

**Pennsylvania Senate State Government Committee Hearing**  
**Senate Bill 595, Printers No. 912 (Remote Notarization)**  
**Statement of Pennsylvania Bankers Association**

*October 24, 2017*

My name is Raymond Pepe, I am Of Counsel to the law firm of K&L Gates LLP, and serve as outside counsel to the Pennsylvania Bankers Association. On behalf of the members of the Association, I would like to thank Senator Mike Folmer and the co-sponsors of Senate Bill 595 for their diligent work to update Pennsylvania law to allow notarizations to take place by means of audio-visual communication. Senate Bill 595 will make notary services more readily available when face-to-face access to a notary public is not available, especially when individuals required to make acknowledgment, attestations or to make statements under oath are traveling, located in rural areas, or are outside of the United States, and as a result will help facilitate the provision of financial services and electronic commerce.

The members of the Association recommend that legislation authorizing remote notarization should modify the Pennsylvania Uniform Law on Notarial Acts in a manner consistent with the following principles:

- Remote notarization should require the use of a communication technology that makes it possible for an individual not in the presence of a notary public and a notary public located in this state to communicate with each other simultaneously by sight and sound.
- A notary witnessing a statement made by a remotely located individual regarding a record, or witnessing the signing of a record, should be required to verify the identify of the individual making the statement or signing the record based on the personal knowledge of the notary or through the use of an identity proofing process or service by which a third person provides a notary public with a reasonable means to verify the identity of a remotely-located individual through a review of personal information from public or private data sources.
- A notary public by use of tamper-evident technology or personal acknowledgement by the remotely located individual should be able to reasonably

to identify a record before the notary public as the same record about which the remotely located individual makes a statement or affixes his or her signature.

- Before performing remote notarial acts, a notary should be required to register with the Pennsylvania Department of State and disclose the technologies that will be used in remote notarization. No separate licensing or approval process, however, should be required for a notary to perform remote notarizations.
- The Department of State should be authorized, but not required, to adopt standards for technologies used in remote notarizations and should be authorized to disapprove any technologies that do not comply with the minimum requirements set forth by law or any standards adopted by the department.
- Notaries should be required to maintain an electronic audio-visual copy of any remotely performed notarial act for a reasonable period of time, and should be required to identify in their logbooks whether notarial acts were performed by means of communication technology.
- Notarial certificates should be required to disclose that notarial acts were performed remotely and language should be added to standard form notarial certificates to indicate whether notarial acts were performed remotely.
- Efforts should be made to promote the uniformity of law among the states by either delaying final enactment of Senate Bill 595 until final recommendations are made by national groups working to develop recommended uniform or model legislation to authorize remote notarization, or a process should be included in the law for developing future recommendations for amendments to the law.
- If a remotely located individual is outside of the United State, (1) the notarial act should relate to a record to be filed with or relating to a matter before a court, governmental entity, public official, or other entity located in the United States; or which involves property located in the United States; and (2) the law of the foreign country in which the individual is located should not prohibit the individual from making a statement or signing the record that will be notarized in the United States..
- Implementation of remote notarization should not be dependent upon the adoption of any standards or regulations by the Department of State, but it may be appropriate to delay the effective date of substantive provisions of amendments to current law to allow remote notarization in order to provide an opportunity for the development of standards and regulations.

With respect to the development of uniform interstate recommendations for how legislation should authorize remote notarization, a Drafting Committee of the Uniform Law Commission will be meeting in Washington D.C. on November 3 and 4, 2017 to consider

amendments to the Uniform Law on Notarial Acts. The Drafting Committee Meeting is open to the public and participation in the meeting by interested observers and advisors is recommended. As a member of the Pennsylvania Board of Commissioners on Uniform State Laws I will be serving as a co-chair of the Drafting Committee.

The Mortgage Bankers Association and the American Land Title Association are also engaged in parallel efforts to develop a model state law to authorize remote notarization. It is my hope and expectation that these two groups will arrive at a consistent set of recommendations within the next six to nine months.

