

2018 Regular Session

SENATE BILL NO. 358

BY SENATOR LUNEAU

NOTARIES. Provides for electronic notarial acts and electronic notaries public. (8/1/18)

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AN ACT

To amend and reenact Civil Code Art. 1833 and to enact Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 35:621 through 632, relative to notaries public and commissioners; to provide relative to notarial acts; to authorize electronic notarial acts; to authorize electronic notaries public; to provide certain terms, definitions, conditions, requirements, procedures, and effects; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, comprised of R.S. 35:621 through 632, is hereby enacted to read as follows:

CHAPTER 10. ELECTRONIC NOTARIAL ACTS

§621. Definitions

For the purposes of this Chapter:

(1) "Credential analysis" means a process or service operating according to criteria approved by the secretary through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

1 **(2) "Electronic" means relating to technology having electrical, digital,**
2 **magnetic, online, wireless, cellular, optical, electromagnetic, or similar**
3 **capabilities.**

4 **(3) "Electronic document" means information that is created, generated,**
5 **sent, communicated, received, or stored by electronic means.**

6 **(4) "Electronic notarial act" means an official act by an electronic notary**
7 **public conducted using electronic means and involves electronic documents, an**
8 **electronic seal, and electronic signature as provided by this Chapter.**

9 **(5) "Electronic notarial certificate" means the portion of a notarized**
10 **electronic document that is completed by the electronic notary public and**
11 **contains the following:**

12 **(a) The electronic notary public's electronic signature, electronic seal,**
13 **title, and commission expiration date.**

14 **(b) Other required information concerning the date and place of the**
15 **notarial act.**

16 **(c) The facts attested to or certified by the notary public in the notarial**
17 **act.**

18 **(6) "Electronic notary public" means a notary public who has been**
19 **commissioned by the secretary to perform electronic notarial acts under this**
20 **Chapter.**

21 **(7) "Electronic seal" means information within a notarized electronic**
22 **document that confirms the electronic notary public's name, jurisdiction,**
23 **license number, and commission expiration date and generally corresponds to**
24 **data in notary seals used on paper documents.**

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

28 **(9) "Identity proofing" means a process or service operating according**
29 **to criteria approved by the secretary through which a third person affirms the**

1 identity of an individual through review of personal information from public
2 and proprietary data sources.

3 (10) "Notarial act" as used in this Chapter means the performance by
4 an electronic notary public of a function authorized under R.S. 35.1, et seq.

5 (11) "Online notarial act" means an electronic notarial act performed
6 by means of two-way video and audio conference technology and an online
7 internet connection that meets the standards adopted in this Chapter.

8 (12) "Principal" means an individual:

9 (a) Whose electronic signature is notarized in an electronic notarial act;

10 or

11 (b) Taking an oath or affirmation from the electronic notary public but
12 not in the capacity of a witness for the electronic notarial act.

13 (13) "Remote presentation" means a transmission to an electronic notary
14 public through communication technology of an image of a government-issued
15 identification credential that is of sufficient quality to enable the electronic
16 notary public to:

17 (a) Identify the individual seeking the electronic notary public's services.

18 (b) Perform credential analysis.

19 (14) "Secretary" means the Louisiana Secretary of State.

20 §622. Adoption of rules

21 The secretary shall adopt rules necessary to implement this Chapter,
22 including rules to facilitate electronic notarial acts.

23 §623. Electronic notarial acts; standards

24 The secretary by rule shall develop and maintain standards for
25 electronic notarial acts in accordance with this Chapter, including standards for
26 credential analysis, identity proofing and electronic notarial acts conducted by
27 an electronic notary public through use of an online internet connection.

28 §624. Performing electronic notarial acts; application and standards

29 A. A notary public or an applicant for appointment as an electronic

1 notary public under this Section may apply to the secretary to be appointed and
2 commissioned as an electronic notary public in the manner provided by this
3 Section.

4 B. A person qualifies to be appointed as an electronic notary public by:

5 (a) Satisfying the qualification requirements for appointment as a
6 notary public under Chapter 1 of this Title.

7 (b) Electronically submitting to the secretary an application in the form
8 prescribed thereby, that satisfies the secretary that the applicant is qualified.

9 C. The application required by Subsection B of this Section must
10 include:

11 (a) The applicant's name to be used in acting as a notary public.

