

2018 Regular Session

HOUSE BILL NO. 572

BY REPRESENTATIVE MAGEE

NOTARIES: Provides for electronic notaries public and electronic notarial acts

1 AN ACT

2 To enact Civil Code Article 1833(D) and (E) and Chapter 15 of Title 35 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 35:681 through 692, relative to
4 electronic notaries public; to provide for electronic notaries public; to provide for
5 electronic notarial acts; to provide for definitions; to provide for rule-making
6 authority; to provide for standards and application requirements; to provide for
7 maintenance of electronic records; to provide for authority and jurisdiction; to
8 provide for duties and procedures; to provide for fees; to provide for termination of
9 a commission; to provide relative to authentic acts; and to provide for related
10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 15 of Title 35 of the Louisiana Revised Statutes of 1950,
13 comprised of R.S. 35:681 through 692, is hereby enacted to read as follows:

14 CHAPTER 15. ELECTRONIC NOTARIAL ACTS

15 §681. Definitions

16 (1) "Credential analysis" means a process or service operating according to
17 criteria approved by the secretary through which a third person affirms the validity
18 of a government-issued identification credential through review of public and
19 proprietary data sources.

1 (2) "Electronic" means relating to technology having electrical, digital,
2 magnetic, online, wireless, cellular, optical, electromagnetic, or similar capabilities.

3 (3) "Electronic document" means information that is created, generated, sent,
4 communicated, received, or stored by electronic means.

5 (4) "Electronic notarial act" means an official act by an electronic notary
6 public conducted using electronic means and involves electronic documents, an
7 electronic seal, and an electronic signature as provided by this Chapter.

8 (5) "Electronic notarial certificate" means the portion of a notarized
9 electronic document that is completed by the electronic notary public and contains
10 the following:

11 (a) The electronic notary public's electronic signature, electronic seal, title,
12 and commission expiration date.

13 (b) Other required information concerning the date and place of the notarial
14 act.

15 (c) The facts attested to or certified by the notary public in the notarial act.

16 (6) "Electronic notary public" means a notary public who has been
17 commissioned by the secretary to perform electronic notarial acts under this Chapter.

18 (7) "Electronic seal" means information within a notarized electronic
19 document that confirms the electronic notary public's name, jurisdiction, license
20 number, and commission expiration date and generally corresponds to data in notary
21 seals used on paper documents.

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

25 (9) "Identity proofing" means a process or service operating according to
26 criteria approved by the secretary through which a third person affirms the identity
27 of an individual through review of personal information from public and proprietary
28 data sources.

1 (10) "Notarial act" as used in this Chapter means the performance by an
2 electronic notary public of a function authorized under R.S. 35:1 et seq.

3 (11) "Online notarial act" means an electronic notarial act performed by
4 means of two-way video and audio conference technology and an online internet
5 connection that meets the standards adopted in this Chapter.

6 (12) "Principal" means an individual:

7 (a) Whose electronic signature is notarized in an electronic notarial act; or

8 (b) Taking an oath or affirmation from the electronic notary public but not
9 in the capacity of a witness for the electronic notarial act.

10 (13) "Remote presentation" means a transmission to an electronic notary
11 public through communication technology of an image of a government-issued
12 identification credential that is of sufficient quality to enable the electronic notary
13 public to:

14 (a) Identify the individual seeking the electronic notary public's services; and

15 (b) Perform credential analysis.

16 (14) "Secretary" means the secretary of state.

17 §682. Rulemaking

18 The secretary shall adopt rules necessary to implement this Chapter,
19 including rules to facilitate electronic notarial acts.

20 §683. Standards for electronic notarial acts

21 The secretary by rule shall develop and maintain standards for electronic
22 notarial acts in accordance with this Chapter, including standards for credential
23 analysis, identity proofing, and electronic notarial acts conducted by an electronic
24 notary public through use of an online internet connection.

25 §684. Application and requirements for performing electronic notarial acts

26 A. A notary public or an applicant for appointment as an electronic notary
27 public under this Section may apply to the secretary to be appointed and
28 commissioned as an electronic notary public in the manner provided by this Section.

29 B. A person qualifies to be appointed as an electronic notary public by:

1 (1) Satisfying the qualification requirements for appointment as a notary
2 public under Chapter 1 of this Title;

3 (2) Paying all application fees required by the secretary; and

4 (3) Electronically submitting to the secretary an application in the form
5 prescribed thereby, that satisfies the secretary that the applicant is qualified.

6 C. The application required by Subsection B shall include:

7 (1) The applicant's name to be used in acting as a notary public;

8 (2) A certification that the applicant will comply with the secretary's
9 standards developed pursuant to this Chapter; and

10 (3) An e-mail address of the applicant.

11 D. The secretary may by rule create, promulgate and impose additional
12 mandatory qualifications for a notary public or an applicant for appointment as an
13 electronic notary public to conduct online notarial acts.

