HOUSE DOCKET, NO. 912 FILED ON: 1/17/2017

HOUSE . . . . . No. 815

The Commonwealth of Massachusetts

PRESENTED BY:

Carmine L. Gentile

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act modernizing notary services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Carmine L. Gentile	*13th Middlesex*	*1/17/2017*
Chris Walsh	*6th Middlesex*	*1/17/2017*
Michelle M. DuBois	*10th Plymouth*	*1/17/2017*

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HOUSE . . . . . No. 815

By Mr. Gentile of Sudbury, a petition (accompanied by bill, House, No. 815) of Carmine L. Gentile, Chris Walsh and Michelle M. DuBois relative to regulating notarization to allow for electronic notaries. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1581* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act modernizing notary services.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 222 of the Massachusetts General Laws is hereby amended by inserting the following section after section 12:

Section.

(a) As used in this section, the following words shall have the following meanings:

"Affirmation", an act in which a person makes a vow in the presence of the electronic notary under penalty of perjury.

"Approved time stamp provider", a person or organization recognized by the secretary of state as capable of reliably providing time stamp services on notary service electronic documents.

"Electronic", a thing relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic acknowledgement", a notarial act in which an electronic notary electronically certifies that the signer, whose identity is proven by satisfactory evidence, either:

(1) Appeared before the electronic notary and acknowledged that the signer executed the instrument;

(2) Provided secure electronic acknowledgement that the signer executed the electronic instrument presented to the electronic notary.

"Electronic commission", the written authority to perform electronic notarization acts.

"Electronic document", any record created, generated, sent, communicated, received or stored by electronic means.

"Electronic jurat", an electronic notarial act in which the electronic notary certifies that a signer, whose identity is proven by satisfactory evidence, has made in the electronic notary's presence a voluntary electronic sig nature or mark and has taken an oath or affirmation vouching for the truthfulness of the signed electronic document.

"Electronic notary", any person commissioned to perform notarial acts under this article.

"Electronic notary public", any person commissioned to perform notarial acts under this article.

"Electronic notary token", the electronic attachment to a notarized electronic document that is attached by the electronic notary and that contains the notary's electronic signature. The

electronic notary token is linked to the electronic document to which it relates in a manner so that if the document is changed the electronic notary token is invalidated.

"Electronic signature", an electronic method or process that through the application of a security procedure allows a determination that the electronic signature at the time it was executed was all of the following:

(1) Unique to the person using it;

(2) Capable of verification;

(3) Under the sole control of the person using it;

(4) Linked to the electronic document to which it relates in a manner so that if the document is changed the electronic signature is invalidated.

"Notary service electronic certificate", the materials and methods issued by an electronic notary to a prospective signer so that signer may create a notary service electronic signature.

"Notary service electronic signature", an act completed by a signer using a properly issued notary service electronic certificate to sign an electronic document.

"Oath", an act in which a person makes a vow in the presence of the electronic notary under penalty of perjury, with reference made to a supreme being.

"Personal knowledge of identity", familiarity with an individual resulting from interactions with that individual over a sufficient time to eliminate reasonable doubt that the individual has the identity claimed.

"Satisfactory evidence of identity",

(1) Proof of identity is evidenced by one of the following:

(i) An unexpired driver license that is issued by a state or territory of the United States;

(ii) An unexpired passport that is used by the United States Department of State;

(iii) An unexpired identification card that is issued by any branch of the United States armed forces;

(iv) Any other unexpired identification card that is issued by the United States government or a state or tribal government that contains the individual's photograph, signature and physical description and that contains the individual's height, weight, color of hair and color of eyes;

(v) The oath or affirmation of a credible person who is personally known to the electronic notary and who personally knows the individual signer;

(vi) The oath or affirmation of a credible person who personally knows the individual and who provides satisfactory evidence of identity pursuant to items (i), (ii), (iii) or (iv) of this subdividsion;

(vii) Personal knowledge of the individual signer by the electronic notary.

