

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 236

2017 Regular Session

LaFleur

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

CLERKS OF COURT. Provides relative to clerks of court. (8/1/17) (2/3-CA7s2.1(A))

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Technical Legislative Bureau amendments

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

SB 236 Reengrossed

2017 Regular Session

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Present law, relative to clerks of court, provides that the uniform filing fee that a recorder may charge for the filing and recordation of a multiple indebtedness mortgage executed in accordance with C.C. Art. 3298 is \$25, plus \$10 for each subsequent page, and \$5 for each name after the first name that is required to be indexed.

Proposed law provides that the uniform filing fee that a recorder may charge for the filing and recordation of a multiple indebtedness mortgage executed in accordance with C.C. Art. 3298 is as set forth in proposed law (R.S. 13:844).

Present law provides that for purposes of establishing the recordation fee, every multiple indebtedness mortgage filed for recordation shall be captioned as a "multiple indebtedness mortgage" or "multiple obligations mortgage" on the first page, and shall have on the first page a margin of two inches at the top and one inch at the bottom and on each side, and all subsequent pages shall have a margin requirement of one inch on all sides. In addition, the type size shall be not less than eight point. Further, for any document not in compliance with these requirements there shall be an additional noncompliance fee of \$10 per document. Proposed law deletes present law.

Present law provides that recorders may charge the following fees:

- (1) For filing and recording any document, \$25 per book for the first page and \$10 for each subsequent page per book up to 10 pages. All documents that exceed 10 pages, \$25 for the first page and \$8 for each subsequent page.
- (2) For indexing of all documents filed for record for each name after the first name that is required to be indexed, \$5 per name.
- (3) For notarizing acknowledgments of acts executed under private signature, with seal and certificate, \$5.
- (4) For certificate of real estate mortgage and lien certificate with seal, for each name in which search is made, and for one definable property only, \$20 for the first name and \$10 for each additional name. There shall be an additional charge of \$1 per exception in the event that more than 10 exceptions are contained on a certificate.
- (5) For canceling real estate mortgage, with original note, \$10.
- (6) For making copies of all official documents, no more than \$2 per page.
- (7) For attesting any record or copy thereof, \$5.

- (8) For canceling of lien for paving or installation of sewerage system, \$10.

Proposed law provides that recorders shall charge the following fees for filing and recording documents:

- (1) For one to five page documents, \$100.
- (2) For six to 25 page documents, \$200.
- (3) For 26 to 50 page documents, \$300.
- (4) For documents in excess of 50 pages, \$300 for first 50 pages and \$5 for each subsequent page.
- (5) For indexing of all documents filed for record for each name after the tenth name that is required to be indexed, \$5 per name.
- (6) The above set forth fees (1) through (5) shall be inclusive of the following:
 - (a) Indexing of all documents filed for record for up to 10 names.
 - (b) One certified copy of the recorded document or e-certification of document.
- (7) Notwithstanding any other provision of law to the contrary, there shall be a fee of \$50 for the recordation of an act or affidavit to cancel a single mortgage, lien, or privilege.
- (8) If a document is to be recorded and filed in both the mortgage and conveyance records, the fees provided in proposed law shall be assessed separately for recording in the mortgage records and in the conveyance records.
- (9) Documents to be recorded may be either letter-size paper (8.5 x 11 inches) or legal-size paper (8.5 x 14 inches) and the recording fees set forth in proposed law shall be the same regardless of which size paper is used. For any other size paper, there shall be an additional fee of \$20 per page.
- (10) For notarizing acknowledgments of acts executed under private signature, with seal and certificate, \$10.
- (11) For certificate of real estate mortgage and lien certificate with seal, for each name in which search is made, and for one definable property only, \$20 for the first name and \$10 for each additional name. There shall be an additional charge of \$1 per exception in the event that more than 10 exceptions are contained on a certificate.
- (12) For canceling real estate mortgage, with original note, \$10.
- (13) For making copies of all official documents, no more than \$2 per page.
- (14) Except as otherwise provided in proposed law (R.S. 13:844(A)(1)(f)(ii)) for attesting any record or copy thereof, \$10. For a file-stamped conformed copy, \$5.

Proposed law defines "document" as those pages presented together for filing or recording, inclusive of the act, together with exhibits, riders, or additional documents attached thereto, including but not limited to powers of attorney, property description exhibits, tax certificates and researches, mortgage certificates, resolutions, certificates and surveys. Requires that every document filed for recordation shall be captioned as to type of act on the first page, and shall have on the first page a margin of two inches at the top and one inch at the bottom and sides. The type size shall not be less than eight point.

