

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1097 Session of 2020

INTRODUCED BY MASTRIANO, BAKER, BOSCOLA, BREWSTER, BROWNE, FONTANA, MENSCH, SCAVELLO, J. WARD, HAYWOOD, PITTMAN, STEFANO, BARTOLOTTA AND BROOKS, MARCH 23, 2020

SENATOR DISANTO, STATE GOVERNMENT, AS AMENDED, APRIL 6, 2020

AN ACT

1 Amending ~~Title~~ TITLES 42 (JUDICIARY AND JUDICIAL PROCEDURE) AND <--
2 57 (Notaries Public) of the Pennsylvania Consolidated
3 Statutes, IN UNIFORM UNSWORN FOREIGN DECLARATIONS ACT, <--
4 FURTHER PROVIDING FOR HEADING OF CHAPTER, FOR SHORT TITLE OF
5 CHAPTER, FOR DEFINITIONS, FOR APPLICABILITY AND FOR FORM OF
6 UNSWORN DECLARATION AND, in revised uniform law on notarial
7 acts, further providing for authority to perform notarial
8 act, 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. Section 304 of Title 57 of the Pennsylvania~~ <--
15 ~~Consolidated Statutes is amended by adding a subsection to read:~~

16 SECTION 1. CHAPTER 62 HEADING AND SECTIONS 6201, 6202, 6203 <--
17 AND 6206 OF TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED STATUTES
18 ARE AMENDED TO READ:

CHAPTER 62

UNIFORM UNSWORN [FOREIGN]

DECLARATIONS ACT

22 § 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 notary public <--  
6 NOTARIAL OFFICER may certify that a tangible copy of an <--  
7 electronic record is a true and correct copy of the electronic  
8 record.

9 Section ~~2~~ 3. Title 57 is amended by adding a section to <--  
10 read:

11 § 314.1. Notarial act performed by remotely located individual.

12 (a) Definitions. Terms are defined in subsection (j). <--  
13 (RESERVED). <--

14 (b) General rule.--A remotely located individual may comply  
15 with section 306 (relating to personal appearance required) by  
16 appearing before a notary public by means of communication  
17 technology.

18 (c) Use of communication technology.--A notary public  
19 located in this Commonwealth may perform a notarial act  
20 facilitated by communication technology for a remotely located  
21 individual if all of the following paragraphs apply:

22 (1) The notary public:

23 (i) has personal knowledge under section 307(a)  
24 (relating to identification of individual) of the  
25 identity of the individual;

26 (ii) has satisfactory evidence of the identity of  
27 the remotely located individual by oath or affirmation  
28 from a credible witness appearing before the notary  
29 public under section 307(b) or under this section; or

30 (iii) is able to reasonably identify the individual

1 by at least two different types of identity proofing  
2 processes or services.

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

5 (i) in which the remotely located individual made  
6 the statement; or

7 (ii) on which the remotely located individual  
8 executed the signature.

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

14 (4) If the remotely located individual is located  
15 outside the United States, all of the following subparagraphs  
16 apply:

17 (i) The record:

18 (A) is to be filed with or relates to a matter  
19 before a court, governmental entity, public official  
20 or other entity under the jurisdiction of the United  
21 States; or

22 (B) involves:

23 (I) property located in the territorial  
24 jurisdiction of the United States; or

25 (II) a transaction substantially connected  
26 with the United States.

27 (ii) The act of making the statement or signing the  
28 record is not prohibited by the foreign state where the  
29 remotely located individual is located.

30 (d) Notarial certificate.--If a notarial act is subject to

1 this section, the certificate of notarial act required by  
2 section 315 (relating to certificate of notarial act) and the  
3 short form certificate under section 316 (relating to short form  
4 certificates) must indicate that the notarial act was performed  
5 by means of communication technology.

6 (e) Sufficiency.--A short form certificate under section 316  
7 for a notarial act subject to this section is sufficient if  
8 either of the following paragraphs apply:

9 (1) The short form certificate is in the form provided  
10 by section 316 and contains a statement substantially as  
11 follows:

12 "This notarial act involved the use of communication  
13 technology."

14 (2) The certificate complies with the regulations  
15 promulgated under subsection (h) (1).

16 (f) Audio-visual recording.--

17 (1) This subsection applies to:

18 (i) a notary public;

19 (ii) a guardian, a conservator or an agent of a  
20 notary public; or

21 (iii) a personal representative of a deceased notary  
22 public.

23 (2) A person under paragraph (1) shall retain the audio-  
24 visual recording created under subsection (c) (3) or cause the  
25 recording to be retained by a repository designated by or on  
26 behalf of the notary public. The person shall retain the  
27 recording:

28 (i) for at least 10 years after the recording is  
29 created; or

30 (ii) as otherwise required by the regulations

1 promulgated under subsection (h) (4).

2 (g) Notification.--

3 (1) Before a notary public performs the notary public's  
4 initial notarial act under this section, the notary public  
5 must notify the department that the notary public will be  
6 performing notarial acts facilitated by communication  
7 technology and identify the technology.

8 (2) If the department has established standards for  
9 approval of communication technology or identity proofing  
10 under subsection (h) and section 327 (relating to  
11 regulations), the communication technology and identity  
12 proofing must conform to the standards.

