

SENATE BILL NO. 75

BY SENATOR MORRIS (On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 253 and 2853, Code of Criminal
3 Procedure Article 14.1, and R.S. 44:116(D) and the introductory paragraph of R.S.
4 44:116(E)(1) and R.S. 44:116(E)(2), to enact Section 4 of Chapter 3 of Title I of
5 Book VI of the Code of Civil Procedure, to be comprised of Code of Civil Procedure
6 Article 2911, Code of Criminal Procedure Article 14.2, R.S. 9:2761 and 2762, and
7 R.S. 44:117, and to redesignate Code of Civil Procedure Article 258 and R.S. 44:117,
8 relative to electronic filing and record retention; to provide for the filing of
9 pleadings, documents, and exhibits in civil proceedings; to provide for the filing,
10 retention, and recordation of testaments; to provide for electronic and facsimile
11 filings in criminal proceedings; to provide for the effectiveness of electronic records;
12 to provide for the reproduction, maintenance, and destruction or return of original
13 records; to provide for the preservation of filings in the conveyance records; to
14 provide for redesignations; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Code of Civil Procedure Articles 253 and 2853 are hereby amended and
17 reenacted and Section 4 of Chapter 3 of Title I of Book VI of the Code of Civil Procedure,
18 to be comprised of Code of Civil Procedure Article 2911, is hereby enacted to read as
19 follows:

20 Art. 253. Pleadings, documents, and exhibits to be filed with clerk

21 A. All pleadings or documents to be filed in an action or proceeding instituted
22 or pending in a court, and all exhibits introduced in evidence, shall be delivered **or**
23 **transmitted** to the clerk of the court for ~~such~~ **that** purpose. The clerk **of court** shall
24 endorse thereon the fact and date of filing; and shall retain possession thereof for
25 inclusion in the record, or in the files of his **the clerk's** office, as required by law.
26 The endorsement of the fact and date of filing shall be made upon receipt of the
27 pleadings or documents by the clerk **of court** and shall be made without regard to

1 whether there are orders in connection therewith to be signed by the court.

2 B. The filings as provided in Paragraph A of this Article and all other
3 provisions of this Chapter may be transmitted electronically in accordance with a
4 system established by a the clerk of court, ~~or by Louisiana Clerks' Remote Access~~
5 ~~Authority. When such a system is established, the~~ The clerk of court shall adopt and
6 implement procedures a system for the electronic filing and storage of any pleading,
7 document, or exhibit, ~~and the official record shall be the electronic record~~ filed with
8 a pleading. A pleading or document filed electronically is deemed filed on the date
9 and time stated on the confirmation of electronic filing sent from the system, if the
10 clerk of court accepts the electronic filing. Public access to electronically filed
11 pleadings and documents shall be in accordance with the rules governing access to
12 paper filings. ~~The clerk of court may convert into an electronic record any pleading,~~
13 ~~document, or exhibit as set forth in R.S. 44:116. The originals of conveyances shall~~
14 ~~be preserved by the clerk of court.~~

15 C. The clerk of court may convert into an electronic record any pleading,
16 document, or exhibit that is filed in paper form. If requested by the filing party,
17 the clerk of court shall return to the filing party the original of any document
18 or exhibit that has been converted into an electronic record.

19 D. The official record shall be the electronic record. The original of any
20 filed document or exhibit shall be maintained by the filing party during the
21 pendency of the proceeding and until the judgment becomes final and definitive,
22 unless otherwise provided by law or order of the court. Upon request and
23 reasonable notice, the original document or exhibit shall be produced to the
24 court. Upon reasonable notice, the original document or exhibit shall be made
25 available to the opposing party for inspection.

26 E. Unless otherwise directed by the court, the original of all documents
27 and exhibits introduced or proffered into evidence, submitted with a petition for
28 executory process, or filed in a summary judgment proceeding shall be retained
29 by the clerk of court until the order or judgment becomes final and definitive.

30 ~~E.~~ F. A judge or justice presiding over a court in this state may sign a court

1 order, notice, official court document, and other writings required to be executed in
2 connection with court proceedings by use of an electronic signature as defined by
3 R.S. 9:2602.

