

Regular Session, 2014

HOUSE BILL NO. 1259 (Substitute for House Bill No. 661 by Representative Price)

BY REPRESENTATIVE PRICE

FINANCIAL INSTITUTIONS: Provides relative to the admissibility of electronic reproductions of records retained by financial institutions

1 AN ACT

2 To amend and reenact R.S. 6:667.3, R.S. 13:3733.1(A)(1), (E), and (G), and Code of Civil  
3 Procedure Articles 2636 and 2637(A) and (C) and to enact Code of Civil Procedure  
4 Article 2637(F), relative to reproductions of records retained by financial institutions  
5 and usage thereof; to provide for the recognition of reproductions as authentic  
6 evidence; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 6:667.3 is hereby amended and reenacted to read as follows:

9 §667.3. Records as evidence

10 A. An official record of a member's account in a credit union doing business  
11 in this state, or an entry therein, when admissible for any purpose, may be evidenced  
12 by a copy attested by the officer having legal custody of the member's records.

13 B. Notwithstanding any law or provision to the contrary, with respect to any  
14 power exercised by credit unions, each reproduction, as defined in R.S.  
15 13:3733.1(A)(4), shall be an original as defined in Article 1001(3) of the Louisiana  
16 Code of Evidence, and under any other similar codes of evidence or other evidentiary  
17 laws or rules of any other jurisdiction.

18 Section 2. R.S. 13:3733.1(A)(1), (E), and (G) are hereby amended and reenacted to  
19 read as follows:

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

A. As used in this Section the following terms shall have the following  
meanings:

(1) "Financial institution" means any mortgage or loan servicer or any ~~every~~  
entity organized to engage in the business of banking pursuant to the laws of the  
United States, the state of Louisiana, any other state, or the District of Columbia,  
including state banks, national banks, savings and loan associations, and all other  
entities which lend money or otherwise extend credit and which are supervised by  
any department, board, agency, or corporation of the United States, the state of  
Louisiana, any other state, or the District of Columbia.

\* \* \*

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

STATE OF \_\_\_\_\_

PARISH/COUNTY OF \_\_\_\_\_

CITY OF \_\_\_\_\_

I, \_\_\_\_\_, a representative of \_\_\_\_\_ (the  
Financial Institution ~~financial institution~~) do hereby certify ~~that~~ the following:

(a) The document(s) attached to this certificate, consisting of \_\_\_\_ page(s) is  
(are each) a true and correct reproduction of the original thereof, being a  
reproduction made from the records maintained by the Financial Institution

(financial institution) in the course of its business activities and made in accordance with the provisions of R.S. 13:3733.1.

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

NAME

TITLE

ADDRESS

\* \* \*

G.(1) A reproduction of a ~~promissory note, negotiable instrument,~~ letter of credit, certificated security, document of title, or a certificate of title pertaining to a motor vehicle shall not be deemed to be an original of such record for the following purposes:

~~(a) Use of the record in executory proceedings as provided in Chapter I of Title II of Book V of the Louisiana Code of Civil Procedure, Article 2631 et seq., except as otherwise provided by Article 2636.~~

~~(b)~~(a) Transferring the record.

~~(c)~~(b) Presenting the record for payment, acceptance, or honor.

~~(d)~~(c) Use of the record in a judicial proceeding or action involving a claim based on such record, unless the original has been lost, stolen, or inadvertently destroyed, or unless the reproduction is certified in accordance with the provision of this Section.

(2) ~~However, a~~ A reproduction of a check, as defined in R.S. 10:3-104, that has been destroyed by a financial institution in the regular course of its business activities shall be deemed to be an original of such check in a judicial proceeding or

1 action involving a claim based on or involving such check. ~~However, a~~ A substitute  
2 check, as defined in the federal Check Clearing for the 21st Century Act and  
3 Regulation CC, 12 CFR 229.2(zz), ~~may~~ shall be deemed to be an original of such  
4 check in a judicial proceeding or action involving a claim based on or involving such  
5 check.

