



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2761, RELATING TO FRAUD PREVENTION

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

DATE: Wednesday, February 13, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol, Conference Room 229

Deliver to: Committee Clerk, Room 229, 5 copies

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

Chair Kokubun and Members of the Committee:

The Department of the Attorney General supports this measure.

The purpose of this bill is to prevent notarized documents from being altered by substituting material that was not part of the document to which the notarial seal originally was applied. The Department recognizes this problem but believes that the problem should be addressed with other notary problems by taking a more comprehensive approach such as the approach taken in S.B. No. 2975. Section 1 of S.B. No. 2975 adds four new sections to chapter 456, Hawaii Revised Statutes, one of which is entitled "Failure to authenticate with a certification statement." We believe S.B. No. 2975 adopts a more comprehensive approach to issues relative to notaries.

This new section of S.B. No. 2975 creates a criminal offense if a notary public knowingly notarizes a document and fails to include a certification that includes the: (1) date of the notarization and signature of the notary public; (2) printed name and stamp or seal of the notary public; (3) identification of the jurisdiction in which the notarial act is performed; (4) identification or description of the document being notarized, placed in close proximity to the acknowledgment or jurat; and (5) statement of the number of pages and date of the document. A person who commits this

offense shall be guilty of a misdemeanor and sentenced in accordance with chapter 706, Hawaii Revised Statutes, except that the court shall impose a minimum sentence of a \$1,000 fine. Furthermore, a conviction under this section shall result in the automatic revocation of the notary public's commission. Thus, this section sets forth five explicit elements a notary public must include in a certification statement when notarizing a document and a criminal penalty for failure to comply. We request that this section of S.B. No. 2975 be used in place of section 2 of S.B. No. 2761.

We also ask that other portions of S.B. No. 2975, to the extent allowable by this bill's title, be added to this bill. Sections 1, 2, and 3 of S.B. No. 2975 address fraud prevention by adding a definition section to chapter 456 and creating four new criminal offenses (in addition to the above described offense for failing to authenticate with a certification statement). The misdemeanor offense of failure to verify identity and a signature prohibits a notary public from notarizing a document without first verifying the identity of the signer. The misdemeanor offense of misrepresenting a notarized document in the second degree prohibits a person, knowing a document has been altered after it was notarized, from submitting a document to another for reliance. It becomes a first degree class C felony offense if the act was committed with the 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.

In addition, we ask that section 4 of S.B. No. 2975, to the extent allowable by this bill's title, be added to this bill. Section 4 of S.B. No. 2975 amends section 456-9, Hawaii Revised Statutes, to include administrative fines and identifies six acts of misconduct related to the prevention of fraud. Section 4 subjects a notary public to administrative fines for failing to: (1) maintain

only one seal or stamp; (2) surrender of seal and certificate to the Attorney General's office within ninety days of resignation, removal from office, or the expiration of a term without renewal; (3) authenticate every acknowledgment or jurat with a certificate; (4) record all notarial transactions as prescribed by section 456-16, Hawaii Revised Statutes, and applicable rules; (5) surrender record books to the Attorney General within ninety days of the end date of the commission, resignation, or removal from office; and (6) notify the Attorney General within ten days after loss, misplacement, or theft of the notary public's seal, stamp, or any record book and, in the case of theft, inform the appropriate law enforcement agency of the theft and deliver a copy of the law enforcement's report of the theft to the Attorney General.

We likewise ask that section 5 of S.B. No. 2975 be added to this bill as that section amends section 456-9.5(a), Hawaii Revised Statutes, to include the deposit of administrative fines related to fraud prevention into the notary public revolving fund.

We respectfully request passage of this measure with our additions. Attached for your convenience is a copy of S.B. No. 2975 with those parts we suggest be added to this bill highlighted.

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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.

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

S.B. NO. 2975

A BILL FOR AN ACT

RELATING TO NOTARIES PUBLIC.

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

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

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

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

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

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

§456- Powers and duties of the attorney general. In addition to any other powers and duties authorized by law, the attorney general shall have all powers necessary or convenient to effectuate the purposes of this chapter, including, without limitation, the

following powers:

- (1) Issue notary public commissions to applicants pursuant to this chapter;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91;
- (3) Suspend or revoke any commission for any cause prescribed by this chapter or for any violation of the rules adopted pursuant to this chapter, and refuse to issue any commission for any cause that would be grounds for suspension or revocation of a commission; and
- (4) Impose administrative fines for any cause prescribed by this chapter or for any violation of the rules adopted pursuant to this chapter.

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

- (1) If a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or
- (2) If not a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or fails to verify the signature of the signer by recognizing the signature of the signer by personal familiarity with the signature, or by comparing the signature with satisfactory proof of the signer's signature.

