

HOUSE No. 495

The Commonwealth of Massachusetts

PRESENTED BY:

Tom Sannicandro

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 passage of the accompanying:

An Act relative to electronic notarization.

PETITION OF:

NAME:

Tom Sannicandro

DISTRICT/ADDRESS:

7th Middlesex

HOUSE No. 495

By Mr. Sannicandro of Ashland, a petition (accompanied by bill, House, No. 495) of Tom Sannicandro relative to the electronic notarization of documents. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to electronic notarization.

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

1 Definitions

2 In this article, unless the context otherwise requires:

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

6 2. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
7 optical, electromagnetic or similar capabilities.

8 3. "Electronic acknowledgment" means a notarial act in which an electronic notary
9 electronically certifies that the signer, whose identity is proven by satisfactory evidence, either:

10 (a) Appeared before the electronic notary and acknowledged that the signer executed the
11 instrument.

12 (b) Provided secure electronic acknowledgment that the signer executed the electronic
13 instrument presented to the electronic notary.

14 4. "Electronic commission" means the written authority to perform electronic notarization
15 acts.

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

18 6. "Electronic jurat" means an electronic notarial act in which the electronic notary
19 certifies that a signer, whose identity is proven by satisfactory evidence, has made in the

20 electronic notary's presence a voluntary electronic signature or mark and has taken an oath or
21 affirmation vouching for the truthfulness of the signed electronic document.

22 7. "Electronic notary public" or "electronic notary" means any person commissioned to
23 perform notarial acts under this article.

24 8. "Electronic notary token" means the electronic attachment to a notarized electronic
25 document that is attached by the electronic notary and that contains the notary's electronic
26 signature. The electronic notary token is linked to the electronic document to which it relates in a
27 manner so that if the document is changed the electronic notary token is invalidated.

28 9. "Electronic signature" means an electronic method or process that through the
29 application of a security procedure allows a determination that the electronic signature at the
30 time it was executed was all of the following:

31 (a) Unique to the person using it.

32 (b) Capable of verification.

33 (c) Under the sole control of the person using it.

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

36 10. "Notary service electronic certificate" means the materials and methods issued by an
37 electronic notary to a prospective signer so that signer may create a notary service electronic
38 signature.

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

41 12. "Oath" or "affirmation" means an act in which a person makes a vow in the presence
42 of the electronic notary under penalty of perjury, with reference made to a supreme being in the
43 case of an oath.

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

47 14. "Satisfactory evidence of identity" means:

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

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

50 (ii) An unexpired passport that is issued by the United States department of state.

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

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

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

59 (vi) The oath or affirmation of a credible person who personally knows the individual and
60 who provides satisfactory evidence of identity pursuant to item (i), (ii), (iii) or (iv) of this
61 subdivision.

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

63 (b) In addition to the provisions of paragraph 14, subdivision (a) of this section, for the
64 purposes of a real estate conveyance or financing that proof of identity may be evidenced by one
65 of the following:

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

67 (ii) A valid unexpired passport that is issued by a national government other than the
68 United States government and that is accompanied by a valid unexpired visa or other
69 documentation that is issued by the United States government and that is necessary to establish
70 an individual's legal presence in the United States.

71 (iii) Any other valid unexpired identification that is deemed acceptable by the United
72 States department of homeland security to establish an individual's legal presence in the United
73 States and that is accompanied with supporting documents as required by the United States
74 department of homeland security.

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

80 Applicability of article; electronic signature laws

81 A. Any notarial act in which a person by oath or affirmation signs a document may be
82 performed electronically as prescribed by this article if under applicable law that document may
83 be signed with an electronic signature.

84 B. Unless otherwise expressly prohibited by law, the following notarial acts, terms and
85 entities have the same legal effect as those prescribed by article 2 of this chapter:

- 86 1. Electronic acknowledgment as acknowledgment.
- 87 2. Electronic oath as oath.
- 88 3. Electronic jurat as jurat.
- 89 4. Electronic affidavit as affidavit.
- 90 5. Electronic notarial act as notarial act.
- 91 6. Electronic notarial certificate token as notarial certificate.
- 92 7. Electronic notary as notary.

93 C. An electronic commission is a commission to perform only electronic notary acts And
94 only an electronic notary is authorized to perform electronic notary acts.

95 D. Unless otherwise expressly prohibited by law, any electronic notarial act may be
96 performed by either:

- 97 1. An act in the presence of an electronic notary as prescribed by this article.
- 98 2. An electronic notarial service as prescribed by this article for which the person signing
99 appears before an electronic notary and by oath or affirmation acknowledges that any notary
100 service electronic document that is created by the person pursuant to this article has the same
101 legal force and effect as if the person appeared before an electronic notary and by oath or
102 affirmation executed an electronic notarial act.

103 E. Section 41-132 applies in conjunction with this article to electronic signatures used by
104 electronic notaries.

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

107 Notarized electronic documents; elements

108 A. A notarized electronic document consists of the following:

- 109 1. A complete electronic document.
- 110 2. A signature or mark that is affixed to the document by the signer.
- 111 3. A time and date statement that is affixed to the document in a manner that is approved
112 by the secretary of state.

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

115 B. On completion of the notarized electronic document, any change to any of the
116 elements prescribed in subsection A invalidates the notarized electronic document.

117 Duties; electronic notarization in presence of electronic notary

118 A. Electronic notaries public shall perform the following electronic notarial acts when
119 requested:

120 1. Take electronic acknowledgments.

121 2. Administer oaths and affirmations relating to electronic documents and electronic
122 notarial acts.

123 3. Perform jurats relating to electronic documents and electronic notarial acts.

124 4. Educate notary service electronic signature certificate applicants about the
125 responsibilities and consequences of the use of the certificate.

126 5. Administer an oath or affirmation that the notary service electronic signature certificate
127 applicant understands the responsibilities and consequences of using a notary service electronic
128 signature certificate to sign a notary service electronic document and that the electronic signature
129 certificate has the same legal force and effect as any notarial act made before a notary public
130 pursuant to article 2 of this chapter.

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

133 B. A notarized electronic document that is completed in the presence of an electronic
134 notary consists of the following:

135 1. A complete electronic document.

136 2. A signature or mark that is affixed to the document by the signer.

137 3. A time and date statement that is contained within the electronic notary token.

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

139 C. On completion of the notarized electronic document, any change to any of the
140 elements prescribed in subsection B of this section invalidates the notarized electronic document.

141 D. An electronic notary public shall:

142 1. Keep, maintain and protect as a public record a journal of all official acts performed by
143 the notary as prescribed in section 41-361 and in the form prescribed by the secretary of state.

144 2. Provide and keep the materials and processes to create an electronic notary token as
145 approved by the secretary of state.

146 3. Authenticate with the electronic notary token all official acts and affix the date of the
147 expiration of the notary's commission as an electronic notary on every document that the
148 electronic notary electronically signs.

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

151 Authentication of authority of officer for foreign notarizations

152 An electronic notarial act performed by any of the persons described in section 33-501
153 shall be recognized in this state if the notarial act creates an electronically notarized electronic
154 document as prescribed by this article.