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Secretary of State
Tre Hargett

STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 37

AN ORDER EXTENDING UNTIL JUNE 30, 2020, EXECUTIVE ORDER NO. 26 TEMPORARILY PERMITTING REMOTE NOTARIZATION AND WITNESSING OF DOCUMENTS TO FURTHER CONTAIN COVID-19

WHEREAS, on April 9, 2020, I issued Executive Order No. 26, which allowed for remote notarization and remote witnessing of documents, subject to compliance with certain procedures, so that Tennesseans could continue to engage in commerce and execute legal documents without requiring in-person contact that might lead to exposure to, or the spread of, COVID-19; and

WHEREAS, an extension of the provisions of Executive Order No. 26 is necessary to ensure that persons, and particularly populations especially vulnerable to COVID-19, including older adults and persons with compromised immune systems or serious chronic medical conditions, can continue to avoid in-person contact to the greatest extent practicable; and

WHEREAS, this Order is substantively identical to Executive Order No. 26, and the provisions are restated below simply for purposes of updating the effective dates and executive order numbers in Paragraph 3.f., as well as incorporating Paragraph 4.1 from Executive Order No. 28; and

WHEREAS, in addition to the other emergency management powers granted by law, Tennessee Code Annotated, Section 58-2-107(e), provides that during a state of emergency, the Governor is authorized to suspend laws and rules regarding the conduct of state business if necessary to cope with the emergency, order evacuations from certain areas, make orders concerning entry and exit and the occupancy of premises within an emergency area, and take measures concerning the conduct of civilians and the calling of public meetings and gatherings, among other things; and

WHEREAS, the temporary suspension of selected state laws and rules and the other measures contained herein are necessary to facilitate the response to the current emergency.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, in light of the continuing state of emergency under Executive Order No. 36 to facilitate the response to COVID-19, do hereby order the following:

1. Definitions.

   a. "Document" as used in this Order means an instrument, trust, will, living will, durable health care power of attorney, durable power of attorney, deed, or other legal document;

   b. "Signatory" as used in this Order means a person or persons who execute or sign ("execute", "executed", or "execution") a Document; and

   c. "Witness(es)" as used in this Order means a person or persons who acknowledge, attest, or otherwise witness ("witness" or "witnessing") the execution or signing of a Document by a Signatory, and/or a person or persons who witness an act performed by another Witness(es).

2. Purpose. The purpose of this Order is to permit remote notarization and remote witnessing of Documents to allow persons to engage in commerce and execute legal documents without the need for in-person contact that creates the risk of exposure to or spread of COVID-19. The provisions of this Order should be liberally construed to effectuate this purpose.

3. Remote notarization and witnessing permitted. Any law, including, but not limited to, the common law, the provisions of Tennessee Code Annotated, Title 8, Chapter 16, and Titles 32, 34, 66, and 68, and any related rules, requiring a Signatory to execute a Document in the physical presence of, or while physically appearing before, a notary public or Witness(es), or requiring a Witness(es) to witness a Document in the physical presence of, or while physically appearing before, a notary public or another Witness(es), is hereby suspended to the extent necessary to permit remote notarization and remote witnessing under the following conditions:

   a. Execution by a Signatory, witnessing by Witness(es), and notarization by a notary public, as applicable, must occur via real-time audio and visual communication means where the Signatory, the notary public, and Witness(es), as applicable, can see and hear one another simultaneously, including, but not limited to, videoconference technology such as Skype, FaceTime, Zoom, WebEx, and other similar communication technologies;

   b. The Signatory, notary public, and Witness(es), as applicable, must each be physically located in Tennessee during the real-time audio and visual communication;

c. The notary public and Witness(es), as applicable, through use of the real-time audio and visual communication, must verify the identity of the Signatory, by personal knowledge or by government-issued identification at the time that execution occurs;

d. The Signatory and Witness(es), as applicable, must affirmatively identify on the real-time audio and visual communication the Document being executed and witnessed, as applicable;

e. The execution and witnessing, as applicable, must be captured sufficiently close on the real-time audio and visual communication for the notary public and Witness(es), as applicable, to observe;

f. The Document must include a provision stating that it was executed in compliance with, as applicable, Executive Order No. 26 by Tennessee Governor Bill Lee, dated April 9, 2020, and/or Executive Order No. 37 by Tennessee Governor Bill Lee, dated May 12, 2020; and

g. The execution, witnessing, or notarization of a Document, as applicable, must be memorialized by at least one of the following methods:

   i. Counterparts. Persons who execute, witness, or notarize a Document, as applicable, while in different locations from one another execute, witness, or notarize separate signature pages in counterparts; or

   ii. Subsequent notarization or witnessing of original Document. The Document is executed by the Signatory, and then the applicable notary public or Witness(es), or a combination thereof, subsequently notarizes or witnesses the original Document executed by the Signatory. Such notarizing or witnessing shall be deemed to be carried out at the time of the execution by the Signatory as long as the notarizing or witnessing is completed not later than ten calendar days from the date of the execution of the Document.

4. Online Notary Act. The provisions and requirements of the Online Notary Public Act, Title 8, Chapter 16, Part 3, are hereby suspended to the extent necessary to permit a notary public to remotely notarize a Document in accordance with this Order; provided, that nothing herein shall prevent an online notary public from electing to notarize a Document pursuant to the provisions of the Online Notary Public Act, and compliance with the Online Notary Public Act shall continue to have full force and effect under law.

4.1 Extension of Expiration of Terms of Office. The provisions of Tennessee Code Annotated, Section 8-16-103, are hereby suspended to the extent necessary to delay the expiration of terms of office of notaries public and online notaries public set to expire between March 12, 2020, and June 15, 2020. Such terms of office shall

instead expire on June 30, 2020. This paragraph shall not affect the requirement of providing a bond under Tennessee Code Annotated, Section 8-16-104.

5. Suspension of laws that would limit application of this Order. Any law, order, executive order, rule, or regulation that would otherwise limit the enforceability of this Order is hereby suspended, pursuant to Tennessee Code Annotated, Section 58-2-107.

6. Severability. If any provision of this Order or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Order which can be given effect without the invalid provision or application, and to that end the provisions of this Order are declared to be severable.

7. Term and effective date. This Order shall be effective and enforceable at 12:01 a.m., Central Daylight Time, on May 18, 2020, and shall remain in effect until 12:01 a.m., Central Daylight Time, on June 30, 2020, at which time the suspension of any state laws and rules and the other provisions of this Order shall cease and be of no further force or effect.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 12th day of May, 2020.

GOVERNOR

ATTEST:

SECRETARY OF STATE