2020 Regular Session

HOUSE BILL NO. 122

BY REPRESENTATIVE GREGORY MILLER

NOTARIES: Provides for the ratification of certain executive orders relative to notarial acts

AN ACT
To enact Chapter 11 of Title 35 of the Louisiana Statutes of 1950, to be comprised of R.S. 35:701 and 702, relative to the effect of remote notarization during certain emergencies and disasters; to provide for notary services during the COVID-19 public health emergency; to provide relative to the ratification of Section 6 of Proclamation 37-JBE-2020 and Part C of Section 5 of Proclamation 41-JBE-2020; to provide for retroactive and prospective application; to provide for effectiveness, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 11 of Title 35 of the Louisiana Revised Statutes of 1950, comprised of R.S. 35:701 and 702, is hereby enacted to read as follows:

CHAPTER 11. MODIFICATION OF PRESENCE REQUIREMENT FOR NOTARY FUNCTIONS PERFORMED DURING 2020 COVID-19 PUBLIC HEALTH EMERGENCY

§701. Purpose; ratification

A. The legislature finds that the COVID-19 public health emergency created a statewide emergency disrupting the ability of notaries public to be in the physical presence of persons whose signatures the notary public was authenticating. This Chapter is enacted for the benefit and protection of the state as a whole and its citizens, to prevent injustice, inequity, undue hardship, and disruption of transactions.
§702. Remote notarization authorized

A. Notwithstanding any law to the contrary, any act in which any person or witness appeared before a notary public using an electronic device or process which allowed all such persons and the notary public to communicate simultaneously by sight and sound and to which the electronic signatures of such persons, witnesses, and the notary public were affixed on or after March 11, 2020, and before May 1, 2020, shall have the same force and effect as if all persons, witnesses, and the notary public had been in the physical presence of each other.

B. The provisions of Subsection A of this Section shall not apply to any testament, trust instrument, donation inter vivos, matrimonial agreement, act modifying, waiving, or extinguishing an obligation of final spousal support, or any amendments to such acts, or authentic acts.

C. Any act which would constitute an authentic act but for the appearance of one or more necessary persons via electronic means, may still be valid as an act under private signature or an acknowledged act.

Section 2. The provisions of this Act shall preempt and supersede but not repeal any conflicting provision of the Civil Code or any other provision of law to the extent that such provision conflicts with the provisions of this Act.

Section 3. This Act is declared to be interpretative, curative, and procedural, and therefore is to be applied retroactively as well as prospectively.

Section 4. The Louisiana State Law Institute is hereby directed to include as notes to this Act Proclamation 37-JBE-2020 and Proclamation 41-JBE-2020.
Section 5. This Act shall become effective upon signature by the governor or, if not
signed by the governor, upon expiration of the time for bills to become law without signature
by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
vetoed by the governor and subsequently approved by the legislature, this Act shall become
effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part
of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute
part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Abstract: Provides for ratification of Section 6 of Proclamation 37-JBE-2020 and Part C
of Section 5 of Proclamation 41-JBE-2020 regarding remote notarization during the
COVID-19 public health emergency.

Proposed law ratifies Section 6 of Proclamation 37-JBE-2020 and Part C of Section 5 of
Proclamation 41-JBE-2020 related to remote notarization during the COVID-19 public

Proposed law provides for appearances before a notary public using an electronic device or
process that allowed such persons and notary public to communicate simultaneously by sight
and sound and affix electronic signatures.

Proposed law provides that transactions authenticated through electronic notarization during
the period of March 11, 2020, until April 30, 2020, shall have the same force and effect as
if the parties to the transaction, witnesses, and notary public had been in the physical
presence of each other.

Proposed law does not apply to any testament, trust instrument, donation inter vivos,
matrimonial agreement, act modifying, waiving, or extinguishing an obligation of final
spousal support, or any amendments to such acts, or authentic acts.

Proposed law provides that any act which would constitute an authentic act but for the
appearance of one or more necessary persons via electronic means, may still be a valid act
under private signature or acknowledged act.

Proposed law applies retroactively as well as prospectively.

Effective upon signature by the governor or lapse of time for gubernatorial action.

(Adds R.S. 35:701 and 702)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and
Procedure to the original bill:

1. Remove the proposed legislation and provide for ratification of Section 6 of
Proclamation 37-JBE-2020 and Part C of Section 5 of Proclamation 41-JBE-
2020 regarding transactions authenticated through electronic notarization during the period of March 11, 2020, through April 30, 2020.

2. Provide that proposed law supersedes certain provisions of present law.

3. Provide that proposed law is to be applied retroactively.

4. Direct the La. State Law Institute to include notes regarding certain executive orders.

5. Provide for effectiveness upon signature of governor.