



**Pennsylvania Senate State Government Committee
Senate Bill 595 (Printers No. 912)**

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**Testimony of Kerry Smith, Senior Staff Attorney
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Good morning, Chairman Folmer, Minority Chairman Williams, and members of the Committee. My name is Kerry Smith, and I am a senior staff attorney in Community Legal Services' Homeownership and Consumer Right Unit. I thank you for holding this hearing and inviting CLS to testify today on the issue of remote webcam notarizations.

Community Legal Services, Inc. was established by the Pennsylvania Bar Association in 1966. Since then, CLS has provided legal services to more than one million low-income Philadelphia residents, representing them in court, and advocating on their behalf regarding policies that affect them. As the city's largest provider of free legal services, CLS assists more than 9,000 of Philadelphia's poorest residents with their legal problems each year. The Homeownership and Consumer Rights Unit represents approximately 600 homeowners annually dealing with the potential loss of their home. While the vast majority of those cases involve foreclosures, a number of our clients have been victims of fraud. Some have had imposters attempt to steal their homes through forged deeds. Others have purchased and invested in homes from scam artists who never held title to the property. Still others may have been exploited through a fraudulent power of attorney or one that they were not competent to sign. While the schemes may vary in form, in all cases the stories are heartbreaking.

It is through the lens of our clients' experiences that we view the issue before you today. Notaries play an important role in helping deter and detect possible fraudulent conveyances and documents. Under existing law, a notary provides verification that a document was signed or acknowledged in the physical presence of the notary by a signer who both properly established her identity and willingly executed the document for its intended purpose. The notary records these details in a journal or register, which is then available later to the public for review.

The question before you today is whether notaries can fulfill their fraud prevention duties remotely through webcam technology as effectively as they can in person. Stakeholders across the country are working to determine the answer. The National Association of Secretaries of



State (NASS) has launched a task force to study the issue, review available technologies, and develop standards that could ensure the integrity of remote notarizations, with a final report and recommendations anticipated soon. The Uniform Law Commission (ULC) recently established a committee to consider an amendment to its Revised Uniform Law on Notarial Acts (RULONA) that would allow remote notarizations for signers within the United States. And here in Pennsylvania, under the leadership of Chairman Folmer, interested parties are working together to examine the issue and the best approach for our state. We appreciate the opportunity to be a part of that process on behalf of our clients.

Our position on remote notarizations in Pennsylvania is informed by the fact that a Pennsylvania resident already can have a document remotely notarized by a notary licensed under Virginia law. In 2011, the Commonwealth of Virginia modified its law to allow an individual to appear remotely before Virginia notaries through audio-video applications, even if the individual is located in another jurisdiction. Pennsylvania law recognizes the validity of Virginia's remote notarization process. Specifically, Pennsylvania's recently revised notary law provides that a notarization lawfully performed in another state has the same effect under the law of this Commonwealth as if performed by a notary here. Given that backdrop, the more narrow matter before you is whether Pennsylvania should expand the availability of remote notarizations through Pennsylvania notaries and, if so, under what standards. Related matters to consider are whether individuals located outside of Pennsylvania should be able to appear remotely before notaries here, and whether Pennsylvania should continue to recognize other states' remote notarizations of documents executed by Pennsylvania residents if they do not meet the standards established here.

As you move forward with other stakeholders in examining whether to authorize remote notarization in Pennsylvania, we encourage the Committee to consider the following principles:

- Remote notarization through audio-visual communication should be used only for electronic notarizations. Notarization of paper documents should continue to require a personal appearance before a notary. Notarized paper documents may require an original, or "wet ink" signature, and questions may arise regarding the validity of remote notarizations of paper documents that require original signatures.
- Remote notarizations should require the use of an audio-visual technology that allows the individual and the notary to see, hear and communicate with each other in real time, simultaneously.
- A notary should create a recording of remote notarizations performed through audio-visual communication. The recording of the transaction would serve as a valuable tool for deterring fraud and ensuring compliance with notarial duties. This recording should



be stored for a reasonable period of time, ideally 10 years as provided in Montana's remote notarization statute. It should be made available to the signer, law enforcement and those with a court subpoena, and the cost for obtaining a copy of the recording should be reasonable. In addition, the remote notarization should be recorded in the notary journal, detailing the same information as currently required for in person notarizations, with a certified copy available to the public. Procedures should be established for the archival and retrieval of recordings in the event a notary no longer holds an active notary commission.

- Remote notarization should include a robust, multi-factor process to establish a signer's identity. When an individual appears in person before a notary, an identification document can be physically examined by the notary which helps verify the validity of the credential. Sharing that same credential through a video screen would not be as reliable of an exclusive method of identification. In the remote notarization context, this credential should be reviewed and retained, but the identification of the signer also should be confirmed through other methods. These may include knowledge-based authentication, where the signer is asked a series of questions about the individual from credit history and similar files. As recent events have made clear, data from credit history files and other sources may remain vulnerable to breaches; as such, the knowledge-based authentication should only supplement other identity verification procedures. Other methods include identity proofing process used by the federal government for employees and contractors, or biometric identifiers. We are concerned that knowledge-based authentication that demands users navigate a web application under time pressure may be difficult or impossible for some individuals. Authentication must be accessible to everyone, regardless of physical or mental impairments, language differences, age, or other barriers. Legislation should make accessibility an explicit requirement for remote notarizations.
- The remote notarization must employ technology that ensures with reasonable certainty that the notary and signer are viewing the same electronic document that cannot be altered after it is electronically signed.
- Standards should be set for technologies used in remote notarizations that ensure the security of the system.
- Pennsylvanians who utilize the remote notarization process when they are located in Pennsylvania should benefit from the protections established by our state law. Remote notarizations can raise questions about which laws apply to the transaction when the signer can be located in one state, the notary in another, and the company providing the audio-video communication in a third state. By contrast, when a notarization is performed in person, the matter is straightforward as both the signer and notary are located in the same state. As I testified earlier, Pennsylvania law currently recognizes the validity of any notarizations lawfully performed in another state. While this recognition may be suitable for notarizations that are performed in person in other



states, remote notarizations involving Pennsylvanians who are located in this Commonwealth should be governed by Pennsylvania law. This requirement will ensure that Pennsylvanians have strong legal rights that can be effectively enforced.

We believe these principles should be incorporated directly into the authorizing legislation itself, and not delegated to the regulatory agency. Adequate governing standards should be set in the legislation that can be further refined and continually adapted at the administrative level to address evolving technologies.

Again, thank you for inviting Community Legal Services to testify at today's hearing. We look forward to continue working with the Committee and other stakeholders on this important issue.

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