

Public Hearing on Senate Bill 595 before the
PENNSYLVANIA SENATE STATE GOVERNMENT COMMITTEE
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Chairman Folmer, Chairman Williams, and members of the Committee, thank you for the opportunity to make comments in this Public Hearing on Senate Bill 595 relating to electronic notarization.

My name is Marc Aronson. I am the President and Chief Executive Officer of the Pennsylvania Association of Notaries (PAN), located in Pittsburgh, Pennsylvania. Forty one thousand of the state's commissioned notaries public are members of our Association. Our Customer Service Department answers, on average, 200 calls per day from notaries seeking assistance with notarial matters. PAN is an approved education provider for the Department of State. Our Education Department, with three full-time instructors, presents over 250 seminars each year, in locations around the Commonwealth.

I have been a notary public, notary instructor, advisor, conference presenter, and expert witness on notarial matters for more than 45 years. I served as an official observer on the Uniform Law Commission's Drafting Committee and subsequently worked with our legislators and other advisors to enact the Revised Uniform Law on Notarial Acts (RULONA), in Pennsylvania. I was also an official observer when the Drafting Committee wrote an amendment to RULONA to enable the use of online electronic notarization by individuals located outside the United States.

I speak not in favor of, nor in opposition to, Senate Bill 595. PAN members have expressed little interest in performing electronic notarization by audio-visual communication. My intention today is to raise your awareness of issues and concerns that potentially affect the Association's members and the citizens of Pennsylvania. I urge the Committee to study and evaluate the advantages and the disadvantages of electronic notarization by audio-visual communication before crafting legislation.

In a white paper on electronic notarization, the Property Records Industry Association (PRIA) stated, "The practice of using a trusted third party to acknowledge or certify that certain formalities of document execution have taken place between individuals dates back to early civilization and has carried forward to modern times." PRIA listed the traditional assurances that the notarial act adds to the signing of documents:

- The notary acts as a trusted third party, an impartial witness to the signer's intent.
- The notary takes reasonable care to evaluate the signer's comprehension and willingness to sign.
- The notary's signature and stamp provide *prima facie* evidence of the facts stated in the notarial certificate (for example, that the signer appeared in person and was identified according to law as the individual he or she claimed to be).

PRIA also noted that, in addition to providing assurances between the parties to a transaction, the notarial act helps to deter fraud and thereby ensures the integrity of the public record.

Proponents of electronic notarization by audio-visual communication point out that the imposition of technology—in this case, technology facilitating an audio-visual interaction between individuals in remote locations over the web—does not affect the traditional assurances of the notarial act. While the notary retains his or her function and responsibilities as an impartial witness, the technology simply provides another means by which the notary may perform the duties of office. The added value of tamper-evident electronic documents, identity proofing technology, and the audio-visual record itself further enhances the reliability and security of the transaction.

Electronic notarization by audio-visual communication may be beneficial to specific markets and industries; it certainly benefits the vendors selling the technology. However, the path to achieving successful implementation has not been and will not be an easy one. Before proceeding with Senate Bill 595, the Committee should take advantage of the ongoing discussions in other states and at the national level:

- So far, only five states—Virginia, Montana, Texas, Nevada and Ohio—have passed laws enabling electronic notarization by audio-visual communication. Other states—for example, Minnesota—are observing and evaluating the progress made in those five states before moving ahead with their own legislation.
- Notary public administrators and other state officials I spoke to said the most difficult challenges lay after enactment, as unforeseen problems arose. They are open to sharing their experiences and lessons learned with their counterparts in other states.
- The RULONA Drafting Committee is re-convening to discuss an amendment to RULONA. States that adopted RULONA as their notary law would thereby have a clear path to uniformity in electronic notarization by audio-visual communication as well. The Drafting Committee is scheduled to meet November 3-4 in Washington DC.

It may be true that electronic notarization by audio-visual communication will not change the fundamental aspects of the notarial act, and that the technology has the potential to enhance the efficiency, reliability and security of the transaction. But I suggest there are numerous other issues to be considered. For example:

- Who is responsible for the long-term archiving, preservation, and accessibility of the electronic records? How will the courts determine whether the integrity and security of the audio-visual record has been preserved, not in the next five years but in the next twenty-five years?
 - If a notary performs a notarization according to law but experiences a failure of the technology to capture and record the transaction, who is liable to the customer or the receiver of the document?
 - Without face-to-face, interpersonal interaction, how is the presence or absence of coercion, willingness and competence detected, evaluated and acted upon in the online environment?
 - How will this bill affect the ordinary notaries public, the signing agents, the mobile notaries, and the “tag and title shops,” sole proprietors who serve their local communities? How will over 88,000 notaries in Pennsylvania benefit from this bill?
 - What effect does this bill have on thousands of notarizations, performed in Pennsylvania, on documents destined for use in other states or outside the United States? How is a notarization performed electronically by audio-visual communication authenticated or issued an apostille for use internationally?
 - How are industries other than banking, real estate, and lending going to be affected by this bill? Do we have an understanding of the unintended consequences this bill may cause?
 - Where is the support for electronic notarization by audio-visual communication among the citizens of Pennsylvania? How are individuals unable or unwilling to engage with technology going to be served?
 - How will we gain the confidence that this new process will provide the same level of assurance as that achieved by face-to-face interaction?
 - How will electronic notarizations by audio-visual communication reach the same level of understanding and trust with the public and private entities that rely on notaries’ services today?
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On behalf of the Pennsylvania Association of Notaries, I look forward to working with you to write legislation that maintains the traditional assurances of notarization while meeting the needs of the Commonwealth's citizens in the future.

Chairman Folmer, Chairman Williams, members of the Committee, thank you for your time and attention today. I would be happy to answer questions or provide additional commentary.

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References

"Electronic Notarization: Traditional Assurances for Electronically Recorded Documents," white paper adopted by the PRIA Board November 11, 2015, p. 1.