14 E. Nothing in this Section shall be construed to prevent an electronic notary
15 from using updated technology or technologies during the term of the commission,
16 however, the electronic notary shall notify the secretary electronically within ninety
17 days of installation or use of such updated technology or technologies and provide
18 a brief description of such technology.

19 F. The secretary may charge a fee for an application submitted under
20 Subsection B of this Section, in an amount necessary to administer the provisions of
21 this Chapter.

22 §685. Performance of notarial acts

23 An electronic notary public:

24 (1) Is a notary public for purposes of this Title and is subject to the provisions
25 of this Title to the same extent as a notary public appointed and commissioned
26 pursuant to this Title.

27 (2) May perform all notarial acts authorized by R.S. 35:1 et seq.

1 §686. Authority to perform electronic notarial acts

2 An electronic notary public has the authority to perform all electronic notarial
3 acts and related functions as governed by this Chapter.

4 §687. Electronic record of electronic notarial acts

5 A. An electronic notary public shall keep a secure electronic record of
6 electronic documents notarized by the electronic notary public. The electronic record
7 shall contain all of the following for each electronic notarial act:

8 (1) The date and time of the act.

9 (2) The type of act.

10 (3) The type, the title, or a description of the electronic document or
11 proceeding.

12 (4) The printed name and address of each principal involved in the
13 transaction or proceeding.

14 (5) Evidence of identity of each principal involved in the transaction or
15 proceeding in a form containing all of the following information:

16 (a) Statement that the person is personally known to the electronic notary
17 public.

18 (b) A notation of the type of identification document provided to the
19 electronic notary public.

20 (c) A record of the identity verification made under this Section, if
21 applicable; or all of the following:

22 (i) The printed name and address of each credible witness swearing to or
23 affirming the person's identity.

24 (ii) Each credible witness not personally known to the electronic notary
25 public, a description of the type of identification documents provided to the
26 electronic notary public.

27 (d) A recording of any video and audio conference that is the basis for
28 satisfactory evidence of identity and a notation of the type of identification presented
29 as evidence.

1 (e) The fee, if any, charged for the electronic notarial act.

2 B. The electronic notary public shall take reasonable steps to do all of the
3 following:

4 (1) Ensure the integrity, security, and authenticity of all electronic notarial
5 acts performed.

6 (2) Maintain a backup for the electronic record required by Subsection A of
7 this Section.

8 (3) Protect the backup record from unauthorized use.

9 (4) Maintain the electronic record required by Subsection A of this Section
10 for at least five years after the date of the transaction or proceeding.

11 §688. Jurisdiction and applicable law

12 All electronic notarial acts performed in accordance with this Chapter shall
13 be deemed to have been performed within the state of Louisiana and governed by
14 Louisiana law.

15 §689. Duty of care

16 A. An electronic notary public performing electronic notarial acts shall keep,
17 maintain, protect, and provide for lawful inspection an electronic record of all
18 electronic notarial acts as provided by R.S. 35:687.

19 B. If video and audio conference technology authorized under this Chapter
20 is the basis for satisfactory evidence of identity and the principal's identity has been
21 ascertained upon presentation of such satisfactory evidence of identity, the electronic
22 notary public shall keep a copy of the recording of the video and audio conference
23 and a notation of the type of any other identification used. The electronic notary
24 public shall take reasonable steps to do all of the following:

25 (1) Ensure the integrity, security, and authenticity of electronic notarial acts,

26 (2) Maintain a backup of the electronic record of electronic notarial acts.

27 (3) Ensure protection of such backup records from unauthorized use.

28 C. The electronic record of an electronic notarial act shall be maintained for
29 a period of at least five years from the date of the transaction.

1 D. An electronic notary public performing electronic notarial acts shall do
2 all of the following:

3 (1) Take reasonable steps to ensure that any registered device used to create
4 an electronic signature is current and has not been revoked or terminated by its
5 issuing or registering authority.

6 (2) Keep his record, electronic signature, and physical and electronic seals
7 secure under his exclusive control and shall not allow them to be used by any other
8 notary or any other person.

9 (3) Use his electronic signature only for the purpose of performing electronic
10 notarial acts.

11 (4) Immediately upon discovering that the notary's record, electronic
12 signature, or physical or electronic seal has been lost, stolen, or may be otherwise
13 used by a person other than the notary, shall do both of the following:

14 (a) Inform the appropriate law enforcement agency in the case of theft or
15 vandalism.

16 (b) Notify the secretary in writing and signed in the official name in which
17 he was commissioned.

18 §690. Electronic notarial act procedures

19 A. An electronic notary public may perform an electronic notarial act
20 authorized under this Section that meets the requirements of this Chapter and rules
21 adopted pursuant thereto regardless of whether the electronic notary public or
22 principal is physically located in this state at the time of any part of the electronic
23 notarial act.

24 B. In performing an electronic notarial act, an electronic notary public shall
25 verify the identity of a principal creating an electronic signature at the time that the
26 signature is taken in the same manner as for a notarial act governed by R.S. 35:1 et
27 seq., or as provided by this Section.

