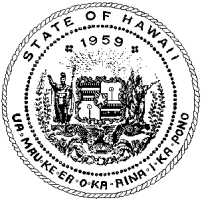


HB717 HD1

Measure Title: RELATING TO NOTARIES PUBLIC.
Report Title: Notaries Public; Limited Purpose Driver's License
Description: Prohibits a commissioned notary public from accepting a limited purpose driver's license for verification of identification. (HB717 HD1)
Companion: [SB332](#)
Package: None
Current Referral: CPH, JDL
Introducer(s): SOUKI



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 17, 2017
Rm. 229, 9:30 a.m.

To: The Honorable Rosalyn Baker, Chair
Members of the Senate Committee on Consumer Protection & Health

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 717, H.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC opposes H.B. No. 717, H.D.1, which, if enacted, would prohibit a commissioned notary public from accepting a limited purpose driver’s license to verify a signer’s identity, making it a misdemeanor criminal offense to do so.

Limited purpose driver’s licenses are issued pursuant to HRS § 286-104.5, enacted into law as Act 172 in 2015. § 286-1-4.5(a) allows issuance of a limited purpose driver’s license only upon satisfactory proof to the examiner of drivers of both the applicant’s identity and Hawai‘i residence, by presentation of documentary proof. Pursuant to § 286-104.5(c), every limited purpose driver’s license must bear on its face the phrase, “Not acceptable for official federal purposes,” and on its reverse the phrase, “This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits.” The statute also requires that the limited purpose driver’s license be of a unique design or color that clearly distinguishes it from the regular driver’s license that is compliant with the

REAL ID Act of 2005, Public Law 109-13.

This bill would impose greater limitations on the limited purpose driver's license, criminalizing the acceptance by a notary of the limited purpose driver's license to verify a signer's identity. Apparently, the proponents of this change raise two concerns in support of their position: that the limited purpose driver's license is inherently unreliable as proof of identity; and, that acceptance of the limited purpose driver's license for this non-federal purpose somehow violates the REAL ID Act. On review, neither of these concerns is compelling.

As discussed above, HRS § 286-104.5 requires presentation of satisfactory documentary proof to examiner of drivers of both *identity* and residency, so reliability of the limited use driver's license for verification of identity should not be an issue.

The concern that acceptance of the limited purpose driver's license for verification of identity for non-federal purposes might violate the REAL ID Act is one that calls for review and scrutiny.

The REAL ID Act expressly provides an exception that allows the issuance of the Hawai'i limited purpose driver's license:

SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

* * * * *

(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

* * * * *

(11) In any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card—

(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and

(B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose.

HRS § 286-104.5 meets the requirements of the REAL ID Act, and there is no compelling reason to further limit the use of the limited purpose driver's license for non-federal purposes, no need to roll back the good done through the 2015 enactment of Act 172.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

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March 17, 2017

To: Senator Rosalyn Baker, Chair
Senator Clarence Nishihara, Vice Chair
Members of the Senate Committee on Commerce, Consumer
Protection and Health

From: Cathy Betts
Executive Director, Hawaii State Commission on the Status of Women

Re: Testimony in Opposition, HB 717, Relating to Notaries Public

The Commission opposes HB 717, which would prohibit a notary's acceptance of a provisional drivers license as valid identification and would attach criminal penalties and sanctions to this act.

The Hawaii Department of Transportation began issuing limited purpose instruction permits and limited purpose drivers licenses in January of 2016. The application requirements are similar to that of any other type of state identification: documents verifying legal name, date of birth, and principal residence in the State of Hawaii. Applicants need not provide proof of legal presence or social security number.

Alone, a limited purpose drivers license is not compliant for REAL ID purposes. The REAL ID is a program put into place by the U.S. Department of Homeland Security. The purpose of this program is to inhibit the movement of terrorists. Thus, a compliant REAL ID is truly only necessary for entering federal buildings and/or boarding an aircraft.

