

JAN 22 2008

A BILL FOR AN ACT

RELATING TO NOTARIES PUBLIC.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 456, Hawaii Revised Statutes, is
2 amended by adding four new sections to be appropriately
3 designated and to read as follows:

4 "§456- Definitions. As used in this chapter, unless the
5 context requires otherwise:

6 "Alter" means to change by means of erasure, obliteration,
7 deletion, insertion of new content, or transposition of content.

8 "Personally knowing" means having an acquaintance, derived
9 from association with the individual, which establishes the
10 individual's identity with at least a reasonable certainty.

11 "Proof of the signer's signature and identity" shall be
12 evidenced by production of a current identification card or
13 document issued by the United States, this State, any other
14 state, or a national government that contains the bearer's
15 photograph and signature.

16 "§456- Powers and duties of the attorney general. In
17 addition to any other powers and duties authorized by law, the
18 attorney general shall have all powers necessary or convenient

1 to effectuate the purposes of this chapter, including, without
2 limitation, the following powers:

3 (1) Issue notary public commissions to applicants pursuant
4 to this chapter;

5 (2) Adopt, amend, or repeal rules pursuant to chapter 91;

6 (3) Suspend or revoke any commission for any cause
7 prescribed by this chapter or for any violation of the
8 rules adopted pursuant to this chapter, and refuse to
9 issue any commission for any cause that would be
10 grounds for suspension or revocation of a commission;
11 and

12 (4) Impose administrative fines for any cause prescribed
13 by this chapter or for any violation of the rules
14 adopted pursuant to this chapter.

15 §456- Failure to verify identity and signature. (a) A
16 person commits the offense of failure to verify identity and
17 signature if the person is a commissioned notary public and
18 knowingly notarizes a document and:

19 (1) If a witness to the signing of the instrument, fails
20 to verify the identity of the signer by personally
21 knowing the signer or by comparing the personal

1 appearance of the signer with satisfactory proof of
2 the signer's identity; or

3 (2) If not a witness to the signing of the instrument,
4 fails to verify the identity of the signer by
5 personally knowing the signer or by comparing the
6 personal appearance of the signer with satisfactory
7 proof of the signer's identity; or fails to verify the
8 signature of the signer by recognizing the signature
9 of the signer by personal familiarity with the
10 signature, or by comparing the signature with
11 satisfactory proof of the signer's signature.

12 (b) Any person who violates this section shall be guilty
13 of a misdemeanor and shall be sentenced in accordance with
14 chapter 706, except that the court shall impose a minimum
15 sentence of a fine of \$1,000.

16 (c) A conviction under this section shall result in the
17 automatic revocation of the notary public's commission.

18 **§456- Failure to authenticate with a certification**
19 **statement.** (a) A person commits the offense of failure to
20 authenticate with a certification statement if the person is a
21 commissioned notary public and knowingly notarizes a document

1 and fails to include any of the following in the notary
2 certification:

3 (1) Date of notarization and signature of the notary
4 public;

5 (2) The printed name and stamp or seal of the notary
6 public;

7 (3) Identification of the jurisdiction in which the
8 notarial act is performed;

9 (4) Identification or description of the document being
10 notarized, placed in close proximity to the
11 acknowledgment or jurat; and

12 (5) A statement of the number of pages and date of the
13 document.

14 (b) Any person who violates this section shall be guilty
15 of a misdemeanor and shall be sentenced in accordance with
16 chapter 706, except that the court shall impose a minimum
17 sentence of a fine of \$1,000.

18 (c) A conviction under this section shall result in the
19 automatic revocation of the notary public's commission."

20 SECTION 2. Chapter 710, Hawaii Revised Statutes, is
21 amended by adding to part V two new sections to be appropriately
22 designated and to read as follows:

1 "§710-A Misrepresenting a notarized document in the first
2 degree. (1) A person commits the offense of misrepresenting a
3 notarized document in the first degree if the person submits or
4 invites reliance on a document that the person knows has been
5 altered after the document had been notarized by a notary public
6 in this or any other jurisdiction, and:

7 (a) The offense was committed with intent to mislead a
8 public servant; or

9 (b) The offense was committed for purpose of commercial or
10 private financial gain.

11 (2) Misrepresenting a notarized document in the first
12 degree is a class C felony.

13 §710-B Misrepresenting a notarized document in the second
14 degree. (1) A person commits the offense of misrepresenting a
15 notarized document in the second degree if, with intent to
16 mislead another, the person submits or invites reliance on a
17 document that the person knows has been altered after the
18 document had been notarized by a notary public in this or any
19 other jurisdiction.

20 (2) Misrepresenting a notarized document in the second
21 degree is a misdemeanor."

