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January 31, 2017

Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

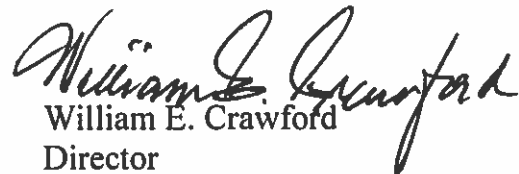
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR 218 OF 2015

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature relative to the adoption of an electronic notary law.

Sincerely,


William E. Crawford
Director

WEC/puc

Enclosure

cc: Representative Raymond Garofalo

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
ELECTRONIC SIGNATURES STUDY GROUP**

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR 218 OF THE 2015 REGULAR SESSION**

Relative to the adoption of an electronic notary law

Prepared for the
Louisiana Legislature on
January 31, 2017

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
ELECTRONIC SIGNATURES STUDY GROUP**

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2015 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 218

BY REPRESENTATIVE GAROFALO

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study the need for and feasibility of adopting an electronic notary law and specifically whether Louisiana should adopt laws providing for the use of technology to execute notarizations when the signor is not in the notary's physical presence, and to report its findings to the Louisiana Legislature no later than February 1, 2017.

WHEREAS, with the evolution of technology and the increasing use of technology to facilitate commerce and banking, a number of states now allow for electronic notarization of electronic records, as distinguished from traditional pen and paper notarization; and

WHEREAS, electronic notarization is a process whereby a notary affixes an electronic notary signature and seal information to an electronic document; and

WHEREAS, the Louisiana Legislature enacted Act 244 in the 2001 Regular Session and created the Louisiana Uniform Electronic Transaction Act (R.S. 9:2601 et seq.), and R.S. 9:2611 specifically provides for the electronic signature of a notary, but does not provide any guidance or standards for how electronic notarization can be achieved; and

WHEREAS, audio and video conference technology has continued to develop and is becoming more widely available and used, and in 2012, a law became effective in Virginia allowing notary publics to electronically notarize documents when the signor is not in the notary's presence if satisfactory evidence of the signer's identity is established using audio and video conference technology; and

WHEREAS, the Virginia law requires parties to the notary transaction to be able to simultaneously see and speak to one another, the signal transmission to be live (real time), and the signal transmission to be secure from interception through lawful means by anyone other than the persons communicating; and

WHEREAS, the Virginia law provides detailed procedures for confirming the identity of a signor, and requires the electronic notary to maintain a copy of the recording of the video and audio conference, thereby establishing safeguards to help protect against fraud while allowing individuals and businesses to take advantage of the latest technology in an effort to facilitate transactions; and

WHEREAS, a similar law in Louisiana would allow businesses to utilize current technology in an effort to facilitate transactions and to efficiently and safely serve customers.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations regarding the adoption of an electronic notary law.

BE IT FURTHER RESOLVED that the Legislature does hereby urge and request the Louisiana State Law Institute to study and make recommendations for the use of technology to execute notarizations when the signor is not in the notary's physical presence.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit a written report of its findings, together with any proposed legislation, to the Legislature of Louisiana no later than February 1, 2017.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

January 31, 2017

To: Representative Taylor F. Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
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INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR 218 OF THE 2015 REGULAR SESSION

House Concurrent Resolution No. 218 of the 2015 Regular Session (attached) urges and requests the Louisiana State Law Institute to study and make recommendations regarding the adoption of an electronic notary law, and specifically whether Louisiana should adopt laws providing for the use of technology to execute notarizations when the signor is not in the notary's physical presence. In fulfillment of this request, the Law Institute created the Electronic Signatures Study Group, which is supervised by Facilitator Michael S. Evanson and comprised of members who represent the clerks of court, Secretary of State, and other interests.

The Resolution makes two specific requests of the Law Institute: (1) to study and make recommendations regarding the adoption of an electronic notary law; and (2) to study and make recommendations for the use of technology to execute notarizations when the signor is not in the notary's physical presence. These requests were addressed at the November 4, 2016 meeting of the Electronic Signatures Study Group.

At its November 4, 2016 meeting, the Electronic Signatures Study Group reviewed the Virginia electronic notary law referenced in the Resolution. Study Group members noted that the Virginia law does not set out specific standards, but rather bestows the Secretary of the Commonwealth with the authority and responsibility to create standards for electronic notarizations. Members also reviewed the Electronic Notary Acts of Virginia, Montana, Nebraska, Nevada, Arizona, and South Carolina.

The Study Group agreed that the adoption of an electronic notary law in Louisiana is advisable. As was pointed out in the joint resolution, Louisiana Legislature enacted Act 244 in the 2001 Regular Session and created the Louisiana Uniform Electronic Transaction Act (R.S. 9:2601 et seq.), and R.S. 9:2611 specifically provides for the electronic signature of a notary, but does not provide any guidance or standards for how electronic notarization can be achieved.

This topic was discussed at length by the Study Group at its January 27, 2017 meeting. Having reviewed the electronic notary laws of other states for guidance, the Group ultimately noted that Louisiana's civilian tradition and the unique province of notaries in Louisiana necessitated further consideration and study of the following issues pertaining to the adoption of

an electronic notary law in Louisiana: (1) what capabilities and functionalities should be required of technologies in order to qualify for use in the electronic notarization process; (2) whether such technologies should be prescribed by way of an exhaustive list, or instead by qualifying standards; (3) the role of the Secretary of State, the Notaries Association, and other relevant organizations in creating and modifying such a list or setting such standards; and (4) whether and what parts of existing law might require clarification should an electronic notary law ultimately be adopted.

The Study Group is continuing to research the implications of the above principles and all other relevant issues in order to prepare its recommendations to the Legislature. A final report will be submitted once the Study Group has received approval of these recommendations from the Council of the Law Institute.

Respectfully submitted,

Michael S. Evanson, Facilitator
Electronic Signatures Study Group
Louisiana State Law Institute