28 C. In performing an online notarial act, an electronic notary public shall
29 verify the identity of a principal by using two-way video and audio conference

1 technology and an online internet connection that meets the requirements of this
2 Chapter and rules adopted pursuant to this Chapter.

3 D. In performing any electronic notarial act, the principal's identity may be
4 verified by any of the following:

5 (1) The electronic notary public's personal knowledge of the person creating
6 the electronic signature.

7 (2) Each of the following:

8 (a) Remote presentation by the person creating the electronic signature of a
9 government-issued identification credential, including a passport or driver's license,
10 that contains the signature and a photograph of the person.

11 (b) Credential analysis of the credential described by R.S. 35:681.

12 (c) Identity proofing of the person described by R.S. 35:681.

13 E. For an online notarial act, the electronic notary public shall take
14 reasonable steps to ensure that the internet-based, two-way video and audio
15 communication utilized is secure from unauthorized interception or access.

16 F. The electronic notarial certificate for any electronic notarial act shall
17 include a notation that the notarial act is an electronic notarial act.

18 §691. Fees for electronic notarial act

19 An electronic notary public or the electronic notary public's employer may
20 charge a fee in an amount that is reasonable and customary for performing the
21 electronic notarial act in addition to any other fees authorized under this Section.

22 §692. Termination of electronic notary public's commission

23 A. Except as provided by Subsection B of this Section, an electronic notary
24 public whose commission terminates shall destroy the coding, disk, certificate, card,
25 software, or password that enables electronic affixation of the electronic notary
26 public's official electronic signature or seal. The electronic notary public shall certify
27 compliance with this Subsection to the secretary.

28 B. A former electronic notary public whose commission terminated for a
29 reason other than revocation or a denial of renewal is not required to destroy the

1 items described by Subsection A if the former electronic notary public is
2 recommissioned as an electronic notary public with the same electronic signature and
3 seal within three months after the former electronic notary public's former
4 commission terminated.

5 Section 2. Civil Code Article 1833(D) and (E) are hereby enacted to read as follows:

6 Art. 1833. Authentic act

7 * * *

8 D. For purposes of this Article, a person may physically appear before the
9 notary public or authorized officer taking the acknowledgment or may appear by an
10 online, internet-based, two-way audio and video communication that meets the
11 electronic notarial act requirements provided by law.

12 E. A writing executed by electronic means before an electronic notary public
13 in the manner provided by law for an electronic notarial act that otherwise meets the
14 requirements of this Article shall be considered an authentic act as provided by this
15 Article.

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 572 Original

2018 Regular Session

Magee

Abstract: Creates electronic notaries public and electronic notarial acts and provides for the definitions, qualifications, authority, jurisdiction, duties, fees, and procedures for such notaries and notarial acts.

Proposed law creates electronic notaries public and electronic notarial acts.

Proposed law provides definitions for "credential analysis", "electronic", "electronic document", "electronic notarial act", "electronic notarial certificate", "electronic notary public", "electronic seal", "electronic signature", "identity proofing", "notarial act", "online", "principal", and "remote presentation" .

Proposed law authorizes the secretary of state to develop rules to implement proposed law, which shall include standards for electronic notarial acts, credential analysis, and identity proofing.

Proposed law provides that a notary public or an applicant for appointment as an electronic notary public may apply to the secretary of state to be appointed and commissioned as an electronic notary public, and provides requirements for such applications.

Proposed law authorizes electronic notaries public to perform all notarial acts and related functions and provides for the inclusion of certain information on all such acts.

Proposed law requires all electronic notaries public to ensure the integrity, security, and authenticity of all electronic notarial acts performed, and to maintain a record and backup of all electronic notarial records.

Proposed law provides that all acts performed in accordance with proposed law shall be deemed to have been performed within this state and governed by the law of this state.

Proposed law provides the general procedures for executing electronic notarial acts which includes the use of two-way video and audio conference technology.

Proposed law authorizes an electronic notary public to charge a fee in an amount that is reasonable and customary.

Proposed law provides the procedures for termination of an electronic notary public's commission including the destruction of the electronic notary public's electronic signature and seal, with the destruction of such signature and seal certified to the secretary.

Present law defines 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.

Present law further requires that the typed or hand-printed name of each person be placed in a legible form immediately beneath the signature of each person signing the act, but that in order to be an authentic act, the writing need not be executed at one time or place, or before the same notary public or in the presence of the same witnesses, as long as each party who executes it does so before a notary public and in the presence of two witnesses and each party, each witness, and each notary public signs it.

Present law provides that the failure to include the typed or hand-printed name of each person signing the act shall not affect the validity or authenticity of the act.

Proposed law retains present law but further provides that a person may appear by an online, internet-based, two-way audio and video communication that meets the electronic notarial act requirements provided by proposed law.

Proposed law provides that a writing executed by electronic means before an electronic notary public and meeting the requirements of proposed law shall be considered an authentic act.

(Adds C.C. Art. 1833(D) and (E) and R.S. 35:681 through 692)