If passed, HB 717 would have a disparate and negative impact on the many undocumented individuals who reside, work, and contribute to the economy in Hawaii. HB 717 would prevent undocumented individuals from performing activities like obtaining a guardianship for a child, purchasing or selling a car, entering into a simple contract, etc. It should also be noted that one of the documents deemed to be sufficient "proof" of residency in order to receive a limited purpose drivers license is a notarized affidavit.

Further, HB 717 could significantly hinder the lives of undocumented individuals and their families. Any proposed public policy must examine the unintended consequences. The Commission understands the intent of the measure is to protect notaries from fraud. However, this measure would also further force undocumented individuals, many of whom are women and children, into the shadows. The Commission respectfully requests that this Committee hold this measure. Thank you for the opportunity to testify in opposition of this measure.



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TESTIMONY RE: HB 717 – Notaries Public; Limited Purpose Driver’s License
COMMITTEE: HOUSE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH
TESTIFIER: WRITTEN AND ORAL COMMENTS
Cheryl Kaster, President, at 348-1892

Aloha Chair Baker, Vice Chair Nishihara, and Committee Members:

Thank you for the opportunity to present written and oral testimony before this committee in support of HB 717.

A. LIMITED PURPOSE LICENSES ARE NOT INTENDED TO BE USED AS IDENTIFICATION

The Association of Hawaii Notaries (the “Association”) supports the intended purpose of Act 172, **to provide a limited purpose driver’s license, limited purpose provisional driver’s license, or limited purpose learner’s permit** (hereinafter “Limited Purpose Licenses”) for certain individuals who need **to drive** although though they are not able to provide documentation that would permit them to qualify for a regular driver’s license, provisional driver’s license, or learner’s permit.

The Association believes the intent and purpose of HB 1007 (which became Act 172) was stated in the bill. That purpose was only to permit the holder to drive a vehicle, not for these Limited Purpose Licenses to be used for identification.

Therefore, it is the position of the Association that the requirements HAR 5-11-7, detailing “Acceptable forms of identification of signers,” do not pertain to the Limited Purpose Licenses because they were never intended to be used by the holder for identification.

“Hawaii Administrative Rule 5-11-7 **Acceptable forms of identification of signers.**” specifies that acceptable identification cards or documents that may be used for notarization must be current, government issued, with a picture and a signature.

§5-11-7 Acceptable forms of identification of signers.

No acknowledgment, jurat, or other instrument shall be taken, unless the person offering to make the acknowledgment, jurat, or instrument is personally known to the notary public to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the notary public, or 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.** [Eff 5/5/08; comp 3/12/15] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-15) (Emphasis added.)

Even if the Limited Purpose Licenses of Act 172 did qualify under HAR 5-11-7 as “identification,” there are other compelling reasons Hawaii Notaries Public should be prohibited from accepting them as identification in the process of notarization.

B. NOTARIZATION IN HAWAII OFTEN INVOLVES INTERSTATE COMMERCE TRANSACTIONS

Many documents notarized in Hawaii are sent to other states. Some documents originating in other states are sent to Hawaii for notarization by consumers here and then returned, across state borders to their originating state. It is not uncommon for documents notarized in Hawaii to be sent to other countries, as well.

Act 172, itself, supports HB 717 in its prohibition against Hawaii Notaries being required to accept the Limited Purpose Licenses for notarization:

HB 1007, H.D. 1, S.D. 2, ACT 172 of 2015, effective January 1, 2016, states in pertinent parts, as follows:

Pg. 3, lines 1-3, It is not the intent of this Act to Jeopardize the State’s (sic) compliance with the REAL ID Act of 2005 or the receipt of any federal grants or funding.

Is it not possible permitting the use of these Limited Purpose Licenses for identification in notarization risk our standing with requirements of the REAL ID Act? Act 172 specified “federal identification” but if they can’t be used for air flight, voting or state benefits, why would we consider permitting their use for the very important process of notarization? Is it possible that accepting the Limited Purpose Licenses for notarization in interstate commercial transactions not be considered a federal use?

Pg. 3, lines 3-5, the *“restricted driver’s licenses will be clearly marked as **not acceptable for federal identification purposes.**”* (Emphasis added.)

