

NOTARIES PUBLIC (57 PA.C.S.) - AUTHORITY TO PERFORM NOTARIAL ACT,
NOTARIAL ACT PERFORMED FOR REMOTELY LOCATED INDIVIDUAL,
NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL ACT ON ELECTRONIC
RECORD AND SELECTION OF TECHNOLOGY

Act of Oct. 29, 2020, P.L. 1030, No. 97

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No. 2020-97

HB 2370

AN ACT

Amending Title 57 (Notaries Public) of the Pennsylvania Consolidated Statutes, in Revised Uniform Law on Notarial Acts, further providing for authority to perform notarial act, providing for notarial act performed for remotely located individual and further providing for notification regarding performance of notarial act on electronic record and selection of technology.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 304 of Title 57 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:
§ 304. Authority to perform notarial act.

* * *

(c) Certification of tangible copies.--A notarial officer may certify that a tangible copy of an electronic record is a true and correct copy of the electronic record.

Section 2. Title 57 is amended by adding a section to read:
§ 306.1. Notarial act performed for remotely located individual.

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

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

(1) The notary public:

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

(ii) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under section 307(b)(2) or under this section; or

(iii) is able to reasonably identify the individual by at least two different types of identity proofing processes or services.

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

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

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

(3) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act, including all interactions between the notary public and the remotely located individual.

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

(i) The record:

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

(B) involves:

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

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

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

(c) Notarial certificate.--If a notarial act is subject to this section, the certificate of notarial act required by section 315 (relating to certificate of notarial act) and the short form certificate under section 316 (relating to short form certificates) must indicate that the notarial act was performed by means of communication technology.

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

(1) The short form certificate is in the form provided by section 316 and contains a statement substantially as follows:
"This notarial act involved the use of communication technology."

(2) The certificate complies with the regulations promulgated under subsection (g) (1).

(e) Audio-visual recording.--The following apply:

(1) This subsection applies to:

(i) a notary public;

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

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

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

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

(ii) as otherwise required by the regulations promulgated under subsection (g) (4).

(f) Notification.--The following apply:

(1) 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 facilitated by communication technology and identify the technology.

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

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

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

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

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

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

(h) Promotion of uniformity.--Before promulgating, amending or repealing regulations about the performance of a notarial act with respect to a remotely located individual, the department shall consider, if consistent with this chapter, all of the following:

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

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

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

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

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

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

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

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

"Identity proofing." A process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

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

(1) the United States;

(2) Puerto Rico;

(3) the Virgin Islands; and

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

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

Section 3. Section 320 of Title 57 is amended by adding a subsection to read:

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

* * *

(c) Certification of tangible copies.--A recorder of deeds may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that the record be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

Section 4. Upon the effective date of this act, the Department of State shall immediately authorize a notary public to conduct notarial acts in the manner authorized by 57 Pa.C.S. § 306.1 if the notary gives notice to the Department of State as required by

57 Pa.C.S. § 306.1(f)(1) and uses a communication and identity proofing designated in the Department of State's March 25, 2020, notice of limited suspension of the requirements of 57 Pa.C.S. § 306, or that is designated in a list of additional acceptable technologies subsequently adopted by the Department of State. A notary public may use any other technology within 30 days of giving notice as required under 57 Pa.C.S. § 306.1(f)(1), unless the Department of State prohibits the use of the technology for good cause for failure to satisfy the requirements of 57 Pa.C.S. § 306.1 or determines that the use of the technology should be delayed pending an evaluation of the technology. This section shall expire upon the adoption of regulations by the Department of State as required by 57 Pa.C.S. § 306.1(g)(2).

Section 5. This act shall take effect immediately.

APPROVED--The 29th day of October, A.D. 2020.

TOM WOLF