SLS 24RS-259 **ENGROSSED**

2024 Regular Session

SENATE BILL NO. 75

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

COURTS. Provides for electronic filing and record retention. (8/1/24)

AN ACT 1

2 To amend and reenact Code of Civil Procedure Articles 253 and 2853, Code of Criminal Procedure Article 14.1, and R.S. 44:116(D) and the introductory paragraph of R.S. 3 44:116(E)(1) and R.S. 44:116(E)(2), to enact Section 4 of Chapter 3 of Title I of 4 5 Book VI of the Code of Civil Procedure, to be comprised of Code of Civil Procedure Article 2911, Code of Criminal Procedure Article 14.2, R.S. 9:2761 and 2762, and 6 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; to provide for the reproduction, maintenance, and destruction or return of original 12 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

17

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

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

A. All pleadings or documents to be filed in an action or proceeding instituted or pending in a court, and all exhibits introduced in evidence, shall be delivered <u>or</u> <u>transmitted</u> to the clerk of the court for <u>such that</u> purpose. The clerk <u>of court</u> shall endorse thereon the fact and date of filing, and shall retain possession thereof for inclusion in the record, or in the files of <u>his the clerk's</u> office, as required by law. The endorsement of the fact and date of filing shall be made upon receipt of the pleadings or documents by the clerk <u>of court</u> and shall be made without regard to whether there are orders in connection therewith to be signed by the court.

B. The filings as provided in Paragraph A of this Article and all other provisions of this Chapter may be transmitted electronically in accordance with a system established by a the clerk of court, or by Louisiana Clerks' Remote Access Authority. When such a system is established, the The clerk of court shall adopt and implement procedures a system for the electronic filing and storage of any pleading, document, or exhibit, and the official record shall be the electronic record filed with a pleading. 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 paper filings. The clerk of court may convert into an electronic record any pleading, document, or exhibit as set forth in R.S. 44:116. The originals of conveyances shall be preserved by the clerk of court.

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

D. The official record shall be the electronic record. The original of any

pendency of the proceeding and until the judgment becomes final and definitive, unless otherwise provided by law or order of the court. Upon request and reasonable notice, the original document shall be produced to the court. Upon reasonable notice, the original document shall be made available to the opposing party for inspection.

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

C. F. A judge or justice presiding over a court in this state may sign a court order, notice, official court document, and other writings required to be executed in connection with court proceedings by use of an electronic signature as defined by R.S. 9:2602.

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

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

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

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

1 H. I. All electronic filings shall include an electronic signature. For the 2 purpose of this Article, "electronic signature" means an electronic symbol or process 3 attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. 4 5 J. The clerk of court shall not refuse to accept for filing any pleading or other document that is signed by electronic signature and executed in 6 7 connection with court proceedings, or that complies with the procedures for 8 electronic filing implemented pursuant to this Article, solely on the ground that 9 the pleading or document was signed by electronic signature. 10 Comments - 2024 11 (a) The amendment to Paragraph B of this Article does not change the 12 rule that the clerk of court has the authority to convert any pleading, 13 14 document, or exhibit into an electronic record. Nevertheless, unless the court 15 directs otherwise, any original document that has legal efficacy, such as a 16 will, codicil, trust, promissory note, authentic act, affidavit, or exhibit that 17 may necessitate a physical examination by the trier of fact to determine an 18 issue, must be retained by the parties until a final and definitive judgment is 19 rendered. The judgment of a trial court becomes final and definitive when no 20 post-trial motions or appeals are taken from the judgment. The judgment of 21 a court of appeal becomes final and definitive if neither an application to the 22 court of appeal for rehearing nor an application to the supreme court for a 23 writ of certiorari is timely filed. See Article 2166(A). If a writ of certiorari 24 is granted by the supreme court, the judgment of the supreme court becomes 25 final and definitive when the delay for application for rehearing has expired or the application is denied. See Article 2167(B) and (C). 26 27 28 (b) The amendment to Paragraph C of this Article clarifies that the 29 clerk of court may convert into an electronic record any pleading, document, 30 or exhibit that is filed in paper form. Even though the original document is converted into an electronic record, the original document may still be 31 32 needed for examination at a hearing or trial. 33 34 (c) The amendment to Paragraph E of this Article is new and requires 35 that the original of all documents and exhibits introduced or proffered into evidence, submitted with a petition for executory process, or filed in a 36 summary judgment proceeding be retained by the clerk of court until the 37 38 order or judgment becomes final and definitive, unless the court otherwise 39 directs. This does not change the law pertaining to the destruction of 40 documents after filing. See, e.g., R.S. 13:917, 1221, 1904, and 2562.26 relative to the destruction of useless records. 41 42 43 44 Art. 2853. Purported testament must be filed, though possessor doubts validity 45 Filing of purported testament

