

2020 Regular Session

HOUSE BILL NO. 274

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Article 3344(A)(introductory paragraph) and R.S. 35:6
3 and to enact R.S. 9:2760 and Chapter 10 of Title 35 of the Louisiana Revised
4 Statutes of 1950, to be comprised of R.S. 35:621 through 630, relative to remote
5 online notarization; to provide for recordation of tangible copies of electronic acts;
6 to provide for performance of remote online notarization; to provide for limitations
7 relative to remote online notarization; to provide for definitions; to provide for
8 rulemaking; to provide for duties of notaries public; to provide for recordkeeping;
9 to provide for an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Civil Code Article 3344(A)(introductory paragraph) is hereby amended
12 and reenacted to read as follows:

13 Art. 3344. Refusal for failure of original signature or proper certification; effect of
14 recordation; necessity of proof of signature recordation of a duplicate

15 A. ~~The~~ Except as otherwise provided by law, the recorder shall refuse to
16 record:

17 * * *

18 Section 2. R.S. 9:2760 is hereby enacted to read as follows:

19 §2760. Recordation of electronic record in tangible form

20 The recorder shall not refuse to record a tangible copy of an electronic record
21 on the ground that it does not bear the original signature of a party if a notary public
22 or other officer before whom it was executed certifies that the tangible copy is an
23 accurate copy of the electronic record.

1 Section 3. R.S. 35:6 is hereby amended and reenacted to read as follows:

2 §6. Foreign notaries; acts and other instruments, effect

3 All acts passed before any notary public and two witnesses in the District of
 4 Columbia, or any state of the United States other than Louisiana, except those
 5 performed by remote online notarization, shall be authentic acts and shall have the
 6 same force and effect as if passed before a notary public in Louisiana.

7 Section 4. Chapter 10 of Title 35 of the Louisiana Revised Statutes of 1950, to be
 8 comprised of R.S. 35:621 through 624 and 626 through 630, is hereby enacted to read as
 9 follows:

10 CHAPTER 10. REMOTE ONLINE NOTARIZATION

11 §621. Short title

12 This Chapter may be cited as the "Remote Online Notarization Act".

13 §622. Definitions

14 A. In this Chapter:

15 (1) "Communication technology" means an electronic device or process that
 16 allows substantially simultaneous communication by sight and sound.

17 (2) "Credential analysis" means a process through which the authenticity of
 18 an individual's government-issued identification credential is evaluated by another
 19 person through review of public and proprietary data sources.

20 (3) "Identity proofing" means a process through which the identity of an
 21 individual is affirmed by another person by either of the following means:

22 (a) Dynamic knowledge-based authentication, such as a review of personal
 23 information from public or proprietary data sources.

24 (b) Analysis of biometric data, such as facial recognition, voiceprint analysis,
 25 or fingerprint analysis.

26 (4) "Remote online notarial act" means an instrument executed before a
 27 notary public by means of communication technology that meets the standards
 28 adopted under this Chapter.

1 (5) "Remote online notarization" means the process through which an
 2 instrument is executed before a notary public by means of communication
 3 technology that meets the standards adopted under this Chapter.

4 B. The definitions of "electronic", "electronic record", "electronic signature",
 5 and "record" as provided by the Louisiana Uniform Electronic Transactions Act, R.S.
 6 9:2601 et seq., apply in this Chapter.

7 §623. Legal recognition of remote online notarial acts

8 A. Except as otherwise provided in Subsections B and C of this Section, a
 9 remote online notarial act that meets the requirements of R.S. 35:625 through 627
 10 satisfies any requirement that a party appear before a notary public at the time of the
 11 execution of the instrument. In all other respects, a remote online notarial act shall
 12 comply with other applicable laws governing the manner of the execution of that act.

13 B. The following instruments shall not be executed by remote online
 14 notarization:

15 (1) Testaments or codicils thereto.

16 (2) Trust instruments or acknowledgments thereof.

17 (3) Donations inter vivos.

18 (4) Matrimonial agreements or acknowledgments thereof.

19 (5) Acts modifying, waiving, or extinguishing an obligation of final spousal
 20 support or acknowledgments thereof.

21 C. Remote online notarization may not be used to execute an authentic act
 22 as defined in Civil Code Article 1833. Except as otherwise provided in Subsection
 23 B of this Section, an act that fails to be authentic as a result of being executed by
 24 remote online notarization may still be valid as an act under private signature or an
 25 acknowledged act.

26 D. This Chapter supplements and does not repeal, supersede, or limit the
 27 provisions of the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.

1 §624. Standards for remote online notarization

2 A. The secretary of state shall, by rule adopted in accordance with the
3 Administrative Procedure Act, develop and maintain standards for the
4 implementation of this Chapter.

5 B. In developing standards for remote online notarization, the secretary of
6 state shall form a stakeholder committee that shall include but need not be limited
7 to representatives of the Louisiana Land Title Association, the Louisiana Association
8 of Independent Land Title Agents, the Louisiana Notary Association, the Louisiana
9 Bankers Association, the Louisiana Clerks of Court Association, the Louisiana State
10 Bar Association, the Louisiana Public Tag Association, and the Louisiana State Law
11 Institute.

