S T A T E O F N E W Y O R K

9201

2009-2010 Regular Sessions

I N A S S E M B L Y

October 21, 2009

Introduced by M. of A. EDDINGTON -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to providing for electronic notarization

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The executive law is amended by adding a new section 137-a to read as follows:

S 137-A. 1. DEFINITIONS. (A) "ELECTRONIC" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION ONE OF SECTION THREE HUNDRED TWO OF THE STATE TECHNOLOGY LAW.

(B) "ELECTRONIC DOCUMENT" MEANS INFORMATION THAT IS CREATED, GENERATED, SENT, COMMUNICATED, RECEIVED OR STORED BY ELECTRONIC MEANS.

(C) "ELECTRONIC NOTARIAL ACT" MEANS AN OFFICIAL ACT BY A NOTARY PUBLIC ON OR INVOLVING AN ELECTRONIC DOCUMENT AND USING MEANS AUTHORIZED BY THE SECRETARY OF STATE.

(D) "ELECTRONIC NOTARY PUBLIC" OR "ELECTRONIC NOTARY" MEANS A NOTARY PUBLIC WHO HAS REGISTERED WITH THE SECRETARY OF STATE THE CAPABILITY OF PERFORMING ELECTRONIC NOTARIAL ACTS.

(E) "ELECTRONIC SIGNATURE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION THREE OF SECTION THREE HUNDRED TWO OF THE STATE TECHNOLOGY LAW.

(F) "ELECTRONIC NOTARIAL STATEMENT OF AUTHORITY" MEANS THE PORTION OF A NOTARIZED ELECTRONIC DOCUMENT THAT IS COMPLETED BY A NOTARY PUBLIC AND CONTAINS THE NOTARY PUBLIC'S ELECTRONIC SIGNATURE AND ALL INFORMATION REQUIRED BY SECTION ONE HUNDRED THIRTY-SEVEN OF THIS ARTICLE.

(G) "NOTARY ELECTRONIC SIGNATURE" MEANS THOSE FORMS OF ELECTRONIC SIGNATURE, WHICH HAVE BEEN APPROVED BY THE SECRETARY OF STATE AS AN ACCEPTABLE MEANS FOR AN ELECTRONIC NOTARY TO AFFIX THE NOTARY PUBLIC'S OFFICIAL SIGNATURE TO AN ELECTRONIC RECORD THAT IS BEING NOTARIZED.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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2. PHYSICAL APPEARANCE REQUIREMENT. (A) A NOTARY PUBLIC SHALL NOT PERFORM AN ELECTRONIC NOTARIAL ACT IF THE DOCUMENT SIGNER DOES NOT APPEAR IN PERSON BEFORE THE NOTARY PUBLIC AT THE TIME OF NOTARIZATION. UNDER NO CIRCUMSTANCE SHALL A NOTARY PUBLIC BASE IDENTIFICATION MERELY UPON FAMILIARITY WITH A SIGNER'S ELECTRONIC SIGNATURE OR AN ELECTRONIC VERIFICATION PROCESS THAT AUTHENTICATES THE SIGNER'S ELECTRONIC SIGNATURE WHEN THE SIGNER IS NOT IN THE PHYSICAL PRESENCE OF THE NOTARY PUBLIC.

(B) THE METHODS FOR IDENTIFYING DOCUMENT SIGNERS FOR AN ELECTRONIC NOTARIZATION SHALL BE THE SAME AS THE METHODS REQUIRED FOR A PAPER-BASED NOTARIZATION.

3. REGISTRATION REQUIREMENTS. (A) BEFORE PERFORMING ANY ELECTRONIC NOTARIAL ACT OR ACTS, A NOTARY PUBLIC SHALL REGISTER THE CAPABILITY TO NOTARIZE ELECTRONICALLY WITH THE SECRETARY OF STATE ON A FORM PRESCRIBED BY THE SECRETARY OF STATE.

(B) IN REGISTERING THE CAPABILITY TO PERFORM ELECTRONIC NOTARIAL ACTS, THE NOTARY PUBLIC SHALL PROVIDE THE FOLLOWING INFORMATION TO THE SECRETARY OF STATE, NOTARY PROCESSING UNIT:

(I) THE APPLICANT'S NAME AS CURRENTLY COMMISSIONED AND COMPLETE MAILING ADDRESS;

(II) THE EXPIRATION DATE OF THE NOTARY PUBLIC'S COMMISSION AND SIGNATURE OF THE COMMISSIONED NOTARY PUBLIC;

(III) THE APPLICANT'S E-MAIL ADDRESS;

(IV) THE DESCRIPTION OF THE ELECTRONIC TECHNOLOGY OR TECHNOLOGIES TO BE USED IN ATTACHING THE NOTARY PUBLIC'S ELECTRONIC SIGNATURE TO THE ELECTRONIC DOCUMENT;