13 (h) Regulations.--In addition to matters listed in section  
14 327, the department shall promulgate regulations regarding  
15 performance of a notarial act performed under this section. The  
16 regulations shall do all of the following:

17 (1) Prescribe the means of performing a notarial act  
18 involving communication technology to communicate with a  
19 remotely located individual.

20 (2) Establish standards for communication technology and  
21 identity proofing. This paragraph includes the use of  
22 credential analysis, dynamic knowledge-based authentication,  
23 biometrics and other means of identification.

24 (3) Establish requirements or procedures to approve  
25 providers of communication technology and the process of  
26 identity proofing.

27 (4) Establish standards and periods for the retention of  
28 an audio-visual recording created under subsection (c) (3) of  
29 the performance of a notarial act.

30 (i) Promotion of uniformity.--Before promulgating, amending

1 or repealing regulations about the performance of a notarial act  
2 with respect to a remotely located individual, the department  
3 shall consider, if consistent with this chapter, all of the  
4 following:

5 (1) The most recent standards regarding the performance  
6 of a notarial act with respect to remotely located  
7 individuals promulgated by a national standard-setting  
8 organization. This paragraph includes the National  
9 Association of Secretaries of State.

10 (2) Standards, practices and customs of other  
11 jurisdictions that enact a statutory provision substantially  
12 similar to this section.

13 (3) The views of governmental officials and entities and  
14 other interested persons.

15 (j) Definitions.--As used in this section, the following  
16 words and phrases shall have the meanings given to them in this  
17 subsection unless the context clearly indicates otherwise:

18 "Communication technology." An electronic device or process  
19 that:

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

23 (2) makes reasonable accommodations for an individual  
24 with a vision, hearing or speech impairment in accordance  
25 with law.

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

28 "Identity proofing." A process or service by which a third  
29 person provides a notary public with a means to verify the  
30 identity of a remotely located individual by a review of



1 personal information from public or private data sources.

2 "Outside the United States." A location outside the  
3 geographic boundaries of:

4 (1) the United States;

5 (2) Puerto Rico;

6 (3) the Virgin Islands; and

7 (4) any territory, insular possession or other location  
8 subject to the jurisdiction of the United States.

9 "Remotely located individual." An individual who is not in  
10 the physical presence of the notary public performing a notarial  
11 act under subsection (c).

12 Section ~~3~~ 4. Section 320 of Title 57 is amended by adding a <--  
13 subsection to read:

14 § 320. Notification regarding performance of notarial act on  
15 electronic record; selection of technology.

16 \* \* \*

17 (c) Certification of tangible copies.--A recorder of deeds  
18 may accept for recording a tangible copy of an electronic record  
19 containing a notarial certificate as satisfying any requirements  
20 that the record be an original, if the notarial officer  
21 executing the notarial certificate certifies that the tangible  
22 copy is a true and correct copy of the electronic record.

23 ~~Section 4. This act shall take effect as follows:~~ <--

24 ~~(1) The addition of 57 Pa.C.S. §§ 304(c), 314.1(h) and~~  
25 ~~(j) and 320(c) shall take effect immediately.~~

26 ~~(2) This section shall take effect immediately.~~

27 ~~(3) The remainder of this act shall take effect January~~  
28 ~~1, 2021.~~

29 SECTION 5. UPON THE EFFECTIVE DATE OF THIS SECTION, THE <--  
30 DEPARTMENT OF STATE SHALL IMMEDIATELY AUTHORIZE A NOTARY PUBLIC

1 TO CONDUCT NOTARIAL ACTS IN THE MANNER AUTHORIZED BY 57 PA.C.S.  
2 § 314.1, PROVIDED THE NOTARY GIVES NOTICE TO THE DEPARTMENT AS  
3 REQUIRED BY 57 PA.C.S. § 314.1(G)(1) AND USES A COMMUNICATION  
4 AND IDENTITY PROOFING TECHNOLOGY DESIGNATED IN THE DEPARTMENT'S  
5 MARCH 25, 2020, NOTICE OF THE LIMITED SUSPENSION OF THE  
6 REQUIREMENTS OF 57 PA.C.S. § 306, OR THAT IS DESIGNATED IN A  
7 LIST OF ADDITIONAL ACCEPTABLE TECHNOLOGIES SUBSEQUENTLY ADOPTED  
8 BY THE DEPARTMENT. A NOTARY PUBLIC MAY USE ANY OTHER TECHNOLOGY  
9 WITHIN 30 DAYS OF GIVING NOTICE AS REQUIRED BY 57 PA.C.S. §  
10 314.1(G)(1), UNLESS THE DEPARTMENT FOR GOOD CAUSE PROHIBITS THE  
11 USE OF THE TECHNOLOGY FOR FAILURE TO SATISFY THE REQUIREMENTS OF  
12 57 PA.C.S. § 314.1 OR DETERMINES THAT USE OF THE TECHNOLOGY  
13 SHOULD BE DELAYED PENDING AN EVALUATION OF THE TECHNOLOGY. THIS  
14 SECTION SHALL EXPIRE UPON THE ADOPTION OF REGULATIONS BY THE  
15 DEPARTMENT AS REQUIRED BY 57 PA.C.S. § 314.1(H)(2).

16 SECTION 6. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.