

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

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

DIGEST

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. Proposed law also generally excludes collateral mortgage notes from proposed law relative to use of reproductions. 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 conventional mortgage or 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 with the original or supplemental petition, along with the original or reproduction of the note, bond, handnote,

or other evidence representing the actual indebtedness, attached as an exhibit. A reproduction of the note, bond, handnote, or other evidence representing the actual indebtedness shall be certified by a representative of a financial institution.

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); adds R.S. 13:3733.1(K))

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).

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the reengrossed bill

1. Excluded collateral mortgage notes generally from authorization to use a reproduction.
2. Revised language as to showing proof of actual indebtedness if a mortgage sought to be enforced is a collateral mortgage, or if the conventional mortgage or security agreement to be enforced secures multiple or future indebtedness of the debtor.