1 SECTION 3. Section 456-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§456-7 [Acts prohibited; penalty. No person shall be~~
4 ~~qualified to act as a notary public or shall enter upon any of~~
5 ~~the duties of the office or offer or assume to perform any such~~
6 ~~duties until the person has fully complied with each of the~~
7 ~~requirements in each of the foregoing sections of this chapter.~~
8 ~~Any person wilfully violating this section shall be fined not~~
9 ~~more than \$500, or imprisoned not more than one year, or both.]~~

10 Unauthorized practice as a notary public. (a) A person commits
11 the offense of unauthorized practice as a notary public if the
12 person knowingly engages in or offers to engage in any duties of
13 the office of a notary public without first complying with all
14 of the following:

- 15 (1) Being appointed and commissioned as a notary public by
16 the attorney general;
17 (2) Filing a copy of the person's commission, an
18 impression of the person's seal, and a specimen of the
19 person's official signature with the clerk of the
20 circuit court of the circuit in which the person
21 resides; and

1 (3) Executing an official surety bond pursuant to section
2 456-5.

3 (b) Any person who violates this section shall be guilty
4 of a misdemeanor and shall be sentenced in accordance with
5 chapter 706, except that the court shall impose a minimum
6 sentence of a fine of \$2,000 for the first offense and a fine of
7 no less than \$3,000 for any subsequent offense.

8 (c) Nothing in this section shall be construed to restrict
9 or to do away with any liability for civil damages."

10 SECTION 4. Section 456-9, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~§456-9 Fees~~ and administrative fines. (a) The
13 attorney general shall charge and collect the following fees
14 for:

- 15 (1) Issuing the original commission, \$40; and
- 16 (2) Renewing the commission, \$40.

17 Notwithstanding the foregoing, the attorney general may
18 establish and adjust fees pursuant to chapter 91.

19 ~~[The foregoing fees collected by the attorney general shall~~
20 ~~be deposited into the notaries public revolving fund established~~
21 ~~by section 456-9.5, except that if that fund is terminated, the~~

1 ~~foregoing fees shall thereafter be deposited with the director~~
2 ~~of finance to the credit of the general fund.]~~

3 (b) The court fees for filing a copy of a commission and
4 for each certificate of authentication shall be specified by the
5 supreme court.

6 (c) The attorney general may impose and collect the
7 following administrative fines for a notary public's failure to:

8 (1) Maintain an official seal of one type, either a single
9 engraved seal or a single rubber stamp facsimile seal,
10 on which shall be inscribed the name of the notary
11 public, and the words "notary public" and "State of
12 Hawaii" only, \$20;

13 (2) Surrender the notary public's seal and certificate to
14 the attorney general within ninety days of
15 resignation, removal from office, or the expiration of
16 a term without renewal, \$200;

17 (3) Authenticate every acknowledgment or jurat with a
18 certificate that shall be signed and dated by the
19 notary, include the printed name and official stamp or
20 seal of the notary, identify the jurisdiction in which
21 the notarial act is performed, describe in close
22 proximity to the acknowledgment or jurat the document

- 1 being notarized, and state the number of pages and
2 date of the document, \$500;
- 3 (4) Record all of the notary public's transactions as
4 prescribed by section 456-15 and applicable rules,
5 \$200;
- 6 (5) Notify the attorney general of a change in occupation,
7 residence, or employment, within thirty days of such
8 change, \$10;
- 9 (6) Display signage notifying the availability of notary
10 services to the public, \$10;
- 11 (7) Offer notary services, whether by appointment only or
12 not, during all normal business hours of operation
13 where the notary public is employed, \$10;
- 14 (8) If choosing to renew a commission, timely renew the
15 notary public commission by failing to submit a
16 completed renewal application, pay the renewal fee, or
17 complete the processing and filing of a commission for
18 renewal by the date of expiration of the notary
19 public's commission, \$60;
- 20 (9) Surrender the notary public's record books to the
21 attorney general within ninety days of the end date of

1 the commission, resignation, or removal from office,
2 \$500; and

3 (10) Notify the attorney general within ten days after
4 loss, misplacement, or theft of the notary public's
5 seal, stamp, or any record book, inform the
6 appropriate law enforcement agency in the case of
7 theft, and deliver a copy of the law enforcement
8 agency's report of the theft to the attorney general,
9 \$20.

10 (d) The foregoing moneys collected by the attorney general
11 pursuant to this section shall be deposited into the notaries
12 public revolving fund established by section 456-9.5, except
13 that if that fund is terminated, the foregoing moneys shall
14 thereafter be deposited with the director of finance to the
15 credit of the general fund."

