

ACT No. 84

2015 Regular Session

HOUSE BILL NO. 697

BY REPRESENTATIVE ABRAMSON

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AN ACT

To amend and reenact Code of Civil Procedure Articles 2636(8) and 2637(F) and R.S. 13:3733.1(A)(introductory paragraph), (2), and (4), (C), and (E) and to enact Code of Civil Procedure Article 2636(9) and R.S. 13:3733.1(A)(5) and (6), (L), and 3733.2, relative to electronic obligations records and electronic signatures; to deem financial institution records and promissory notes containing electronic signatures to be authentic evidence; to provide for electronic signatures regarding evidence which need not be authentic; to provide for definitions; to modify the certificate required to deem reproductions as authentic evidence; to provide for the transferability of rights, authority, and protections relative to the use of reproductions; to provide for obligations records containing electronic signatures; to allow for a presumption of authenticity; to provide for a certification form; to exempt collateral mortgage notes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 2636(8) and 2637(F) are hereby amended and reenacted and Code of Civil Procedure Article 2636(9) is hereby enacted to read as follows:

1 Art. 2636. Authentic evidence

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

4 * * *

5 (8) All other documentary evidence recognized by law as authentic evidence,
6 including R.S. 9:5555, R.S. 10:9-629, and R.S. 13:3733.1 and 3733.2.

7 (9) A promissory note or other evidence of indebtedness evidencing the
8 obligation secured by the mortgage, security agreement or privilege, containing an
9 electronic signature in accordance with the Louisiana Uniform Electronic
10 Transactions Act, R.S. 9:2601 et seq. and accompanied by a certification in
11 accordance with R.S. 13:3733.2.

12 Art. 2637. Evidence which need not be authentic

13 * * *

14 F. Evidence as to the proper party plaintiff entitled to enforce the obligation
15 secured by the note, bond, handnote, or other instrument, including those that are
16 electronically signed, evidencing the obligation of which a copy or reproduction is
17 submitted in accordance with Article 2636(8) or Paragraph C of this Article, may be
18 proved by verified original or supplemental petition, or by an affidavit submitted
19 therewith.

20 Section 2. R.S. 13:3733.1(A)(introductory paragraph), (2), and (4), (C), and (E) are
21 hereby amended and reenacted and R.S. 13:3733.1(A)(5) and (6), (L), and 3733.2 are hereby
22 enacted to read as follows:

23 §3733.1. Financial institution records; reproductions; recordkeeping; admissibility
24 into evidence; definitions

25 A. As used in this Section and in R.S. 13:3733.2, the following terms shall
26 have the following meanings:

27 * * *

1 (2) "Record" means any writing, entry, print, instrument, or document
2 evidencing any transaction or event, including but not limited to books of account,
3 vouchers, documents, agreements, contracts, security agreements, other collateral
4 security documents, checks, and correspondence. The term also includes
5 information that is stored in electronic or other medium and is retrievable in
6 perceivable form.

7 * * *

8 (4) "Reproduction" means a counterpart, duplicate, or copy, or a durable
9 medium for making a counterpart, duplicate, or copy, produced from the same
10 impression as the original, or from the same matrix, or produced or obtained by any
11 photographic, photostatic, microfilm, microcard or miniature or microphotographic
12 process, or by any mechanical or electronic recording or re-recording, electronic or
13 optical imaging, chemical process or other process or technique which accurately
14 reproduces the original or forms or creates a durable medium for so reproducing the
15 original, including but not limited to computer and other printouts, and counterparts,
16 duplicates, copies, and other output generated or produced by or from an electronic
17 imaging system such as counterparts, duplicates, or copies produced or obtained
18 from optical disks. A reproduction shall also mean a substitute check as defined
19 under the federal Check Clearing for the 21st Century Act and Regulation CC, 12
20 CFR 229.2(aaa). The term also includes the reproduction of a record containing an
21 electronic signature.

22 (5) "Electronic record" means a record created, generated, sent,
23 communicated, received, or stored by electronic means.

24 (6) "Electronic signature" means an electronic sound, symbol, or process
25 attached to or logically associated with a record and executed or adopted by a person
26 with the intent to sign the record.

27 * * *

28 C. Notwithstanding any other statute, rule of law, regulation, ordinance, or
29 other provision to the contrary, except Subsection G of this Section, each
30 reproduction of a record made pursuant to this Section shall be considered to be an

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

1 original of such record for all purposes and shall be admissible into evidence to the
 2 same extent as the original record itself in any judicial, administrative, and other
 3 proceedings in all courts, tribunals, and other bodies and in any proceedings before
 4 all boards, bureaus, departments, commissions, and agencies of this state, whether
 5 the original record is in existence or not, and shall be received in evidence as prima
 6 facie proof of its contents with the same force and effect as though the original
 7 document were produced, and shall be deemed ~~authentic evidence~~ authentic for all
 8 purposes, satisfying the requirements of Code of Evidence Articles 901 and 902.
 9 The introduction of a reproduction does not preclude introduction of the original
 10 record.

