

2020 Regular Session

SENATE BILL NO. 472

BY SENATOR LUNEAU

NOTARIES. Provides for the execution of electronic notarial acts. (8/1/20)

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AN ACT

To amend and reenact the introductory paragraph of Civil Code Article 3344(A) and to enact R.S. 9:2760 and Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 35:621 through 630, relative to notaries public and commissioners; to provide relative to remote online notarization; to authorize and provide for recordation of certain electronic notarial acts; to authorize a notary public to perform an electronic notarial act under certain circumstances; to provide certain terms, definitions, conditions, requirements, procedures, and effects; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

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

* * *

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

2 **§2760. Recordation of electronic record in tangible form**

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

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

9 **CHAPTER 10. REMOTE ONLINE NOTARIZATION**

10 **§621. Short title**

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

12 **§622. Definitions**

13 **A. In this Chapter:**

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

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

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

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

24 **(b) Analysis of biometric data, such as facial recognition, voiceprint**
25 **analysis, or fingerprint analysis.**

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

29 **(5) "Remote online notarization" means the process through which an**

1 instrument is executed before a notary public by means of communication
2 technology that meets the standards adopted under this Chapter.

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

6 §623. Legal recognition of remote online notarial acts

7 A. Except as otherwise provided in Subsections B and C of this Section,
8 a remote online notarial act that meets the requirements of R.S. 35:625, 626,
9 and 627 satisfies any requirement that a party appear before a notary public at
10 the time of the execution of the instrument. In all other respects, a remote online
11 notarial act shall comply with other applicable laws governing the manner of
12 the execution of that act.

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

15 (1) Testaments or codicils thereto.

16 (2) Trust instruments or acknowledgments thereof.

17 (3) Donations inter vivos.

18 (4) Matrimonial agreements or acknowledgments thereof.

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

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

26 D. This Chapter supplements and does not repeal, supersede, or limit
27 the provisions of the Louisiana Uniform Electronic Transactions Act, R.S.
28 9:2601 et seq.

29 §624. Standards for remote online notarization

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

4 B. In developing standards for remote online notarization, the secretary
5 of state shall form a stakeholder committee that shall include but need not be
6 limited to representatives of the Louisiana Land Title Association, the Louisiana
7 Association of Independent Land Title Attorneys, the Louisiana Notary
8 Association, the Louisiana Bankers Association, the Louisiana Clerks of Court
9 Association, and the Louisiana State Law Institute.

10 C. The rules shall be adopted prior to February 1, 2022, and may
11 thereafter be modified, amended, or supplemented with or without the input of
12 the stakeholder committee.

13 §625. Notaries authorized to perform remote online notarization

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

17 B. In order to obtain authorization to perform remote online
18 notarization, a notary public shall submit an application to the secretary of state
19 in a format prescribed by the secretary of state, complete any course of
20 instruction required by the secretary of state, and satisfy any other
21 requirements imposed by rules adopted by the secretary of state.

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

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

28 A. A notary public physically located in any parish of this state in which
29 the notary has the power to exercise the function of a notary public may

1 perform a remote online notarization for a party who is not in the physical
2 presence of the notary and who may be located in or outside this state. A witness
3 to a remote online notarial act shall be in the physical presence of the party.

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

10 §627. Procedure for performing remote online notarization

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

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

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

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

19 (b) Credential analysis.

20 (c) Identity proofing.

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

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

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

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

1 **§628. Duties of the notary**

2 **The notary public shall take reasonable steps to ensure both of the**
3 **following:**

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

6 **(2) The electronic record before the notary public is the same electronic**
7 **record in which the party made a statement or on which the party executed or**
8 **adopted an electronic signature.**

9 **§629. Records of remote online notarizations**

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

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

14 **(2) Maintain an audio and video recording of each remote online**
15 **notarization for at least ten years after the date of the remote online**
16 **notarization.**

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

20 **B. The notary public may designate a custodian to maintain the**
21 **electronic records required by Subsection A of this Section, provided that the**
22 **notary public has unrestricted access to the electronic records and the custodian**
23 **meets any standards established by the secretary of state for the maintenance**
24 **of electronic records.**

25 **§630. No variation by agreement**

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

27 Section 4. Due to the imminent threat posed by COVID-19 as provided in
28 Proclamation Number 25 JBE 2020 and any subsequent proclamation, declaring the
29 existence of a statewide public health emergency, Sections 1, 2, and 3 of this Act shall be

1 retroactive to March 11, 2020.

The original instrument was prepared by Margaret M. Corley. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle D. Ridge.

DIGEST

SB 472 Reengrossed 2020 Regular Session Luneau

Proposed law authorizes remote online notarization and recordation of certain electronic notarial instruments.

Proposed law creates the "Remote Online Notarization Act".

Proposed law provides definitions and procedures for remote online notarization.

Proposed law provides that a notary public, who holds a valid notarial commission in Louisiana, is authorized by the secretary of state to perform remote online notarization. Further provides for the notary's duties.

Proposed law provides a list of which instruments shall not be executed by remote online notarization.

Proposed law requires the secretary of state, by rule, to develop and maintain standards to implement proposed law.

The provisions of proposed law may not be varied by agreement.

Proposed law supplements present law concerning electronic transactions.

The provisions of proposed law shall have retroactive application beginning March 11, 2020.

Effective August 1, 2020.

(Amends C.C.Art. 3344(A); adds R.S. 9:2760 and R.S. 35:621-630)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Changes the name of the act from Electronic Notarial Acts to the Remote Online Notarization Act.
2. Adds specific standards and instructions for a commissioned notary public to perform remote online notarizations.
3. Adds a list of which instruments shall not be executed by remote online notarization.
4. Provides for retroactive application.