16 SECTION 5. Section 456-9.5, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) There is established in the state treasury the
19 notaries public revolving fund into which shall be deposited:

20 (1) All fees, administrative fines, charges, or other
21 payments received pursuant to section 456-9;

- 1 (2) Penalties and fines for violations of section 456-3,
2 456-7, or 456-16;
- 3 (3) Appropriations made for deposit into the notaries
4 public revolving fund; and
- 5 (4) Interest earned on money in the notaries public
6 revolving fund."

7 SECTION 6. Section 456-16, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§456-16 Disposition of records, penalty.** (a) The
10 records of each notary public shall be deposited with the
11 [~~office~~] department of the attorney general upon the
12 resignation, death, expiration of each term of office, or
13 removal from or abandonment of office. If any notary public
14 fails to comply with this section within ninety days of the date
15 of the resignation, expiration of any term of office, or removal
16 from or abandonment of office or if the [~~notary's~~] notary
17 public's personal representative fails to comply with this
18 section within ninety days of the [~~notary's~~] notary public's
19 death, then the notary public or the [~~notary's~~] notary public's
20 personal representative shall forfeit to the State not less than
21 \$50 nor more than \$500, in the discretion of the court, in an
22 action brought by the attorney general on behalf of the State.

S.B. NO. 2975

1 (b) The department of the attorney general shall keep
2 record books for a period not less than six years after
3 submitted by a notary public, but thereafter may dispose of the
4 record books."

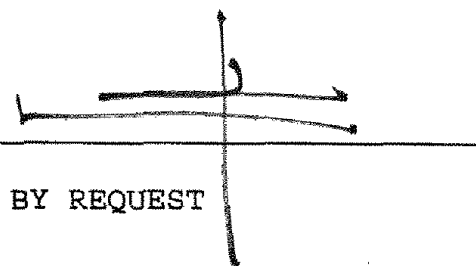
5 SECTION 7. In codifying the new sections added to chapter
6 710, Hawaii Revised Statutes, by section 2 of this Act, the
7 revisor of statutes shall substitute appropriate section numbers
8 for the letters used in the designations of, and references to,
9 those new sections in this Act.

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect on July 1, 2008.

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INTRODUCED BY: _____

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Report Title:

NOTARIES PUBLIC.

Description:

Clarifies the powers and duties of the Attorney General with respect to notaries public; identifies conduct that would subject a notary to fines; and identifies criminal conduct with regard to notarization, notarized documents, and related matters.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO NOTARIES PUBLIC.

PURPOSE: To clarify the powers and duties of the Attorney General with respect to notaries public; to criminalize the notarization of a document where the notary public has not: (1) verified the identity of the signer, and (2) evidenced such notarization with a certificate signed and dated by the notary public and including requisite information; to criminalize the misrepresentation of a notarized document; to identify conduct that would subject a notary to administrative fines; and to establish a six-year retention policy for notary public record books.

MEANS: Add four new sections to chapter 456, Hawaii Revised Statutes, and two new sections to chapter 710, Hawaii Revised Statutes, and amend sections 456-7, 456-9, 456-9.5(a), and 456-16, Hawaii Revised Statutes.

JUSTIFICATION: The Department of the Attorney General has received reports of serious notarial misconduct, including complaints that notaries are signing blank or incomplete acknowledgments, jurats, or declarations which are later used in the commission of illegal activities. This bill helps to deter such misconduct by setting forth the broad powers and duties of the Attorney General for the regulation of notaries public, by identifying ten specific practices that may subject a notary public to administrative fines, by making it a misdemeanor for a notary public to notarize a document without verifying the identity of the signer and evidencing the notarization with an appropriate certificate, by making it a felony to misrepresent a notarized document in the first degree, and by making

it a misdemeanor to represent a notarized document in the second degree.

Our Department also knows of instances where a page on which the notarization stamp is placed is separated from its original document and used with a different document. This bill restricts the use of the notarization to its intended original document, and is helpful in preventing the fraudulent "bait and switch" practice of attaching a notarized page from one document to a different document. This bill authorizes the Attorney General to administratively fine a notary who fails to authenticate every acknowledgment or jurat with a completed certificate describing the document being notarized, thus discouraging fraudulent "bait and switch" practices. Furthermore, this bill criminalizes the act of submitting or inviting reliance on a document that the person knows has been altered after the document has been notarized by making such misrepresentation a misdemeanor.

In addition, this bill amends section 456-7, Hawaii Revised Statutes, to clarify that a person commits the offense of unauthorized practice as a notary public if the person knowingly engages in or offers to engage in any duties of a notary public without first being commissioned by the Attorney General, filing a copy of the person's commission, an impression of the person's seal, and a specimen of the person's signature with the clerk of the circuit court in which the person resides, and executing an official surety bond.