* * *

12 E. Whenever any counterpart, duplicate, or copy or group of counterparts,
 13 duplicates, or copies shall be certified with a certificate reading substantially as
 14 follows, each such counterpart, duplicate, or copy shall be a reproduction as defined
 15 in this Section and shall be admissible into evidence as the original record. Except
 16 as prohibited in Subsection G of this Section, if the original record would be deemed
 17 to be authentic evidence, the reproduction, so certified, shall also be deemed
 18 authentic evidence for all purposes including but not limited to for purposes of Code
 19 of Civil Procedure Articles 2631 et seq.

20 STATE OF _____

21 PARISH/COUNTY OF _____

22 CITY OF _____

23 I, _____, a representative of _____

24 (the Financial Institution or assignee) do hereby certify the following:

25 (a) The document(s) attached to this certificate, consisting of ____ page(s)
 26 is (are each) a true and correct reproduction of the original thereof, being a
 27 reproduction made from the records maintained by the Financial Institution or
 28 assignee in the course of its business activities and made in accordance with the
 29 provisions of R.S. 13:3733.1.

1 (b) If the document(s) attached to this certificate is (are each) an obligation
 2 sought to be enforced, including a promissory note, the Financial Institution or
 3 assignee does certify that ~~the Financial Institution~~ it is a person or entity entitled to
 4 enforce the obligation(s) evidenced by the document(s) attached to this certificate.

5 _____
 6 NAME

7 _____
 8 TITLE

9 _____
 10 ADDRESS

11 * * *

13 L. A person that purchases, acquires, or otherwise obtains an interest in a
 14 promissory note, instrument, loan, asset, or other evidence of indebtedness
 15 previously held by a financial institution has the same rights, authority, and
 16 protections that the financial institution had under this Section relative to the use of
 17 a reproduction of a record pertaining to the promissory note, instrument, loan, asset,
 18 or other evidence of indebtedness.

19 §3733.2. Financial institution records containing electronic signatures; admissibility
 20 into evidence

21 A. Notwithstanding any other provision to the contrary, if accompanied by
 22 a certification as provided in Subsection B of this Section, a record, containing an
 23 electronic signature or a reproduction of a record containing an electronic signature,
 24 shall be considered to be an original, as defined in Article 1001 of the Code of
 25 Evidence, for all purposes and shall be admissible into evidence as an original record
 26 in any judicial, administrative, and other proceedings in all courts, tribunals, and
 27 other bodies and in any proceedings before all boards, bureaus, departments,
 28 commissions, and agencies of this state, and shall be received in evidence as prima
 29 facie proof of its contents with the same force and effect as an original record, and
 30 shall be deemed authentic for all purposes, satisfying the requirements of Code of
 31 Evidence Articles 901 and 902. If accompanied by a certification as provided in

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1 Subsection B of this Section, a record containing an electronic signature or a
2 reproduction of a record containing an electronic signature shall be deemed authentic
3 evidence for purposes of executory process to the same extent as if it were a
4 manually signed paper original record.

5 B. A record containing an electronic signature or a reproduction of a record
6 containing an electronic signature is presumed to be genuine if accompanied by a
7 certification, executed by a representative of a financial institution or its assignee,
8 substantially as follows:

9 STATE OF _____

10 PARISH/COUNTY OF _____

11 CITY OF _____

12 I, _____, a representative of _____ (the
13 Financial Institution or assignee) do hereby certify the following:

14 (a) In accordance with R.S. 13:3733.2, based on the undersigned person's
15 personal knowledge or upon information and belief based upon records of the
16 financial institution, any assignee, or any other person that are kept or obtained in the
17 ordinary course of its business activities, the document(s) attached to this certificate,
18 consisting of _____ page(s), is (are each) a record, electronic record, or reproduction
19 of a record or electronic record that contains a genuine electronic signature of
20 _____ (insert name of signer on documents).

21 (b) If the document(s) attached to this certificate is (are each) an obligation
22 sought to be enforced, including a promissory note, the financial institution or
23 assignee named above is entitled to enforce the obligation(s) evidenced by the
24 documents.

25 _____
26 _____ NAME

27 _____
28 _____ TITLE

29 _____
30 _____ ADDRESS

1 C. The provisions of this Section that authorize the use of a record
2 containing an electronic signature or a reproduction of a record containing an
3 electronic signature shall not apply to a collateral mortgage note as defined in R.S.
4 10:9-102(d)(3).

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____