

2015 Regular Session

HOUSE BILL NO. 697

BY REPRESENTATIVE ABRAMSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/PROCEDURE: Provides relative to the origination and evidence of electronic obligations documents

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 2636(8) and 2637(F) and R.S.

3 13:3733.1(A)(introductory paragraph), (2), and (4), (C), and (E) and to enact Code

4 of Civil Procedure Article 2636(9) and R.S. 13:3733.1(A)(5) and (6), (L), and

5 3733.2, relative to electronic obligations records and electronic signatures; to deem

6 financial institution records and promissory notes containing electronic signatures

7 to be authentic evidence; to provide for electronic signatures regarding evidence

8 which need not be authentic; to provide for definitions; to modify the certificate

9 required to deem reproductions as authentic evidence; to provide for the

10 transferability of rights, authority, and protections relative to the use of

11 reproductions; to provide for obligations records containing electronic signatures; to

12 allow for a presumption of authenticity; to provide for a certification form; to exempt

13 collateral mortgage notes; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Code of Civil Procedure Articles 2636(8) and 2637(F) are hereby

16 amended and reenacted and Code of Civil Procedure Article 2636(9) is hereby enacted to

17 read as follows:

1 Art. 2636. Authentic evidence

2 The following documentary evidence shall be deemed to be authentic for
3 purposes of executory process:

4 * * *

5 (8) All other documentary evidence recognized by law as authentic evidence,
6 including R.S. 9:5555, R.S. 10:9-629, and R.S. 13:3733.1 and 3733.2.

7 (9) A promissory note or other evidence of indebtedness evidencing the
8 obligation secured by the mortgage, security agreement or privilege, containing an
9 electronic signature in accordance with the Louisiana Uniform Electronic
10 Transactions Act, R.S. 9:2601 et seq. and accompanied by a certification in
11 accordance with R.S. 13:3733.2.

12 Art. 2637. Evidence which need not be authentic

13 * * *

14 F. Evidence as to the proper party plaintiff entitled to enforce the obligation
15 secured by the note, bond, handnote, or other instrument, including those that are
16 electronically signed, evidencing the obligation of which a copy or reproduction is
17 submitted in accordance with Article 2636(8) or Paragraph C of this Article, may be
18 proved by verified original or supplemental petition, or by an affidavit submitted
19 therewith.

20 Section 2. R.S. 13:3733.1(A)(introductory paragraph), (2), and (4), (C), and (E) are
21 hereby amended and reenacted and R.S. 13:3733.1(A)(5) and (6), (L), and 3733.2 are hereby
22 enacted to read as follows:

23 §3733.1. Financial institution records; reproductions; recordkeeping; admissibility
24 into evidence; definitions

25 A. As used in this Section and in R.S. 13:3733.2, the following terms shall
26 have the following meanings:

27 * * *

28 (2) "Record" means any writing, entry, print, instrument, or document
29 evidencing any transaction or event, including but not limited to books of account,

1 vouchers, documents, agreements, contracts, security agreements, other collateral
2 security documents, checks, and correspondence. The term also includes
3 information that is stored in electronic or other medium and is retrievable in
4 perceivable form.

5 * * *

6 (4) "Reproduction" means a counterpart, duplicate, or copy, or a durable
7 medium for making a counterpart, duplicate, or copy, produced from the same
8 impression as the original, or from the same matrix, or produced or obtained by any
9 photographic, photostatic, microfilm, microcard or miniature or microphotographic
10 process, or by any mechanical or electronic recording or re-recording, electronic or
11 optical imaging, chemical process or other process or technique which accurately
12 reproduces the original or forms or creates a durable medium for so reproducing the
13 original, including but not limited to computer and other printouts, and counterparts,
14 duplicates, copies, and other output generated or produced by or from an electronic
15 imaging system such as counterparts, duplicates, or copies produced or obtained
16 from optical disks. A reproduction shall also mean a substitute check as defined
17 under the federal Check Clearing for the 21st Century Act and Regulation CC, 12
18 CFR 229.2(aaa). The term also includes the reproduction of a record containing an
19 electronic signature.

20 (5) "Electronic record" means a record created, generated, sent,
21 communicated, received, or stored by electronic means.

22 (6) "Electronic signature" means an electronic sound, symbol, or process
23 attached to or logically associated with a record and executed or adopted by a person
24 with the intent to sign the record.

25 * * *

26 C. Notwithstanding any other statute, rule of law, regulation, ordinance, or
27 other provision to the contrary, except Subsection G of this Section, each
28 reproduction of a record made pursuant to this Section shall be considered to be an
29 original of such record for all purposes and shall be admissible into evidence to the

1 same extent as the original record itself in any judicial, administrative, and other
 2 proceedings in all courts, tribunals, and other bodies and in any proceedings before
 3 all boards, bureaus, departments, commissions, and agencies of this state, whether
 4 the original record is in existence or not, and shall be received in evidence as prima
 5 facie proof of its contents with the same force and effect as though the original
 6 document were produced, and shall be deemed ~~authentic evidence~~ authentic for all
 7 purposes, satisfying the requirements of Code of Evidence Articles 901 and 902.
 8 The introduction of a reproduction does not preclude introduction of the original
 9 record.

