

2020 Regular Session

HOUSE BILL NO. 274

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

10 Be it enacted by the Legislature of Louisiana:

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

17 * * *

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

19 §2760. Recordation of electronic record in tangible form

20 The recorder shall not refuse to record a tangible copy of an electronic record
21 on the ground that it does not bear the original signature of a party if a notary public

1 or other officer before whom it was executed certifies that the tangible copy is an
2 accurate copy of the electronic record.

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

4 §6 Foreign notaries; acts and other instruments, effect

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

9 Section 4. Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be
10 comprised of R.S. 35:621 through 624 and 626 through 630, is hereby enacted to read as
11 follows:

12 CHAPTER 10. REMOTE ONLINE NOTARIZATION

13 §621. Short title

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

15 §622. Definitions

16 A. In this Chapter:

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

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

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

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

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

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

4 (5) "Remote online notarization" means the process through which an
5 instrument is executed before a notary public by means of communication
6 technology that meets the standards adopted under this Chapter.

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

10 §623. Legal recognition of remote online notarial acts

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

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

18 (1) Testaments or codicils thereto.

19 (2) Trust instruments or acknowledgments thereof.

20 (3) Donations inter vivos.

21 (4) Matrimonial agreements or acknowledgments thereof.

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

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

1 D. This Chapter supplements and does not repeal, supersede, or limit the
2 provisions of the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.
3 §624. Standards for remote online notarization

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

7 B. In developing standards for remote online notarization, the secretary of
8 state shall form a stakeholder committee that shall include but need not be limited
9 to representatives of the Louisiana Land Title Association, the Louisiana Association
10 of Independent Land Title Agents, the Louisiana Notary Association, the Louisiana
11 Bankers Association, the Louisiana Clerks of Court Association, the Louisiana State
12 Bar Association, the Louisiana Public Tag Association, and the Louisiana State Law
13 Institute.

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

17 * * *

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

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

25 B. A remote online notarial act is deemed to be executed in any parish of this
26 state where any party is physically located at the time of the remote online
27 notarization. If no party was physically located in this state at the time of the remote
28 online notarization, the remote online notarial act is deemed to be executed in the

1 parish where the notary public is physically located at the time of the remote online
2 notarization.

3 §627. Procedure for performing remote online notarization

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

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

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

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

12 (b) Credential analysis.

13 (c) Identity proofing.

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

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

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

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

22 §628. Duties of the notary

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

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

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

1 §629. Records of remote online notarizations

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

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

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

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

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

15 §630. No variation by agreement

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

17 Section 5. R.S. 35:625 is hereby enacted to read as follows:

18 §625. Notaries authorized to perform remote online notarization

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

22 B. The provisions of this Section shall cease to be effective on February 1,
23 2022.

24 Section 6. R.S. 35:625.1 is hereby enacted to read as follows:

25 §625.1. Notaries authorized to perform remote online notarization

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

1 B. In order to obtain authorization to perform remote online notarization, a
2 notary public shall submit an application to the secretary of state in a format
3 prescribed by the secretary of state, complete any course of instruction required by
4 the secretary of state, and satisfy any other requirements imposed by rules adopted
5 by the secretary of state.

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

9 Section 7. This Section and Sections 1, 2, 3, 8, 9, and 10 of this Act shall become
10 effective on August 1, 2020.

11 Section 8.(A) Section 4 of this Act shall become effective upon the later of
12 enactment of the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress)
13 or August 1, 2020.

14 (B) If the SECURE Notarization Act is not enacted prior to February 1, 2022,
15 Section 4 of the Act shall become effective on February 1, 2022.

16 Section 9.(A) Section 5 of this Act is contingent upon the enactment of the SECURE
17 Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress).

18 (B) If the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress)
19 is enacted, Section 5 of this Act shall become effective upon the later of the enactment of
20 the H.R. 6364 or S. 3533 of the 116th Congress or August 1, 2020.

21 Section 10. Section 6 of this Act shall become effective on February 1, 2022.

DIGEST

The digest printed below was prepared by 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 274 Reengrossed 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. 35:623) provides for the legal effect of remote online notarization.

Proposed law (R.S. 35:6) authorizes remote online notarization by states other than Louisiana and the District of Columbia.

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

Proposed law (R.S. 35:625) provides that any regularly commissioned notary public in Louisiana is authorized to perform remote online notarizations. Proposed law will cease to be effective on Feb. 1, 2022.

Proposed law (R.S. 35:625.1) provides for the process and requirements necessary to become and remain authorized to perform remote online notarizations, including the requirement that the secretary of state may only authorize a regularly commissioned notary public who holds a valid notarial commission in this state.

Proposed law (R.S. 35:626(A)) provides for the locations of the notary public, parties, and witnesses to a remote online notarial act, requires the notary public to be physically located in a parish where the notary is authorized to exercise the function of a notary public, and 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.

Proposed law amending C.C. Art. 3344(A) and R.S. 35:6 and enacting R.S. 9:2760 shall become effective on Aug. 1, 2020.

Proposed law enacting R.S. 35:621, 622, 623, 624, 626, 627, 628, 629, and 630 shall become effective upon the later of the enactment of the SECURE Notarization Act or Aug. 1, 2020. If the SECURE Notarization Act is not enacted prior to Feb. 1, 2022, R.S. 35:621, 622, 623, 624, 626, 627, 628, 629, and 630 of proposed law shall become effective on Feb. 1, 2022.

Proposed law enacting R.S. 35:625 and 625.1 is contingent upon enactment of the SECURE Notarization Act. If the SECURE Notarization Act is enacted, R.S. 35:625 and 625.1 of proposed law shall become effective upon the later of the enactment of the SECURE Notarization Act or Aug. 1, 2020.

(Amends C.C. Art. 3344(A)(intro. para.) and R.S. 35:6; Adds R.S. 9:2760 and R.S. 35:621-630)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Provide for notarization of acts by foreign notaries.
2. Provide for multiple effective dates for certain provisions of proposed law.
3. Add the Louisiana State Bar Association as a stakeholder.

The House Floor Amendments to the engrossed bill:

1. Add the Louisiana Public Tag Association as a member of the stakeholder committee formed by the secretary of state.
2. Make technical changes.