Present law provides that the funds derived by the clerk of court in the parish of Calcasieu from that portion of the fees collectable pursuant to present law above the amount of such

fees collectable at the rates provided by R.S. 13:844 prior to the amendment thereof at the 1981 Regular Session of the Legislature shall be expended exclusively for the payment of salaries of deputy clerks of court in that parish. Proposed law deletes present law.

Present law provides that in addition to the above charges, the clerks of court as ex officio notaries public may make a reasonable charge for drawing deeds, mortgages, chattel mortgages, liens or other similar instruments. Proposed law retains present law.

Present law, for purposes of establishing the filing and recording fee, provides that every document filed for recordation shall be captioned as to type of act on the first page, and shall have on the first page a margin of two inches at the top, and one inch at the bottom and sides. The type size shall not be less than eight point. Provides that for any document not in compliance with these requirements, there shall be an additional \$10 noncompliance fee per document.

Present law provides that in addition to the fees otherwise provided in present law, the clerk of the 24th JDC for Jefferson Parish may demand and receive additional fees in an amount not to exceed 25% of the fees specified in present law, such funds so derived to be expended exclusively for the payment of salaries of deputy clerks of court in that parish. Proposed law deletes present law.

Present law authorizes the clerks of court and ex officio recorders and registers of conveyances and recorders of mortgages to make additional copies, by means of the microphotographic process, of all original acts and/or records thereof, including criminal records, of every nature and kind in their custody by virtue of their various official capacities filed or recorded in their offices prior to July 29, 1964, and subsequent thereto. Proposed law authorizes them to make additional copies by any means authorized by proposed law; otherwise retains present law.

Present law authorizes such clerks of court and ex officio recorders and registers to purchase the necessary microphotographic equipment and equipment used to retrieve from storage microfilm copies, to lease such equipment or to contract with competent independent contractors, or both, according to their discretion, to cause the records described in this section to be copied and reproduced by means of the microphotographic process. Proposed law authorizes them to purchase the necessary equipment for photorecording, photocopying, microfilming, or electronic imaging, to lease such equipment or to contract with competent independent contractors, or both, according to the discretion of said clerks of court and ex officio recorders and registers, to cause such records to be copied and reproduced.

Present law authorizes each such clerk of court and ex officio recorder and register to defray the cost of copying, reproducing and retrieving the records described in this section, including the cost of microphotographic and retrieval equipment and services, out of any funds available in the clerk's salary fund. Proposed law authorizes each such clerk of court and ex officio recorder and register to defray the cost of copying, reproducing, and retrieving the records described in present law out of any funds available in the clerk's salary fund

Present law requires that the clerks of court, including the clerks of the Criminal or Civil District Courts for the parish of Orleans, make and retain in their custody, by means of the microphotographic process, a copy of all original criminal and civil records of every nature and kind, which are deemed permanent under a record retention and disposal schedule adopted by the secretary of state and the clerks of court in accordance with R.S. 44:410 and 411. Provides that the clerks of court may then destroy the original criminal records and any other records, the destruction of which is authorized by R.S. 13:917, which have been so copied and retained. However, all records in suits affecting records relating to immovable property, or adoption, interdiction, successions, trusts, or emancipation created prior to 1922 shall be retained in their original form.

Proposed law requires that prior to destroying the original criminal records and any other records of every nature and kind that are deemed permanent under a record retention and disposal schedule adopted by the secretary of state and the clerks of court in accordance with R.S. 44:410 and 411, the destruction of which is authorized by R.S. 13:917, the clerks of

court, including the clerks of the Criminal or Civil District Courts for the parish of Orleans, make and retain in their custody a copy of such records electronically on non-rewritable magnetic, optical or laser type storage media, including but not limited to CD-ROM. Provides that no cause of action for any claim shall exist against a clerk of court for any damage or loss resulting from the destruction of an original record after proper preservation of the record in accordance herewith. However, all records in suits affecting records relating to immovable property, or adoption, interdiction, successions, trusts, or emancipation created prior to 1922 shall be retained in their original form.

