonwealth or under federal authority will be recognized within the Commonwealth.

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It requires that notarial acts be evidenced by a certificate and a stamp and requires a notary public to keep a journal to record public records. It provides that a notary public must deliver the journal to the Recorder of Deeds within 30 days of the expiration, revocation, or resignation of the notary's commission.

It provides that a notary public may perform notarial acts with respect to electronic records.

The bill provides qualifications for becoming a notary public to include:

- 1) Being at least 18 years of age;
- 2) Being a citizen or permanent resident of the U.S.;
- 3) Being a resident or having a place of employment within the Commonwealth;
- 4) Being able to read and write English; and
- 5) Successful completion of the initial examination and compliance with continuing education requirements and other regulations set by the department.

The bill requires the endorsement of the Senator from the district in which the person resides or in the case of a nonresident, where the person works. If there is a vacancy in the Senatorial District, then it must include the endorsement of a Senator of an adjacent district. It provides that before receiving a commission to be a notary public, the person must obtain a bond in the amount of \$10,000 or an amount set by the department and requires the bond and commission to be recorded with the Recorder of Deeds. It provides that commissions issued by the department are valid for four years.

The bill authorizes the department to deny, refuse to renew, revoke, suspend, reprimand or impose a condition on a commission of a notary public with respect to an act or omission which demonstrates that the notary lacks honesty, integrity, or competence.

It authorizes the department to impose an administrative penalty of up to \$1,000 for each violation. The bill provides that an administrative investigation by the department shall not prevent a victim from seeking other civil or criminal remedies. It provides for:

- 1) Department investigations and hearings;
- 2) Department initiated civil proceedings at law or equity to enforce the act; or
- 3) Department initiated requests for prosecution of criminal offenses related to conduct regulated under the act.

The bill prohibits notaries public from:

- 1) Assisting in the drafting of legal documents or providing legal advice;
- 2) Acting as an expert on immigration matters;
- 3) Representing a person in a judicial or administrative proceeding relating to immigration; or
- 4) Receiving compensation for any of the foregoing.

The bill provides that a commission of a notary public in effect on the effective date of the chapter continues until its expiration. Requires a notary public, when performing notarial acts, to comply with the provisions of the chapter as of the effective date.

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The bill requires the department to fix the fees of a notary public and requires notaries public to display their fees in a conspicuous manner or provide fees upon request.

The bill repeals existing statutes regarding notaries public.

The authority of the department to approve courses for notaries public is effective immediately. The remainder of the act takes effect 180 days after the department submits notice of approval of courses to the Legislative Reference Bureau for inclusion in the Pennsylvania Bulletin.

### **FISCAL IMPACT:**

The enactment of this legislation will have a nominal fiscal impact on the Department of State (Department). The Department will need to make changes to current processes and regulations concerning examinations for first time notary applicants, changes that will likely necessitate enhancements to the current notaries database to process and store this information. The Department anticipates this can be handled within its current and projected funding.

The enactment of this legislation will also cause a temporary but significant increase in workload for the Department of State, over a period of approximately one year. All Divisions of Commissions, Legislation and Notaries forms and materials will require revision. The Divisions would need to communicate the changes in the law to notaries public, other notarial officers, and notary education providers. The Department will also need to promulgate regulations to implement the act. The Department anticipates addressing all these responsibilities with the efforts of existing staff resources.

In addition, the law requires all 17 approved education providers to revamp their notary education courses and submit new ones, each of which must be approved by the Department prior to being offered to notaries. Because both initial education and continuing education are required by the bill, it is anticipated that the Department will need to review a greater number of courses, both initially and on an ongoing basis.

The Department currently maintains a public searchable database of all notaries public. Authorized e-notaries are searchable on the website only by certain users and not by the general public. Therefore, the public database display would need to be altered to indicate on the notary record whether a notary public is authorized to notarize electronically and also be searchable by the public. It is anticipated that all system-related enhancements required in the bill would be implemented as a part of the Department's ongoing maintenance contact with its notary system vendor. The flexible implementation date in the bill allows the Department the time it will need to ensure that the enhancements can be made within the existing software build schedule, with no anticipated additional costs.

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Finally, House Bill 25 requires that first-time applicants “must pass an examination administered by the department or by an entity approved by the department.” Many providers already administer an exam at the end of their courses to test knowledge. Therefore, the Department believes it will be able to work with these vendors to implement this provision at little or no cost to the Commonwealth.