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E-SIGNATURES: WHAT TO DO IF YOU AND YOUR CLIENT CANNOT MEET- THE STATE OF THE LAW

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E-signature Issues in Louisiana

- Statutory framework authorizing e-signatures (Louisiana Uniform Electronic Transactions Act (UETA), La. Rev. Stat. Ann. § 9:2601, et seq.; passed in 2001)
- Exclusions from the Louisiana UETA
- Electronic Notarization and requirements for authentic acts
- Remote Online Notarization (“RON”) – Update on Proclamations and Pending Legislation
- E-filing and the use of electronic signatures

Statutory Background for Use of E-signatures

- Louisiana Uniform Electronic Transactions Act (UETA), La. Rev. Stat. Ann. § 9:2601, et seq.; passed in 2001.
- Based on the Uniform Electronic Transactions Act (1999), National Conference of Commissioners on Uniform State Laws
- Adopted by 47 states
- Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq (the “E-Sign Act”)

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2607. Legal recognition of electronic records, electronic signatures, and electronic contracts

- A. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- B. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- C. If a law requires a record to be in writing, an electronic record satisfies the law.
- D. If a law requires a signature, an electronic signature satisfies the law.

Comments:

(a) This Section sets forth the fundamental premise of this Chapter: namely, that the medium in which a record, signature, or agreement is created, presented or retained does not affect its legal significance. Subsections A and B of this Section are designed to eliminate the single element of medium as a reason to deny effect or enforceability to a record, signature, or agreement. The fact that the information is set forth in an electronic, as opposed to paper, record is irrelevant.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2603 Scope – does NOT apply to “the creation and execution of wills, codicils, or testamentary trusts”;

- Does not apply to the “extent [a transaction] it is governed by the provisions of Title 10 of the Louisiana Revised Statutes” – the comments indicate the Title 10 has its own provisions for electronic transactions such as check collections and electronic funds transfers;
- Does NOT apply to “a law governing adoption, divorce, or other matters of family law, with the exception of a temporary restraining order”;
- Various exclusions for cancellation or termination of utility services, evictions, rental agreements, cancellation or termination of health insurance and life insurance benefits, certain product recalls
- Documents relating to the transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2611 Notarization and acknowledgment

- “If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.”
- Comments: “This Section does not provide any guidance for how electronic notarization can be achieved.”

Louisiana Civil Code art. 1833 (Authentic act)

“An authentic act is a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed.”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Eschete v. Eschete, 2012-2059 (La.App. 1 Cir. 2/27/14, 4-5); 142 So.3d 985 (Donation invalidated because of physical separation of notary and witness from person signing document)

“While the trial court appears to have accepted the testimony of Ms. Robichaux and Ms. Smith as credible and that they were, in fact, in an adjoining office with the door open with Ms. Robichaux on the phone and Ms. Smith making copies, the trial court found that ‘the writing was not executed before Ms. Robichaux and that ... Mr. Eschete was not in the presence of Ms. Smith at the signing of the document.’ Under these specific facts, we cannot conclude that the trial court erred in finding that the act did not meet the requirements of an authentic act as contemplated by LSA–C.C. art. 1833.1. Clearly, the physical separation prevented the notary and one of the witnesses from observing Mr. Eschete affix his signature onto the act of donation.”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Authentic Acts

- “An authentic act constitutes full proof of the agreement it contains, as against the parties, their heirs, and successors by universal or particular title.” Louisiana Civil Code art. 1835 (Authentic act constitutes full proof between parties and heirs)
- “A donation *inter vivos* shall be made by authentic act under the penalty of absolute nullity, unless otherwise expressly permitted by law.” Louisiana Civil Code art. 1541 (Form required for donations)
- “Executory proceedings are those which are used to effect the seizure and sale of property, without previous citation and judgment, to enforce a mortgage or privilege thereon evidenced by an authentic act importing a confession of judgment, and in other cases allowed by law.” Louisiana Code of Civil Procedure art. 2631 (Use of executory proceedings)
- Notarial testaments (Louisiana Civil Code Article 1576)

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

- PROCLAMATION NUMBER 37 JBE 2020 (March 26, 2020) and 41 JBE 2020 (April 2, 2020)
 - A) [A Louisiana commissioned Notary] “ ... may perform notarization for an individual not in the physical presence of the notary public if:
 - 1) the individual, any witnesses [deleted in 41 JBE 2020] and the notary public can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;
 - 2) the notary public –
 - a) has reasonably identified the individual; and
 - b) either directly or through an agent: i) creates an audio and visual recording of the performance of the notarization, and ii) retains such recording as a notarial record for at least 10 years from the date of execution unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

- PROCLAMATION NUMBER 37 JBE 2020 (March 26, 2020) and 41 JBE 2020 (April 2, 2020)
 - c) The person appearing, all witnesses [deleted in 41 JBE 2020] and the Notary Public can affix their digital signatures to the act in a manner that renders any subsequent change or modification of the remote online notarial act to be evident.
- B) If a State law requires an individual to appear personally before or be in the physical presence of a notary public at the time of a notarization that requirement shall be satisfied if the individual and the notary public are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;
- except for the laws pertaining to testaments, trust instruments, donations inter vivos, matrimonial agreements, acts modifying, waiving or extinguishing an obligation of final spousal support and authentic acts.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

- PROCLAMATION NUMBER 37 JBE 2020 (March 26, 2020) and 41 JBE 2020 (April 2, 2020)

C) During this emergency, the recorder (as used in La. C.C. Art 3344) shall not refuse to record a tangible copy of an electronic record on the ground that it does not bear the original signature of a person if a notary public or other officer before whom it was executed certifies that the tangible copy is an accurate copy of the electronic record.

Section 8. "... effective retroactively to the beginning on this emergency on Wednesday, March 11, 2020 to Monday, April 13, 2020, or as extended by any subsequent Proclamation, unless terminated sooner." (Expired April 30, 2020)

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

Louisiana Supreme Court Letter to District Court Judges – March 30, 2020 - Affidavit Requirement for Petition for Protection from Abuse Filings (discusses effect of Proclamation)

Opposing Views on Executive Order

Louisiana Appleseed – will help self-represented litigants, including individuals seeking protective orders, temporary restraining orders, in forma pauperis petitions, or successions. Bulletin available on Facebook page.

Louisiana Notary Association – 1) Absence of security and information privacy provisions; 2) absence of regulation of platforms; and 3) separation of powers issues. Position statement provided to Governor on March 29, 2020 requesting repeal of Section 6 of the Executive Order.

Title, mortgage, and real estate industry also have stake in outcome

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

Pending legislation

- House Bill No. 122, Rep. Miller, House Bill No. 274, Rep. Garofalo, and Senate Bill No. 472, Sen. Luneau – HB 122 and 274 signed by President of the Senate on May 31, 2020
- HB 122 – Enacts La.R.S. 35:701 and 702 - “The action of the governor of this state in issuing Section 6 of Proclamation Number 37 JBE 2020 and Part C of Section 5 of Proclamation Number 41 JBE 2020 is hereby approved, ratified, and confirmed subject to the provisions of this Part.”
- Retroactive to March 11, 2020; covers period through May 1, 2020
- Does not apply to any document listed in the exclusions – no authentic acts
- Retroactive application applies to witnesses (although excluded from 41 JBE 2020 on April 2, 2020)

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

Pending legislation

- House Bill No. 122, Rep. Gregory Miller, House Bill No. 274, Rep. Raymond E. Garofalo, and Senate Bill No. 472, Sen. Luneau
- HB 274 and SB 472 allow for remote online notarization
- Limitations – exempts wills, trusts, donations inter vivos, marital agreements, certain spousal support agreements
- **Cannot be used for authentic acts**
- Establishes stakeholder committee to work with Secretary of State
- Discusses the procedure for performing the online notarization, including location of parties
- Record maintenance – 10 years for electronic document and audio/visual recording
- SB 472 – Retroactive to March 11, 2020; would take effect Feb. 1, 2022.
- HB 274 – Effective date Feb.1, 2022, depending on SECURE Act

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

Other Executive Orders

New York – March 19, 2020 – “Any notarial act that is required under New York State law is authorized to be performed utilizing audio-video technology provided that the following conditions are met ...”; effective until April 18, 2020.

Iowa – March 22, 2020 – “... temporarily suspend[s] the regulatory provisions of Iowa Code ... to the extent that they require the physical presence of a testator, settlor, principal, witness, or other person, if the person is present in a manner in which the witness or other person can see and hear the acts by electronic means, such as video conference, Skype, Facetime, Zoom, or other means, whether or not recorded.”

Connecticut – March 23, 2020 – “**Remote Notarization.** Effective immediately and through June 23, 2020, unless modified, extended or terminated by me, all relevant state laws and regulations are hereby modified to permit any notarial act that is required under Connecticut law to be performed using an electronic device or process ...”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

Other Executive Orders

Illinois – March 26, 2020 – “... the requirement that a person must ‘appear before’ a Notary Public commissioned under the laws of Illinois pursuant to the Illinois Notary Act, 5 ILCS 312/6-102, is satisfied if the Notary Public performs a remote notarization via two-way audio-video communication technology”. Secretary of State has issued guidance.

Colorado – March 27, 2020 – “This Executive Order temporarily suspends the requirement to appear personally before notarial officers to perform notarizations, and authorizes the Secretary of State to promulgate and issue temporary emergency rules to permit notarial officers to perform remote notarizations.” Effective for 30 days.

Maryland – March 30, 2020 – “An individual need not be in the physical presence of a notary public who performs a notarial act if: a. they communicate with each other simultaneously by sight and sound through a communication technology ...”; “effective until the termination of the state of emergency.”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Remote Online Notarization

Proposed Federal legislation - Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020

- Senators Mark Warner and Kevin Cramer
- “To authorize and establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce, to require any Federal court located in a State to recognize notarizations performed by a notary public commissioned by another State when the notarization occurs in or affects interstate commerce, and to require any State to recognize notarizations performed by a notary public commissioned by another State when the notarization occurs in or affects interstate commerce or when the notarization was performed under or relates to a public act, record, or judicial proceeding of the State in which the notary public was commissioned.”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

E-filing and Video Conferencing in Louisiana (Court status updates at www.lasc.org)

Jefferson Parish Clerk of Court – JeffNet; JeffAlerts (<https://www.courtonline.us/> - video conferencing for all 24th JDC (Jefferson) judges) – Reduced rate for 24 hour access (\$5) – IMPORTANT - E-filing and e-recording services are not available with 24-hour access accounts.

24th JDC and Orleans CDC remote check-in system – **SINE APP** - lawyers, litigants, defendants, witnesses, and visitors who have been permitted to attend in person may remain in their vehicles or outside of the courthouse until their case is called. **DOWNLOAD THE SINE APP BEFORE COURT** and use it to check in when you arrive to the courthouse; CDC in jury pool rooms.

