

2018 Regular Session

SENATE BILL NO. 358

BY SENATOR LUNEAU

NOTARIES. Authorizes and provides relative to certain electronic notarial acts. (8/1/19)

1 AN ACT

2 To enact Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 35:621 through 630, relative to notaries public and commissioners; to provide  
4 relative to notarial acts; to authorize certain electronic notarial acts; to authorize a  
5 notary public to perform an electronic notarial act under certain circumstances; to  
6 provide certain terms, definitions, conditions, requirements, procedures, and effects;  
7 and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950,  
10 comprised of R.S. 35:621 through 630, is hereby enacted to read as follows:

11 **CHAPTER 10. ELECTRONIC NOTARIAL ACTS**

12 **§621. Definitions**

13 **For the purposes of this Chapter:**

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

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

4           (3) "Electronic notarial act" means an official act passed by or before a  
5           notary public pursuant to Title 35 of the Louisiana Revised Statutes of 1950 and  
6           conducted using electronic means and which involves electronic documents, an  
7           electronic seal, and electronic signature as provided by this Chapter.

8           (4) "Electronic notarial certificate" means the portion of the electronic  
9           document that is completed by the notary public in an electronic notarial act  
10           which contains the following:

11           (a) The notary public's electronic signature and electronic seal.

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

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

16           (5) "Electronic seal" means the information required by R.S. 35:12 of the  
17           notary public before whom the electronic notarial act was passed, which is  
18           electronically affixed to the electronic document evidencing such electronic  
19           notarial act.

20           (6) "Electronic signature" means the signature of a party to an electronic  
21           notarial act that is attached to or logically associated with an electronic  
22           document by or through an electronic sound, symbol, or mark.

23           (7) "Identity proofing" means a process or service operating in  
24           accordance with criteria developed by the secretary through which the identity  
25           of a signatory to an electronic notarial act is authenticated through review of  
26           personal information from public and proprietary data sources.

27           (8) "Notarial act" means the performance by a notary public of a  
28           function authorized under Title 35 of the Louisiana Revised Statutes of 1950.

29           (9) "Online notarial act" means an electronic notarial act performed by

1 means of two-way video and audio conference technology and an online internet  
2 connection that meets the criteria approved by the secretary and the standards  
3 adopted in this Chapter.

4 (10) "Principal" means either of the following:

5 (a) An individual whose electronic signature is affixed to the electronic  
6 document of an electronic notarial act before a notary public.

7 (b) An individual who has taken an oath or made an acknowledgment  
8 before a notary public but not in the capacity of a witness for the electronic  
9 notarial act.

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

14 (a) Identify the individual seeking an electronic notarial act.

15 (b) Perform credential analysis.

16 (12) "Secretary" means the Louisiana Secretary of State.

17 **§622. Rulemaking**

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

20 **B. The secretary may by rule impose additional mandatory qualifications**  
21 **for a notary public to conduct online notarial acts.**

22 **C. The secretary shall adopt rules that require a notary public to keep**  
23 **a secure electronic record of the electronic documents evidencing an electronic**  
24 **notarial act passed by or before the notary. The electronic record shall contain**  
25 **all of the following for each electronic notarial act:**

26 **(1) The date and time of the act.**

27 **(2) The type of act.**

28 **(3) The type, the title, or a description of the electronic document or**  
29 **proceeding.**

1                   **(4) The printed name and address of each principal involved in the**  
2                   **transaction or proceeding.**

3                   **(5) Evidence of identity of each principal to the electronic notarial act**  
4                   **shall meet the same standards as provided by Title 35 of the Louisiana Revised**  
5                   **Statutes of 1950.**

6                   **(6) Evidence of identity for all principals to an electronic notarial act**  
7                   **shall also include an electronic recording of any video and audio conference that**  
8                   **is the basis for satisfactory evidence of identity and a notation of the type of**  
9                   **identification presented as evidence.**

10                   **(7) If applicable, the fee charged for the electronic notarial act.**

11                   **D. The secretary in his discretion, may charge a reasonable fee to require**  
12                   **reporting of certain information from a notary public desiring to conduct**  
13                   **electronic notarial acts and as otherwise necessary to administer the provisions**  
14                   **of this Chapter.**

15                   **§623. Standards for electronic notarial acts**

16                   **The secretary by rule shall develop and maintain standards for**  
17                   **electronic notarial acts including standards for credential analysis, identity**  
18                   **proofing, and electronic notarial acts conducted by an electronic notary public**  
19                   **through use of an online internet connection.**

20                   **§624. Authority to perform electronic notarial acts**

21                   **A. The secretary shall require a notary public to complete and submit an**  
22                   **application before being authorized under this Chapter to perform electronic**  
23                   **notarial acts.**

24                   **B. A notary public authorized to perform electronic notarial acts under**  
25                   **this Chapter is a notary public who holds a valid notarial commission in this**  
26                   **state pursuant to Title 35 of the Louisiana Revised Statutes of 1950 and has**  
27                   **statewide jurisdiction.**