12 (b) A certification that the applicant will comply with the secretary's
13 standards developed pursuant to this Chapter.

14 (c) An email address of the applicant.

15 D. The secretary may by rule create, promulgate and impose additional
16 mandatory qualifications for a notary public or an applicant for appointment
17 as an electronic notary public to conduct online notarial acts.

18 E. Nothing herein shall be construed to prevent an electronic notary
19 from using updated technology or technologies during the term of the
20 commission. The electronic notary shall notify the secretary electronically
21 within ninety days of installation or use of such updated technology or
22 technologies and provide a brief description thereof.

23 §625. Performing notarial acts

24 An electronic notary public is a notary public for purposes of this Title
25 and is subject thereto to the same extent as a notary public appointed and
26 commissioned thereunder. An electronic notary public may perform all notarial
27 acts authorized by this Title.

28 §626. Authority to perform electronic notarial acts

29 An electronic notary public has the authority to perform all electronic

1 notarial acts and related functions as governed by this Chapter.

2 §627. Electronic record of electronic notarial acts

3 A. An electronic notary public shall keep a secure electronic record of
4 electronic documents notarized by the electronic notary public. The electronic
5 record must contain for each electronic notarial act:

6 (1) The date and time of the act.

7 (2) The type of act.

8 (3) The type, the title, or a description of the electronic document or
9 proceeding.

10 (4) The printed name and address of each principal involved in the
11 transaction or proceeding.

12 (5) Evidence of identity of each principal involved in the transaction or
13 proceeding in the form of:

14 (a) A statement that the person is personally known to the electronic
15 notary public.

16 (b) A notation of the type of identification document provided to the
17 electronic notary public.

18 (c) A record of the identity verification made under this Section, if
19 applicable; or the following:

20 (i) The printed name and address of each credible witness swearing to
21 or affirming the person's identity.

22 (ii) For each credible witness not personally known to the electronic
23 notary public, a description of the type of identification documents provided to
24 the electronic notary public.

25 (d) A recording of any video and audio conference that is the basis for
26 satisfactory evidence of identity and a notation of the type of identification
27 presented as evidence.

28 (e) The fee, if any, charged for the electronic notarial act.

29 B. The electronic notary public shall take reasonable steps to:

1 (1) Ensure the integrity, security, and authenticity of all electronic
2 notarial acts performed.

3 (2) Maintain a backup for the electronic record required by Subsection
4 A of this Section.

5 (3) Protect the backup record from unauthorized use.

6 C. The electronic record required by Subsection A of this Section shall
7 be maintained for at least five years after the date of the transaction or
8 proceeding.

9 §628. Applicable law; jurisdiction

10 All electronic notarial acts performed in accordance with this Chapter
11 shall be deemed to have been performed within the state of Louisiana and
12 governed by Louisiana law.

13 §629. Duty of care

14 A. An electronic notary public performing electronic notarial acts shall
15 keep, maintain, protect, and provide for lawful inspection an electronic record
16 of all electronic notarial acts as provided by R.S. 35:688.

17 B. If video and audio conference technology authorized under this
18 Chapter is the basis for satisfactory evidence of identity and the principal's
19 identity has been ascertained upon presentation of such satisfactory evidence
20 of identity, the electronic notary public shall keep a copy of the recording of the
21 video and audio conference and a notation of the type of any other identification
22 used. The electronic notary public shall take reasonable steps to:

23 (1) Ensure the integrity, security, and authenticity of electronic notarial
24 acts.

25 (2) Maintain a backup of the electronic record of electronic notarial acts.

26 (3) Ensure protection of such backup records from unauthorized use.

27 C. The electronic record of an electronic notarial act shall be maintained
28 for a period of at least five years from the date of the transaction.