Louisiana First and Fifth Circuit Court of Appeal – Zoom oral arguments

Orleans Parish – Remote Access System <http://www.orleanscivilclerk.com/onlinerecords.html> (March 27, 2020 – Clerk Chelsey Richard Napoleon announces FREE complimentary subscriptions to the Remote Access system including civil records and land records.)

Ascension, Calcasieu, Iberia, Jefferson Davis, Lafayette, Livingston, Plaquemines, Sabine, St. John the Baptist, St. Tammany, Tangipahoa, and Union Parishes - Odyssey E-File LA system <https://louisiana.tylerhost.net/OfsWeb/>

East Baton Rouge and Bossier - <https://clerkconnect.com/login>

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Electronic Wills

- **Florida** - Fla. Stat. Ann. § 732.523 (Self-proof of electronic will)
- **Arizona** - Ariz. Rev. Stat. Ann. § 14-2518 (Electronic will; requirements; interpretation)
- **Nevada** - Nev. Rev. Stat. Ann. § 133.085 (Electronic will)
- **Indiana** - Ind. Code Ann. § 29-1-21-1 (Chapter 21. Electronic Wills) "The purpose of this chapter is to provide rules for the valid execution, attestation, self-proving, and probate of wills that are prepared and signed electronically."
- Most, if not all, still have a physical presence requirement, but allow electronic signatures by testator, notary, and witnesses

Uniform Electronic Wills Act (drafted by the National Conference of Commissioners on Uniform State Laws, July 2019)

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2603.1 – Electronic applications for warrants and judicial records

- Section F allows person to sign an affidavit with an electronic signature

Op. Att'y Gen. No. 14-0187 (Jan. 9, 2015)

“Act 606 of the 2014 Regular Session authorizes judges to use electronic signatures when signing court orders, notices, official court documents, and other writings to be executed in connection with both civil and criminal proceedings, subject to the adoption of court rules establishing the method and ensuring the authenticity of such signatures. Accordingly, La. Atty. Gen. Op. No. 13-0158 is recalled.”

Hon. Scott U. Schlegel, Judge, Division “D”

24th Judicial District Court, Jefferson Parish

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2602 Definitions – “Electronic signature” – “no specific technology need be used to create a valid signature”;

- “one’s voice on an answering machine may suffice if the requisite intention is present”;
- “including one’s name as part of an electronic mail communication also may suffice, as may the firm name on the facsimile”

Preston Law Firm, L.L.C. v. Mariner Health Care Mgmt. Co., 622 F.3d 384 (5th Cir. 2010)

- Dispute over approximately \$2 million in legal fees; issue was whether emails sufficed for writing and signature requirements for binding settlement agreement on the payment of fees;
- Fifth Circuit held that a valid compromise was formed through email communications for settlement of the claim for legal fees; law firm sued under the open account statute and it was removed to federal court;
- “Where a writing and/or a signature is required to form a contract, an email will satisfy such requirement. See La.Rev.Stat. Ann. § 9:2607.” *Preston Law Firm*, 622 F.3d at 390.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Klebanoff v. Haberle, 43,102 (La.App. 2 Cir. 3/19/08); 978 So.2d 598

- “In the instant case, the parties' positions were clearly expressed in writings which are recognized under the La. Uniform Electronic Transactions Act, La. R.S. 9:2607. ” *Klebanoff*, 978 So.2d at 605.
- Early case holding that e-mail communications qualify as “writings” sufficient for settlement purposes under UETA.

Williamson v. Bank of New York Mellon, 947 F.Supp.2d 704 (N.D. Tex.2013)

- Question of whether the parties entered into a settlement agreement with a series of emails between counsel
- Under Texas UETA, the series of emails qualified as a signed writing
- The court discussed the distinction between typing your name at the end of an email and automatically including a signature block
- The court wrote that an attorney’s manually typed name qualified as an electronic signature under the UETA
- **Automatic signature blocks** – “McInnis's email client did not create a signature block of its own volition. Rather, McInnis must have generated his signature block at some point in the past. He then directed his email client to attach the signature block to his subsequent outgoing email. The Court concludes that these actions affirmatively show intent to sign the record as required by TUETA.” *Williamson*, 947 F.Supp.2d at 710-711.
- Compares to signature on a telegram

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

“A number of other courts have similarly found that names typed at the end of emails can be signatures under various states’ statutes of frauds and enactments of the Uniform Electronic Transactions Act (‘UETA’), which is the source of TUETA. E.g., *Preston Law Firm, L.L.C. v. Mariner Health Care Mgmt. Co.*, 622 F.3d 384, 391 (5th Cir.2010) (affirming that ‘[e]mails can qualify as the signed writings needed to form contracts’ under Louisiana’s UETA); *Lamle v. Mattel, Inc.*, 394 F.3d 1355, 1362 (Fed.Cir.2005) (opining that inclusion of individual’s name on email would be valid signature under California’s UETA); *Cloud Corp. v. Hasbro, Inc.*, 314 F.3d 289, 295–96 (7th Cir.2002) (holding that ‘the sender’s name on an e-mail satisfies the signature requirement of the [Illinois] statute of frauds’ and noting that it would be valid signature under federal Electronic Signatures in Global and National Commerce Act as well); *Adani Exps. Ltd. v. AMCI Exp. Corp.*, Civ. A. No. 05–304, 2007 WL 4298525, at *11 (W.D.Pa. Dec. 4, 2007) (finding email sufficient to meet requirements of Pennsylvania statute of frauds); *Roger Edwards, LLC v. Fiddes & Son, Ltd.*, 245 F.Supp.2d 251, 261 (D.Me.2003), *aff’d in part, dismissed in part*, 387 F.3d 90 (1st Cir.2004) (same for Maine statute of frauds); *Waddle v. Elrod*, 367 S.W.3d 217, 228–29 (Tenn.2012) (same for Tennessee); *Williason v. Delsener*, 59 A.D.3d 291, 874 N.Y.S.2d 41 (N.Y.App.Div.2009) (same for New York); see also *Tricon Energy, Ltd. v. Vinmar Int’l, Ltd.*, No. 4:10–CV–05260, 2011 WL 4424802, at *11 (S.D.Tex. Sept. 21, 2011) (holding, without reference to TUETA, that two emails closing with typed names ‘represent signed writings under the Texas UCC’).”

Williamson v. Bank of New York Mellon, 947 F.Supp.2d 704, 710 (N.D. Tex.2013)

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2604 – Application – only applies to electronic records and signatures created after July 1, 2001;

- States specifically that it is adopting the UETA and addresses inconsistencies with the E-Sign

§ 2605 – Use of electronic records and electronic signatures

- applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means
- Indicates that while some transactions may be made by electronic means, party may refuse to conduct other transactions by electronic means
- Gives examples of where it may be found the parties reached an agreement to conduct electronic transactions, even includes giving out a business card with an email address – May have implied that you are consenting to conduct business electronically

§ 2606 – Construction and Application – “to facilitate electronic transactions consistent with other applicable law” and eliminate barriers to electronic commerce and governmental transactions

- Statute is designed to “allow the courts to apply [the provisions] to new and unforeseen technologies and practices”;
- “As time progresses, it is anticipated that what is new and unforeseen today will be commonplace tomorrow”

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2608 Provision of information in writing; presentation of records

- If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record **capable of retention by the recipient at the time of receipt**.
- Also addressed how to handle electronic information if other laws require that the information be “posted or displayed in a certain manner”
- “Savings provision” – other substantive laws not overridden

§ 2609 –**Attribution and effect of electronic record and electronic signature**

- “An electronic record or electronic signature is attributable to a person **if it was the act of the person**.”
- Created a considerable amount of litigation – parties arguing that they did not sign electronically.
- “The act of the person may be shown in any manner, including a showing of the **efficacy of any security procedure** applied to determine the person to which the electronic record or electronic signature was attributable.”
- The effect of an electronic record or electronic signature attributed to a person is determined from the **context and surrounding circumstances at the time of its creation, execution, or adoption**, including the agreement of the parties, if any, and otherwise as provided by law.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Arbitration Agreements

Hill v. Hornbeck Offshore Servs., Inc., 799 F.Supp.2d 658 (E.D. La.2011)

- Incentive program where employee “electronically reviewed and signed” agreements that contained arbitration clauses
- Employee disputed whether the “clickwrap” agreement created a legally enforceable obligation to arbitrate.
- “Moreover, state law also gives legal effect to both electronic contracts and signatures. See La.Rev.Stat. § 9:2607. Therefore, in the absence of fraud, misrepresentation, or deceit, one is bound under Louisiana law to the terms of a contract, signed electronically or otherwise.” Hill, 799 F.Supp.2d at 661.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Uninsured Motorist Waivers

Bonck v. White, 2012-1522 (La.App. 4 Cir. 4/24/13, 6); 115 So.3d 651

- “No case exists in Louisiana that applies this statute [UETA] to a UMBI [uninsured/underinsured motorist bodily injury coverage] form.”
- Fourth Circuit held that statute does apply to insurance forms, including UMBI, based in part on an advisory letter from the acting Commissioner of Insurance that said electronic signatures are authorized in transacting the business of insurance in Louisiana.
- Plaintiff met the agent in Progressive's office and signed the application online in the office; when the dispute arose, Progressive produced a waiver form that was initialed and signed electronically by Plaintiff;
- Plaintiff denied she signed the waiver form, and argued that electronic signatures cannot be used in insurance policies; she also pointed out that her name was spelled with a “Y” rather than an “I”;
- The trial court granted the insurer’s MSJ, but the Fourth Circuit reversed, finding that genuine issues of material fact existed concerning whether Plaintiff actually signed the form electronically. An affidavit of Plaintiff showed that the form was completed four days after her actual visit to the office, and that all of her communications with the insurance company were in person four days earlier. Progressive’s affidavit only stated what was contained in the insurance company’s files.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Uninsured Motorist Waivers

Rapalo-Alfaro v. Lee, 2015-0209 (La.App. 4 Cir. 8/12/15); 173 So.3d 1174

- “Mr. Rapalo–Alfaro also asserted that Lloyd's motion should be denied because it failed to establish that the name, date, initials, and signature on the uninsured motorist rejection form—all of which were completed electronically—are attributable to him.
- Named Lloyds as a defendant and claimed he had UM coverage.
- Lloyd's filed MSJ supported by certified copy of the UM waiver electronically signed by plaintiff.
- Lloyds proved the signature by attaching a “digital signature acceptance confirmation” with plaintiff's electronic signature, a digital ID number associated with the signature, a box with his initials, and language confirming his electronic signature.
- Good background discussion on the burden of proof under UETA to prove electronic signatures.
- District Court granted MSJ for insurer, Fourth Circuit affirmed.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Uninsured Motorist Waivers