Present law provides that in all cases where the clerks of court and recorders of the various parishes throughout the state, Orleans Parish excepted, are required by law to make records of filings, documents, pleadings, and all other written instruments, except indexes, and registers of the same, such records may be made by any method of photorecording, photocopying, microfilming, or other photographic method of reproduction or electronically on non-rewritable magnetic, optical, or laser type storage media, including but not limited to CD-ROM. However, the film stock used in making photographic or microphotographic copies and the processing of the copies shall comply with the standards of the American National Standard Institute for permanent record photographic microcopying film and the electronic media used shall comply with the standards of the International Standards Organization for electronic storage of records.

Proposed law specifically includes indexes and registers of the records; otherwise retains present law.

Present law provides that whenever recordation by means of photorecording, photocopying, microfilming, or other photographic method of reproduction is used or when electronic recordation on non-rewritable magnetic, optical, or laser type storage media is used, any requirement expressed or implied in law for the above-mentioned records, other than indexes and registers of the same, to be maintained in a book or bound volume shall be satisfied by the appropriate storage unit of microfilm or other photographic method employed, or tape or disk; however, the originals of conveyances, probate, mortgage, and other permanent records required by existing law to be kept for all time shall continue to be maintained in a book or bound volume and shall remain subject to examination and copying under the provisions of R.S. 44:31 et seq., and other applicable laws.

Proposed law specifically includes indexes and registers of the records and in lieu of maintaining the original of permanent records required to be kept for all time in a book or bound volume, if a clerk of court elects to record by means of microfilming or other photographic method of reproduction, or electronically, he shall have copies of the films, tapes, or disks available for inspection, examination, and copying under the provisions of R.S. 44:31 et seq., and other applicable laws.

Present law requires recorders to keep indexes, both direct and inverse, to all acts filed for record in their respective offices which indexes shall contain, in alphabetical order, references to the names of the parties to the acts, to the file number assigned on recordation to the day, month, and year in which they are recorded, and to the book and page in which they are recorded.

Proposed law retains present law and additionally requires that all recorders adopt and adhere to any indexing standards that have been promulgated by the Louisiana Clerks' Remote Access Authority.

Present law requires that the clerk of court and recorder only display the last four digits of the social security numbers listed on instruments that his office makes available for viewing on the Internet. Proposed law requires that the recorder only display the last four digits of the social security numbers or taxpayer identification numbers listed on instruments that his office makes available for viewing on the Internet.

Present law provides that a clerk of court, as ex officio recorder, the Orleans Parish register of conveyances, or its successor, or the Orleans Parish recorder of mortgages or its successor, hereinafter referred to as "recorder", is authorized but not required to adopt and implement

a published plan which shall include a written contract between the clerk of court, the Orleans Parish register of conveyances, or its successor, or the Orleans Parish recorder of mortgages, or its successor, and the filer, which complies with the Louisiana Uniform Electronic Transactions Act, and which provides for the acceptance of an electronic record of any recordable written instrument except original maps, plats, property descriptions, or photographs as related to the work of a professional surveyor engaged in the "Practice of Land Surveying" as defined in R.S. 37:682 for filing and recording submitted by any person, department, political subdivision, agency, branch, entity, or instrumentality of Louisiana or of the federal government or of a state-chartered or federally chartered financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Requires that the filer of such an electronic record certify to the recorder that the written instrument from which the electronic record is taken conforms to all applicable laws relating to the form and content of instruments which are submitted in writing. Provides that immediately after acceptance of an electronic record for filing, the recorder shall endorse such record with the date, hour, and minute it is filed. An electronic filing received on a legal holiday or at any time other than during the normal business hours of the recorder shall be accepted for filing on the next business day by the same procedure followed when a paper document is received in the mail of the recorder at any time other than during normal business hours. Provides that an electronic record shall be effective with respect to a third person from the time of its filing in the same manner as if the written instrument had been filed.

Proposed law requires that on or before January 1, 2022, each clerk of court, including the Orleans Parish register of conveyances or its successor and the Orleans Parish recorder of mortgages or its successor, adopt and implement a plan for recording electronic documents in accordance with proposed law.

Proposed law provides that clerks of court shall not be liable for any damages caused by any third party to any information included in pleadings or documents accepted for filing by the clerk of court.

Effective August 1, 2017.

(Amends R.S. 9:5217, R.S. 13:844, R.S. 44:40(A), (B), (C), and (E), 116(A) and (B), and 161, C.C. Art. 3352(C), and C.C.P. Art. 258(A); adds C.C.P. Arts. 258(D) and 259)

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