Attached to this statement is a draft set of amendments to the Uniform Law on Notarial Acts that will be discussed at the Uniform Law Commission's November Drafting Committee Meeting. For convenience, I have modified the draft to indicate how it could be incorporated into current Pennsylvania law.

**DISCUSSION DRAFT OF AMENDMENTS TO THE PENNSYLVANIA  
REVISED UNIFORM LAW ON NOTARIAL ACTS TO AUTHORIZE  
REMOTE NOTARIZATION**

Chapter 3 (relating to the Revised Uniform Law on Notarial Act) of Title 63 of the Consolidated Statutes is amended to add a new section as follows:

**Section 314-A. Notarial act performed by a remotely-located individual.**

(a) Definitions.--In this section:

(1) “Communication technology” means an electronic device or process that allows a remotely-located individual and a notary public located in this state to communicate with each other simultaneously by sight and sound.

(2) “Foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

(3) “Identity proofing” means a process or service by which a third person provides a notary public with a reasonable means to verify the identity of a remotely-located individual by a review of personal information from public or private data sources.

(4) A “remotely located individual” is an individual who is not in the physical presence of the notary.

(b) Authorization.--A notary public present in this state may perform by means of communication technology a notarial act relating to a statement made in or signature executed on a record by a remotely-located individual if:

(1) the notary public has:

(i) personal knowledge under section 307(a) (relating to identification of individual) of the identity of the individual; or

(ii) satisfactory evidence under subsection (d) of the identity of the individual;

(2) when the remotely-located individual is present in a foreign state:

(i) the record,

(A) is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity located in the territorial jurisdiction of the United States; or

(B) involves property located in the territorial jurisdiction of, or a transaction substantially connected with, the United States; and

(ii) the act of making the statement or signing the record is not prohibited by a foreign state in which the remotely-located individual is located.

(3) the notary public is able, by use of tamper-evident technology or personal acknowledgement by the remotely located individual, reasonably to identify the record before the notary public as the same record in which the remotely located individual made the statement or on which the remotely-located individual executed the signature; and

(4) the notary, of a custodian acting on behalf of the notary or a guardian or personal representative of an incapacitated or deceased notary, retains a video and audit copy of the performance of the notarial act for at least [five years] or as otherwise provided by subsection (g)(4).

(c) Appearance.--If a notarial act relates to a statement made in or a signature executed on a record by a remotely-located individual, that individual may comply with section 306 (relating to personal appearance required) by appearing before the notary public by means of communication technology.

(d) Identification of individual.--In addition to the methods permitted by section 307(a) for identification of an individual, a notary public has satisfactory evidence of the identity of a remotely-located individual if the notary public reasonably can identify the individual by means of identity proofing.

(e) Certificate.--If a notarial act involves a statement made in or a signature executed on a record by a remotely-located individual, the certificate of notarial act required by section 315 (relating to certificate of notarial act) and the short form certificate provided in section 316 (relating to short form certificates) must also indicate that the individual was remotely-located. A short form certificate subject to this section is sufficient if it is in the form required by section 316 and following the signature of the notary, states that, "This notarial act involved a statement made or a signature executed on a record by a remotely-located individual using communication technology."

(f) Registration.--Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the department that the notary public will be performing notarial acts by communication technology and identify the communication technology and any provider of third-person identity verification on whom the notary public intends to rely on for identity proofing. If the department has established standards for approval of communication technology under subsection (j) and section 327 (relating to regulations), the communication technology must conform to the standards. If the communication technology conforms to the standards, the department shall approve the use of the communication technology.

(g) Regulations.--The department may adopt rules regarding performance of a notarial act with respect to remotely-located individuals. The rules may:

(1) prescribe the means of performing a notarial act involving communication technology to communicate with a remotely-located individual;

(2) establish standards for the approval of communication technology;

(3) approve providers of third-person identity verification and the process of identity proofing; and

(4) establish standards and time periods for the retention of a video and audio copy of the performance of a notarial act under this chapter as well as a procedure for preservation of the audio and video copy in the event of the death or other termination of the notary public's commission.