This bill further authorizes the Attorney General to impose administrative fines for ten types of misconduct by notaries. The first type of misconduct or practice concerns duplicate or nonconforming seals or stamps. A frequent question is whether a notary may have more than one engraved seal

or rubber stamp, or may have both. To minimize potential loss, misplacement, and fraudulent use of multiple seals and stamps, this bill clearly states that a notary public may have only one engraved seal or one rubber stamp.

Inquirers also ask whether they can include slogans or sayings (such as "best notary" or "friendliest service") on their stamp or seal. To prevent blurring and illegibility, especially when documents are copied multiple times, this bill allows only the name of the notary and the words "notary public" and "State of Hawaii" on a seal or stamp.

The second misconduct is the failure of a notary to surrender the notary public's seal and certificate to the Attorney General within ninety days of resignation, removal from office, or the expiration of a term without renewal. Currently, section 456-3, Hawaii Revised Statutes, requires the Attorney General to bring an action in circuit court to enforce this requirement. This bill allows the Attorney General to use the resources of the Department in a more cost-effective manner by authorizing an administrative fine.

The third misconduct is the failure to properly authenticate every acknowledgment or jurat. This practice ensures that a page on which the notarization stamp is placed is not separated from its original document and used with a different document. This bill helps prevent the fraudulent "bait and switch" practice of attaching a notarized page from one document to a different document.

The fourth misconduct, failure to record all of the notary public's transactions in a record book, frequently comes to our attention years after the actual notarization. This bill authorizes the

Attorney General to impose a \$200 administrative fine for failure to comply with section 456-15, Hawaii Revised Statutes.

Fifth, this bill authorizes the Attorney General to impose a \$10 administrative fine for failure to notify the Attorney General of a change in occupation, residence, or employment within thirty days of such change.

The sixth and seventh types of misconduct, regarding signage and hours of operation, are also subjects of frequent inquiry. This bill clarifies that a notary public is subject to administrative fines for failing to display signage notifying the public of available notary public services, whether by appointment or not, during all normal business hours of operation where the notary public is employed.

The eighth provision for administrative fines concerns late renewals and arises from notaries renewing months and even years after the expiration of their commission dates. This bill clearly subjects a notary public, if choosing to renew the notary public's commission, to a \$60 administrative fine if the notary public fails to complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission.

The ninth misconduct is the failure of a notary public to surrender the notary public's record books to the Attorney General within ninety days of the end date of the commission, resignation, or removal from office. Currently, section 456-16, Hawaii Revised Statutes, requires the Attorney General to bring an action in circuit court to enforce this practice. Again, this bill enables the Attorney General to use the resources of the department in a more cost-effective manner by authorizing an administrative fine.

The tenth misconduct is the failure of a notary public to notify the Attorney General within ten days after loss, misplacement, or theft of the notary public's seal, stamp, or any record book.

This bill also amends section 456-9.5, Hawaii Revised Statutes, to clarify that administrative fines shall be deposited into the notaries public revolving fund.

Lastly, this bill amends section 456-16, Hawaii Revised Statutes, to establish a six-year retention policy for the Department of the Attorney General with respect to notary public record books. Currently, there is no retention policy regarding record books for notaries. In 2002, the Department of the Attorney General assumed from the judiciary the responsibility of maintaining record books turned in by notaries at the end of their four-year terms. These records, along with the records turned in during the past five years, amount to over five hundred banker boxes filled with private personal records of thousands of people. Section 456-15, Hawaii Revised Statutes, requires notaries public to record, amongst other items, the signature, name, and address of each person whose signature is notarized, and the manner in which the signer is identified. Notaries public often, however, record not only the type of identification, such as passport or driver's license, but actually record the identification number and sometimes even make copies of the identification or fingerprints of signers and attach those copies to their record books. The Department of the Attorney General does not have the necessary space to provide secured storage for an infinite amount of record books; a retention policy must be established. Retention policies in other states for notary record books range from recommending, but not requiring, a notary public to keep the notary public's record books until resignation to a

government agency keeping the record books for five years. This bill proposes a six-year retention policy for the Department of the Attorney General because six years is the general statute of limitations period in this State.

Impact on the public: The bill provides guidance to notaries public and their employers regarding appropriate notary public practices, and deters notary public misconduct by clearly identifying misconduct that will be subject to administrative fines or considered a misdemeanor subject to criminal prosecution. This bill helps protect the general public by discouraging notaries public from participating in illegal activities.

Impact on the department and other agencies: The bill should help decrease the number of inquires from notaries public, financial institutions, real estate and mortgage companies, law firms, etc. It may generate more revenue for the notary public program, which is self-sufficient and severely understaffed. The bill, however, may increase the number of questions regarding what needs to be included in the newly required certificate.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2008.