

**Senate State Government Committee**  
**Public Hearing on SB 595, PN 912**  
**October 24, 2017**  
**10:00 AM**  
**Hearing Room One – North Office Building**  
**Written Testimony of Robert Torres, Acting Secretary of the Commonwealth**  
**Pennsylvania Department of State**

Thank you, Chairman Folmer, Minority Chairman Williams, and members of the committee for allowing the Department of State to submit written comments for the record on SB 595, PN 912 that would amend the Notary Public Law. The Department, through the Bureau of Commissions, Elections and Legislation (“Bureau”), appoints, commissions, and disciplines notaries in Pennsylvania under the Notary Public Law. For over 200 years, notaries public have been officially recognized by the Commonwealth for administering oaths and affirmations, certifying copies and taking depositions, affidavits, verifications and acknowledgements. Notaries public in Pennsylvania certify, verify and acknowledge hundreds of thousands of important documents each year. More than 85,000 men and women hold notary public commissions in Pennsylvania.

The Wolf Administration and the Department of State support Senator Folmer’s goal to provide remote notarization because it can solve problems that flow from a signer’s lack of geographic proximity to an available notary. Remote notarization also enables businesses to offer notarization services to clients from a central location.

**I. History of Notaries in Pennsylvania**

The office of notary public is an important position of public trust. Pennsylvania first enacted its own law governing notaries public in 1791. Under that first law, the Governor had the authority to appoint six notaries public for Philadelphia and three for the remaining counties.

The authority to appoint notaries public was transferred from the Governor to the Secretary of the Commonwealth by the Notary Public Law of 1953. The 1953 statute also streamlined the procedure for being appointed a notary public in the state.

On December 9, 2002, Pennsylvania enacted the first major amendments to the Notary Public Law of 1953 in some 50 years through Act 151 of 2002, effective July 1, 2003, 57 P.S. § 147 et seq.

Among many amendments designed to modernize the Notary Public Law of 1953, Act 151 contains a provision requiring all notary public applicants for both an initial appointment and reappointment to submit proof of having completed three hours of mandatory preapproved notary public education within six months immediately preceding application.

The amended Notary Public Law also eliminated the requirement for an embossing seal and

thus paved the way for electronic notarization. Act 151 required that approved notary education have a core curriculum that included electronic notarization. Act 151 also contemplated that electronic signatures and electronic records could be notarized, acknowledged or verified, although it provided few details on how electronic notarization should be implemented.

## **II. Electronic vs. Remote Notarization**

Electronic notarization (e-notarization) was included in the amendments to the Notary Public Law in 2002 (effective July 1, 2003). Electronic Notarization was launched on January 30, 2006. Notaries are eligible to provide e-notarization services if:

- They are a Pennsylvania Notary Public in good standing.
- The notary does not have any criminal/disciplinary actions.
- They utilize an electronic notary solution approved by the Department of State.
- They have an email address.

Under the Revised Uniform Law on Notarial Acts (RULONA), notary customers must still be in the physical presence of the notary. Long-distance or remote notarization is not permitted under Pennsylvania law, under either current law or in the upcoming changes to RULONA.

Electronic notarization (e-notarization) in its most basic and common form is the process of a commissioned notary affixing a digital signature or certificate to an electronic document where the digital signature or certificate is a series of numbers generated by a complex mathematical formula (algorithms) involving coding and decoding (encryption) technology, such that the document is tamper-evident. The fundamental components of notarization, including personal appearance of the document signers before the notary, still apply. But rather than a paper document and a rubber stamp notary seal, the notary digitally places his or her identifying information to a document which exists as electronic data in a computer-readable form.

There are over 240 electronic notaries active in Pennsylvania. The Department currently has six electronic notary solution vendors. These are organizations approved by the Department to offer electronic notary solutions to Pennsylvania notaries public that have obtained approval to notarize electronically.

It is the sense of the Department that notarization done remotely or via electronic audio-video communication, as proposed by SB 595, would necessarily all be electronic notarizations, since the notary would not be in the personal presence of the customer to apply the notary seal to the document the customer is signing.

### **III. SB 595**

Since the time of William Penn, personal appearance has been required for notarial acts—the relevant parties must be in the same physical space, within arms' length. Current law requires notarial acts, even those done electronically, to be done in the physical presence of the notary or other notarial officer. This bill would permit notarial acts to be done remotely, via a live electronic audio-video communication. Unlike other proposals, this bill introduces a radically simple revision to the “appearance” section; rather than spelling out what constitutes proper in the statutory text, the bill authorizes the Department to promulgate regulations on that topic. The use of regulatory, rather than statutory, definitions may enable notaries to better adapt their practice to the evolving needs of the notaries’ clients.

Remote notarization can solve problems that flow from a signer’s lack of geographic proximity to an available notary and will enable businesses to offer notarization services to clients from a central location.

One of the benefits of remote notarization is mitigation of the risk of forgery by requiring the notary to archive the audio-video recording of the entire notarization. Personal appearance by means of communication technology has received widespread acceptance as a way of invoking the jurisdiction and authority of federal and state courts. In many states, videoconference technology has been deemed trustworthy and reliable in criminal and civil proceedings.

Extra security measures can be taken to establish the signer’s identity, including use of knowledge-based authentication (KBA) technology. KBA is a method of verifying a signer’s identity for webcam notarizations and other transactions. KBA poses questions from an individual’s life and credit history—such as former street addresses, or financial institutions where the person has an account. The idea is to make the questions so specific that only the signer would know the answers; while the answers may be publicly-available, KBA places a strict time limit on answering these queries, so a would-be identify thief cannot take the time to research the answers and thus beat the system.

The Department intends to work with the Office of Administration (OA) to evaluate the identity proofing process and prospective alignment with OA’s Information Technology Policy (ITP) SEC037.

The three major areas that we need to make sure are addressed with all stakeholders and in this bill, are: mandatory disclosure, the identity proofing process and records retention requirements. The Department would request more direction in this bill from the General Assembly on the requirements for these areas, in part to address concerns about the bill’s constitutionality under non-delegation doctrine.

Thank you for allowing us to provide these comments for your review. Please let the Department know if you have any additional questions or concerns.