(V) AN EXEMPLAR OF THE NOTARY PUBLIC'S ELECTRONIC SIGNATURE, WHICH SHALL CONTAIN THE NOTARY PUBLIC'S NAME AND ANY NECESSARY INSTRUCTIONS OR TECHNIQUES THAT ALLOW THE NOTARY PUBLIC'S ELECTRONIC SIGNATURE TO BE READ; AND

(VI) IF THE DEVICE USED TO CREATE THE ELECTRONIC SIGNATURE WAS ISSUED OR REGISTERED THROUGH A LICENSED CERTIFICATION AUTHORITY, THE NAME OF THE AUTHORITY, THE SOURCE OF THE LICENSE, THE STARTING AND EXPIRATION DATES OF THE DEVICE'S TERM OF REGISTRATION AND ANY REVOCATIONS, ANNULMENTS, OR OTHER PREMATURE TERMINATIONS OF ANY REGISTERED DEVICE OF THE REGISTRANT THAT WAS DUE TO MISUSE OR COMPROMISE OF THE DEVICE, WITH THE DATE, CAUSE AND NATURE OF EACH TERMINATION EXPLAINED IN DETAIL.

4. TYPES OF ELECTRONIC NOTARIAL ACTS. ANY NOTARIAL ACT AUTHORIZED BY SECTION ONE HUNDRED THIRTY-FIVE OF THIS ARTICLE MAY BE PERFORMED ELECTRONICALLY AS PRESCRIBED BY THIS SECTION IF UNDER APPLICABLE LAW THAT DOCUMENT MAY BE SIGNED WITH AN ELECTRONIC SIGNATURE.

5. FORM AND MANNER OF PERFORMING THE ELECTRONIC NOTARIAL ACT: (A) WHEN PERFORMING AN ELECTRONIC NOTARIAL ACT, A NOTARY PUBLIC SHALL APPLY AN ELECTRONIC SIGNATURE, WHICH SHALL BE ATTACHED TO OR LOGICALLY ASSOCIATED WITH THE ELECTRONIC DOCUMENT SUCH THAT REMOVAL OR ALTERATION OF SUCH ELECTRONIC SIGNATURE IS DETECTABLE AND WILL RENDER EVIDENCE OF ALTERATION OF THE DOCUMENT CONTAINING THE NOTARY SIGNATURE WHICH MAY INVALIDATE THE ELECTRONIC NOTARIAL ACT.

(B) THE NOTARY PUBLIC'S ELECTRONIC SIGNATURE IS DEEMED TO BE RELIABLE IF THE FOLLOWING REQUIREMENTS ARE MET: (I) IT IS UNIQUE TO THE NOTARY PUBLIC;

(II) IT IS CAPABLE OF INDEPENDENT VERIFICATION;

(III) IT IS RETAINED UNDER THE NOTARY PUBLIC'S SOLE CONTROL;

(IV) IT IS ATTACHED TO OR LOGICALLY ASSOCIATED WITH THE ELECTRONIC DOCUMENT; AND

(V) IT IS LINKED TO THE DATA IN SUCH A MANNER THAT ANY SUBSEQUENT ALTERATIONS TO THE UNDERLYING DOCUMENT ARE DETECTABLE AND MAY INVALIDATE THE ELECTRONIC NOTARIAL ACT.

(C) THE NOTARY PUBLIC'S ELECTRONIC SIGNATURE SHALL BE USED ONLY FOR THE PURPOSE OF PERFORMING ELECTRONIC NOTARIAL ACTS.

(D) THE SECRETARY SHALL ADOPT RULES NECESSARY TO ESTABLISH STANDARDS, PROCEDURES, PRACTICES, FORMS, AND RECORDS RELATING TO A NOTARY PUBLIC'S ELECTRONIC SIGNATURE. THE NOTARY PUBLIC'S ELECTRONIC SIGNATURE SHALL CONFORM TO ANY STANDARDS ADOPTED BY THE SECRETARY.

6. CHANGE OF E-MAIL ADDRESS. WITHIN FIVE DAYS AFTER THE CHANGE OF AN ELECTRONIC NOTARY PUBLIC'S E-MAIL ADDRESS, THE NOTARY PUBLIC SHALL ELECTRONICALLY TRANSMIT TO THE SECRETARY OF STATE A NOTICE OF THE CHANGE, SIGNED WITH THE NOTARY PUBLIC'S OFFICIAL ELECTRONIC SIGNATURE.

S 2. Section 136 of the executive law is amended by adding a new subdivision 3 to read as follows:

3. FOR ELECTRONIC NOTARIAL SERVICES, EXCEPT WHERE ANOTHER FEE IS SPECIFICALLY PRESCRIBED BY STATUTE, A FEE NOT IN EXCESS OF THOSE SPECIFIED WITHIN THIS SECTION.

S 3. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.