Weddborn v. Doe, 2015-1088 (La.App. 4 Cir. 5/4/16); 194 So.3d 80

- “While an electronic signature may be considered valid, the production of a UM rejection form, alone, is insufficient to establish that an insurer has borne its burden of proof on a motion for summary judgment, when there is a sworn statement by an insured denying that she executed the form. Such a statement creates, at the least, a credibility issue for which summary judgment is inappropriate.” *Weddborn*, 194 So.3d at 88.
- *Practice tip*: These cases tend to turn on the affidavit of the insurance company. In the cases where the insurance company has been successful, they have provided an affidavit of the actual agent who participated in the application process, or an affidavit on the technical details of how they prove attribution; the insured has been successful where the insurer only provides an affidavit of an employee who reviewed the policy after the fact and merely stated what was in the insurance files.
- Affidavit of plaintiff was not simple denial, but stated specific facts such as they had completed and signed all forms by hand, met with the agents in person, and had not completed anything online.
- District Court granted insurer’s MSJ; Fourth Circuit reversed.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Umbrella Insurer's MSJ

Whitehead v. Curole, 2018-1178 (La.App. 1 Cir. 5/9/19); 277 So.3d 409

- Plaintiff argued on summary judgment that the certified copy of the underwriting file was not admissible because it was signed electronically by the insurance company representative.
- First Circuit rejected the argument and said that the electronically signed letter was admissible under the UETA to certify the underwriting file and it was competent summary judgment evidence.
- “Thus, Ms. Horton’s [the insurance company representative] electronically signed letter is admissible under the current version of LSA-R.S. 9:2603 to certify the underwriting file.” *Whitehead*, 277 So.3d at 413.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

ATTRIBUTION CASES

Zulkiewski v. Am. Gen. Life Ins. Co., 299025, 2012 WL 2126068 (Mich. Ct. App. June 12, 2012)

- Dispute over life insurance proceeds; initially, first wife was named as beneficiary and parents were contingent beneficiaries; later changed to have parents as primary beneficiaries; then someone logged in, created an online account, and changed the beneficiary to the second wife as primary and parents as contingent beneficiaries.
- Insured dies; fight ensues between the new wife and the parents over the insurance proceeds.
- Interpleader filed against the parents after insurance company was sued by the second wife.
- Issue became the security procedures used to determine that the decedent had actually made the changes to the policy and the “efficacy of any security procedures” to respond to challenges to authenticity; not required, but one way to show attribution to the individual; American General submitted evidence of its safeguards, including personal information and policy information required to register and make changes online, and regular email and mail notifications confirming changes.
- The court ruled that American General submitted adequate information to show that they had proper safeguards in place, and that the parents could not establish that the changes were the result of fraud or that the changes were made by someone other than the decedent.

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2610 Effect of change or error

- Addresses errors in person-to-person and person-to-automated system transactions
- Requires prompt notification and reasonable steps to notify other party of error

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2612 Retention of electronic records; originals

- If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which: (1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and, (2) Remains accessible for later reference.
 - Comments – “issue of technology obsolescence and the need to update and migrate information to developing systems”

§ 2613 Admissibility in evidence

- “In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.”

§ 2614 Automated transaction

- A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the actions of the electronic agents or the resulting terms and agreements.
- Comments – “This Section confirms that contracts can be formed by machines functioning as electronic agents for parties to a transaction.”
- Discusses validity of “I AGREE” buttons on internet transactions

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

§ 2615 Time and place of sending and receipt

- “Default rules” on determining when an electronic record is sent or received

§ 2616 Transferable records

- A “transferable record” means an electronic record that “would be a note as defined in R.S. 10:3-101 et seq. [UCC – Negotiable Instruments], or a document under R.S. 10:7-101 et seq. [UCC – Documents of Title], if the electronic record were in writing.”

§ 2617, 2618, and 2619 – Defers to state agencies to determine when, or if, they will convert to electronic records and transactions and grants authority to agencies to set standards.

§ 2620 – Provisions are severable

§ 2621 Certification of electronic records

- Online applications for state licenses or permits
- Allows governmental agency to accept an online certification from the applicant in lieu of the sworn application

LOUISIANA UNIFORM ELECTRONIC TRANSACTIONS ACT (UETA)

Stringer v. Pablos, SA-16-CV-257-OG, 2020 WL 532937, (W.D. Tex. Jan. 30, 2020)

- “Defendants [Texas Secretary of State and Department of Public Safety] violated the National Voter Registration Act, 52 U.S.C. §§ 20503(a)(1), 20504(a), (c), (d), and (e), and 20507(a)(1)(A), and the Equal Protection Clause, U.S. Const. amend. XIV, § 1, by failing to permit simultaneous voter registration with online driver's license renewal and change-of-address transactions.”
- Court ordered Texas SOS and DPS “to establish procedures that treat each online driver's license renewal or change-of-address application as a simultaneous application for voter registration which must then be submitted to the Secretary of State.”
- “It is undisputed that the State of Texas already has preexisting electronically stored signatures for every person that uses the online service, and could use them for both driver's license and voter registration. Defendants already use electronically stored signatures for every in-person and mail driver's license-voter registration transaction, which makes their refusal to accept them in online transactions unexplainable.” *Stringer*, 2020 WL 532937 at *6.



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June 2, 2020



EXECUTIVE DEPARTMENT

PROCLAMATION NUMBER 37 JBE 2020

***ADDITIONAL MEASURES FOR COVID-19
PROVISIONS FOR FIRST-RESPONDER RULEMAKING,
LAW ENFORCEMENT REHIRING,
REHIRING OF RETIRED PUBLIC EMPLOYEES,
INSURANCE COMMISSIONER EMERGENCY AUTHORITY,
SHAREHOLDER MEETINGS, AND REMOTE NOTARIZATION***

- WHEREAS,** pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721, *et seq.*, the Governor declared a public health emergency in Proclamation Number 25 JBE 2020 in response to the threat posed by COVID-19;
- WHEREAS,** on March 11, 2020, in Emergency Proclamation Number 25 JBE 2020, the Governor declared that a statewide public health emergency existed in the State of Louisiana because of COVID-19 and expressly empowered the Governor's Office of Homeland Security and Emergency Preparedness and the Secretary of the Department of Health and/or the State Health Officer to take all actions authorized under state law;
- WHEREAS,** on March 13, 2020, in Emergency Proclamation Number 27 JBE 2020, the Governor supplemented the measures taken in his declaration of a Public Health Emergency with additional restrictions and suspensions of deadlines and regulations in order to protect the health and safety of the public because of COVID-19;
- WHEREAS,** on March 13, 2020, in Emergency Proclamation Number 27 JBE 2020 and Emergency Proclamation 28 JBE 2020, the Governor supplemented the measures taken in his declaration of a public health emergency with additional restrictions and suspensions of deadlines and regulations in order to protect the health and safety of the public because of COVID-19;
- WHEREAS,** the order was further supplemented on March 14, 2020, March 16, 2020, March 19, 2020 and March 22, 2020 in order to protect the health and safety of the public because of the extraordinary threat posed by COVID-19;
- WHEREAS,** on March 16, 2020, in Emergency Proclamation Number 30 JBE 2020, the Governor supplemented the measures taken in his declaration of Public Health Emergency by providing all state agencies, boards and commissions, and local political subdivisions of the state to provide for attendance at essential governmental meetings via teleconference or video conference and to allow such attendance during the pendency of this emergency;
- WHEREAS,** in the days since the declaration of public health emergency, the COVID-19 outbreak in Louisiana has expanded significantly;
- WHEREAS,** the first responders of Louisiana are coming into direct contact with citizens who have COVID-19 or may have been exposed to COVID-19;
- WHEREAS,** first responders exposed to COVID-19 in quarantine are being required to use their paid sick leave, paid annual leave or paid compensatory leave;

- WHEREAS,** a large portion of the first responders are subject to the Municipal Fire and Police Civil Service laws of Louisiana;
- WHEREAS,** In accordance with R.S. 33:2497 and R.S. 33:2557, local Municipal Fire and Police Civil Services Boards have the authority to adopt rules relative to leaves of absences;
- WHEREAS,** the spread of the COVID-19 virus has adversely affected a substantial number of public safety personnel in the performance of their missions;
- WHEREAS,** in addition, the limitations on compensation for re-hiring retired deputies and corrections officers on a full-time basis have made filling the depleted ranks of law enforcement difficult;
- WHEREAS,** the various sheriffs of Louisiana have expressed an urgent need to re-hire retired deputies on a full-time basis to maintain their law enforcement missions;
- WHEREAS,** the spread of the COVID-19 virus has adversely affected a substantial number of public employers, including but not limited to public health and safety agencies, in the performance of their missions;
- WHEREAS,** the limitations on hiring separated public employees on a contractual basis have made filling the depleted ranks of state agencies, including health and law enforcement impossible;
- WHEREAS,** the various state agencies have expressed an urgent need to utilize separated public employees to maintain and fulfill their missions;
- WHEREAS,** after declaration of a public health emergency, the Governor is authorized by La. R.S. 29:766(0)(1) to suspend the provisions of any regulatory statute prescribing procedures for the conducting of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- WHEREAS,** after declaration of a public health emergency, the Governor is authorized by La. R.S. 29:766(0)(3) to transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;
- WHEREAS,** to aid businesses of this state in navigating the crisis in a prompt manner, reducing their insurance premiums, and accounting for volatility in projections in a time of crisis, it is necessary to grant the Commissioner of Insurance authority to suspend provisions Title 22 of the Louisiana Revised Statutes of 1950 concerning commercial insurance policies;
- WHEREAS,** in addition to the restrictions previously ordered because of this emergency, it is necessary to temporarily suspend certain provisions of the Business Corporation Act to the extent they require meetings of shareholders to be noticed and/or held at a physical location;
- WHEREAS,** the suspension of certain provisions of the Business Corporation Act to the extent they require meetings of shareholders to be noticed and/or held at a physical location are necessary because of the propensity of the COVID-19 virus to spread via personal interactions and because of physical contamination of property due to its ability to attach to surfaces for prolonged periods of time;
- WHEREAS,** due to the extraordinary threat posed by COVID-19 and to further support the stay at home order, in order to provide Louisiana citizens and business with a secure and safe method by which to execute important legal documents, the highly contagious nature of this threat necessitates that a notary public commissioned under the laws of the State of Louisiana may perform notarization

for an individual not in the physical presence of the notary public, subject to certain safeguards to ensure the integrity of the notarial process; and

WHEREAS, these measures are necessary to protect the health and safety of the people of Louisiana.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

