

(H. B. 2327)

(No. 155-2010)

(Approved October 25, 2010)

AN ACT

To add new subsections (3), (4), and (12) to Section 2; renumber current subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18) of Section 2 as subsections (5), (6), (7), (8), (9), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), and (21), respectively, of Section 2; amend subsection (b) of Section 3; amend Section 7; add Sections 17, 18, 19, 20, and 21; renumber Sections 17 and 18 as Sections 22 and 23, respectively, of Act No. 148 of August 8, 2006, known as the “Electronic Transactions Act,” in order to confer on the Office of Management and Budget the functions, powers, and authorities to enforce the aforementioned Act; provide that the Legislative Assembly and the Judicial Branch shall adopt the proper provisions to enforce the public policy set forth therein; and repeal Act No. 359 of September 16, 2004, as amended, known as the “Puerto Rico Electronic Signature Act.”

STATEMENT OF MOTIVES

There is no doubt that the automation of processes in the public and private endeavors has streamlined them and allowed for a more effective and adequate rendering of services that are necessary for the citizens of Puerto Rico in general. However, this entails certain risks which are inherent to the nature of electronic media that, among other things, could affect the very integrity of transactions, as well as the confidence needed for citizens to favor the use of such media for their daily errands.

It is the public policy of the Government of Puerto Rico to facilitate and promote the participation of Puerto Rico in the new commercial order, so that it maintains high competitiveness standards in the international markets created by globalization. In this new order, Puerto Rico has been recognized by the World

Economic Forum and is ranked 36, out of 131 countries, in terms of its worldwide technological competitiveness. Even more interesting is the fact that we were ranked second within the Latin American region, and fourth, within the entire American region. In terms of technological availability, we are ranked twenty-six, and twenty-five in sophisticate business operations.

Electronic signatures are a necessary tool to maintain and improve our competitiveness, which allows for securing the privacy, integrity, and authenticity of electronic transactions. Their use provides reliability in a virtual world where interpersonal contact is circumscribed to electronic transmissions.

Thus, the State, in its interest to promote this public policy, recognizes and accepts electronic signatures and confers the same on them legal effect and value as that of handwritten signatures on paper, by virtue of the approval of Act No. 359 of September 16, 2004, known as the “Puerto Rico Electronic Signature Act.”

Act No. 359 of September 16, 2004 created the Electronic Signature Infrastructure Committee (CIFE, Spanish acronym), with the purpose of supervising, regulating, organizing, and overseeing the infrastructure necessary to institute the use of electronic signatures in Puerto Rico. The Committee was granted the powers and authorities necessary for and inherent to its function, pursuant to the provisions of said Act and the regulations approved thereunder.

Furthermore, Act No. 359 of September 16, 2004 conferred on CIFE very broad functions and powers, such as establishing operational guidelines and policies to be observed by the Certification Authorities, the Registration Authorities, signers, and any other natural or juridical person offering any service or product related to the use of electronic signatures, as authorized by the Committee; to conduct an annual audit, both financial and technological, of Certification Authorities, Registration Authorities, or any other natural or juridical person offering any service or product related to the use of electronic signatures

that are subject to regulation under the law; to establish through regulation the operational and financial requirements to be met by any Certification Authority or Registration Authority to be certified as such through the issue of a license to that effect; to issue licenses to Certification Authorities or Registration Authorities; to order the suspension or cancellation of licenses of Certification Authorities or Registration Authorities that fail to comply with the provisions of the Act or the regulations or orders promulgated thereunder; to fix by regulation the fees to be charged for licenses issued under the Act, as well as the charges on account of the investigation of license applications and registration fees; to establish the prices, fees, or amounts that signers shall pay to Registration Authorities for the issue, revocation, or cancellation of a Digital Certificate; to establish the amount of the bond to be posted by Certification Authorities and Registration Authorities to respond for any noncompliance with the Act or the regulations approved thereunder; to establish the prices, fees, or amounts to be paid by signers for any other products or services necessary for the use of electronic signatures, be these services provided by a Certification Authority, a Registration Authority, or any other natural or juridical person that provides any service or product related to the use of electronic signatures.

