

2020 Regular Session

HOUSE BILL NO. 122

BY REPRESENTATIVE GREGORY MILLER

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

1 AN ACT

2 To enact Chapter 11 of Title 35 of the Louisiana Statutes of 1950, to be comprised of R.S.
3 35:701 and 702, relative to the effect of remote notarization during certain
4 emergencies and disasters; to provide for notary services during the COVID-19
5 public health emergency; to provide relative to the ratification of Section 6 of
6 Proclamation Number 37 JBE 2020 and Part C of Section 5 of Proclamation Number
7 41 JBE 2020; to provide for retroactive and prospective application; to provide for
8 effectiveness, and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

12 CHAPTER 11. MODIFICATION OF PRESENCE REQUIREMENT FOR NOTARY

13 FUNCTIONS PERFORMED DURING 2020 COVID-19 PUBLIC HEALTH

14 EMERGENCY

15 §701. Purpose; ratification

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

1 to persons relying on the authentication of signatures of persons not in the physical
2 presence of a notary public by a notary public who authenticated the signature
3 through electronic means using audio-video communication. Therefore, this Chapter
4 shall be liberally construed to effect its purposes.

5 B. The action of the governor of this state in issuing Section 6 of
6 Proclamation Number 37 JBE 2020 and Part C of Section 5 of Proclamation Number
7 41 JBE 2020 is hereby approved, ratified, and confirmed subject to the provisions
8 of this Part.

9 §702. Remote notarization authorized

10 A. Notwithstanding any law to the contrary, any act in which any person or
11 witness appeared before a notary public using an electronic device or process which
12 allowed all such persons and the notary public to communicate simultaneously by
13 sight and sound and to which the electronic signatures of such persons, witnesses,
14 and the notary public were affixed on or after March 11, 2020, and before May 1,
15 2020, shall have the same force and effect as if all persons, witnesses, and the notary
16 public had been in the physical presence of each other.

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

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

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

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

1 Section 4. The Louisiana State Law Institute is hereby directed to include as notes
2 to this Act Proclamation Number 37 JBE 2020 and Proclamation Number 41 JBE 2020.

3 Section 5. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 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)]

HB 122 Reengrossed

2020 Regular Session

Gregory Miller

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

Proposed law ratifies Section 6 of Proclamation Number 37 JBE 2020 and Part C of Section 5 of Proclamation Number 41 JBE 2020 related to remote notarization during the COVID-19 public health emergency from March 11, 2020, until April 30, 2020.

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 of 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 Number 37 JBE 2020 and Part C of Section 5 of Proclamation Number 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.

The House Floor Amendments to the engrossed bill:

1. Make technical Legislative Bureau amendments.