6 ~~(2)(3)~~ (3) A reproduction of an original record bearing a signature shall not be  
7 admissible into evidence as the original record itself if the signature on the original  
8 is omitted from the reproduction.

9 \* \* \*

10 Section 3. Code of Civil Procedure Articles 2636 and 2637(A) and (C) are hereby  
11 amended and reenacted and Code of Civil Procedure Article 2637(F) is hereby enacted to  
12 read as follows:

13 Art. 2636. Authentic evidence

14 The following documentary evidence shall be deemed to be authentic for  
15 purposes of executory process:

16 (1) The note, bond, or other instrument evidencing the obligation secured by  
17 the mortgage, security agreement, or privilege, paraphed for identification with the  
18 act of mortgage or privilege by the notary or other officer before whom it is  
19 executed, with the exception that a paraph is not necessary in connection with a note  
20 secured by a security agreement subject to Chapter 9 of the Uniform Commercial  
21 Code ~~Louisiana Commercial Laws~~ or a copy of the note, bond, or other instrument  
22 evidencing the obligation certified as such by the notary before whom the act of  
23 mortgage, security agreement, or privilege was executed~~;~~.

24 (2) A certified copy or a duplicate original of an authentic act~~;~~.

25 (3) A certified copy of any judgment, judicial letters, or order of court~~;~~.

26 (4) A copy of a resolution of the board of directors, or other governing board  
27 of a corporation, authorizing or ratifying the execution of a mortgage on its property,  
28 certified in accordance with the provisions of R.S. 13:4103~~;~~.

1 (5)(a) A security agreement subject to Chapter 9 of the Uniform Commercial  
2 Code ~~Louisiana Commercial Laws~~, which need not be executed or acknowledged  
3 before a notary, ~~or,~~

4 (b) A reproduction of a security agreement described in Subsubparagraph (a)  
5 of this Subparagraph or a reproduction of a single writing that evidences both an  
6 obligation to pay and a security agreement described in Subsubparagraph (a) of this  
7 Subparagraph, that is certified by a representative of a financial institution in the  
8 manner provided for in R.S. 13:3733.1(E).

9 (6) A certified copy of the limited liability company's articles of organization  
10 filed with the secretary of state or a written consent or extract of minutes of a  
11 meeting of the persons specified in R.S. 13:4103.1, in each case authorizing or  
12 ratifying the execution of an act of mortgage on its property and in the form required  
13 by R.S. 13:4103.1, certified as provided in R.S. 12:1317(C).

14 (7) A certified copy of the contract of partnership authorizing the execution  
15 of an act of mortgage filed for registry with the secretary of state.

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

18 Art. 2637. Evidence which need not be authentic

19 A. Evidence as to the proper party defendant, or as to the necessity for  
20 appointing an attorney at law to represent an unrepresented defendant, or of any  
21 agreement to extend or modify the obligation to pay or of written notification of  
22 default, or of the breach or occurrence of a condition of the act of mortgage, or of the  
23 security agreement, or privilege securing the obligation, or of advances made by the  
24 holder of a collateral mortgage note or note for future advances, or of an obligation  
25 secured under Chapter 9 of the Uniform Commercial Code ~~Louisiana Commercial~~  
26 ~~Laws~~, need not be submitted in authentic form. These facts may be proved by the  
27 verified petition, or supplemental petition, or by affidavits submitted therewith.