- SECTION 1:**
- A) In an effort to preserve the health and safety of the first responders, specifically the firefighters and police officers subject to the Municipal Fire and Police Civil Service System, all local Municipal Fire and Police Civil Service Boards are to meet to adopt emergency rules to provide for special COVID-19 leave rules.
 - B) In order to quickly achieve these rule adoptions, the 30-day notice requirements for rule adoptions found in R.S. 33:2478 and R.S. 33:2538 are hereby suspended during the pendency of the declaration of public health emergency.
 - C) Municipal Fire and Police Civil Service Boards shall post notice of the proposed emergency rule with the 24-hour public meeting notice provided in R.S. 42:19.
 - D) Due to the Stay at Home Order issued by Proclamation Number 33 JBE 2020, all Municipal Fire and Police Civil Service Boards shall conduct a meeting by teleconference or video conference by Monday, March 30, 2020.
- SECTION 2:**
- A) The limitation on receipt of full retirement benefits by rehired retirees assigned to road patrol or corrections function only, under La. R.S. 11:2175(E) shall be suspended for the duration of this emergency. Any sheriff may rehire on a full-time basis any otherwise qualified retirees to road patrol or corrections functions only, without loss or suspension of retirement benefits to those rehired deputies, for the duration of the emergency.
 - B) The Boards of Trustees of the Louisiana Sheriffs Pension and Relief Fund shall not be required to suspend benefits to retirees rehired as full-time employees covered by this proclamation.
- SECTION 3:**
- Pursuant to La. R.S. 29:724(0)(1), the two-year limitation on public employees, following their separation from public service, contracting with their former agency as more fully set forth in La. R.S. 42:1121(8)(1) shall be suspended for the duration of this emergency. Any state agency may contract with any otherwise qualified separated employee to assist the state agency in the performance of their mission, as reasonably necessary, for the duration of the emergency.
- SECTION 4:**
- A) Commissioner of Insurance James J. Donelon shall have limited transfer of authority from the Governor to suspend provisions of any regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning commercial insurance policies rated using auditable exposure bases, including but not limited to payroll, sales, enrollment, attendance, occupancy rates, square footage or any other basis now affected by the current public health emergency, to require when requested, mid-term audits, self-audits or other adjustments to rating bases, thereby reducing the associated premium and more accurately reflecting annual exposure projections. This does not waive an insurer's rights or responsibilities to perform a final audit at policy expiration.
 - B) No provision in this proclamation shall relieve an insured who has a

claim caused by this public health emergency, or its aftermath, from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim. or to pay insurance premiums upon termination of these provisions.

SECTION 5:

- A) Subpart A of Part 7 of the Business Corporation Act, including without limitation, Subsection B of Section 1-701, subsection C of 1-702 and subsections A and E of Section 1-705 of the Business Corporation Act, is hereby suspended to the extent it requires meetings of shareholders to be noticed and held at a physical location in connection with any shareholder meeting that either (a) has a record date that falls during the Public Health emergency declared by Proclamation Number 25 JBE 2020 (or as extended by any subsequent Proclamation), (b) requires notice to be provided in connection therewith during the Public Health emergency declared by Proclamation Number 25 JBE 2020 (or as extended by any subsequent Proclamation) or (c) is scheduled to occur during the Public Health emergency declared by Proclamation Number 25 JBE 2020 (or as extended by any subsequent Proclamation).
- B) This Proclamation shall remain in full force and effect with respect to any meeting duly called and convened in accordance with the Business Corporation Act and in reliance upon Section 1 hereof, notwithstanding the lapse or termination of this Proclamation.

SECTION 6:

- A) During this emergency, a regularly commissioned notary public who holds a valid notarial commission in the state of Louisiana, including a person who is licensed to practice law and commissioned by the Secretary of State, may perform notarization for an individual not in the physical presence of the notary public if:
 - 1) the individual, any witnesses and the notary public can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;
 - 2) the notary public -
 - a) has reasonably identified the individual; and
 - b) either directly or through an agent:
 - i) creates an audio and visual recording of the performance of the notarization, and
 - ii) retains such recording as a notarial record for at least 10 years from the date of execution unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto.
 - c) The person appearing, all witnesses and the Notary Public can affix their digital signatures to the act in a manner that renders any subsequent change or modification of the remote online notarial act to be evident.
- B) If a State law requires an individual to appear personally before or be in the physical presence of a notary public at the time of a notarization that requirement shall be satisfied if the individual and the notary public are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization; except for the laws pertaining to testaments, trust instruments, donations inter vivos, matrimonial agreements, acts modifying, waiving or extinguishing an obligation of final spousal support and authentic acts.
- C) During this emergency, the recorder (as used in La. C.C. Art 3344) shall not refuse to record a tangible copy of an electronic record on the ground that it does not bear the original signature of a person if a notary public

or other officer before whom it was executed certifies that the tangible copy is an accurate copy of the electronic record.

SECTION 7: The Governor's Office of Homeland Security and Emergency Preparedness is directed to ensure compliance with this order, and is empowered to exercise all authorities pursuant to La. R.S. 29:721, et seq., and La. R.S. 29:760, et seq.

SECTION 8: Unless otherwise provided in this order, these provisions are effective retroactively to the beginning on this emergency on Wednesday, March 11, 2020 to Monday, April 13, 2020, or as extended by any subsequent Proclamation, unless terminated sooner.



IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana in the City of Baton Rouge, on this 26th day of March, 2020 L J

A handwritten signature in black ink, appearing to be "John Bel Edwards", is written over a horizontal line.

GOVERNOR OF LOUISIANA

**ATTEST BY THE
SECRETARY OF STATE**

SECRETARY OF STATE



EXECUTIVE DEPARTMENT

PROCLAMATION NUMBER 41 JBE 2020

***STATE OF EMERGENCY FOR COVID-19
EXTENSION OF EMERGENCY PROVISIONS***

- WHEREAS,** pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721, *et seq.*, the Governor declared a public health emergency on in Proclamation Number 25 JBE 2020 in response to the threat posed by COVID-19;
- WHEREAS,** on March 11, 2020, in Proclamation Number 25 JBE 2020, the Governor declared that a statewide public health emergency existed in the State of Louisiana because of COVID-19 and expressly empowered the Governor's Office of Homeland Security and Emergency Preparedness and the Secretary of the Department of Health and/or the State Health Officer to take all actions authorized under state law;
- WHEREAS,** on March 13, 2020, in Proclamation Number 27 JBE 2020, the Governor supplemented the measures taken in his declaration of a Public Health Emergency with additional restrictions and suspensions of deadlines and regulations in order to protect the health and safety of the public because of COVID-19;
- WHEREAS,** the original proclamation was further supplemented on March 14, 2020, March 16, 2020, March 19, 2020, March 22, 2020, March 26, 2020, and March 31, 2020, in order to protect the health and safety of the public because of the extraordinary threat posed by COVID-19;
- WHEREAS,** in the days since the declaration of the public health emergency, the COVID-19 outbreak in Louisiana has expanded significantly;
- WHEREAS,** when the Governor determines that a state of public health emergency exists, La. R.S. 766(B) empowers the Governor to declare a state of public health emergency by executive order, or proclamation, or both;
- WHEREAS,** it is necessary to renew Proclamation Number 25 JBE 2020, as well as Proclamations 27 JBE 2020, 30 JBE 2020, 32 JBE 2020, 33 JBE 2020, and 37 JBE 2020; and
- WHEREAS,** these measures are necessary to protect the health and safety of the people of Louisiana.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: GENERAL PROVISIONS

- A)** Pursuant to the Louisiana Health Emergency Powers Act, La. R.S. 29:760, *et seq.*, a statewide public health emergency is declared to continue to exist in the State of Louisiana as a result of the continued threat posed to Louisiana citizens by COVID-19, the effects of which continue to threaten the lives and health of the citizens of the state.
- B)** The Governor's Office of Homeland Security and Emergency Preparedness and Secretary of the Department of Health are hereby expressly empowered to take any and all actions authorized under the Louisiana Health Emergency Powers Act, La. R.S. 29:760, *et seq.*, in relation to this public health emergency.

- C) The Secretary of the Department of Health and/or the State Health Officer are hereby expressly empowered to take any and all actions authorized thereto under Titles 29 and 40 of the Louisiana Revised Statutes and under the State Sanitary Code (LAC Title 51) in relation to this public health emergency.

SECTION 2: STAY AT HOME ORDER

- A) To preserve the public health and safety, and to ensure the healthcare system is capable of serving all citizens in need, especially those at high risk and vulnerable to COVID-19, all individuals within the State of Louisiana are under a general stay-at-home order and are directed to stay home unless performing an essential activity. Further, all gatherings of 10 people or more between shall be postponed or cancelled. This applies only to gatherings in a single space at the same time where individuals will be in close proximity to one another. An activity is essential if the purpose of the activity is one of the following:
- 1) Obtaining food, medicine, and other similar goods necessary for the individual or a family member of the individual.
 - 2) Obtaining non-elective medical care and treatment and other similar vital services for an individual or a family member of the individual.
 - 3) Going to and from an individual's workplace to perform a job function necessary to provide goods or services being sought in Subsections (A) and (B) of this Section, or as otherwise deemed essential worker functions. Guidance provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) on what workers are essential is outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.
 - 4) Going to and from a place of employment remaining open under Section 2(C) of this order, provided that the employee has been designated as essential.
 - 5) Going to and from the home of a family member.
 - 6) Going to and from an individual's place of worship.
 - 7) Engaging in outdoor activity, provided individuals maintain a distance of six feet from one another and abide by the 10-person limitation on gathering size established in this proclamation.
- B) CLOSURE OF NONESSENTIAL BUSINESSES
- 1) The following nonessential businesses shall remain closed to the public and members:
 - a) All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, trampoline parks, aquariums, zoos, museums, arcades, fairs, pool halls, children's play centers, playgrounds, theme parks, any theaters, concert and music halls, adult entertainment venues, racetracks, casinos, video poker establishments, movie theaters, bowling alleys, bars, and other similar businesses.
 - b) All personal care and grooming businesses, including but not limited to, barber shops, beauty salons, nail salons, spas, massage parlors, tattoo parlors, fitness centers, gyms, and other similar businesses.
 - c) All malls, except for stores in a mall that have a direct outdoor entrance and exit that provide essential services and products as provided by CISA guidelines.
 - 2) Businesses closed to the public pursuant to this provision shall not be prohibited from conducting necessary activities such as payroll, cleaning services, maintenance or upkeep as necessary.
- C) Any business not covered by the guidance from the CISA discussed in Section 2(A) and not ordered temporarily closed in Subsection (B) above may continue operations but with only essential employees and minimal contact with the public, while requiring proper social distancing. Further, the 10-person limitation on gathering size shall continue to apply to such business operations. Early learning

centers and child care facilities adhering to the guidance issued by the Louisiana Department of Education and Office of Public Health may continue to operate.

