

2020 Regular Session

HOUSE BILL NO. 722

BY REPRESENTATIVE GREGORY MILLER

FINANCIAL INSTITUTIONS: Provides for the enforcement of electronic signatures by financial institutions

1 AN ACT

2 To amend and reenact R.S. 13:3733.1(A)(introductory paragraph) and to enact R.S.  
3 13:3733.3, relative to the use of electronic signatures by financial institutions; to  
4 provide for the enforcement of electronic signatures; to provide for a burden of  
5 proof; to provide for evidence; to provide for the recovery of attorney fees and costs;  
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 13:3733.1(A)(introductory paragraph) is hereby amended and  
9 reenacted and R.S. 13:3733.3 is hereby enacted to read as follows:

10 §3733.1. Financial institution records; reproductions; recordkeeping; admissibility  
11 into evidence; definitions

12 A. As used in this Section ~~and in~~, R.S. 13:3733.2, and 3733.3, the following  
13 terms shall have the following meanings:

14 \* \* \*

15 §3733.3. Financial institution records; enforcement of electronic signatures

16 A. Electronic signatures used in transactions by and with financial  
17 institutions are enforceable to the full extent of the law.

18 B. If the purported signer claims that the electronic signature sought to be  
19 enforced by a financial institution is not his signature, the purported signer has the  
20 burden of proving that the electronic signature is invalid or unenforceable.

1           C. If a financial institution seeks to enforce the electronic signature and the  
2           purported signer disputes that the electronic signature is valid or enforceable, the  
3           financial institution may submit corroborating evidence to prove that the electronic  
4           signature is that of the purported signer and is valid and enforceable. Such evidence  
5           may include, but is not limited to, evidence that the purported signer received a  
6           direct or indirect benefit or value from the transaction, such as the deposit of funds  
7           into the purported signer's pre-existing account with the financial institution; the  
8           purported signer's receipt of loan proceeds; or the payment of a debt owed by the  
9           purported signer.

10           D. In any litigation or arbitration where a purported signer of an electronic  
11           record disputes the validity or enforceability of an electronic signature sought to be  
12           enforced by a financial institution, as enforcement is authorized by R.S. 9:2601 et.  
13           seq, reasonable attorney fees and costs may be recovered as follows:

14           (1) If a court or arbitrator holds that the purported signer has proven that the  
15           electronic signature is invalid or unenforceable, the purported signer shall be entitled  
16           in the same proceeding to recover from the financial institution the purported signer's  
17           reasonable attorney fees and costs incurred in proving that the signature was not  
18           valid or enforceable.

19           (2) If a court or arbitrator holds that the signer has not proven that the  
20           electronic signature is invalid or unenforceable, the financial institution shall be  
21           entitled in the same proceeding to recover from the signer the financial institution's  
22           reasonable attorney fees and costs incurred in rebutting the signer's claims of the  
23           signature's invalidity or unenforceability.

24           Section 2. The legislature hereby finds that financial institutions may benefit from  
25 the use of electronic signatures and encourages the use of electronic signatures by financial  
26 institutions to facilitate commerce.

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**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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HB 722 Engrossed

2020 Regular Session

Gregory Miller

**Abstract:** Provides for the enforcement of electronic signatures by financial institutions and authorizes recovery of costs and attorney fees.

Present law (R.S. 9:2601, et seq., Louisiana Uniform Electronic Transactions Act) provides for the effect, use, and enforceability of electronic records and electronic signatures involved in a transaction between two or more persons relating to the conduct of business, commercial, or governmental affairs with certain exceptions. Present law (R.S. 9:2610) further provides for the effect of change or error involving an electronic signature or record.

Proposed law explicitly provides that electronic signatures used in transactions by and with financial institutions are enforceable to the full extent of the law.

Proposed law provides that if the purported signer claims that the electronic signature sought to be enforced by a financial institution is not his own, the purported signer has the burden of proving that the electronic signature is invalid or unenforceable.

Proposed law provides that a financial institution may submit corroborating evidence to provide that an electronic signature is that of the purported signer and provides examples of such evidence.

Proposed law provides that in any litigation or arbitration where a purported signer of an electronic record disputes the validity or enforceability of an electronic signature sought to be enforced by a financial institution as authorized by present law, reasonable attorney fees and costs may be recovered as follows:

- (1) If the purported signer proves that the electronic signature is invalid or unenforceable, the purported signer shall recover from the financial institution his reasonable attorney fees and costs.
- (2) If the signer does not prove that the electronic signature is invalid or unenforceable, the financial institution shall recover from the signer its reasonable attorney fees and costs.

Present law provides for definitions. Proposed law applies present law definitions to proposed law.

(Amends R.S. 13:3733.1(A)(intro. para.); Adds R.S. 13:3733.3)