46

1 **<u>A.</u>** If a person has possession of a document purporting to be the testament 2 of a deceased person, even though he the person believes that the document is not the valid testament of the deceased, or has doubts concerning the validity thereof, he 3 of the testament, the person shall present it the document to the court with his a 4 5 petition praying that the document be filed in the record of the succession proceeding. 6 7 **B.** A person so presenting a purported testament to the court shall not be 8 deemed to vouch for its authenticity or validity, nor **be** precluded from asserting its 9 invalidity. 10 11 **SECTION 4. RETENTION OF TESTAMENTS** 12 Art. 2911. Retention of testaments 13 The clerk of court shall retain in perpetuity the original of a testament that is probated or ordered to be filed and executed. Until the order probating 14 the testament or ordering the testament to be filed and executed becomes final 15 16 and definitive, the clerk of court shall also retain the originals of all other testaments filed in accordance with Article 2853. 17 18 Comments - 2024 19 In accordance with Article 2974, an appeal may be taken from orders and 20 judgments rendered in succession proceedings. 21 22 23 Section 2. Code of Criminal Procedure Article 14.1 is hereby amended and reenacted, 24 and Code of Criminal Procedure Article 14.2 is hereby enacted, to read as follows: Art. 14.1. Filing of pleadings and documents by facsimile or electronic transmission 25 26 **Electronic filings** Any document in a traffic or criminal action may be transmitted 27

electronically in accordance with a system established by the clerk of court. The

clerk of court shall adopt a system for the electronic filing and storage of any

pleading, document, or exhibit other than those documents or exhibits

introduced and filed at a hearing or trial. Furthermore, in a court that accepts

28

29

30

31

electronic filings in accordance with this Article, 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.

Art. 14.2. Facsimile filings

2.8

A. Any document in a traffic or criminal action may be filed with the clerk of court by facsimile transmission if permitted by pursuant to the policy of the clerk of court. Filing shall be deemed complete at the time the facsimile transmission is received by the clerk of court. No later than on the first business day after receiving a facsimile filing, the clerk of court shall transmit to the filing party via facsimile a confirmation of receipt and include a statement of the fees for the facsimile filing and filing of the original document. The facsimile filing fee and transmission fee are incurred upon receipt of the facsimile filing by the clerk of court and payable as provided in Paragraph B of this Article. The facsimile filing shall have the same force and effect as filing the original document, if the party complies with Paragraph B of this Article.

- B. Within seven days, exclusive of legal holidays, after the clerk of court receives the facsimile filing, all of the following shall be delivered to the clerk of court:
- (1) The original document identical to the facsimile filing in number of pages and in content of each page, including any attachments, exhibits, and orders. A document **that is** not identical to the facsimile filing or which **that** includes pages not included in the facsimile filing shall not be considered the original document.
- (2) The fees for the facsimile filing and filing of the original document stated on the confirmation of receipt, if any.
- (3) A transmission fee of five dollars, if the defendant had has not been declared indigent by the court.

C. If the filing party fails to comply with any of the requirements of

1

2	Paragraph B of this Article, the facsimile filing shall have no force or effect.
3	D. Any $\underline{\mathbf{A}}$ court district may provide by court rule for any additional
4	requirement or provisions for filings by facsimile transmission.
5	E. In keeping with the clerk's policy, each clerk of court shall make available
6	the necessary equipment and supplies to accommodate facsimile filing in criminal
7	actions. Purchases for equipment and supplies necessary to accommodate facsimile
8	filings may be funded from any expense fund of the office of the clerk of court as the
9	clerks deem appropriate.
10	F. The filings as provided in this article and all other provisions of this code
11	may be transmitted electronically in accordance with a system established by a clerk
12	of court or by the Louisiana clerks' remote access authority. When such a system is
13	established, the clerk of court shall adopt and implement procedures for the
14	electronic filing and storage of any pleading, document, or exhibit. Furthermore, in
15	a parish that accepts electronic filings covered under this paragraph, the official
16	record shall be the electronic record. A pleading or document filed electronically is
17	deemed filed on the date and time stated on the confirmation of electronic filing sent
18	from the system, if the clerk of court accepts the electronic filing. Public access to
19	electronically filed pleadings and documents shall be in accordance with the rules
20	governing access to written filings.
21	Section 3. R.S. 9:2761 and 2762 are hereby enacted to read as follows:
22	§2761. Effectiveness of electronic record
23	An electronic record filed in accordance with R.S. 44:119 shall have
24	effect as to third persons in the same manner as if an original written
25	instrument had been filed.
26	§2762. Recordation of testaments; indexing; effectiveness
27	If a testament is recorded in the conveyance records, the clerk of court
28	shall index the testament only in the name of the testator. The recordation of the
29	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