28                   **C. An ex officio notary public shall not be authorized to perform**  
29                   **electronic notarial acts under this Chapter.**

1        **§625. Electronic record of electronic notarial acts**

2            **A. A notary public shall keep a secure electronic record of all electronic**  
3        **notarial acts in accordance with the rules developed by the secretary.**

4            **B. The electronic record required by Subsection A of this Section shall**  
5        **be maintained for at least five years after the date of the transaction or**  
6        **proceeding.**

7        **§626. Applicable law; jurisdiction**

8            **All electronic notarial acts performed in accordance with this Chapter**  
9        **shall be considered to have been performed within the state of Louisiana and**  
10       **governed by Louisiana law.**

11       **§627. Duty of care**

12           **A. A notary public passing an electronic notarial act shall keep,**  
13       **maintain, protect, and provide for lawful inspection an electronic record of all**  
14       **electronic notarial acts as provided by this Chapter and the secretary.**

15           **B. If the evidence used to authenticate the principal's identity was**  
16       **obtained using electronic audio or video conference technology or through**  
17       **remote presentation as provided by this Chapter, the notary public passing the**  
18       **electronic notarial act shall keep an electronic copy of such evidence in addition**  
19       **to the recording of the video and audio conference and a notation of the type of**  
20       **identification used.**

21           **C. The notary public passing an electronic notarial act shall take**  
22       **reasonable steps to do all of the following:**

23           **(1) Ensure the integrity, security, and authenticity of electronic notarial**  
24       **acts.**

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

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

27           **(4) Ensure that any registered device used to create an electronic**  
28       **signature is current and has not been revoked or terminated by its issuing or**  
29       **registering authority.**

1           (5) Keep his record, electronic signature, and physical and electronic  
2           seals secured under his exclusive control and not allow them to be used by any  
3           other notary or any other person.

4           (6) Use his electronic signature only for the purpose of performing  
5           electronic notarial acts.

6           §628. Electronic notarial act procedures

7           A. A notary public may perform an electronic notarial act authorized  
8           under this Chapter that meets the requirements of this Chapter and rules  
9           developed by the secretary pursuant hereto regardless of whether the notary  
10          public or principal is physically located in this state at the time of any part of  
11          the electronic notarial act.

12          B. In performing an electronic notarial act pursuant to this Chapter, a  
13          notary public shall verify the identity of a principal creating an electronic  
14          signature to such act at the time that the signature is taken as authorized by this  
15          Chapter and otherwise in the same manner as governed by Title 35 of the  
16          Louisiana Revised Statutes of 1950.

17          C. In performing an online notarial act, a notary public shall verify the  
18          identity of a principal to the act through remote presentation as defined in this  
19          Chapter and using two-way video and audio conference technology and an  
20          online internet connection that meets the requirements of this Chapter and  
21          otherwise in the same manner as governed by Title 35 of the Louisiana Revised  
22          Statutes of 1950.

23          §629. Fees

24          The notary public who passes an online notarial act or employer thereof  
25          may charge a fee in an amount that is reasonable and customary for performing  
26          the electronic notarial act in addition to any other fees authorized under this  
27          Section.

28          §630. Authentic acts

29          Nothing in this Chapter shall prevent an electronic notarial act created

1           in accordance herewith and that meets the requirements of Louisiana Civil  
 2           Code Article 1833 from being recognized and treated as an authentic act as  
 3           provided thereby.

4           Section 2. The provisions of this Act shall become effective on August 1, 2019.

The original instrument was prepared by Jerry G. Jones. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

DIGEST

SB 358 Reengrossed

2018 Regular Session

Luneau

Proposed law authorizes electronic notarial acts and notaries public to perform an electronic notarial act.

Proposed law provides definitions and procedures for an applicant to be qualified by the secretary of state to perform electronic notarial acts. Provides for the adoption of rules to implement its provisions.

Proposed law specifies that a notary public authorized to perform electronic notarial acts is a notary public who holds a valid notarial commission in Louisiana and who has statewide jurisdiction. Does not authorize an ex officio notary public to perform electronic notarial acts.

Proposed law provides requirements for performing and keeping of records of electronic notarial acts, and for termination of commission. Provides procedures for an electronic notarial act.

Proposed law provides that an electronic document resulting from an electronic notarial act that meets the requirements of the present law concerning authentic acts shall be recognized and treated as an authentic act.

Effective August 1, 2019.

(Adds R.S. 35:621-630)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Makes technical changes.
2. Revises definitions.
3. Removes proposed language in Civil Code concerning authentic acts.
4. Adds effective date of August 1, 2019.
5. Provides relative to authority of secretary.
6. Provides relative to duties of notary public performing an electronic notarial act.

Senate Floor Amendments to engrossed bill

1. Specifies that a notary public authorized to perform electronic notarial acts is a notary public who holds a valid notarial commission in Louisiana and who has statewide jurisdiction.
2. Does not authorize an ex officio notary public to perform electronic notarial acts.
3. Makes technical changes.