



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2920, RELATING TO FRAUD PREVENTION.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING

DATE: Friday, March 28, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol, Room 229
Deliver to: Committee Clerk, Room 407, 1 Copy

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 H.B. No. 3053, which was not referred to this Committee. Section 1 of H.B. No. 3053 adds four new sections to chapter 456, Hawaii Revised Statutes, one of which is entitled "Failure to authenticate with a certification statement." We believe H.B. No. 3053 adopts a more comprehensive approach to issues relative to notaries.

This new section 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 H.B. No. 3053 be used in place of section 2 of H.B. No. 2920.

We also ask that other portions of H.B. No. 3053, to the extent allowable by this bill's title, be added to this bill. Sections 1, 2, and 3 of H.B. No. 3053 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 H.B. No. 3053, to the extent allowable by this bill's title, be added to this bill. Section 4 of H.B. No. 3053 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 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 H.B. No. 3053 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 urge passage of this measure with our requested amendments. Attached for your convenience is a copy of H.B. No. 3053 with those parts we suggest be added to this bill highlighted.

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 3053

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

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

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

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 TWENTY-FOURTH LEGISLATURE
H.B. NO. 2920, RELATING TO FRAUD PREVENTION.**

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND
AFFORDABLE HOUSING.

DATE: Friday, March 28, 2008 **TIME:** 9:00 AM

LOCATION: Hawaii State Capitol, Conference Room 229

TESTIFIER: John Walsh, Host, *America's Most Wanted*

Honorable Chair Kokubun and distinguished Committee members:

Thank you for this opportunity to submit written testimony in strong support of H.B.
2920, RELATING TO FRAUD PREVENTION.

The purpose of this bill is to prevent notarized documents from being altered or modified
by tampering with or substituting portions of other documentation that were not part of
the original transaction.

As you are probably aware, I have dedicated nearly three decades of my life to pursue
justice for victims and try to speak in loudly for their rights. My life's work has entailed
extensive travel throughout the world in an effort to solve some of the most appalling
cases and to ensure that justice is served. Few murder and fraud cases have been as
deeply troubling and compelling, both professionally and personally, as the one that
prompted the introduction of this legislation.

FRIEND MURDERED & PROPERTY FRAUDULENTLY ACQUIRED

The murder and fraud case that prompted this legislation has been deeply troubling and
compelling both personally and professionally. John Elwin was a friend of mine who
lived on Kaua'i and was lured to the Philippines in May of 2006 by his long-time
business associate and friend. He never returned. His bullet riddled body, which
evidenced an execution style slaying, was left on the side of the road in a shallow grave
like a piece of garbage.

John was one of three men who mysteriously disappeared on different occasions while on
business trips to the Philippines. Each was accompanied by Henry Calucag, aka, Hank
Jacinto, who returned from the trips alone. He is serving 30 years in prison for a variety
of identity theft and theft related charges. Law enforcement is still actively pursuing
murder charges against him for the death of John Elwin and we hope justice will be
served.

COMMON THREAD-MOTIVE, MEANS, OPPORTUNITY

There have been many cases over the years where homicide was the precursor to obtain property through fraudulent means. Based on my personal observations and experience, the pervasive truth is that given a means and motive, con men like Calucag will invariably seek or create the perfect opportunity to fulfill the commission of a crime.

In the case of John Elwin's estate, Calucag's fraudulent transaction was made exponentially easier because a legitimately notarized document for the legal transfer of an automobile was too easily substituted in order to complete the illegal transfer of Elwin's real property on Kaua'i

HB 2920 – A VITAL DETERRENT

Enactment of HB2920 is needed to deter people like Calucag from fraudulent substitution of notarized documents in order to complete the illegal transfer of property. By passing this legislation, both the "means" and "opportunity" will be removed from the "crime" equation, and effectively prevent or reduce the commission of crimes against people and their property.

CONCLUSION

I have been privileged to testify on the local and congressional levels regarding victim's rights legislation. Without doubt, there is nothing more rewarding or fulfilling than to know that laws were enacted as the direct result of cooperation between the criminal justice system and the legislative branches of government.

Your Committee on Commerce, Consumer Protection and Affordable Housing has the unique opportunity to join other lawmakers in making a global impact on the reduction and prevention of crimes against property rights and persons. The rapid spread of online banking services and personal information, via the internet only exacerbates an already dire situation, especially where vulnerable, easily manipulated senior citizens are concerned.

This phenomenon dictates that all viable means to prevent, deter and minimize identification and property theft be enacted to effectively and proactively manage a growing national and international crisis. HB 2920 is a much needed law that will help stop this exploitation of the innocent.

I commend the initiative and passion of Representative James Tokioka, Luis Soltren and the outstanding work of this committee.

Sincerely,

John Walsh
Host, *America's Most Wanted*