29 D. An electronic notary public performing electronic notarial acts shall:

1 **(1) Take reasonable steps to ensure that any registered device used to**
2 **create an electronic signature is current and has not been revoked or**
3 **terminated by its issuing or registering authority.**

4 **(2) Keep his record, electronic signature, and physical and electronic**
5 **seals secure under his exclusive control and shall not allow them to be used by**
6 **any other notary or any other person.**

7 **(3) Use his electronic signature only for the purpose of performing**
8 **electronic notarial acts.**

9 **E. Immediately upon discovering that the notary's record, electronic**
10 **signature, or physical or electronic seal has been lost, stolen, or may be**
11 **otherwise used by a person other than the notary, an electronic notary public**
12 **performing electronic notarial acts shall inform the appropriate law**
13 **enforcement agency in the case of theft or vandalism, and notify the secretary**
14 **in writing and signed in the official name in which he was commissioned.**

15 **§630. Electronic notarial act procedures**

16 **A. An electronic notary public may perform an electronic notarial act**
17 **authorized under this Section that meets the requirements of this Chapter and**
18 **rules adopted thereunder regardless of whether the electronic notary public or**
19 **principal is physically located in this state at the time of any part of the**
20 **electronic notarial act.**

21 **B. In performing an electronic notarial act, an electronic notary public**
22 **shall verify the identity of a principal creating an electronic signature at the**
23 **time that the signature is taken in the same manner as for a notarial act**
24 **governed by R.S. 35:1, et seq., or as provided by this Section.**

25 **C. In performing an online notarial act, an electronic notary public shall**
26 **verify the identity of a principal by using two-way video and audio conference**
27 **technology and an online internet connection that meets the requirements of**
28 **this Chapter and rules adopted hereunder.**

29 **D. In performing any electronic notarial act, the principal's identity may**

1 be verified by:

2 (1) The electronic notary public's personal knowledge of the person
3 creating the electronic signature; or

4 (2) Each of the following:

5 (a) Remote presentation by the person creating the electronic signature
6 of a government-issued identification credential, including a passport or
7 driver's license, that contains the signature and a photograph of the person.

8 (b) Credential analysis of the credential described by R.S. 35:681.

9 (c) Identity proofing of the person described by R.S. 35:681.

10 E. For an online notarial act, the electronic notary public shall take
11 reasonable steps to ensure that the internet-based, two-way video and audio
12 communication utilized is secure from unauthorized interception or access.

13 F. The electronic notarial certificate for any electronic notarial act must
14 include a notation that the notarial act is an electronic notarial act.

15 §631. Fees

16 An electronic notary public or the electronic notary public's employer
17 may charge a fee in an amount that is reasonable and customary for performing
18 the electronic notarial act in addition to any other fees authorized under this
19 Section.

20 §632. Termination of commission

21 A. Except as provided by Subsection B of this Section, an electronic
22 notary public whose commission terminates shall destroy the coding, disk,
23 certificate, card, software, or password that enables electronic affixation of the
24 electronic notary public's official electronic signature or seal. The electronic
25 notary public shall certify compliance with this Subsection to the secretary.

26 B. A former electronic notary public whose commission terminated for
27 a reason other than revocation or a denial of renewal is not required to destroy
28 the Items described by Subsection A of this Section if the former electronic
29 notary public is recommissioned as an electronic notary public with the same

1 electronic signature and seal within three months after the former electronic
2 notary public's former commission terminated.

3 Section 2. Civil Code Article 1833 is hereby amended and reenacted to read as
4 follows:

5 Art. 1833. Authentic act

6 A. An authentic act is a writing executed before a notary public or other
7 officer authorized to perform that function, in the presence of two witnesses, and
8 signed by each party who executed it, by each witness, and by each notary public
9 before whom it was executed. The typed or hand-printed name of each person shall
10 be placed in a legible form immediately beneath the signature of each person signing
11 the act.

12 B. To be an authentic act, the writing need not be executed at one time or
13 place, or before the same notary public or in the presence of the same witnesses,
14 provided that each party who executes it does so before a notary public or other
15 officer authorized to perform that function, and in the presence of two witnesses and
16 each party, each witness, and each notary public signs it. The failure to include the
17 typed or hand-printed name of each person signing the act shall not affect the validity
18 or authenticity of the act.

19 C. If a party is unable or does not know how to sign his name, the notary
20 public must cause him to affix his mark to the writing.

21 D. For purposes of this Article, a person may physically appear before
22 the notary public or authorized officer taking the acknowledgment or may
23 appear by an online, internet-based, two-way audio and video communication
24 that meets the electronic notarial act requirements provided by law.

25 E. A writing executed by electronic means before an electronic notary
26 public in the manner provided by law for an electronic notarial act that
27 otherwise meets the requirements of this Article shall be considered an
28 authentic act as provided herein.