- D) All restaurants, cafes, and coffee shops, statewide, shall maintain cessation of allowing for any on premises consumption of food or beverages. Any establishment affected by this order may continue take out through curbside delivery, drive-thru, and delivery services, however, in no circumstance shall the food or beverages purchased be consumed on premises. Hotel restaurants may continue operations, but only for the service of registered hotel guests via room service.
- E) Pursuant to La. R.S. 14:329.6, a state of emergency is declared to remain in existence statewide for the purposes of allowing the chief law enforcement officer of any political subdivision to, in order to protect life and property and to bring the emergency situation under control, promulgate orders for any provision therein, including a local curfew from 10:00 p.m. to 5:00 a.m.

SECTION 3: STATE PROCUREMENT

- A) Pursuant to La. R.S. 29:724(D)(1), suspensions of the Louisiana Procurement Code (La. R.S. 39:1551, *et seq.*) and Louisiana Public Bid Law (La. R.S. 38:2211, *et seq.*) and their corresponding rules and regulations are hereby continued for the purpose of the procurement of any good or services necessary to respond to this emergency.
- B) Pursuant to La. R.S. 29:732(A), prices charged or value received for goods and services sold may not exceed the prices ordinarily charged for comparable goods and services in the same market area at or immediately before the time of the state of emergency, unless the price by the seller is attributable to fluctuations in applicable commodity markets, fluctuations in applicable regional or national market trends, or to reasonable expenses and charges and attendant business risk incurred in procuring or selling the goods or services during the state of emergency.
- C) In addition to any authority conferred generally herein or by law, the Governor's Office of Homeland Security and Emergency Preparedness, through consultation with the Secretary of the Department of Health, shall continue to have the primary jurisdiction, responsibility and authority for:
 - 1) Planning and executing public health emergency assessment, mitigation, preparedness response, and recovery for the state;
 - 2) Coordinating public health emergency response between state and local authorities;
 - 3) Collaborating with relevant federal government authorities, elected officials of other states, private organizations or companies;
 - 4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;
 - 5) Organizing public information activities regarding public health emergency response operations; and
 - 6) Taking any other measures deemed necessary and proper, as authorized by law.
- D) For procurement and contracting, strict compliance with the Louisiana Procurement Code (La. R.S. 39:1551, *et seq.*), Telecommunications Procurement (La. R.S. 39:1751-1755), and Information Technology Procurement (La. R.S. 39:196-200), shall not be required. However, all state agencies should continue to comply with the following conditions:
 - 1) An appointed official within the agency, or the equivalent for officials in higher education, must determine that the failure to strictly comply with the statutory restriction is necessary due to the emergency.
 - 2) A centralized point of contact for each agency must monitor all transactions conducted without strict statutory compliance, maintaining copies of all documentation. Documentation should specify whether the purchase falls into the "emergency" or "permanent" category and whether

the purchase relates to the COVID-19 event referenced in Proclamation Number 25 JBE 2020 and all documentation must be maintained and available for audit and FEMA reimbursement purposes.

- 3) Written competitive quotes and/or offers must be obtained whenever possible and agencies must take the necessary steps to assess that fair and equitable pricing is being offered.
- 4) Performance-based contracting should be used where practical.
- 5) Statewide contracts should be used where practical.
- 6) To the maximum extent possible, such emergency contracts should be only for the duration of the emergency or to allow the agency time to comply with normal competitive bidding requirements if the goods or services will be required for an extended period of time.
- 7) Copies of contracts which would otherwise require approval by the Office of State Procurement and the supporting documentation discussed above must be provided to the Office of State Procurement within thirty (30) days or sooner, if practical. Additionally, LaGov agencies should enter small purchases into the LaGov system as soon as practical. The Office of State Procurement shall review the contracts and documentation to determine compliance with this Executive Order.
- 8) Payments to contractors should be made only after verification that all goods and services meet contract requirements.
- 9) All Public Bid Openings shall be suspended. Bid openings will continue, however public openings will not occur in order to limit the potential for exposure. Bid openings will be made available via phone conference or web conference.
- 10) All required Procurement Support Team meetings will be held via phone conference or web conference.

E) The following provisions of the Public Bid Law, La. R.S. 38:2211, *et seq.*, hereby suspended during this emergency:

- 1) Louisiana Public Bid Law (La. R.S. 38:2211, *et seq.*) and its corresponding rules and regulations relating to deadlines for advertisement for bids for public works, submission of bids and ancillary documents, award and execution of public works contracts, and any other deadlines related to the advertisement, award, and execution of a public works contract mandated by statute or by said rules and regulations.
- 2) The provisions of La. R.S. 39:124-125 regarding periodic meetings and/or inspections of capital outlay projects by facility planning and control, including inspection of a project prior to the expiration of the guarantee period, are hereby suspended and any meetings and/or inspections shall be limited to only those inspections or meetings determined to be absolutely necessary for the advancement of the capital outlay project.
- 3) The provisions of La. R.S. 39:126 regarding prior approval of change orders.

SECTION 4: PUBLIC EMPLOYEES AND STATE OFFICES

A) All state offices will be closed to the public. However, essential state functions shall continue.

B) The following travel restrictions will continue to apply to all state employees:

- 1) All state employees traveling on state business out of the United States are hereby directed to cancel or postpone these trips; all employees traveling on official state business out of the State of Louisiana are hereby required to obtain specific authorization from the Commissioner of Administration;
- 2) All state employees intending to travel out of the State of Louisiana for non-official reasons are hereby directed to notify their supervisor and Human Resources Director of the travel as soon as possible, but in no event later than forty-eight (48) hours prior to travel, and immediately upon return to Louisiana;
- 3) All state employees with household members who intend to travel or have traveled internationally are hereby directed to notify their supervisor and

- Human Resources Director of the travel as soon as possible, but in no event later than forty-eight (48) hours prior to the household member's departure, to state the household member's expected date of return, and to notify their supervisor and Human Resources Director immediately upon the household member's actual return to the United States; and
- 4) All state employees shall notify their supervisor and Human Resources Director if the employee or a household member develops symptoms associated with COVID-19.
- C) The Civil Service Commission and the Division of Administration are hereby directed to continue to maintain a set of guidelines for state employees who are infected with COVID-19 or under quarantine for possible exposure to COVID-19. Such guidelines shall include direction for the management of sick leave by state employees and provide for direction, if possible, for the employee to work remotely. The guidelines developed by the Civil Service Commission and the Division of Administration shall remain in effect by this order.
- D) Pursuant to La. R.S. 29:724(D)(1), the two-year limitation on public employees, following their separation from public service, contracting with their former agency as more fully set forth in La. R.S. 42:1121(B)(1) shall remain suspended for the duration of this emergency if the agency determines that it would be necessary to properly respond to this emergency. Any state agency may contract with any otherwise qualified separated employee to assist the state agency in the performance of their mission, as reasonably necessary, for the duration of the emergency.
- E) All state agencies, boards and commissions, and local political subdivisions of the state shall continue to provide for attendance at essential governmental meetings via teleconference or video conference and such attendance shall be allowed during the pendency of this emergency. All efforts shall be made to provide for observation and input by members of the public. Before any meeting conducted pursuant to this section, the state agency, boards and commission, or local political subdivision of the state shall first provide a written certification that it will otherwise be unable to operate due to quorum requirements. Such certification shall be posted at the same time and in the same manner as the agenda for the meeting. Nothing in this order shall be interpreted to waive any notice requirements.

SECTION 5: EMERGENCY SUSPENSIONS

- A) All orders allowing for visitation by the parent of a foster child that resides in a home that is quarantined or isolated due to COVID-19 remain suspended. The Department of Child and Family Services is hereby ordered to make all reasonable efforts to continue to allow for alternative visitation.
- B) **SHAREHOLDER MEETINGS**
- 1) Subpart A of Part 7 of the Business Corporation Act, including without limitation, Subsection B of Section 1-701, subsection C of 1-702 and subsections A and E of Section 1-705 of the Business Corporation Act, hereby remain suspended to the extent it requires meetings of shareholders to be noticed and held at a physical location in connection with any shareholder meeting that either (a) has a record date that falls during the Public Health emergency declared by Proclamation Number 25 JBE 2020 (or as extended by this subsequent Proclamation), (b) requires notice to be provided in connection therewith during the Public Health emergency declared by Proclamation Number 25 JBE 2020 (or as extended by this subsequent Proclamation) or (c) is scheduled to occur during the Public Health emergency declared by Proclamation Number 25 JBE 2020 (or as extended by this subsequent Proclamation).
 - 2) This Proclamation shall remain in full force and effect with respect to any meeting duly called and convened in accordance with the Business Corporation Act and in reliance upon Section 1 hereof, notwithstanding the lapse or termination of this Proclamation.

C) REMOTE NOTARIZATION

- 1) During this emergency, a regularly commissioned notary public who holds a valid notarial commission in the State of Louisiana, including a person who is licensed to practice law and commissioned by the Secretary of State, may perform notarization for an individual not in the physical presence of the notary public if:
 - a) the individual and the notary public can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;
 - b) the notary public—
 - i) has reasonably identified the individual; and
 - ii) either directly or through an agent.
 - a. creates an audio and visual recording of the performance of the notarization, and
 - b. retains such recording as a notarial record for at least 10 years from the date of execution unless a law of the state requires a different period of retention, and if any laws of the state govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto.
 - iii) The person appearing and the Notary Public can affix their digital signatures to the act in a manner that renders any subsequent change or modification of the remote online notarial act to be evident.
- 2) If a state law requires an individual to appear personally before or be in the physical presence of a notary public at the time of a notarization that requirement shall be satisfied if the individual and the notary public are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization; except for the laws pertaining to testaments, trust instruments, donations inter vivos, matrimonial agreements, acts modifying, waiving or extinguishing an obligation of final spousal support and authentic acts.
- 3) During this emergency, the recorder (as used in La. C.C. Art 3344) shall not refuse to record a tangible copy of an electronic record on the ground that it does not bear the original signature of a person if a notary public or other officer before whom it was executed certifies that the tangible copy is an accurate copy of the electronic record.

D) To reduce the burden on members of the public and to limit the interactions of individuals with state employees in governmental offices, the following regulatory statutes are hereby suspended as follows:

- 1) Department of Public Safety
 - a) The deadlines for the period to request an administrative hearing pursuant to La. R.S. 15:542.1.3(B)(4) which expired on or after March 9, 2020 but before May 10, 2020 remains suspended and extended until June 9, 2020.
 - b) Further, with regard to Concealed Handgun Permits, the rules related to expiration of permits at LAC 55:1.1307(D) and LAC 55:1.1309(F) shall continue to be suspended until May 10, 2020.
 - c) The requirement for the renewal of a motor vehicle inspection certificate required under La. R.S. 32:1304 is suspended until May 2020.
 - d) The late fee assessed for firework retail permit applications filed after April 1, 2020, as set forth in La. R.S. 51:656(B), is hereby suspended.
 - e) The late fees assessed for failure to timely renew life safety and property protection licenses, as set forth in La. R.S. 40:1664.9(F) and (G), are temporarily suspended through April 30, 2020.

