



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 3053, RELATING TO NOTARIES PUBLIC.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, February 8, 2008 **TIME:** 2:00 PM

LOCATION: State Capitol Room 325

Deliver to: State Capitol, Room 302, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Shari Wong, Deputy Attorney General

Chair Waters and Members of the Committee:

The Department of the Attorney General is in strong support of this measure.

The purpose of this bill is to clarify the powers and duties of the Attorney General with respect to notaries; 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 the requisite information; to criminalize the misrepresentation of a notarized document; to criminalize the unauthorized practice as a notary public; to identify conduct that would subject a notary to administrative fines; and to establish a six-year retention policy for the Department of the Attorney General regarding notary record books.

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 and by identifying ten specific practices that may subject a notary public to administrative fines.

In addition, this bill creates five new criminal offenses. The misdemeanor offense of failure to verify identity and signature prohibits a commissioned notary from notarizing a document without first verifying the identity of the signer. The misdemeanor offense of failure to authenticate with a certification statement prohibits a commissioned notary from evidencing a notarization without appropriate certification. The misdemeanor offense of misrepresenting a notarized document in the second degree prohibits a person from submitting a document to another to rely on knowing it has been altered after it was notarized. It becomes a first degree class C felony offense if it was committed with intent to mislead a public servant for purposes of financial gain. The misdemeanor offense of unauthorized practice as a notary public prohibits a person from practicing as a notary public without first being commissioned by the Attorney General and completing the process for becoming a notary public.

We respectfully request passage of this measure.

**Testimony before the Committee on Judiciary,
House of Representatives, Regular Session of 2008**

by Philip Hauret

Honolulu, HI 96822, ph. [REDACTED]

February 8, 2008, 2:00 p.m.

House Bill 3053, Relating to Notaries Public (Five Copies)

Dear Chair and Members of the Committee:

My name is Phil Hauret and I am a notary public for a large Hawaii company. I have been a notary public for over 25 years and perform approximately 175 notarial acts a year. I am speaking for myself and not for my employer.

I am opposed to HB 3053. It subjects all notaries to a litany of administrative fines for even minor "offenses" and imposes a burdensome and unworkable certification process upon the notarization of documents. If fraud is being committed by misuse of notarized documents, I believe that some of the measures in HB 2920, which has been already heard in Commerce, Consumer Protection and Affordable Housing, are sufficient to address the issue.

This bill's proposed certification requirement (Section 1) is simply unworkable and could only have been drafted by someone who has never had to get documentation executed on a regular basis. It mandates that a notary not only has to fill out a jurat or acknowledgment when notarizing a document, but also has to complete a separate "certification", which is not formally defined even though the bill adds to HRS §456 several new definitions. This certification would be composed of five elements, including a statement as to the total number of pages in the document and its date. If one has ever had to get a document executed, one knows that additional pages, such as acknowledgments, can be added after you have notarized it, and that if the document is executed in counterparts, which is rather common, a number of sets would result all with different dates, or no dates. The final compiler would then assemble the sets and should give the document the date of the last acknowledgment, which is when the final party has signed, making the document effective. Or he may intentionally leave it undated and request escrow, if it's to be recorded through escrow, to date the document the date of the recordation. Therefore, whatever the notary attests in his certification as the date of the document may vary from the final date, and similarly for the number of pages. But this bill would potentially fine the notary \$1,000 for this "misconduct" even though the document is no longer in the notary's hands and may even be on the Mainland. And to avoid discrepancies between the final document and the various certifications, someone would be forced to recirculate the document to all the notaries to correct their certifications. This certification requirement is just unworkable, if not nightmarish.

Additionally, the bill imposes administrative fines on ten separate "misconducts" of a notary (Section 4), including failure to display signage, without regard to whether one's building would even permit such a thing. These fines are excessive and criminalize minor administrative failures.

Thank you for the opportunity to testify.