We believe that the aforementioned powers and functions are very broad. The implementation of these powers and functions would require the CIFE to be an entirely independent and autonomous agency, to operate perhaps as a public corporation, with an operating budget that enables it to maintain a complex organizational structure and high technology systems that are continuously updated.

In order to attain the purposes of the Act, said agency should have an entire organizational structure consisting of information systems experts, computer security systems, system analysts, operating system auditors, certified public

accountants, and financial auditors, as well as an entire staff of secretaries and human resources to support this framework.

On the other hand, the authorities and powers granted to the CIFE under Act No. 359 of September 16, 2004 are in conflict with the public policy provided in Act No. 151 of June 22, 2004, known as the “Electronic Government Act.” This Act sets forth as public policy the incorporation of information technologies into government procedures, the rendering of services, and the dissemination of information, through a strategy that focuses on citizens geared toward the attainment of accomplishments and which actively promotes innovation. Act No. 151 of June 22, 2004 provides that, in implementing its public policy, the Office of Management and Budget shall be entrusted with the task of promoting a coordinated approach to the issues posed by the information society and facilitating for the access to information and government services to be offered in a manner consistent with the applicable provisions, among others, on the protection of privacy, security, information availability policies, and guaranteed access to persons with disabilities. Likewise, it shall be in charge of evaluating and updating the Guidelines issued by the Governor’s Committee on Information Systems that govern the acquisition and implementation of information technology systems, equipment, and programs for the agencies of the Executive Branch of the Government of Puerto Rico. The OMB would have to meet the requirements established under Act No. 359 of September 16, 2004 to be able to execute and implement the public policy of Act No. 151 of June 22, 2004. For such reason, we deem it prudent for the regulation of security mechanisms and the public policy on the use of technologies to be contained within the same statute.

On the other hand, Act No. 148 of August 8, 2006, to be amended by this Act, sets forth the public policy of promoting and facilitating the participation of Puerto Rico in national and international markets and fostering the development of

the necessary legal infrastructure for our citizens to reliably and securely enjoy the benefits of national and global e-commerce. Said public policy is consistent with the one set forth in Act No. 151 of June 22, 2004.

The use of digital signatures is a mechanism that provides security to transactions conducted electronically. Said mechanism makes it possible to guarantee the creation and integrity of digital documents, messages, or electronic transactions, providing these documents with a feature that pertained only to paper documents. Said mechanism consists of a set of data associated to a digital message that guarantees the signer's identity and the integrity of the message. Digital signatures are the safest mechanism, within the group of electronic signatures, to send and receive messages and conduct transactions on the Internet.

By virtue of Act No. 151 of June 22, 2004, the OMB has developed the Electronic Government Program. Said Program has the technology, personnel, and experience needed to implement the norms and procedures relative to the use of information technologies in the Government. To this end, the webpage of the Government of Puerto Rico (www.gobierno.pr) was developed. Said webpage works as a virtual Government office, open 24 hours a day, seven days a week. Through this webpage, citizens are able to carry out their government transactions. Furthermore, it allows them to print forms and their instructions to request Government services from their computer, to then take these personally or send them by mail to the office from which services are being requested. For the OMB, adopting the use of digital signatures shall be a simple and economical process, and shall be consistent with the public policy of cutbacks on spending and the placement of functions in strategic and effective positions.

Due to the fact that this is a security mechanism used in electronic transactions, and that the OMB is the agency responsible for promoting a coordinated approach to the issues posed by the information society and facilitating

access to government services and information through the Electronic Government Program, we believe that this measure is the right mechanism to achieve the use of security mechanisms, such as digital signatures in government transactions.

Through the approval of Act No. 148 of August 8, 2006, the Legislative Assembly sought to adopt a mechanism to: (1) facilitate commercial electronic transactions between states that have adopted the law; (2) facilitate interstate transactions and transactions with government agencies; and (3) promote consistency in electronic transactions. Thus, we temper our code of laws with the model law drafted by the United States National Conference of Commissioners on Uniform State Laws.

