

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 79 Session of 2011

INTRODUCED BY GREENLEAF AND KITCHEN, JANUARY 12, 2011

REFERRED TO JUDICIARY, JANUARY 12, 2011

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9 Pennsylvania Consolidated Statutes are repealed: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 [§ 5326. Assistance to tribunals and litigants outside this
11 Commonwealth with respect to depositions.

12 (a) General rule.--A court of record of this Commonwealth
13 may order a person who is domiciled or is found within this
14 Commonwealth to give his testimony or statement or to produce
15 documents or other things for use in a matter pending in a
16 tribunal outside this Commonwealth. The order may be made upon
17 the application of any interested person or in response to a
18 letter rogatory and may prescribe the practice and procedure,
19 which may be wholly or in part the practice and procedure of the
20 tribunal outside this Commonwealth, for taking the testimony or

1 statement or producing the documents or other things. To the
2 extent that the order does not prescribe otherwise, the practice
3 and procedure shall be in accordance with that of the court of
4 this Commonwealth issuing the order. The order may direct that
5 the testimony or statement be given, or document or other thing
6 produced, before a person appointed by the court. The person
7 appointed shall have power to administer any necessary oath.

8 (b) Voluntary compliance.--A person within this Commonwealth
9 may voluntarily give his testimony or statement or produce
10 documents or other things for use in a matter before a tribunal
11 outside this Commonwealth.

12 § 5328. Proof of official records.

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

27 (b) Foreign record.--A foreign official record, or an entry
28 therein, when admissible for any purpose, may be evidenced by an
29 official publication or copy thereof, attested by a person
30 authorized to make the attestation, and accompanied by a final

certification as to the genuineness of the signature and
official position:

- (1) of the attesting person; or
- (2) of any foreign official whose certificate of
genuineness of signature and official position either:
 - (i) relates to the attestation; or
 - (ii) is in a chain of certificates of genuineness of
signature and official position relating to the
attestation.

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

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

(d) Lack of record.--A written statement that after diligent
search no record or entry of a specified tenor is found to exist
in the records designated by the statement, authenticated as
provided in this section in the case of a domestic record, or

1 complying with the requirements of this section for a summary in
2 the case of a record in a foreign country, is admissible as
3 evidence that the records contain no such record or entry.]

4 Section 2. Chapter 53 of Title 42 is amended by adding a
5 subchapter to read:

6 SUBCHAPTER B.1

7 FOREIGN DEPOSITIONS AND SUBPOENAS

8 Sec.

9 5331. Short title of subchapter.

10 5332. Scope of subchapter.

11 5333. Definitions.

12 5334. Principles of construction.

13 5335. Issuance of subpoena.

14 5336. Pennsylvania rules applicable.

15 5337. Application to court.

16 § 5331. Short title of subchapter.

17 This subchapter shall be known and may be cited as the
18 Uniform Interstate Depositions and Discovery Act.

19 § 5332. Scope of subchapter.

20 This subchapter shall apply to any civil action or proceeding
21 in a foreign jurisdiction where discovery is sought in this
22 Commonwealth.

23 § 5333. Definitions.

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

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

28 "Foreign subpoena." A subpoena issued under authority of a
29 court of record of a foreign jurisdiction.

30 "Person." An individual, corporation, business trust,

1 estate, trust, partnership, limited liability company,
2 association, joint venture, public corporation, government or
3 governmental subdivision, agency or instrumentality or any other
4 legal or commercial entity.

5 "Prothonotary." The term includes a clerk of court, where
6 applicable.

7 "State." A state of the United States, the District of
8 Columbia, Puerto Rico, the United States Virgin Islands, a
9 federally recognized Indian tribe or any territory or insular
10 possession subject to the jurisdiction of the United States.

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

13 (1) attend and give testimony at a deposition, hearing
14 or trial;

15 (2) produce and permit inspection and copying of
16 designated books, documents, records, electronically stored
17 information or tangible things in the possession, custody or
18 control of the person; or

19 (3) permit inspection of premises under the control of
20 the person.

21 § 5334. Principles of construction.

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

25 § 5335. Issuance of subpoena.

26 (a) General rule.--To request issuance of a subpoena under
27 this section, a party must submit a foreign subpoena to a
28 prothonotary in the jurisdiction in which the person who is the
29 subject of the order resides, is employed or regularly transacts
30 business in person. A request for the issuance of a subpoena

1 under this subchapter does not constitute an appearance in the
2 courts of this Commonwealth.

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

7 (c) Contents of subpoena.--A subpoena under subsection (b)
8 must:

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

10 (2) Contain or be accompanied by the names, addresses
11 and telephone numbers of all counsel of record in the
12 proceeding to which the subpoena relates and of any party not
13 represented by counsel.

14 § 5336. Pennsylvania rules applicable.

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

19 No. 4009.21 (relating to Subpoena Upon a Person Not a
20 Party for Production of Documents and Things. Prior Notice.
21 Objections).

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

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

25 No. 4009.24 (relating to Notice of Intent to Serve
26 Subpoena. Objection to Subpoena. Forms).

27 No. 4009.25 (relating to Certificate Prerequisite to
28 Service of Subpoena. Form).

29 No. 4009.26 (relating to Subpoena to Produce Documents or
30 Things. Form).

1 No. 4009.27 (relating to Certificate of Compliance.

2 Form).

3 § 5337. Application to court.

4 (a) General rule.--An application to a court for a
5 protective order or to enforce, quash or modify a subpoena
6 issued by a prothonotary under section 5335 (relating to
7 issuance of subpoena) must comply with the rules and statutes of
8 this Commonwealth and be submitted to the court that ordered
9 service of the subpoena.

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

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

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