4 ~~D. Any pleading or document in a traffic or criminal action may be filed with~~
5 ~~the court by facsimile transmission in compliance with the provision of the Code of~~
6 ~~Criminal Procedure Article 14.1.~~

7 ~~E. The clerk shall not refuse to accept for filing any pleading or other~~
8 ~~document signed by electronic signature, as defined by R.S. 9:2602, and executed~~
9 ~~in connection with court proceedings, or which complies with the procedures for~~
10 ~~electronic filing implemented pursuant to this Article, if any applicable fees for filing~~
11 ~~and transmission are paid, solely on the ground that it was signed by electronic~~
12 ~~signature.~~

13 F. **G.** If the filing party fails to comply with any **requirement of the**
14 **requirements of Paragraph A or B of** this Article, the electronic filing shall have
15 no force or effect. ~~The district courts~~ **A court** may provide by court rule for other
16 matters related to filings by electronic transmission.

17 ~~G. H.~~ The clerk of court may procure equipment, services, and supplies
18 necessary to accommodate electronic filings out of the clerk's salary fund.

19 ~~H. I.~~ All electronic filings shall include an electronic signature. For the
20 purpose of this Article, "electronic signature" means an electronic symbol or process
21 attached to or logically associated with a record and executed or adopted by a person
22 with the intent to sign the record.

23 **J. The clerk of court shall not refuse to accept for filing any pleading or**
24 **other document that is signed by electronic signature and executed in**
25 **connection with court proceedings, or that complies with the procedures for**
26 **electronic filing implemented pursuant to this Article, solely on the ground that**
27 **the pleading or document was signed by electronic signature.**

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30 (a) The amendment to Paragraph B of this Article does not change the
31 rule that the clerk of court has the authority to convert any pleading,
32 document, or exhibit into an electronic record. Nevertheless, unless the court

1 directs otherwise, any original document that has legal efficacy, such as a
 2 will, codicil, trust, promissory note, authentic act, affidavit, or exhibit that
 3 may necessitate a physical examination by the trier of fact to determine an
 4 issue, must be retained by the parties until a final and definitive judgment is
 5 rendered. The judgment of a trial court becomes final and definitive when no
 6 post-trial motions or appeals are taken from the judgment. The judgment of
 7 a court of appeal becomes final and definitive if neither an application to the
 8 court of appeal for rehearing nor an application to the supreme court for a
 9 writ of certiorari is timely filed. See Article 2166(A). If a writ of certiorari
 10 is granted by the supreme court, the judgment of the supreme court becomes
 11 final and definitive when the delay for application for rehearing has expired
 12 or the application is denied. See Article 2167(B) and (C).
 13

14 (b) The amendment to Paragraph C of this Article clarifies that the clerk of
 15 court may convert into an electronic record any pleading, document, or exhibit that
 16 is filed in paper form. Even though the original document is converted into an
 17 electronic record, the original document may still be needed for examination at a
 18 hearing or trial.
 19

20 (c) The amendment to Paragraph E of this Article is new and requires that the
 21 original of all documents and exhibits introduced or proffered into evidence,
 22 submitted with a petition for executory process, or filed in a summary judgment
 23 proceeding be retained by the clerk of court until the order or judgment becomes
 24 final and definitive, unless the court otherwise directs. This does not change the law
 25 pertaining to the destruction of documents after filing. See, e.g., R.S. 13:917, 1221,
 26 1904, and 2562.26 relative to the destruction of useless records.
 27

28 * * *

29 ~~Art. 2853. Purported testament must be filed, though possessor doubts validity~~

30 **Filing of purported testament**

31
 32 **A.** If a person has possession of a document purporting to be the testament
 33 of a deceased person, even though ~~he~~ **the person** believes that the document is not
 34 the valid testament of the deceased; or has doubts concerning the validity ~~thereof, he~~
 35 **of the testament, the person** shall present ~~it~~ **the document** to the court with ~~his a~~
 36 petition praying that the document be filed in the record of the succession
 37 proceeding.

38 **B.** A person ~~so~~ presenting a purported testament to the court shall not be
 39 deemed to vouch for its authenticity or validity, nor ~~be~~ **be** precluded from asserting its
 40 invalidity.

