

SENATE RESOLUTION NO. 140

BY SENATOR MILLER

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and recommend legislation relative to the acknowledgment of acts under private signature pursuant to Civil Code Article 1836 by simultaneous audiovisual transmission as a procedure separate from remote online notarization.

WHEREAS, remote online notarization is a formal process by which a notarial act is performed by means of communication technology in accordance with R.S. 35:621 et seq., and generally assumes that a party appears before a notary public by communication technology at the time of execution of the instrument; and

WHEREAS, in all other respects, a remote online notarial act shall comply with other applicable laws and regulations governing the manner of execution of that act; and

WHEREAS, R.S. 35:623(B) provides that certain instruments shall not be executed by remote online notarization, including testaments or codicils thereto; trust instruments or acknowledgments thereof; donations inter vivos; matrimonial agreements or acknowledgments thereof; acts modifying, waiving, or extinguishing an obligation of final spousal support; and authentic acts; and

WHEREAS, Louisiana law does not authorize remote online notarization to execute an authentic act as defined in Civil Code Article 1833; and

WHEREAS, notwithstanding those limitations, an act that fails to be authentic as a result of being executed by remote online notarization may still be valid as an act under private signature or as an acknowledged act pursuant to Civil Code Article 1836; and

WHEREAS, when an act under private signature is acknowledged in conformity with Civil Code Article 1836, it is regarded prima facie as the true and genuine act of a party executing it and shall be admitted in evidence without further proof; and

WHEREAS, Civil Code Article 1836 provides that an act under private signature may be acknowledged by recognizing the signature as the signature of the party who executed the act, before a court, a notary public, or another officer authorized to perform that function, in the presence of two witnesses; and

WHEREAS, an acknowledgment in accordance with Civil Code Article 1836 is not itself the execution of the underlying private signature instrument, but a later recognition pursuant to an oral declaration concerning a signature already affixed to the instrument; and

WHEREAS, Code of Civil Procedure Article 1436.1 permits a deposition to be taken by telephone or other remote electronic means if agreed to by all parties or ordered by the court; and

WHEREAS, pursuant to Code of Civil Procedure Article 1434, the deposition must be taken before a notary or other officer authorized to administer oaths who is not an employee or attorney of any party and is not otherwise interested in the outcome of the case; and

WHEREAS, Code of Civil Procedure Article 1443 requires the officer before whom the deposition is taken to administer the oath or affirmation and to record the testimony personally or by someone acting under the officer's direction and in the officer's presence; and

WHEREAS, Louisiana law also authorizes remote live testimony in open court upon a showing of appropriate safeguards pursuant to Code of Civil Procedure Article 1633.1; and

WHEREAS, the provisions of the Code of Civil Procedure demonstrate that the remote participation in legal proceedings authorized by Louisiana law are more demanding than an acknowledgment in accordance with Civil Code Article 1836, provided that the procedure is reliable and adequately documented; and

WHEREAS, a Civil Code Article 1836 acknowledgment is regarding the declarant's oral recognition of a signature, and not the contemporaneous execution of the original instrument, therefore it is appropriate to consider whether the acknowledgment may be made by simultaneous audiovisual transmission under clearly defined conditions as a procedure separate from remote online notarization; and

WHEREAS, notaries public may have occasion to receive a Civil Code Article 1836 acknowledgment from a client, affiant, witness, or other person whose identity is personally known to the notary, or whose identity can otherwise be reliably established; and

WHEREAS, the Louisiana State Law Institute has the capability and expertise to study and evaluate the need for revisions to applicable laws in the state of Louisiana, and to

make recommendations, together with specific proposals for legislation, relative to authorization of acknowledgment by simultaneous audiovisual transmission as a procedure separate from remote online notarization.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and recommend legislation relative to the acknowledgment of acts under private signature pursuant to Civil Code Article 1836 by simultaneous audiovisual transmission as a procedure separate from remote online notarization, and to report its findings, including any proposed legislation, to the Louisiana Legislature, no later than March 1, 2027.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall consider whether the procedure should be made available to all notaries public in the state of Louisiana under the same statutory conditions without requiring certification under the remote online notarization law, provided that the procedure is limited to acknowledgments in accordance with Civil Code Article 1836 and not used to execute an authentic act or any instrument excluded pursuant to R.S. 35:623(B).

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall focus on guiding principles and appropriate safeguards, which include, at a minimum, consideration of the following:

(1) A Civil Code Article 1836 acknowledgment by simultaneous audiovisual transmission as a procedure separate from remote online notarization.

(2) Availability to notaries public in the state of Louisiana without requiring certification under the remote online notarization law.

(3) Acknowledgments limited to persons personally known to the notary or whose identity can otherwise be reliably established.

(4) Compliance with uniform statutory safeguards.

(5) Reliable identification of the declarant if the declarant is not personally known to the notary.

(6) Possession or review of the original instrument at the time of the acknowledgment.

(7) Simultaneous audiovisual appearance before the notary and two witnesses.

(8) Retention of an appropriate record or certificate of the proceeding.

(9) Statutory language distinguishing the acknowledgment from remote online notarization.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit one printed copy and one electronic copy of any report produced pursuant to this Resolution to the David R. Poynter Legislative Research Library as required by R.S. 24:771 and 772, no later than March 1, 2027.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

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PRESIDENT OF THE SENATE