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

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

§456- Failure to authenticate with a certification statement. (a) A person commits the offense of failure to authenticate with a certification statement if the person is a commissioned notary public and knowingly notarizes a document and fails to include any of the following in the notary certification:

- (1) Date of notarization and signature of the notary public;
- (2) The printed name and stamp or seal of the notary public;
- (3) Identification of the jurisdiction in which the notarial act is performed;
- (4) Identification or description of the document being notarized, placed in close proximity to the acknowledgment or jurat; and
- (5) A statement of the number of pages and date of the document.

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

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

SECTION 2. Chapter 710, Hawaii Revised Statutes, is amended by adding to part V two new sections to be appropriately designated and

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to read as follows:

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

- (a) The offense was committed with intent to mislead a public servant; or
- (b) The offense was committed for purpose of commercial or private financial gain.

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

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

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

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

~~"§456-7 [Acts prohibited; penalty. No person shall be qualified to act as a notary public or shall enter upon any of the duties of the office or offer or assume to perform any such duties until the person has fully complied with each of the requirements in each of the foregoing sections of this chapter. Any person wilfully~~

~~violating this section shall be fined not more than \$500, or imprisoned not more than one year, or both.] Unauthorized practice as a notary public. (a) 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 the office of a notary public without first complying with all of the following:~~

- (1) Being appointed and commissioned as a notary public by the attorney general;
- (2) Filing a copy of the person's commission, an impression of the person's seal, and a specimen of the person's official signature with the clerk of the circuit court of the circuit in which the person resides; and
- (3) Executing an official surety bond pursuant to section 456-5.

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

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

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

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

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

Notwithstanding the foregoing, the attorney general may

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establish and adjust fees pursuant to chapter 91.

~~[The foregoing fees collected by the attorney general shall be deposited into the notaries public revolving fund established by section 456-9.5, except that if that fund is terminated, the foregoing fees shall thereafter be deposited with the director of finance to the credit of the general fund.]~~

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

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

- (1) Maintain an official seal of one type, either a single engraved seal or a single rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, and the words "notary public" and "State of Hawaii" only, \$20;
- (2) 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, \$200;
- (3) Authenticate every acknowledgment or jurat with a certificate that shall be signed and dated by the notary, include the printed name and official stamp or seal of the notary, identify the jurisdiction in which the notarial act is performed, describe in close proximity to the acknowledgment or jurat the document being notarized, and state the number of pages and date of the document, \$500;
- (4) Record all of the notary public's transactions as prescribed by section 456-15 and applicable rules, \$200;

- (5) Notify the attorney general of a change in occupation, residence, or employment, within thirty days of such change, \$10;
- (6) Display signage notifying the availability of notary services to the public, \$10;
- (7) Offer notary services, whether by appointment only or not, during all normal business hours of operation where the notary public is employed, \$10;
- (8) If choosing to renew a commission, timely renew the notary public commission by failing to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission, \$60;
- (9) 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, \$500; and
- (10) Notify the attorney general within ten days after loss, misplacement, or theft of the notary public's seal, stamp, or any record book, inform the appropriate law enforcement agency in the case of theft, and deliver a copy of the law enforcement agency's report of the theft to the attorney general, \$20.

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

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

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

- (1) All fees, administrative fines, charges, or other payments received pursuant to section 456-9;
- (2) Penalties and fines for violations of section 456-3, 456-7, or 456-16;
- (3) Appropriations made for deposit into the notaries public revolving fund; and
- (4) Interest earned on money in the notaries public revolving fund."

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

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

(b) The department of the attorney general shall keep record

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books for a period not less than six years after submitted by a notary public, but thereafter may dispose of the record books."

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

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

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

INTRODUCED BY: _____

BY REQUEST

**Testimony before the Committee on Commerce, Consumer Protection
& Affordable Housing
Senate, Regular Session of 2008**

**by Philip Hauret
1541 Davenport Place, Apt. C
Honolulu, HI 96822, ph. 543-4735**

February 13, 2008, 9:00 a.m.

Senate Bill 2761, Relating to Fraud Prevention

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 have several comments on Senate Bill 2761. To apparently prevent fraudulent use of acknowledgments attached to legal documents, Section 2 of the bill requires the notary to “emboss, stamp, or impress the notary’s seal over a succinct phrase describing the document”. This measure seems a reasonable response to the problem, though I would point out that many government forms that require notarization of signatures lack the space in which to put a “succinct phrase describing the document.” Perhaps language can be added that would require all state and county agencies to revise their forms accordingly. I believe this measure is superior to the wholesale changes to notary law and practice being proposed by two administration bills (House Bill 3053 and Senate Bill 2975).

I am opposed to Section 3 of the bill, which would provide the AG’s office the power to implement “such measures as may be necessary to prevent the fraudulent use of a notarized document after placement of the notary’s seal.” In light of the administration bills noted above, I do not think it wise to give the AG’s office the administrative power to implement many, if not all, of the measures in these bills. The mechanism set forth in Section 1 of this bill should be sufficient.

Thank you for the opportunity to testify.