The intent of the Legislative Assembly was to promote and facilitate Puerto Rico's participation in national and international markets and to foster the development of the necessary legal infrastructure for all our citizens to reliably and securely enjoy the benefits of national and global e-commerce.

In light of our experience and the need to foster the privacy, integrity, and authenticity of electronic transactions, this Act seeks to provide the Government of Puerto Rico with the necessary tools to facilitate the implementation, development, and maintenance of an electronic signature infrastructure that meets any requirements and standards that may be established at the local, interstate, Federal, and global levels. Therefore, the Office of Management and Budget is entrusted with the development of the necessary regulations to effectively implement the public policy provided for herein.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.—New subsections (3), (4), and (12) are hereby added to Section 2 of Act No. 148 of August 8, 2006, to as follows:

“Section 2.—Definitions.—

For the purposes of this Act, the following terms shall have the meaning stated hereinbelow:

(1) ...

(2) ...

(3) ‘Certification Authority’.—Any juridical person that may produce, issue, cancel, or revoke Digital Certificates used in electronic signatures, which holds a self-signed Digital Certificate that allows for the establishment of a certification route between Digital Certificates subordinated to or created by the same.

(4) ‘Registration Authority’.—Any juridical person that may receive and verify the personal data of any natural or juridical person that requests a Certification Authority to produce, issue, cancel, and/or revoke a Digital Certificate.

...

(12) ‘Digital Signature’.—A kind of electronic signature that is represented as a set of data, sounds, symbols, or processes in electronic form, created by a private key that uses an asymmetric technique to ensure the data message’s integrity through a verification code, as well as the link between the owner of a digital signature and the data message sent. In converting a message with a digital signature, the person who has the initial message or communication and the public key of the signer can determine accurately whether:

(i) The conversion was made by using the private key that corresponds to the signer’s public key;

(ii) The message or communication has been altered since the conversion was made.

...”

Section 2.—Current subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18) of Section 2 of Act No. 148 of August 8, 2006 are hereby renumbered as subsections (5), (6), (7), (8), (9), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), and (21), respectively.

Section 3.—Subsection (b) of Section 3 of Act No. 148 of August 8, 2006 is hereby amended to read as follows:

“Section 3.—Scope.—

(a) ...

(b) Except as provided by special law, this Act shall not apply to the following transactions:

(1) ...

...

(12) Such transactions that involve documents that should be enclosed with any hazardous materials, pesticides, or any other toxic substance or material, in the transportation or handling of such materials and substances.

(c) ...”

Section 4.—Section 7 of Act No. 148 of August 8, 2006 is hereby amended to read as follows:

“Section 7.—Legal Recognition of Electronic Documents, Electronic Signatures, and Electronic Contracts.—

(a) ...

...

(e) Except as otherwise provided in this Act, a message, document, or transaction that is associated with or attached to a valid electronic signature pursuant to applicable laws shall have the same legal effect conferred on the documents executed with handwritten signatures.

(f) None of the provisions of this Act shall be construed so as to limit the probatory value that a message, document, or transaction without an associated or attached electronic signature could have, even if the same is never printed on paper or another medium different from that on which it was originally issued. These provisions shall neither be applied so as to exclude, restrict, or divest from its legal effect such message, document, or transaction without an associated or attached electronic signature when the applicable laws do not require either the electronic signature or the handwritten signature.

(g) The provisions of this Act shall neither be construed so as to exclude, restrict, or divest from its legal value and effect, any message, document, or transaction in which an electronic agent intervened in its issue or transmission, insofar as the actions of such electronic agent are legally attributable to the person involved.”

Section 5.—A Section 17 is hereby added to Act No. 148 of August 8, 2006 to read as follows:

“Section 17.—Regulation of Electronic Transactions and Signatures.—

The Office of Management and Budget shall approve regulations as necessary to evaluate the ability of agencies and/or their functions to participate in electronic transactions. Likewise, the OMB shall promulgate regulations in order to organize and coordinate with agencies the access of citizens to the services offered by the Government through electronic transactions, as well as the use of electronic signatures, while guaranteeing the security of the transactions. Furthermore, it shall draft regulations as necessary to establish eligibility criteria to offer the services to be provided by Certification Authorities and Registration Authorities.”