- 2) Office of Motor Vehicles
- a) Late fees for driver's license which would be charged beginning on March 9, 2020 through May 10, 2020, remain suspended until May 20, 2020.
 - b) The three-day period mandated in La. R.S. 32:863.1 to appear at an Office of Motor Vehicle field office for a notice of violation served on or after March 9, 2020 but before May 10, 2020, remains suspended until May 13, 2020.
 - c) The expiration date of temporary registration plates issued pursuant to La. R.S. 47:519 and La. R.S. 47:519.2 which expired on or before March 9, 2020 remains suspended until May 10, 2020.
 - d) The expiration date of license plates issued pursuant to La. R.S. 47:462, *et seq.*, which expired on or after March 9, 2020 but before May 10, 2020 remains suspended until May 10, 2020.
 - e) The notice of default issued pursuant to La. R.S. 32:429.4 that would be issued on or after March 9, 2020 but before May 15, 2020 remains suspended, and the notices will not be issued until after May 15, 2020.
 - f) The expiration date of an apportioned registration issued under the International Registration Plan which expires March 31, 2020 remains suspended and the expiration date remains extended to May 31, 2020.
 - g) The period to request an administrative hearing submitted to the Department pursuant to La. R.S. 32:667, La. R.S. 32:863, La. R.S. 863.1 and LAC Title 55, Part III, Chapter 1, §159 which expired on or after March 9, 2020 but before May 10, 2020 remains suspended and extended until June 10, 2020.
 - h) The sixty-day delay for the Department to submit the administrative hearing record to the Division of Administrative Law pursuant to La. R.S. 32:667(D)(1) for an arrest which occurred on or after March 9, 2020 but before May 10, 2020 remains extended until August 8, 2020.
 - i) Office of Motor Vehicles may continue to offer services by remote customer services agent interaction in current Office of Motor Vehicles office locations.
 - j) All driving schools in the State of Louisiana shall remained closed for in-class instruction until April 30, 2020.
 - k) The expiration date of driver's licenses which expire on or after March 9, 2020, but on or before May 10, 2020, is suspended and the expiration date is extended to May 20, 2020.
 - l) The expiration of a temporary driver's license issued pursuant La R.S. 32:667(A) which were issued on or after March 9, 2020 through May 10th, 2020 is suspended until June 9, 2020.
 - m) All students who enroll in a driver's education course after March 9, 2020 shall be allowed to begin the driver's education course without the issuance of the temporary instructional permit until May 10, 2020.
 - n) Any suspension for which the official notice of withdrawal was issued on or after Feb 17,2020, but before May 10, 2020, shall remain pending until June 9,2020.
 - o) The expiration date of a hang tag issued pursuant to La. R.S. 47:463.4, *et seq.*, which expired on or after March 9, 2020, but before May 10, 2020, is suspended until May 30, 2020.
 - p) For purchasers of used vehicles, purchased from a private individual on or after February 4, 2020 but before May 10, 2020, the 60 day grace period provided for in La. R.S. 32:707(H) for citations for failure to have have a current registration and license plate is extended until June 20, 2020.

E) There shall remain in effect an exemption from the federal rules and regulations that limit the hours operators of commercial vehicles may drive, specifically, Part 395 (drivers' hours of service) of Title 49 of the Code of Federal Regulations, and any additional appropriate response regarding additional expenditures due to this

declaration as determined by the Secretary of the Department of Transportation and Development, or by the Louisiana State Police or local law enforcement agencies for public safety issues in order to ensure the uninterrupted supply of essential goods and commodities.

- F) Nothing herein shall be construed as an exemption from the Commercial Driver's License requirements in 49 CFR 383, the financial requirements in 49 CFR 387, or applicable federal size and weight limitations.
- G) The following specific provisions of the Louisiana Revised Statutes of 1950 related to the imposition of fees or charges related to transactions with the Department of Health, or their authorized agent, as qualified by this Order, are hereby suspended for transactions by individuals when, as determined by any guidelines or directions issued by the Secretary, the request is a result of the emergency conditions:
 - 1) La. R.S. 40:40(2), to the extent that it requires payment of a fee for production of a duplicate birth record.
 - 2) La. R.S. 40:40(3), to the extent that it requires payment of a fee for production of a duplicate death certificate.

H) LEGAL AND ADMINISTRATIVE DEADLINES

- 1) Legal deadlines, including liberative prescription and preemptive periods applicable to legal proceedings in all courts, administrative agencies, and boards, are hereby suspended until at least Monday, April 30, 2020, including, but not limited to, any such deadlines set forth by law within the following:
 - a) Louisiana Civil Code;
 - b) Louisiana Code of Civil Procedure;
 - c) Louisiana Code of Criminal Procedure;
 - d) Louisiana Children's Code;
 - e) Title 9 of Louisiana Revised Statutes, Civil Code Ancillaries;
 - f) Title 13 of Louisiana Revised Statutes, Courts and Judicial Procedure;
 - g) Title 14 of Louisiana Revised Statutes, Criminal Law;
 - h) Title 15 of Louisiana Revised Statutes, Criminal Procedure;
 - i) Title 18 of Louisiana Revised Statutes, Louisiana Election Code;
 - j) Title 23 of Louisiana Revised Statutes, Labor and Worker's Compensation;
 - k) Title 32 of Louisiana Revised Statutes, Motor Vehicles and Traffic Regulations;
 - l) Title 40 of Louisiana Revised Statutes, Public Health and Safety;
 - m) Title 46 of Louisiana Revised Statutes, Public Welfare and Assistance are hereby suspended;
 - n) Title 47 of Louisiana Revised Statutes, Revenue and Taxation;
 - o) Title 49 of Louisiana Revised Statutes, State Administration; and
 - p) Title 56 of Louisiana Revised Statutes, Wildlife and Fisheries.
- 2) In addition, all other deadlines in legal proceedings in all courts, administrative agencies, and boards shall remain suspended until Monday, April 30, 2020.
- 3) Courts, administrative agencies and boards statewide shall continue to use due diligence in communicating with attorneys, parties to proceedings with pending deadlines, and the public how the court, agency or board will implement and interpret the provisions of this Order.
- 4) Paragraph 2 of this Subsection shall not be interpreted so as to prohibit an owner of immovable property from reclaiming leased property if abandoned as provided by law, or entering leased property to make necessary repairs as provided by law.

- K)** Any state department or agency or political subdivision is hereby granted authority to further extend any non-essential deadline for a period of no longer than 30 days if deemed necessary to respond to the threat of COVID-19.

SECTION 6: DEPARTMENT OF EDUCATION

- A)** All public schools in the State of Louisiana shall continue to close facilities to students until April 30, 2020. Schools may offer complete distance learning, as capabilities exist. With appropriate social distancing measures, schools shall, if able, continue to provide meals or other essential services with applicable staff. Instructional minute requirements shall be temporarily suspended for distance education courses and for curriculum delivery. The required 63,720 instructional minute requirement per year shall also remain suspended. The Board of Elementary and Secondary Education shall report to the Governor and the Legislature any further actions necessary to ensure that eligible students achieve successful student grading, promotion, and graduation.
- B)** The provisions of La. R.S. 17:24.4 and BESE Bulletin 741 that mandate annual administration of testing under the Louisiana Education Assessment Program and End of Course examinations hereby remain suspended for the entirety of the 2019-2020 school year contingent upon receipt of a waiver of the accountability mandates in the Every Student Succeeds Act from the United States Department of Education.
- C)** The provisions of La. R.S. 17:4023 and La. R.S. 47:6301(B)(2)(ii) that require nonpublic schools to administer testing under the Louisiana Education Assessment Program and End of Course examinations to students participating in the Louisiana Student Scholarships for Educational Excellence program and to students receiving scholarships from donations to school tuition organizations hereby remain suspended for the entirety of the 2019-2020 school year upon receipt of a waiver of the accountability mandates in the Every Student Succeeds Act from the United States Department of Education.
- D)** The provisions of La. R.S. 17:10.1 that provide for the School and District Accountability System and any rules or regulations adopted by the Board of Elementary and Secondary Education pertaining to the School and District Accountability System hereby remain suspended for the 2019-2020 school year upon receipt of a waiver of the accountability mandates in the Every Student Succeeds Act from the United States Department of Education.
- E)** The provisions of La. R.S. 17:391.2, *et seq.*, that provide for public school accountability and assessment hereby remain suspended for the entirety of the 2019-2020 school year upon receipt of a waiver of the accountability mandates in the Every Student Succeeds Act from the United States Department of Education.
- F)** The provisions of La. R.S. 17:154.3 that require teachers to work a minimum number of days per school year hereby remain suspended for the entirety of the 2019-2020 school year.
- G)** The provisions of La. R.S. 17:221 that mandate every person having control or charge of a child to send that child to a public or nonpublic school hereby remain suspended for the entirety of the 2019-2020 school year.
- H)** The provisions of La. R.S. 17:232 that require attendance to be checked daily at all schools hereby remain waived for the entirety of the 2019-2020 school year.
- I)** The provisions of La. R.S. 17:3881, *et seq.*, La. R.S. 17:3901, *et seq.*, and La. R.S. 17:3997(D) that provide for the use of value-added data in teacher evaluation and as criteria for receipt of teaching credentials hereby remain suspended for the entirety of the 2019-2020 school year upon receipt of a waiver of the accountability mandates in the Every Student Succeeds Act from the United States Department of Education.

- J) The provisions of La. R.S. 17:3991(C)(1)(b) that require charter schools to adhere to certain student application and enrollment procedures hereby remain suspended for the entirety of the 2019-2020 school year.
- K) The provisions of 17:183.2(B) and (C) that require students graduating in Spring 2020 to complete the Individualized Education Program (IEP) goals and requirements for the purposes of graduation are suspended for the entirety of the 2019-2020 school year.
- L) The provisions of 17:183.3(D) and (E) that require students graduating in Spring 2020 to complete the IEP goals and requirements for the purposes of graduation for the entirety of the 2019-2020 school year.
- M) The provisions of 17:183.3(B)(2)(f) are suspended to allow eligible twelfth grade students to graduate in Spring 2020 with less than 9 credit units if the students were enrolled in a course within the Jump Start sequence in Spring 2020.
- N) The Board of Elementary and Secondary Education shall maintain emergency rules as necessary to effect the suspension of the statutes described in the sections above.

SECTION 7: HIGHER EDUCATION

- A) All Public Post-secondary institutions and proprietary schools within the State of Louisiana that are licensed by the Louisiana Board of Regents shall continue to be allowed to substitute in-person clinical and classroom instruction with online and lab simulations for enrolled students for the duration of the declared emergency.

Further, all proprietary schools within the State of Louisiana that are licensed by the Louisiana Board of Regents shall continue to be allowed to substitute in-person clinical and classroom instruction with online and lab simulations for currently enrolled students as of March 1, 2020.