28 \* \* \*

1 C. If a mortgage sought to be enforced is a collateral mortgage ~~on movable~~  
2 ~~or immovable property~~, or if the security agreement sought to be enforced secures  
3 ~~secured~~ multiple or ~~other and~~ future indebtedness of the debtor, the existence of the  
4 actual indebtedness may be proved by verified original or supplemental petition, or  
5 by an affidavit submitted therewith, with the notes, bonds, handnotes, or other  
6 evidence representing the actual indebtedness, or a reproduction of the notes, bonds,  
7 handnotes, or other evidence representing the actual indebtedness, each certified by  
8 a representative of that financial institution pursuant to the provisions of R.S.  
9 13:3733.1(E), that may be attached as an exhibit to the petition ~~the verified petition~~  
10 ~~or supplemental petition, with the handnote, handnotes, or other evidence~~  
11 ~~representing the actual indebtedness attached as an exhibit to the petition.~~

12 \* \* \*

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

18 Section 4. This Act shall become effective on July 1, 2014; if vetoed by the  
19 governor and subsequently approved by the legislature, this Act shall become effective on  
20 July 1, 2014, or on the day following such approval by the legislature, whichever is later.

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#### 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)]

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Price

HB No. 1259

**Abstract:** Modifies requirements and provisions relative to the admissibility of electronic reproductions of records retained by financial institutions.

Present law defines "reproduction" as a counterpart, duplicate, or copy, or a durable medium for making a counterpart, duplicate, or copy, produced from the same impression as the original, or from the same matrix, or produced or obtained by any photographic, photostatic, microfilm, microcard or miniature or microphotographic process, or by any mechanical or electronic recording or re-recording, electronic or optical imaging, chemical process or other process or technique which accurately reproduces the original or forms or creates a durable

medium for reproducing the original, including but not limited to computer and other printouts, counterparts, duplicates, copies, and other output generated or produced by or from an electronic imaging system such as counterparts, duplicates, or copies produced or obtained from optical disks.

With respect to powers exercised by credit unions and notwithstanding any law or provision to the contrary, proposed law provides that a reproduction of a member account record constitutes an original record for evidentiary purposes pursuant to the La. Code of Evidence 1001(3), and under any other similar codes of evidence or evidentiary law or rule in another jurisdiction.

With respect to reproductions of member account records, present law provides that whenever any counterpart, duplicate, or copy or group of counterparts, duplicates, or copies are required to be certified with a certificate reading by the respective financial institution providing the reproduction, each counterpart, duplicate, or copy constitutes a reproduction as defined in present law and is admissible into evidence as the original record.

Proposed law defines a "financial institution" as every entity organized to engage in the business of banking pursuant to U.S. laws, the state of La., any other state, or Washington, DC, including state banks, national banks, savings and loan associations, and all other entities which lend money or otherwise extend credit and which are supervised by any department, board, agency, or corporation of the U.S., the state of La., any other state, or Washington, DC. Proposed law adds mortgage and loan servicers to the definition of financial institution.

Present law requires the financial institution providing the certification of the reproduction to certify the following:

- (1) The document (attached to the certificate) consists of the accurate number of pages, the document is a true and correct reproduction of the original, and the reproduction is made from the records maintained by the financial institution in the course of its business activities and made pursuant to the provisions of present law.

Proposed law requires an additional certification to be made by the financial institution:

- (2) The financial institution is a person or entity entitled to enforce an obligation evidenced by the document attached to the certificate.

Present law provides that the reproduction of a promissory note, negotiable instrument, letter of credit, certificated security, document of title, or a certificate of title pertaining to a motor vehicle is not deemed an original of the record for the purpose of using the record in executory proceedings. Proposed law removes promissory notes and negotiable instruments from the applicability of present law.

Proposed law adds to present law that unless the reproduction of a letter of credit, certificated security, document of title, or a certificate of title pertaining to a motor vehicle is certified by the respective financial institution pursuant to the provisions of present law and proposed law, they are not deemed to be originals of the record for the purpose of using the record in a judicial proceeding or action involving a claim based on the record, unless the original has been lost, stolen, or inadvertently destroyed.