Section 6.—A Section 18 is hereby added to Act No. 148 of August 8, 2006 to read as follows:

“Section 18.—Creation and Conservation of Electronic Records.—

The Office of Management and Budget of Puerto Rico shall set the necessary standards to be used by each government agency for the creation and conservation of electronic records and for the conversion of paper records into electronic records.”

Section 7.—A Section 19 is hereby added to Act No. 148 of August 8, 2006 to read as follows:

“Section 19.—Admission and Distribution of Electronic Records by Government Agencies.—

(a) Except as otherwise provided in Section 11(f) of this Act, the Office of Management and Budget shall impose the conditions or limitations under which a government agency electronic records and electronic signatures may be sent to or accepted from other persons, as well as to create, generate, communicate, store, process, use, and rely on electronic records and electronic signatures.

(b) The Office of Management and Budget, within the parameters provided in compliance with subsection (a) of this Section and taking security into special consideration, may specify:

(1) The manner and format in which electronic records shall be created, generated, sent, communicated, received, and stored, as well as the systems established for such purposes;

(2) When electronic records should be signed by electronic media, the manner and format in which the electronic signature should be affixed to the electronic record and the identity of and the criteria to be met by any third party used by a person who files a document in order to facilitate a process;

(3) The proper control processes and procedures to ensure the adequate preservation, disposition, integrity, security, confidentiality, and verification of electronic records; and

(4) Any other required attributes for electronic records, which shall be specified for non-electronic records as pertinent or reasonably necessary under the circumstances.

(c) This Act does not compel government agencies to use or allow the use of electronic records or electronic signatures.”

Section 8.—A Section 20 is hereby added to Act No. 148 of August 8, 2006 to read as follows:

“Section 20.—Interoperability.—

The Office of Management and Budget shall set the standards for the use of electronic records or electronic signatures by agencies and promote consistency and interoperability with requirements similar to those adopted by the Federal Government and specialized entities recognized in other U. S. or international jurisdictions.

The Office of Management and Budget shall be required to impose stringent compliance requirements and metrics and to render semiannual reports to the Governor and the Legislative Assembly to allow for the assessment of the effectiveness of the implementation of this measure.”

Section 9.—A Section 21 is hereby added to Act No. 148 of August 8, 2006 to read as follows:

“Section 21.—The Judicial Branch and the Legislative Assembly.—

The Legislative Assembly and the Judicial Branch shall adopt provisions as each may deem appropriate and convenient to coordinate and render effective the public policy set forth in this Act within their respective internal processes.”

Section 10.—Current Sections 17 and 18 of Act No. 148 of August 8, 2006 are hereby renumbered as Sections 22 and 23.

Section 11.—Act No. 359 of September 16, 2004, as amended, known as the “Puerto Rico Electronic Signature Act,” is hereby repealed.

Section 12.—This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 155-2010 (H. B. 2327)** of the **4th Session of the 16th Legislature** of Puerto Rico:

AN ACT to add new subsections (3), (4), and (12) to Section 2; renumber current subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18) of Section 2 as subsections (5), (6), (7), (8), (9), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), and (21), respectively, of Section 2; amend subsection (b) of Section 3; amend Section 7; add Sections 17, 18, 19, 20, and 21; renumber Sections 17 and 18 as Sections 22 and 23, respectively, of Act No. 148 of August 8, 2006, known as the “Electronic Transactions Act,” in order to confer on the Office of Management and Budget the functions, powers, and authorities to enforce the aforementioned Act; provide that the Legislative Assembly and the Judicial Branch shall adopt the proper provisions to enforce the public policy set forth therein; and repeal Act No. 359 of September 16, 2004, as amended, known as the “Puerto Rico Electronic Signature Act.”

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on the 18th day of April, 2013.

Juan Luis Martínez Martínez
Acting Director