12 C. The rules shall be adopted prior to February 1, 2022, and may thereafter
13 be modified, amended, or supplemented with or without the input of the stakeholder
14 committee.

15 * * *

16 §626. Location of notary, parties, and witnesses; location of remote online notarial
17 act

18 A. A notary public physically located in any parish of this state in which the
19 notary has the power to exercise the function of a notary public may perform a
20 remote online notarization for a party who is not in the physical presence of the
21 notary and who may be located in or outside this state. A witness to a remote online
22 notarial act shall be in the physical presence of the party.

23 B. A remote online notarial act is deemed to be executed in any parish of this
24 state where any party is physically located at the time of the remote online
25 notarization. If no party was physically located in this state at the time of the remote
26 online notarization, the remote online notarial act is deemed to be executed in the
27 parish where the notary public is physically located at the time of the remote online
28 notarization.

1 §627. Procedure for performing remote online notarization

2 A. At the time of a remote online notarization, the notary public shall verify
3 the identity of any party or witness appearing remotely, both through use of
4 communication technology and by one of the following means:

5 (1) The notary public's personal knowledge of the individual.

6 (2) A process that includes all of the following:

7 (a) Remote presentation by the individual of a government-issued
8 identification credential, such as a passport or driver's license, that contains the
9 signature and a photograph of the individual.

10 (b) Credential analysis.

11 (c) Identity proofing.

12 B. The notary public shall do all of the following:

13 (1) Include in the remote online notarial act a statement that it is a remote
14 online notarial act.

15 (2) Attach to or cause to be logically associated with the remote online
16 notarial act the notary public's electronic signature, together with all other
17 information required to be included in the act by other applicable law.

18 (3) Digitally sign the remote online notarial act in a manner that renders any
19 subsequent change or modification of the remote online notarial act to be evident.

20 §628. Duties of the notary

21 The notary public shall take reasonable steps to ensure both of the following:

22 (1) The communication technology used in the performance of a remote
23 online notarization is secure from unauthorized interception.

24 (2) The electronic record before the notary public is the same electronic
25 record in which the party made a statement or on which the party executed or
26 adopted an electronic signature.

27 §629. Records of remote online notarizations

28 A. The notary public shall do all of the following:

1 (1) Maintain electronic copies capable of being printed in a tangible medium
2 of all remote online notarial acts for at least ten years after the date of the remote
3 online notarization.

4 (2) Maintain an audio and video recording of each remote online notarization
5 for at least ten years after the date of the remote online notarization.

6 (3) Take reasonable steps to secure the records required to be maintained by
7 this Section from corruption, loss, destruction, and unauthorized interception or
8 alteration.

9 B. The notary public may designate a custodian to maintain the electronic
10 records required by Subsection A of this Section, provided that the notary public has
11 unrestricted access to the electronic records and the custodian meets any standards
12 established by the secretary of state for the maintenance of electronic records.

13 §630. No variation by agreement

14 The provisions of this Chapter may not be varied by agreement.

15 Section 5. R.S. 35:625 is hereby enacted to read as follows:

16 §625. Notaries authorized to perform remote online notarization

17 A. Any regularly commissioned notary public who holds a valid notarial
18 commission in the state of Louisiana is hereby authorized to perform remote online
19 notarizations.

20 B. The provisions of this Section shall cease to be effective on February 1,
21 2022.

22 Section 6. R.S. 35:625.1 is hereby enacted to read as follows:

23 §625.1. Notaries authorized to perform remote online notarization

24 A. Only a regularly commissioned notary public who holds a valid notarial
25 commission in the state of Louisiana may be authorized by the secretary of state to
26 perform remote online notarization.

27 B. In order to obtain authorization to perform remote online notarization, a
28 notary public shall submit an application to the secretary of state in a format
29 prescribed by the secretary of state, complete any course of instruction required by

1 the secretary of state, and satisfy any other requirements imposed by rules adopted
2 by the secretary of state.

3 C. The authority to perform remote online notarization shall continue as long
4 as the notary public is validly commissioned and the secretary of state has not
5 revoked the notary public's authority to perform remote online notarization.

6 Section 7. This Section and Sections 1, 2, 3, 8, 9, and 10 of this Act shall become
7 effective on August 1, 2020.

8 Section 8.(A) Section 4 of this Act shall become effective upon the later of
9 enactment of the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress)
10 or August 1, 2020.

11 (B) If the SECURE Notarization Act is not enacted prior to February 1, 2022,
12 Section 4 of the Act shall become effective on February 1, 2022.

13 Section 9.(A) Section 5 of this Act is contingent upon the enactment of the SECURE
14 Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress).

15 (B) If the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress)
16 is enacted, Section 5 of this Act shall become effective upon the later of the enactment of
17 the H.R. 6364 or S. 3533 of the 116th Congress or August 1, 2020.

18 Section 10. Section 6 of this Act shall become effective on February 1, 2022.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____