(2) For the purposes of a real estate conveyance or financing, proof of identity may be evidenced by one of the following:

(i) A valid unexpired passport that is issued by the United States government;

(ii) A valid unexpired passport that is issued by a national government other than the United States government and that is accompanied by a valid unexpired visa or other

documentation that is issued by the United States government and that is necessary to establish an individual's legal presence in the United States;

(iii) Any other valid unexpired identification that is deemed acceptable by the United States Department of Homeland Security to establish an individual's legal presence in the United States and that is accompanied with supporting documents as required by the United States Department of Homeland Security.

"Time stamp token", a secure electronic method to affix a statement of time and date that the document was recognized as a valid notary service electronic document by an approved time stamp provider. A time stamp token is attached by an approved time stamp provider to the document in a way that if the document changes, the time stamp token is invalidated.

(b) Any notarial act in which a person by oath or affirmation signs a document may be performed electronically as prescribed by this article.

(c) Unless otherwise expressly prohibited by law, the following notarial acts, terms and entities have the same legal effect as those prescribed by article 2 of this chapter:

(1) Electronic acknowledgment as acknowledgment;

(2) Electronic oath as oath

(3) Electronic jurat as jurat;

(4) Electronic affidavit as affidavit;

(5) Electronic notarial act as notarial act;

(6) Electronic notarial certificate token as notarial certificate;

(7) Electronic notary as notary.

(d) An electronic commission is a commission to perform only electronic notary acts. Only an electronic notary is authorized to perform electronic notary acts.

(e) Unless otherwise expressly prohibited by law, any electronic notarial act may be performed by either:

(1) An act in the presence of an electronic notary as prescribed by this article;

(2) An electronic notarial service as prescribed by this article for which the person signing appears before an electronic notary and by oath or affirmation acknowledges that any notary service electronic document that is created by the person pursuant to this article has the same legal force and effect as if the person appeared before an electronic notary and by oath or affirmation executed an electronic notarial act.

(f) A notarized electronic document consists of the following:

(1) A complete electronic document;

(2) A signature or mark that is affixed to the document by the signer;

(3) A time and date statement that is affixed to the document in a manner that is approved by the secretary of state;

(4) An electronic notary token that is affixed to the document in a manner that is approved by the secretary of state.

(g) On completion of the notarized electronic document, any change to any of the elements prescribed in subsection f invalidates the notarized electronic document.

(h) A notarized electronic document shall be considered completed in the presence of an electronic notary if it consists of the following:

(1) A complete electronic document;

(2) A signature or mark that is affixed to the document by the signer;

(3) A time and date statement that is contained within the electronic notary token;

(4) An electronic notary token that is affixed to the document by the electronic notary.

(i) On completion of the notarized electronic document, any change to any of the elements prescribed in subsection h of this section invalidates the notarized electronic document.

(j An electronic notary public shall:

(1) Keep, maintain and protect as a public record a journal of all official acts performed by the notary as prescribed in section 1 of chapter 222 and in the form prescribed by the secretary of state;

(2) Provide and keep the materials and processes to create an electronic notary token as approved by the secretary of state;

(3) Authenticate with the electronic notary token all official acts and affix the date of the expiration of the notary's commission as an electronic notary on every document that the electronic notary electronically signs;

(4) Respond to any requests for information and comply with any investigations that are initiated by the secretary of state or the office of the attorney general.

(k) Electronic notaries public shall perform the following electronic notarial acts when requested:

(1) Take electronic acknowledgements;

(2) Administer oaths and affirmations relating to electronic documents and electronic notarial acts;

(3) Perform jurats relating to electronic documents and electronic notarial acts

(4) Educate notary service electronic signature certificate applicants about the responsibilities and consequences of the use of the certificate;

(5) Administer an oath or affirmation that the notary service electronic signature certificate applicant understands the responsibilities and consequences of using a notary service electronic signature certificate to sign a notary service electronic document and that the electronic signature certificate has the same legal force and effect as any notarial act made before a notary public pursuant to section 1 of this chapter;

(6) Register the notary service electronic signature certificate applicant for the issuance of a notary service electronic signature certificate that has a maximum useful life of two years.

(l) This article applies to electronic notarial acts that are performed by electronic notaries who are appointed in this state and applies only to their acts performed in the United States.