

Price (HB 1259)**Act No. 440**

Relative to records retained by financial institutions, existing 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, new 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.

Prior law provided for a definition of "financial institution." New law adds mortgage and loan servicers to the definition.

With respect to reproductions of member account records, existing 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 existing law and is admissible into evidence as the original record.

Existing law requires the financial institution providing certification of the reproduction to certify 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 existing law.

New law requires the financial institution to additionally certify that the financial institution is a person or entity entitled to enforce an obligation evidenced by the document attached to the certificate.

Prior law provided that the reproduction of a promissory note, negotiable instrument, letter of credit, certificated security, document of title, or certificate of title pertaining to motor vehicles was not deemed an original of the record for the purpose of using the record in executory proceedings.

New law provides that the reproduction of a letter of credit, certificated security, document of title, or certificate of title pertaining to motor vehicles is not deemed an original of the record for certain other purposes provided in existing law.

New law adds to existing law that unless the reproduction is certified by the respective financial institution pursuant to the provisions of both existing law and new law, it is not deemed an original 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.

Prior law provided that a substitute check, as defined in the federal Check Clearing for the 21st Century Act and Regulation CC, 12 CFR 229.2 (aaa), may be deemed an original of the substitute check in a judicial proceeding or action involving a claim based on or involving such check. New law makes it mandatory that a substitute check be deemed an original.

Generally, new law provides that authorization to use a reproduction does not apply to a collateral mortgage note as defined in existing law.

Existing 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, when paraphed for identification with the act of mortgage or privilege by the notary or other officer before whom it is executed.

Prior law provided 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. New law changes the reference in prior law from secured obligations under Chapter 9 of the Louisiana Commercial Laws to secured obligations under Chapter 9 of the Uniform Commercial Code.

Prior law provided 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. New law changes the reference in prior law from secured obligations under Chapter 9 of the Louisiana Commercial Laws to secured obligations under Chapter 9 of the Uniform Commercial Code.

Prior law provided that all other documentary evidence recognized by law as authentic is authentic evidence for the purposes of executory process. New law adds certain statutory provisions to the application of prior law.

Prior law provided 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. New law changes the reference in prior law from secured obligations under Chapter 9 of the Louisiana Commercial Laws to secured obligations under Chapter 9 of the Uniform Commercial Code.

Prior law provided that if a mortgage sought to be enforced was 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 have been 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. New law changed prior law by deleting movable or immovable property from the reference to a collateral mortgage and by changing the means of verification.

Therefore, new 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 requires certification by a representative of a financial institution.

New 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 existing law, 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) and R.S. 13:3733.1(K))