41 * * *

42 **SECTION 4. RETENTION OF TESTAMENTS**

43 **Art. 2911. Retention of testaments**

1 The clerk of court shall retain in perpetuity the original of a testament
 2 that is probated or ordered to be filed and executed. Until the order probating
 3 the testament or ordering the testament to be filed and executed becomes final
 4 and definitive, the clerk of court shall also retain the originals of all other
 5 testaments filed in accordance with Article 2853.

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7
 8 In accordance with Article 2974, an appeal may be taken from orders and
 9 judgments rendered in succession proceedings.
 10

11 Section 2. Code of Criminal Procedure Article 14.1 is hereby amended and reenacted,
 12 and Code of Criminal Procedure Article 14.2 is hereby enacted, to read as follows:

13 ~~Art. 14.1. Filing of pleadings and documents by facsimile or electronic transmission~~

14 Electronic filings

15 Any document in a traffic or criminal action may be transmitted
 16 electronically in accordance with a system established by the clerk of court. The
 17 clerk of court shall adopt a system for the electronic filing and storage of any
 18 pleading, document, or exhibit other than those documents or exhibits
 19 introduced and filed at a hearing or trial. Furthermore, in a court that accepts
 20 electronic filings in accordance with this Article, the official record shall be the
 21 electronic record. A pleading or document filed electronically is deemed filed
 22 on the date and time stated on the confirmation of electronic filing sent from the
 23 system, if the clerk of court accepts the electronic filing. Public access to
 24 electronically filed pleadings and documents shall be in accordance with the
 25 rules governing access to written filings.

26 Art. 14.2. Facsimile filings

27 A. Any document in a traffic or criminal action may be filed with the clerk
 28 of court by facsimile transmission if ~~permitted by~~ pursuant to the policy of the clerk
 29 of court. Filing shall be deemed complete at the time the facsimile transmission is
 30 received by the clerk of court. No later than on the first business day after receiving
 31 a facsimile filing, the clerk of court shall transmit to the filing party via facsimile a
 32 confirmation of receipt and include a statement of the fees for the facsimile filing

1 and filing of the original document. The facsimile filing fee and transmission fee are
2 incurred upon receipt of the facsimile filing by the clerk of court and payable as
3 provided in Paragraph B of this Article. The facsimile filing shall have the same
4 force and effect as filing the original document, if the party complies with Paragraph
5 B of this Article.

6 B. Within seven days, exclusive of legal holidays, after the clerk of court
7 receives the facsimile filing, all of the following shall be delivered to the clerk of
8 court:

9 (1) The original document identical to the facsimile filing in number of pages
10 and in content of each page, including any attachments, exhibits, and orders. A
11 document **that is** not identical to the facsimile filing or ~~which~~ **that** includes pages
12 not included in the facsimile filing shall not be considered the original document.

13 (2) The fees for the facsimile filing and filing of the original document stated
14 on the confirmation of receipt, if any.

15 (3) A transmission fee of five dollars, if the defendant ~~had~~ **has** not been
16 declared indigent by the court.

17 C. If the filing party fails to comply with any of the requirements of
18 Paragraph B of this Article, the facsimile filing shall have no force or effect.

19 D. ~~Any~~ **A** court ~~district~~ may provide by court rule for any additional
20 requirement or provisions for filings by facsimile transmission.

21 E. In keeping with the clerk's policy, each clerk of court shall make available
22 the necessary equipment and supplies to accommodate facsimile filing in criminal
23 actions. Purchases for equipment and supplies necessary to accommodate facsimile
24 filings may be funded from any expense fund of the office of the clerk of court as the
25 clerks deem appropriate.

