

2020 Regular Session

HOUSE BILL NO. _____

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

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. The introductory paragraph of Civil Code Article 3344(A) 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 record:

1 * * *

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

3 §2760. Recordation of electronic record in tangible form

4 The recorder shall not refuse to record a tangible copy of an electronic record on
5 the ground that it does not bear the original signature of a party if a notary public or other
6 officer before whom it was executed certifies that the tangible copy is an accurate copy of
7 the electronic record.

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

9 §6. Foreign Notaries; acts and other instruments, effect

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

14 Section ~~3~~ 4. Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be
15 comprised of R.S. 35:621 through 630, is hereby enacted to read as follows:

16 CHAPTER 10. REMOTE ONLINE NOTARIZATION

17 §621. Short title

18 This Chapter may be cited as the “Remote Online Notarization Act”.

19 §622. Definitions

20 A. In this Chapter:

21 (1) “Communication technology” means an electronic device or process that allows
22 substantially simultaneous communication by sight and sound.

1 (2) “Credential analysis” means a process through which the authenticity of an
2 individual’s government-issued identification credential is evaluated by another person
3 through review of public and proprietary data sources.

4 (3) “Identity proofing” means a process through which the identity of an individual
5 is affirmed by another person by either of the following means:

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

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

10 (4) “Remote online notarial act” means an instrument executed before a notary
11 public by means of communication technology that meets the standards adopted under this
12 Chapter.

13 (5) “Remote online notarization” means the process through which an instrument
14 is executed before a notary public by means of communication technology that meets the
15 standards adopted under this Chapter.

16 B. The definitions of “electronic,” “electronic record,” “electronic signature,” and
17 “record” as provided by the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601
18 et seq., apply in this Chapter.

19 §623. Legal recognition of remote online notarial acts

20 A. Except as otherwise provided in Subsections B and C of this Section, a remote
21 online notarial act that meets the requirements of R.S. 35:625, 626, and 627 satisfies any
22 requirement that a party appear before a notary public at the time of the execution of the

1 instrument. In all other respects, a remote online notarial act shall comply with other
2 applicable law governing the manner of the execution of that act.

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

4 (1) Testaments or codicils thereto.

5 (2) Trust instruments or acknowledgments thereof.

6 (3) Donations inter vivos.

7 (4) Matrimonial agreements or acknowledgments thereof.

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

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

14 D. This Chapter supplements and does not repeal, supersede, or limit the provisions
15 of the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.

16 §624. Standards for remote online notarization

17 A. The secretary of state shall, by rule adopted in accordance with the
18 Administrative Procedure Act, develop and maintain standards for the implementation of
19 this Chapter.

20 B. In developing standards for remote online notarization, the secretary of state
21 shall form a stakeholder committee that shall include but need not be limited to
22 representatives of the Louisiana Land Title Association, the Louisiana Association of

1 Independent Land Title Attorneys, the Louisiana Notary Association, the Louisiana
2 Bankers Association, the Louisiana Clerks of Court Association, and the Louisiana State
3 Law Institute.

4 C. The rules shall be adopted prior to the effective date of this Act and may
5 thereafter be modified, amended, or supplemented with or without the input of the
6 stakeholder committee.

7 ~~§625. Notaries authorized to perform remote online notarization~~

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

11 ~~B. In order to obtain authorization to perform remote online notarization, a notary~~
12 ~~public shall submit an application to the secretary of state in a format prescribed by the~~
13 ~~secretary of state, complete any course of instruction required by the secretary of state, and~~
14 ~~satisfy any other requirements imposed by rules adopted by the secretary of state.~~

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

18 * * *

19 §626. Location of notary, parties, and witnesses; location of remote online notarial act

20 A. A notary public physically located in any parish of this state in which the notary
21 has the power to exercise the function of a notary public may perform a remote online
22 notarization for a party who is not in the physical presence of the notary and who may be

1 located in or outside this state. A witness to a remote online notarial act shall be in the
2 physical presence of the party.

3 B. A remote online notarial act is deemed to be executed in any parish of this state
4 where any party is physically located at the time of the remote online notarization. If no
5 party was physically located in this state at the time of the remote online notarization, the
6 remote online notarial act is deemed to be executed in the parish where the notary public
7 is physically located at the time of the remote online notarization.

8 §627. Procedure for performing remote online notarization

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

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

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

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

17 (b) Credential analysis;

18 (c) Identity proofing.

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

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

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

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

6 §628. Duties of the notary

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

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

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

13 §629. Records of remote online notarizations

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

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

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

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

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

5 §630. No variation by agreement

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

7 ~~Section 4. This Act shall become effective on February 1, 2022.~~ Section 5. R.S. 35:625 is
8 hereby enacted to read as follows:

9 §625. Notaries authorized to perform remote online notarization

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

13 B. The provisions of this Section shall remain effective only until February 1, 2022,
14 at which time they will terminate and be repealed.

15 Section 6. R.S. 35:625 is hereby enacted to read as follows:

16 §625. Notaries authorized to perform remote online notarization

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

20 B. In order to obtain authorization to perform remote online notarization, a notary
21 public shall submit an application to the secretary of state in a format prescribed by the

1 secretary of state, complete any course of instruction required by the secretary of state, and
2 satisfy any other requirements imposed by rules adopted by the secretary of state.

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

6 Section 7. The provisions of Sections 1, 2, and 3 of this Act shall become effective upon
7 signature of the governor.

8 Section 8.(A) The provisions of Section 4 of this Act shall become effective upon signature
9 by the governor if, prior to such date, H.R. 6364 or S. 3533 of the 116th Congress has been enacted
10 by the United States Congress.

11 Section 8.(B) The provisions of Section 4 of this Act shall become effective upon the
12 earlier of the enactment of H.R. 6364 or S. 3533 of the 116th Congress by the United States
13 Congress and February 1, 2022 if, at the time of signature by the governor, H.R. 6364 or S. 3533
14 of the 116th Congress has not yet been enacted by the United States Congress.

15 Section 9.(A) The provisions of Section 5 of this Act shall become effective upon signature
16 by the governor if, prior to such date, H.R. 6364 or S. 3533 of the 116th Congress has been enacted
17 by the United States Congress.

18 Section 9.(B) The provisions of Section 5 of this Act shall become effective if and when
19 H.R. 6364 or S. 3533 of the 116th Congress is enacted by the United States Congress if, prior to
20 signature by the governor, H.R. 6364 or S. 3533 of the 116th Congress has not yet been enacted
21 by the United States Congress.

1 Section 10. The provisions of Section 6 of this Act shall become effective on February 1,
2 2022.

DIGEST

The digest printed below was prepared by the 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 _____

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. 35:621) provides a short title.

Proposed law (R.S. 35:622) provides definitions.

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

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

Proposed law (R.S. 35:625) provides for the process and requirements necessary to become and remain authorized to perform remote online notarization.

Proposed law (R.S. 35:626(A)) provides for the locations of the notary public, parties, and witnesses to a remote online notarial act.

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.

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