- B) Relative to the initial eligibility requirements for a Taylor Opportunity Program for Students Award, for students who were enrolled in a Louisiana public high school; students who were enrolled in a nonpublic high school in Louisiana having the approval of the State Board of Elementary and Secondary Education; students who resided in the State of Louisiana and were enrolled in a home study program approved by the State Board of Elementary and Secondary Education; and students who resided out of state during the 2020 academic year but who meet the residency requirements to qualify for a TOPS award provided for in La. R.S. 17:5023, the following requirements shall be suspended:
 - 1) The ACT deadlines imposed by La. R.S. 17:5062, including the requirement that a student be assessed a one semester penalty as set forth in La. R.S. 17:5062 for failure to achieve a qualifying score no later than the national ACT test date of the year of high school graduation.
 - 2) The home study requirements set forth in La. R.S. 17:5029(B)(1)(b)(i).
 - 3) The TOPS Tech core curriculum requirement that a student earn at least nine credits in Jump Start course sequences, workplace experiences, and credentials as set forth in La. R.S. 17:5026 when such requirement has been suspended for the purpose of meeting high school graduation requirements.
- C) Relative to continuing eligibility requirements for a Taylor Opportunity Program for Students Award, for students who were enrolled full time as of the census date in a postsecondary institution in Louisiana and remained enrolled as of March 13, 2020; students who were enrolled full time at an out of state college or university as of the census date and remained enrolled through March 13, 2020; students who were enrolled full time as of the census date and who were studying abroad and were required to return to Louisiana due to the outbreak of COVID-19 in the country in which the students were studying; and students who were scheduled to be enrolled full time at a school operating on a basis other than semesters during the spring of 2020; the following requirements shall be suspended:

- 1) The steady academic progress requirements imposed by La. R.S. 17:5041 or La. R.S. 17:5042.
- 2) The minimum grade point average requirements imposed by La. R.S. 17:5041 or La. R.S. 17:5042.
- 3) The deadlines imposed by La. R.S. 17:5041 or La. R.S. 17:5042 requiring that a student whose award is suspended for failure to meet the grade point average requirements must bring his grade point average up to that required in the applicable statute within a specified time period.

SECTION 8: INSURANCE

- A) The Commissioner of Insurance shall continue to have limited authority from the Governor to suspend provisions of any regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning any health insurance policy or contract relative to the current public health emergency, where such statutory or regulatory requirements prevent, hinder, or delay necessary action in coping with the current public health emergency, including the prohibition of any cost sharing, deductibles, copayments, and coinsurance related to the diagnosis or approved treatment of COVID-19.
- B) The Commissioner of Insurance shall have limited transfer of authority from the Governor to suspend provisions of any regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning the cancellation, termination, nonrenewal, and non-reinstatement provisions of Title 22, where such statutory or regulatory requirements prevent, hinder, or delay necessary action in coping with the current public health emergency, including providing additional time for policyholders to complete existing claims, providing additional time for policyholders to remit premium payments to avoid cancelation of policies, prohibiting cancelations where a policyholder is incapable of fulfilling requirements due to the current public health emergency, allowing for mid-term audit of auditable policies upon request of the insured and the recalculation of premium based on the mid-term audit to account for the current operations of the insurer to properly reflect the risk during the current public health emergency, requiring that insurer refund any excess premium as determined by the mid-term audit during the pendency of the current public health emergency.
- C) This authority granted to the Commissioner shall not relieve an insured who has a claim caused by this public health emergency, or its aftermath, from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim, or to pay insurance premiums upon termination of the provisions of this Order.

SECTION 9: HEALTH CARE REGULATIONS

- A) Louisiana state licensure laws, rules, and regulations for medical professionals and personnel hereby remain suspended for those medical professionals and personnel from other states or other countries offering medical services in Louisiana to those needing medical services as a result of this disaster provided that said out-of-state or out-of-country medical professionals and personnel possess a current medical license in good standing in their respective state or country of licensure and that they practice in good faith and within the reasonable scope of his or her skills, training, or ability.
- B) All out-of-state or out-of-country medical professionals and personnel offering services in the State of Louisiana by authority of this Order shall continue to submit to the State Health Officer, or his designee at the Office of Public Health within the Louisiana Department of Health, a copy of their respective professional license and photo identification, together with any other forms or documents the State Health Officer may require, by contacting the Office of Public Health.
- C) Because of the threat posed to health care workers from COVID-19 and the need to allocate resources to respond to this disaster, there is a need to continue to allow for additional telehealth opportunities. To facilitate the provision of telehealth

services where available and appropriate, the following guidelines remain in place:

- 1) The requirement of R.S. 40:1223.4 that each state agency or professional or occupational licensing board or commission that regulates the practice of a healthcare provider promulgate any rules necessary to provide for, promote, and regulate the use of telehealth in the delivery of healthcare services within the scope of practice regulated by the licensing entity hereby remains suspended during the term of this emergency declaration.
 - 2) All licensing boards are encouraged to maintain emergency rules, if necessary, so that it will not be considered unethical nor a violation of any licensing standards of the healthcare provider, solely as a result of the provision of such care via telehealth.
 - 3) The practice of the healthcare provider administered via telehealth must be within the scope of the provider's license, skill, training and experience. The services provided to the patient must meet the standard of care that would be provided if the patient were treated on an in-person basis.
 - 4) Prescribing of any controlled substances via telehealth must be medically appropriate, well-documented and continue to conform to rules applicable to the prescription of such medications.
- D)** The ambulance staffing requirements set forth in R.S. 40:1135.1(A)(2)(a) hereby remain temporarily suspended as to ambulance drivers, provided that such driver possesses a driver's license valid in the State of Louisiana and meets the criminal background check requirements of R.S. 40:1203.1, *et seq.*

Except as expressly suspended herein, all other requirements of R.S. 40:1135.1 shall remain in place, including the requirement that an ambulance be staffed with a minimum of two persons, one of whom shall be a licensed emergency medical technician.

- E)** The licensing and certification requirements for Louisiana Clinical Laboratory Personnel set forth in R.S. 37:1318, including any requirements for criminal background checks, be temporarily suspended for those laboratory personnel conducting COVID-19 testing who demonstrate molecular biology polymerase chain reaction (PCR) experience and/or for those who demonstrate serological experience in testing clinical samples, when such testing and related activities are performed under the oversight and responsibility of a licensed physician or doctor of philosophy (Ph.D.) with demonstrated experience in the related laboratory activities who ensures the quality of results.
- F)** The requirement for supervision of physician assistants pursuant to La. R.S. 37:1360.28 is temporarily suspended, however a physician assistant shall practice within his/her scope of practice, subject to his/her education, knowledge, skills, and ability.
- G)** The Louisiana Board of Dentistry is granted the authority to issue licenses based upon a 2020 graduation from a Louisiana-based CODA accredited program for those who apply and complete their applications in 2020.

SECTION 10: PROVISIONS FOR FIRST RESPONDERS

A) FIRST-RESPONDER RULEMAKING

- 1) In an effort to preserve the health and safety of the first responders, specifically the firefighters and police officers subject to the Municipal Fire and Police Civil Service System, all local Municipal Fire and Police Civil Service Boards are to maintain emergency rules providing for special COVID-19 leave rules.
- 2) In order to quickly achieve these rule adoptions, the 30-day notice requirements for rule adoptions found in R.S. 33:2478 and R.S. 33:2538 hereby remain suspended during the pendency of the declaration of public health emergency.

- 3) Municipal Fire and Police Civil Service Boards shall post notice of the proposed emergency rule with the 24-hour public meeting notice provided in R.S. 42:19.
- 4) Due to the Stay at Home Order in place statewide, all Municipal Fire and Police Civil Service Boards shall conduct meetings by teleconference or video conference.

B) LAW ENFORCEMENT REHIRING

- 1) The limitation on receipt of full retirement benefits by rehired retirees assigned to road patrol or corrections function only, under La. R.S. 11:2175(E) shall remain suspended for the duration of this emergency. Any sheriff may rehire on a full-time basis any otherwise qualified retirees to road patrol or corrections functions only, without loss or suspension of retirement benefits to those rehired deputies, for the duration of the emergency.
- 2) The Boards of Trustees of the Louisiana Sheriffs Pension and Relief Fund shall not be required to suspend benefits to retirees rehired as full-time employees covered by this proclamation.

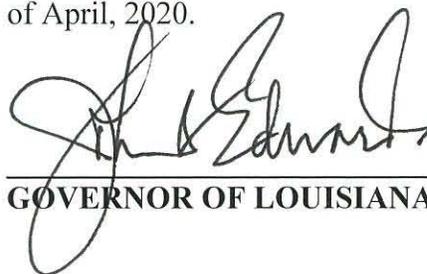
SECTION 11: The Governor's Office of Homeland Security and Emergency Preparedness is directed to ensure compliance with this order, and is empowered to exercise all authorities pursuant to La. R.S. 29:721, *et seq.*, and La. R.S. 29:760, *et seq.*

SECTION 12: All departments, commissions, boards, agencies and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate in actions the state may take in response to the effects of this event.

SECTION 13: Unless otherwise provided in this order, these provisions are effective from Thursday, April 2, 2020 to Thursday, April 30, 2020, or as extended by any subsequent Proclamation, unless terminated sooner.



IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana in the City of Baton Rouge, on this 2nd day of April, 2020.



GOVERNOR OF LOUISIANA

**ATTEST BY THE
SECRETARY OF STATE**



SECRETARY OF STATE

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.

2020 Regular Session

HOUSE BILL NO. 274

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

NOTARIES: Provides for the execution of electronic notarial acts

1 AN ACT

2 To amend and reenact Civil Code Article 3344(A)(introductory paragraph) and R.S. 35:6
3 and to enact R.S. 9:2760 and Chapter 10 of Title 35 of the Louisiana Revised
4 Statutes of 1950, to be comprised of R.S. 35:621 through 630, relative to remote
5 online notarization; to provide for recordation of tangible copies of electronic acts;
6 to provide for performance of remote online notarization; to provide for limitations
7 relative to remote online notarization; to provide for definitions; to provide for
8 rulemaking; to provide for duties of notaries public; to provide for recordkeeping;
9 to provide for an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Civil Code Article 3344(A)(introductory paragraph) is hereby amended
12 and reenacted to read as follows:

13 Art. 3344. Refusal for failure of original signature or proper certification; effect of
14 recordation; necessity of proof of signature recordation of a duplicate

15 A. ~~The~~ Except as otherwise provided by law, the recorder shall refuse to
16 record:

17 * * *

18 Section 2. R.S. 9:2760 is hereby enacted to read as follows:

19 §2760. Recordation of electronic record in tangible form

20 The recorder shall not refuse to record a tangible copy of an electronic record
21 on the ground that it does not bear the original signature of a party if a notary public

1 or other officer before whom it was executed certifies that the tangible copy is an
2 accurate copy of the electronic record.