* * *

11 E. Whenever any counterpart, duplicate, or copy or group of counterparts,
 12 duplicates, or copies shall be certified with a certificate reading substantially as
 13 follows, each such counterpart, duplicate, or copy shall be a reproduction as defined
 14 in this Section and shall be admissible into evidence as the original record. Except
 15 as prohibited in Subsection G of this Section, if the original record would be deemed
 16 to be authentic evidence, the reproduction, so certified, shall also be deemed
 17 authentic evidence for all purposes including but not limited to for purposes of Code
 18 of Civil Procedure Articles 2631 et seq.

19 STATE OF _____

20 PARISH/COUNTY OF _____

21 CITY OF _____

22 I, _____, a representative of _____

23 (the Financial Institution or assignee) do hereby certify the following:

24 (a) The document(s) attached to this certificate, consisting of ____ page(s)
 25 is (are each) a true and correct reproduction of the original thereof, being a
 26 reproduction made from the records maintained by the Financial Institution or
 27 assignee in the course of its business activities and made in accordance with the
 28 provisions of R.S. 13:3733.1.

1 (b) If the document(s) attached to this certificate is (are each) an obligation
2 sought to be enforced, including a promissory note, the Financial Institution or
3 assignee does certify that ~~the Financial Institution~~ it is a person or entity entitled to
4 enforce the obligation(s) evidenced by the document(s) attached to this certificate.

5 _____
6 NAME

7 _____
8 TITLE

9 _____
10 ADDRESS

11 * * *
12

13 L. A person that purchases, acquires, or otherwise obtains an interest in a
14 promissory note, instrument, loan, asset, or other evidence of indebtedness
15 previously held by a financial institution has the same rights, authority, and
16 protections that the financial institution had under this Section relative to the use of
17 a reproduction of a record pertaining to the promissory note, instrument, loan, asset,
18 or other evidence of indebtedness.

19 §3733.2. Financial institution records containing electronic signatures; admissibility
20 into evidence

21 A. Notwithstanding any other provision to the contrary, if accompanied by
22 a certification as provided in Subsection B of this Section, a record, containing an
23 electronic signature or a reproduction of a record containing an electronic signature,
24 shall be considered to be an original, as defined in Article 1001 of the Code of
25 Evidence, for all purposes and shall be admissible into evidence as an original record
26 in any judicial, administrative, and other proceedings in all courts, tribunals, and
27 other bodies and in any proceedings before all boards, bureaus, departments,
28 commissions, and agencies of this state, and shall be received in evidence as prima
29 facie proof of its contents with the same force and effect as an original record, and
30 shall be deemed authentic for all purposes, satisfying the requirements of Code of

1 Evidence Articles 901 and 902. If accompanied by a certification as provided in
2 Subsection B of this Section, a record containing an electronic signature or a
3 reproduction of a record containing an electronic signature shall be deemed authentic
4 evidence for purposes of executory process to the same extent as if it were a
5 manually signed paper original record.

6 B. A record containing an electronic signature or a reproduction of a record
7 containing an electronic signature is presumed to be genuine if accompanied by a
8 certification, executed by a representative of a financial institution or its assignee,
9 substantially as follows:

10 STATE OF _____

11 PARISH/COUNTY OF _____

12 CITY OF _____

13 I, _____, a representative of _____ (the
14 Financial Institution or assignee) do hereby certify the following:

15 (a) In accordance with R.S. 13:3733.2, based on the undersigned person's
16 personal knowledge or upon information and belief based upon records of the
17 financial institution, any assignee, or any other person that are kept or obtained in the
18 ordinary course of its business activities, the document(s) attached to this certificate,
19 consisting of _____ page(s), is (are each) a record, electronic record, or reproduction
20 of a record or electronic record that contains a genuine electronic signature of
21 _____ (insert name of signer on documents).

22 (b) If the document(s) attached to this certificate is (are each) an obligation
23 sought to be enforced, including a promissory note, the financial institution or
24 assignee named above is entitled to enforce the obligation(s) evidenced by the
25 documents.

26 _____
27 NAME

28 _____
29 TITLE

30 _____
31 ADDRESS

1 C. The provisions of this Section that authorize the use of a record
 2 containing an electronic signature or a reproduction of a record containing an
 3 electronic signature shall not apply to a collateral mortgage note as defined in R.S.
 4 10:9-102(d)(3).

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 697 Reengrossed

2015 Regular Session

Abramson

Abstract: Amends current law regarding authentic evidence for executory process and electronic obligations documents to extend the rights, protections, and authority of a financial institution under present law to an assignee in possession of a reproduction of an electronic record.

Present law enumerates a list of documentary evidence deemed to be authentic evidence for the purposes of executory process.

Proposed law adds documents recognized by R.S. 13:3733.2 to the enumerated list.

Proposed law provides for a definition of an "electronic record" and "electronic signature".

Present law provides that a financial institution must certify that it is entitled to enforce an obligation evidenced by documents attached to a certificate of authenticity.

Proposed law provides that an assignee may certify that he is entitled to enforce an obligation as evidenced by documents attached to a certificate of authenticity.

Proposed law provides that a record, electronic record, or reproduction of a record or electronic record which contains an electronic signature or a reproduction of an electronic signature is presumed to be genuine if accompanied by a certification that is executed by a representative of a financial institution or its assignee and complies with the proposed form.

(Amends C.C.P. Arts. 2636(8) and 2637(F) and R.S. 13:3733.1(A)(intro. para.), (2), and (4), (C), and (E); Adds C.C.P. Art. 2636(9) and R.S. 13:3733.1(A)(5) and (6), (L), and 3733.2)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Added technical amendments.