1

29

effective against third persons. 2 3 Section 4. R.S. 44:116(D) and the introductory paragraph of R.S. 44:116(E)(1) and 4 R.S. 44:116(E)(2) are hereby amended and reenacted, and R.S. 44:117 is hereby enacted, to read as follows: 5 §116. Photostatic, photographic, microfilm, or other photographic or electronic 6 7 copies of records; indexes of conveyance and mortgage records; 8 disposition; evidentiary status; preservation 9 10 D. Notwithstanding the provisions of Subsection B of this Section or any 11 other provision of law to the contrary, for any record filed on or after January 1, 12 2005, with the exception of instruments filed in the conveyance records and 13 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 14 Land Surveying", as defined in R.S. 37:682, a clerk of court may reproduce the 15 16 record as provided in this Section and may thereafter return the original record to the 17 person presenting it. E.(1) Notwithstanding the provisions of Subsection B of this Section or any 18 19 other provision of law to the contrary, with the exception of instruments filed in the conveyance records, a clerk of court shall not be required to maintain an 20 original record filed on or prior to December 31, 2004, provided that: 21 22 (2) A With the exception of instruments filed in the conveyance records, 23 24 a clerk of court may destroy any record provided for in this Subsection or return it to the person who presented it for recordation after the clerk of court receives 25 certification from the state archivist that the records are not subject to R.S. 44:406 26 27 or R.S. 44:427 411 and after the clerk of court has preserved the record as provided for in this Section. No cause of action for any claim shall exist against a clerk of 28

court for any damage or loss resulting from the return or destruction of an original

SLS 24RS-259

ENGROSSED
SB NO 75

1 record in accordance with this Paragraph after receipt of the certification and 2 proper preservation of the record. 3 §117. Preservation of filings in the conveyance records 4 A. The clerk of court shall preserve in perpetuity the original of each 5 instrument filed in the conveyance records. This Section shall prevail over any 6 7 other law to the contrary. 8 B. For purposes of this Part, the conveyance records include all records, 9 however denominated, that are required by law to be indexed in the index of 10 conveyances maintained by the clerk of court. 11 Section 5. The Louisiana State Law Institute is hereby directed to redesignate 12 existing R.S. 44:117, entitled "Electronic copies of records; Lafayette Parish", as R.S. 44:118 13 and to redesignate Code of Civil Procedure Article 258 as R.S. 44:119 The original instrument and the following digest, which constitutes no part

DIGEST

SB 75 Engrossed

2024 Regular Session

of the legislative instrument, were prepared by Thomas L. Tyler.

Morris

<u>Present law</u> (C.C.P. Art. 253) provides with respect to the filing of pleadings, documents, and exhibits with the clerk of court, including electronic transmission, electronic conversion, and use of electronic signatures.

<u>Proposed law</u> retains <u>present law</u> and requires the original of any filed document or exhibit to be maintained by the filer during the pendency of the proceeding and to be made available for inspection or production to the court.

<u>Proposed law</u> further requires the original of all documents and exhibits introduced or proffered into evidence, submitted with a petition for executory process, or filed in a summary judgment proceeding to be retained by the clerk of court during the pendency of the proceeding.

<u>Present law</u> (C.C.P. Art. 2853) requires the filing of purported testaments in the record of the succession proceeding.

Proposed law retains present law and makes technical corrections.

<u>Proposed law</u> (C.C.P. Art. 2911) requires permanent retention by the clerks of court of testaments that have been probated or ordered to be filed and executed and provides for the retention of other filed testaments.

<u>Present law</u> (C.Cr.P. Art. 14.1) provides for the filing of pleadings and documents by facsimile or electronic transmission.

Page 9 of 10

<u>Proposed law</u> provides for the electronic transmission of documents in traffic or criminal actions pursuant to the policy of the clerk of court.

<u>Proposed law</u> (C.Cr.P. Art. 14.2) provides for the facsimile transmission of documents in traffic or criminal actions pursuant to the policy of the clerk of court.

<u>Proposed law</u> (R.S. 9:2761) provides for the effectiveness of electronic records as to third persons.

<u>Proposed law</u> (R.S. 9:2762) provides for the recordation of testaments in the conveyance records, including indexing requirements and effectiveness against third persons.

<u>Present law</u> (R.S. 44:116) provides for the reproduction, maintenance, and destruction or return of original records.

<u>Proposed law</u> retains <u>present law</u> and adds exceptions for instruments filed in the conveyance records.

<u>Proposed law</u> (R.S. 44:117) requires the preservation of originals of instruments filed in the conveyance records, including records that are required to be indexed by the clerk of court.

<u>Present law</u> (R.S. 44:117) provides for the electronic recordation of filings, documents, pleadings, and other written instruments in Lafayette Parish.

<u>Proposed law</u> redesignates certain provisions in <u>present law</u>.

<u>Present law</u> (C.C.P. Art. 258) provides for the electronic filing and recording of written instruments.

<u>Proposed law</u> redesignates certain provisions in <u>present law</u>.

Effective August 21, 2024.

(Amends C.C.P. Arts. 253 and 2853, C.Cr.P. Art. 14.1, and R.S. 44:116(D) and (E)(1)(intro. par.) and (2); adds C.C.P. Art. 2911, C.Cr.P. Art. 14.2, R.S. 9:2761 and 2762, and R.S. 44:117; redesignates C.C.P. Art. 258 and R.S. 44:117)