3 Section 3. R.S. 35:6 is hereby amended and reenacted to read as follows:

4 §6 Foreign notaries; acts and other instruments, effect

5 All acts passed before any notary public and two witnesses in the District of
6 Columbia, or any state of the United States other than Louisiana, except those
7 performed by remote online notarization, shall be authentic acts and shall have the
8 same force and effect as if passed before a notary public in Louisiana.

9 Section 4. Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be
10 comprised of R.S. 35:621 through 624 and 626 through 630, is hereby enacted to read as
11 follows:

12 CHAPTER 10. REMOTE ONLINE NOTARIZATION

13 §621. Short title

14 This Chapter may be cited as the "Remote Online Notarization Act".

15 §622. Definitions

16 A. In this Chapter:

17 (1) "Communication technology" means an electronic device or process that
18 allows substantially simultaneous communication by sight and sound.

19 (2) "Credential analysis" means a process through which the authenticity of
20 an individual's government-issued identification credential is evaluated by another
21 person through review of public and proprietary data sources.

22 (3) "Identity proofing" means a process through which the identity of an
23 individual is affirmed by another person by either of the following means:

24 (a) Dynamic knowledge-based authentication, such as a review of personal
25 information from public or proprietary data sources.

26 (b) Analysis of biometric data, such as facial recognition, voiceprint analysis,
27 or fingerprint analysis.

1 (4) "Remote online notarial act" means an instrument executed before a
2 notary public by means of communication technology that meets the standards
3 adopted under this Chapter.

4 (5) "Remote online notarization" means the process through which an
5 instrument is executed before a notary public by means of communication
6 technology that meets the standards adopted under this Chapter.

7 B. The definitions of "electronic", "electronic record", "electronic signature",
8 and "record" as provided by the Louisiana Uniform Electronic Transactions Act, R.S.
9 9:2601 et seq., apply in this Chapter.

10 §623. Legal recognition of remote online notarial acts

11 A. Except as otherwise provided in Subsections B and C of this Section, a
12 remote online notarial act that meets the requirements of R.S. 35:625 through 627
13 satisfies any requirement that a party appear before a notary public at the time of the
14 execution of the instrument. In all other respects, a remote online notarial act shall
15 comply with other applicable laws governing the manner of the execution of that act.

16 B. The following instruments shall not be executed by remote online
17 notarization:

18 (1) Testaments or codicils thereto.

19 (2) Trust instruments or acknowledgments thereof.

20 (3) Donations inter vivos.

21 (4) Matrimonial agreements or acknowledgments thereof.

22 (5) Acts modifying, waiving, or extinguishing an obligation of final spousal
23 support or acknowledgments thereof.

24 C. Remote online notarization may not be used to execute an authentic act
25 as defined in Civil Code Article 1833. Except as otherwise provided in Subsection
26 B of this Section, an act that fails to be authentic as a result of being executed by
27 remote online notarization may still be valid as an act under private signature or an
28 acknowledged act.

1 parish where the notary public is physically located at the time of the remote online
2 notarization.

3 §627. Procedure for performing remote online notarization

4 A. At the time of a remote online notarization, the notary public shall verify
5 the identity of any party or witness appearing remotely, both through use of
6 communication technology and by one of the following means:

7 (1) The notary public's personal knowledge of the individual.

8 (2) A process that includes all of the following:

9 (a) Remote presentation by the individual of a government-issued
10 identification credential, such as a passport or driver's license, that contains the
11 signature and a photograph of the individual.

12 (b) Credential analysis.

13 (c) Identity proofing.

14 B. The notary public shall do all of the following:

15 (1) Include in the remote online notarial act a statement that it is a remote
16 online notarial act.

17 (2) Attach to or cause to be logically associated with the remote online
18 notarial act the notary public's electronic signature, together with all other
19 information required to be included in the act by other applicable law.

20 (3) Digitally sign the remote online notarial act in a manner that renders any
21 subsequent change or modification of the remote online notarial act to be evident.

22 §628. Duties of the notary

23 The notary public shall take reasonable steps to ensure both of the following:

24 (1) The communication technology used in the performance of a remote
25 online notarization is secure from unauthorized interception.

26 (2) The electronic record before the notary public is the same electronic
27 record in which the party made a statement or on which the party executed or
28 adopted an electronic signature.

1 §629. Records of remote online notarizations

2 A. The notary public shall do all of the following:

3 (1) Maintain electronic copies capable of being printed in a tangible medium
4 of all remote online notarial acts for at least ten years after the date of the remote
5 online notarization.

6 (2) Maintain an audio and video recording of each remote online notarization
7 for at least ten years after the date of the remote online notarization.

8 (3) Take reasonable steps to secure the records required to be maintained by
9 this Section from corruption, loss, destruction, and unauthorized interception or
10 alteration.

11 B. The notary public may designate a custodian to maintain the electronic
12 records required by Subsection A of this Section, provided that the notary public has
13 unrestricted access to the electronic records and the custodian meets any standards
14 established by the secretary of state for the maintenance of electronic records.

15 §630. No variation by agreement

16 The provisions of this Chapter may not be varied by agreement.

17 Section 5. R.S. 35:625 is hereby enacted to read as follows:

18 §625. Notaries authorized to perform remote online notarization

19 A. Any regularly commissioned notary public who holds a valid notarial
20 commission in the state of Louisiana is hereby authorized to perform remote online
21 notarizations.

22 B. The provisions of this Section shall cease to be effective on February 1,
23 2022.

24 Section 6. R.S. 35:625.1 is hereby enacted to read as follows:

25 §625.1. Notaries authorized to perform remote online notarization

26 A. Only a regularly commissioned notary public who holds a valid notarial
27 commission in the state of Louisiana may be authorized by the secretary of state to
28 perform remote online notarization.

1 B. In order to obtain authorization to perform remote online notarization, a
2 notary public shall submit an application to the secretary of state in a format
3 prescribed by the secretary of state, complete any course of instruction required by
4 the secretary of state, and satisfy any other requirements imposed by rules adopted
5 by the secretary of state.

6 C. The authority to perform remote online notarization shall continue as long
7 as the notary public is validly commissioned and the secretary of state has not
8 revoked the notary public's authority to perform remote online notarization.

9 Section 7. This Section and Sections 1, 2, 3, 8, 9, and 10 of this Act shall become
10 effective on August 1, 2020.

11 Section 8.(A) Section 4 of this Act shall become effective upon the later of
12 enactment of the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress)
13 or August 1, 2020.

14 (B) If the SECURE Notarization Act is not enacted prior to February 1, 2022,
15 Section 4 of the Act shall become effective on February 1, 2022.

16 Section 9.(A) Section 5 of this Act is contingent upon the enactment of the SECURE
17 Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress).

18 (B) If the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress)
19 is enacted, Section 5 of this Act shall become effective upon the later of the enactment of
20 the H.R. 6364 or S. 3533 of the 116th Congress or August 1, 2020.

21 Section 10. Section 6 of this Act shall become effective on February 1, 2022.

DIGEST

The digest printed below was prepared by Louisiana State Law Institute. 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 274 Reengrossed 2020 Regular Session Garofalo

Abstract: Provides for recordation of tangible copies of electronic acts; allows for the performance of notarial functions remotely through the use of technology; and provides for limitations, qualifications, procedures, duties, and rulemaking relative to the performance of remote online notarization.

Proposed law (C.C. Art. 3344 and R.S. 9:2760) allows for the recordation of tangible copies of electronic acts.

Proposed law (R.S. 35:623) provides for the legal effect of remote online notarization.

Proposed law (R.S. 35:6) authorizes remote online notarization by states other than Louisiana and the District of Columbia.

Proposed law (R.S. 35:624) authorizes the secretary of state to form a stakeholder committee and to adopt rules in order to develop and maintain standards to implement proposed law.

Proposed law (R.S. 35:625) provides that any regularly commissioned notary public in Louisiana is authorized to perform remote online notarizations. Proposed law will cease to be effective on Feb. 1, 2022.

Proposed law (R.S. 35:625.1) provides for the process and requirements necessary to become and remain authorized to perform remote online notarizations, including the requirement that the secretary of state may only authorize a regularly commissioned notary public who holds a valid notarial commission in this state.

Proposed law (R.S. 35:626(A)) provides for the locations of the notary public, parties, and witnesses to a remote online notarial act, requires the notary public to be physically located in a parish where the notary is authorized to exercise the function of a notary public, and proposed law (R.S. 35:626(B)) provides for the location of a remote online notarial act.

Proposed law (R.S. 35:627(A)) provides procedures for a notary public to verify the identity of parties and witnesses to a remote online notarial act.

Proposed law (R.S. 35:627(B)) requires a notary public performing remote online notarization to include in a remote online notarial act a statement that it is a remote online notarial act and to electronically and digitally sign the remote online notarial act.

Proposed law (R.S. 35:628) provides for duties of the notary public in performing remote online notarization.

Proposed law (R.S. 35:629(A)) requires a notary public to maintain electronic copies and audio-video recordings of each remote online notarization for at least ten years after the date of the remote online notarization.

Proposed law (R.S. 35:629(B)) allows a notary public to designate a custodian to maintain the electronic records required by proposed law.

Proposed law (R.S. 35:630) prohibits contractual modification of the provisions of proposed law.

Proposed law amending C.C. Art. 3344(A) and R.S. 35:6 and enacting R.S. 9:2760 shall become effective on Aug. 1, 2020.

Proposed law enacting R.S. 35:621, 622, 623, 624, 626, 627, 628, 629, and 630 shall become effective upon the later of the enactment of the SECURE Notarization Act or Aug. 1, 2020. If the SECURE Notarization Act is not enacted prior to Feb. 1, 2022, R.S. 35:621, 622, 623, 624, 626, 627, 628, 629, and 630 of proposed law shall become effective on Feb. 1, 2022.

Proposed law enacting R.S. 35:625 and 625.1 is contingent upon enactment of the SECURE Notarization Act. If the SECURE Notarization Act is enacted, R.S. 35:625 and 625.1 of proposed law shall become effective upon the later of the enactment of the SECURE Notarization Act or Aug. 1, 2020.

(Amends C.C. Art. 3344(A)(intro. para.) and R.S. 35:6; Adds R.S. 9:2760 and R.S. 35:621-630)

Summary of Amendments Adopted by House

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

1. Provide for notarization of acts by foreign notaries.
2. Provide for multiple effective dates for certain provisions of proposed law.
3. Add the Louisiana State Bar Association as a stakeholder.

The House Floor Amendments to the engrossed bill:

1. Add the Louisiana Public Tag Association as a member of the stakeholder committee formed by the secretary of state.
2. Make technical changes.