

Regular Session, 2014

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

BY REPRESENTATIVE PRICE

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§667.3. Records as evidence

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

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

Section 2. R.S. 13:3733.1(A)(1), (E), and (G) are hereby amended and reenacted and R.S. 13:3733.1(K) is hereby enacted to 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.

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ADDRESS

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

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

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K. Except as provided in Subsection H of this Section, the provisions of this Section that authorize the use of a reproduction shall not apply to a collateral mortgage note as defined in R.S. 10:9-102(d)(3).

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

Art. 2636. Authentic evidence

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

(1) The note, bond, or other instrument evidencing the obligation secured by the mortgage, security agreement, or privilege, paraphed for identification with the act of mortgage or privilege by the notary or other officer before whom it is executed, with the exception that a paraph is not necessary in connection with a note secured by a security agreement subject to Chapter 9 of the Uniform Commercial Code 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;

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

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

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

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

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

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

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

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

Art. 2637. Evidence which need not be authentic

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

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C. If a mortgage sought to be enforced is a collateral mortgage ~~on movable or immovable property~~, or if the conventional mortgage or security agreement sought to be enforced secures ~~secured~~ multiple or ~~other~~ and 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

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

GOVERNOR OF THE STATE OF LOUISIANA

CODING: Words in ~~struck-through~~ type are deletions from existing law; words underscored are additions.