

9493

I N A S S E M B L Y

January 7, 2010

Introduced by M. of A. BING, KOON, CASTRO -- Multi-Sponsored by -- M. of
A. DelMONTE, REILLY, SKARTADOS, SWEENEY, THIELE -- read once and
referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to providing for elec-
tronic notarization

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

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

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

6 (B) "ELECTRONIC DOCUMENT" MEANS INFORMATION THAT IS CREATED, GENER-
7 ATED, SENT, COMMUNICATED, RECEIVED OR STORED BY ELECTRONIC MEANS.

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

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

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

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

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

25 2. PHYSICAL APPEARANCE REQUIREMENT. (A) A NOTARY PUBLIC SHALL NOT
26 PERFORM AN ELECTRONIC NOTARIAL ACT IF THE DOCUMENT SIGNER DOES NOT
27 APPEAR IN PERSON BEFORE THE NOTARY PUBLIC AT THE TIME OF NOTARIZATION.

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

LBD14736-02-0

1 UNDER NO CIRCUMSTANCE SHALL A NOTARY PUBLIC BASE IDENTIFICATION MERELY
2 UPON FAMILIARITY WITH A SIGNER'S ELECTRONIC SIGNATURE OR AN ELECTRONIC
3 VERIFICATION PROCESS THAT AUTHENTICATES THE SIGNER'S ELECTRONIC SIGNA-
4 TURE WHEN THE SIGNER IS NOT IN THE PHYSICAL PRESENCE OF THE NOTARY
5 PUBLIC.

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

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

13 (B) IN REGISTERING THE CAPABILITY TO PERFORM ELECTRONIC NOTARIAL ACTS,
14 THE NOTARY PUBLIC SHALL PROVIDE THE FOLLOWING INFORMATION TO THE SECRE-
15 TARY OF STATE, NOTARY PROCESSING UNIT:

16 (I) THE APPLICANT'S NAME AS CURRENTLY COMMISSIONED AND COMPLETE MAIL-
17 ING ADDRESS;

18 (II) THE EXPIRATION DATE OF THE NOTARY PUBLIC'S COMMISSION AND SIGNA-
19 TURE OF THE COMMISSIONED NOTARY PUBLIC;

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

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

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

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

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

39 5. FORM AND MANNER OF PERFORMING THE ELECTRONIC NOTARIAL ACT: (A) WHEN
40 PERFORMING AN ELECTRONIC NOTARIAL ACT, A NOTARY PUBLIC SHALL APPLY AN
41 ELECTRONIC SIGNATURE, WHICH SHALL BE ATTACHED TO OR LOGICALLY ASSOCIATED
42 WITH THE ELECTRONIC DOCUMENT SUCH THAT REMOVAL OR ALTERATION OF SUCH
43 ELECTRONIC SIGNATURE IS DETECTABLE AND WILL RENDER EVIDENCE OF ALTER-
44 ATION OF THE DOCUMENT CONTAINING THE NOTARY SIGNATURE WHICH MAY INVALI-
45 DATE THE ELECTRONIC NOTARIAL ACT.

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

49 (II) IT IS CAPABLE OF INDEPENDENT VERIFICATION;

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

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

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

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

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

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

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

13 3. FOR ELECTRONIC NOTARIAL SERVICES, EXCEPT WHERE ANOTHER FEE IS
14 SPECIFICALLY PRESCRIBED BY STATUTE, A FEE NOT IN EXCESS OF THOSE SPECI-
15 FIED WITHIN THIS SECTION.

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