Present law provides that a substitute check, as defined in the federal Check Clearing for the 21st Century Act and Regulation CC, 12 CFR 229.2(zz), may be deemed to be an original of the substitute check in a judicial proceeding or action involving a claim based on or involving such check. Proposed law changes present law to provide that a substitute check shall be deemed an original of the substitute check in a judicial proceeding or action involving a claim based on or involving such check.

When paraphed for identification with the act of mortgage or privilege by the notary or other officer before whom it is executed, present law provides that the note, bond, or other instrument that evidences the obligation secured by the mortgage, security agreement, or privilege, constitutes authentic evidence for the purposes of executory process.

Present law provides an exception that a paraph is not necessary in connection with a note secured by a security agreement that is subject to Chapter 9 of the Louisiana Commercial Laws, or a copy of the note, bond, or other instrument evidencing the obligation certified as such by the notary before whom the act of mortgage, security agreement, or privilege was executed. Proposed law changes present law from secured obligations under Chapter 9 of the Louisiana Commercial Laws to secured obligations under Chapter 9 of the Uniform Commercial Code.

Present law provides that a security agreement subject to Chapter 9 of the Louisiana Commercial Laws, which need not be executed or acknowledged before a notary, constitutes authentic evidence for the purposes of executory process. Proposed law changes present law from secured obligations under Chapter 9 of the Louisiana Commercial Laws to secured obligations under Chapter 9 of the Uniform Commercial Code.

Present law provides that all other documentary evidence recognized by law as authentic is authentic evidence for the purposes of executory process. Proposed law retains present law and adds a reference of authentic evidence pursuant to present law.

Present law provides that an obligation secured under Chapter 9 of the Louisiana Commercial Laws need not be submitted in authentic form because the facts of these secured obligations may be proved by the verified petition, or supplemental petition, or by affidavits submitted. Proposed law changes present law from secured obligations under Chapter 9 of the Louisiana Commercial Laws to secured obligations under Chapter 9 of the Uniform Commercial Code.

Present law provides that if a mortgage sought to be enforced is a collateral mortgage on movable or immovable property, or if the security agreement sought to be enforced secured multiple or other future indebtedness of the debtor, the existence of the actual indebtedness may be proved by the verified petition or supplemental petition, with the handnote, handnotes, or other evidence representing the actual indebtedness attached as an exhibit to the petition. Proposed law removes movable or immovable property from the reference to a collateral mortgage and changes the means of verification under present law.

Proposed law provides that if a mortgage sought to be enforced is a collateral mortgage, or if the security agreement to be enforced secures multiple or future indebtedness of the debtor, the existence of the actual indebtedness may be proved by verified original or supplemental petition, or by an affidavit submitted therewith, with the notes, bonds, handnotes, or other evidence representing the actual indebtedness, or a reproduction of the notes, bonds, handnotes, or other evidence representing the actual indebtedness, each certified by a representative of the respective financial institution, and may be attached as an exhibit to the petition, pursuant to the provisions of present law and proposed law.

Proposed law provides that evidence as to the proper party plaintiff entitled to enforce the obligation secured by the note, bond, handnote, or other instrument evidencing the obligation, of which a copy or reproduction is submitted pursuant to present law (La. C.C.P. Art. 2636(8) or La. C.C.P. Art. 2637(C)), may be proved by verified original or supplemental petition, or by submitted affidavit.

Effective July 1, 2014.

(Amends R.S. 6:667.3, R.S. 13:3733.1(A)(1), (E), and (G), and C.C.P. Arts. 2636 and 2637(A) and (C)); Adds C.C.P. Art. 2637(F))

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Made technical changes.
2. Clarified that certain evidence of the existence of the debtor's actual indebtedness or reproductions of certain evidence, certified by a representative of the financial institution, may be attached as an exhibit to the verified original or supplemental petition or affidavit to prove the existence of the debtor's actual indebtedness.
3. Changed a statutory reference from La. C.C.P. Art. 2636(1) to La. C.C.P. Art. 2636(8).