26 ~~F. The filings as provided in this article and all other provisions of this code~~
27 ~~may be transmitted electronically in accordance with a system established by a clerk~~
28 ~~of court or by the Louisiana clerks' remote access authority. When such a system is~~
29 ~~established, the clerk of court shall adopt and implement procedures for the~~
30 ~~electronic filing and storage of any pleading, document, or exhibit. Furthermore, in~~

~~a parish that accepts electronic filings covered under this paragraph, the official record shall be the electronic record. A pleading or document filed electronically is deemed filed on the date and time stated on the confirmation of electronic filing sent from the system, if the clerk of court accepts the electronic filing. Public access to electronically filed pleadings and documents shall be in accordance with the rules governing access to written filings.~~

Section 3. R.S. 9:2761 and 2762 are hereby enacted to read as follows:

§2761. Effectiveness of electronic record

An electronic record filed in accordance with R.S. 44:119 shall have effect as to third persons in the same manner as if an original written instrument had been filed.

§2762. Recordation of testaments; indexing; effectiveness

If a testament is recorded in the conveyance records, the clerk of court shall index the testament only in the name of the testator. The recordation of the testament shall not itself have any effect on the rights of the heirs, legatees, and creditors of the succession and shall not make the provisions of the testament effective against third persons.

Section 4. R.S. 44:116(D) and the introductory paragraph of R.S. 44:116(E)(1) and R.S. 44:116(E)(2) are hereby amended and reenacted, and R.S. 44:117 is hereby enacted, to read as follows:

§116. Photostatic, photographic, microfilm, or other photographic or electronic copies of records; indexes of conveyance and mortgage records; disposition; evidentiary status; preservation

* * *

D. Notwithstanding the provisions of Subsection B of this Section or any other provision of law to the contrary, for any record filed on or after January 1, 2005, with the exception of records of a graphic nature, including but not limited to plats, maps, and photographs as related to the work of a Professional Land Surveyor engaged in the "Practice of Land Surveying", as defined in R.S. 37:682, a clerk of court may reproduce the record as provided in this Section and ~~may thereafter~~ **shall**

1 return the original record to the person presenting it: indicated person and to the
 2 address shown on the first page of the record, or if no such person and address
 3 is indicated, to any vendee or other transferee whose name and address are
 4 stated in the instrument. The clerk of court shall verify that the copy of the
 5 record is complete and legible prior to the return or disposal of the original
 6 record.

7 E.(1) Notwithstanding the provisions of Subsection B of this Section or any
 8 other provision of law to the contrary, with the exception of instruments filed in
 9 the conveyance records, a clerk of court shall not be required to maintain an
 10 original record filed on or prior to December 31, 2004, provided that:

11 * * *

12 (2) ~~A~~ With the exception of instruments filed in the conveyance records
 13 on or prior to December 31, 2004, a clerk of court may destroy any record provided
 14 for in this Subsection or return it to the person who ~~presented it for recordation after~~
 15 ~~the clerk receives certification from the state archivist that the records are not subject~~
 16 ~~to R.S. 44:406 or R.S. 44:427 and after the clerk has preserved the record as~~
 17 ~~provided for in this Section.~~ is indicated and to the address shown on the first
 18 page of the record, or if no such person and address is indicated, to the person
 19 who presented the record after the clerk of court has done all of the following:

20 (a) Received certification from the state archivist that the records are not
 21 subject to R.S. 44:406 or 411.

22 (b) Preserved the record as provided in this Section.

23 (c) Verified that the copy of the record is complete and legible. No cause
 24 of action for any claim shall exist against a clerk of court for any damage or loss
 25 resulting from the return or destruction of an original record in accordance with this
 26 Paragraph after receipt of the certification and proper preservation of the record.

27 * * *

28 §117. Preservation of filings in the conveyance records

29 A. The clerk of court shall preserve in perpetuity the original or, when
 30 permitted by R.S. 44:116, a complete and legible copy of each instrument filed

1 in the conveyance records.

2 B. For purposes of this Part, the conveyance records include all records,
3 however denominated, that are required by law to be indexed in the index of
4 conveyances maintained by the clerk of court.

5 Section 5. The Louisiana State Law Institute is hereby directed to redesignate
6 existing R.S. 44:117, entitled "Electronic copies of records; Lafayette Parish", as R.S. 44:118
7 and to redesignate Code of Civil Procedure Article 258 as R.S. 44:119.

8 Section 6. Nothing in this Act shall be construed to create a cause of action against
9 a clerk of court for destruction or disposition of records prior to the effective date of this Act
10 in accordance with the law in effect at the time of the destruction or disposition.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____