Even though the Limited Purpose License cannot be used to board a plane (federal identification) Is Hawaii serving the best interest of all parties to a notarized transaction by requiring Hawaii Notaries to accept a document never intended to be used for identification?

Pg. 3, lines 8-13, *The **PURPOSE** of this Act is to enable the appropriate licensing authority in each county to issue uniquely identified **LIMITED PURPOSE** driver’s licenses, provisional driver’s licenses, and instruction permits to residents who meet the other qualifications for licensure or permit and provide satisfactory proof of their identity and state residency.* (Emphasis added.)

The “satisfactory proof of their identity” to obtain a Limited Purpose License is not satisfactory to be used for federal identification and should not be deemed “satisfactory” for the purpose of notarization in the State of Hawaii.

Pg. 7, lines 6-9, *“**Not acceptable for official federal purposes,**” and on its reverse [shall] bear the phrase, “**This license is issued ONLY as a license to drive a motor vehicle.**”*

(Emphasis added.)

The reason the Limited Purpose Licenses are not acceptable for official federal purposes is because the documentation required to identify the holder does not meet the standard of the REAL ID Act.

C. MAINTAINING INTEGRITY OF NOTARIAL PROCESS FOR ALL PARTIES

Those who are tasked with screening documentation of applicants for driver’s license that is compliant with the REAL ID Act, like tellers in banks who routinely handle paper money, become experts at recognizing documents that may have been forged.

The plethora of optional documents that may be submitted to meet the requirements for issuing one of the Limited Purpose Licenses strains believability that anyone would be able to reasonably ascertain that a lease, rental agreement, deed, title to Hawaii property, college I.D., or transcript, could possibly be considered reliable evidence of a person’s true identity.

The purpose of notarization is to prevent fraud, and one requirement at the core of the notarial process is the necessity for the Notary Public to be reasonably confident that the holder of the identification is the person represented on the I.D.

While some of the documentation options may be credible options IF THAT WERE THE PUPOSE OF THE Limited Purpose Licenses. However, many more are simply opportunities for an individual to perpetrate identity theft, even if the only goal is to legally drive.

D. LIMITED PURPOSE LICENSES ARE NOT COMPLIANT WITH THE REAL ID ACT OF 2005

The documentation necessary to support the identity of a person applying for one of the Limited Purpose Licenses is “flexible” and is “as designated by the examiner of drivers...”

When it refers to an “examiner of drivers” is it referring to the person who gets in the car with the individual, the person who administers the exam, or the individuals who issue the licenses. Whichever is meant, it is acknowledged that documentation requirements to receive a Limited Purpose License fails to meet the standards under the REAL ID Act of 2005.

Act 172 clearly states it is not the intent of the act to jeopardize the state’s compliance with the REAL ID Act of 2005 and jeopardize federal grants or funding. Using one of these Limited Purpose Licenses as identification in notarization clearly jeopardizes the integrity of any such notarization.

For the above reasons, the Association supports HB 717 in its intended purpose to prevent fraud and protect the integrity of Hawaii Notarial Acts by prohibiting the use of Limited Purpose Licenses for identification in notarization.

REQUESTED AMENDMENT TO HB 717

To more fully reflect the types of documents identified in Act 172, the requests that HB 717 be amended as follows (added wording underlined):

(b) A commissioned notary public shall be prohibited from accepting a limited purpose driver’s license, a limited purpose provisional driver’s license, or a limited purpose learner’s permit issued pursuant to section 286-104.5 for verification of identification.

March 17, 2017 @ 9:30am
Conference Room 229
Committee on Commerce, Consumer Protection, and Health

TESTIMONY IN OPPOSITION:
HB717, HD1 RELATING TO NOTARIES PUBLIC

SUBMITTED BY: Amy Agbayani, chair
FILIPINO-AMERICAN ADVOCACY NETWORK (FAN)
3432 B-1 Kalihi St. Honolulu, Hi 96819

Chair Baker and members of the Committee

The Filipino-American Advocacy Network strongly opposes HB 717, hd1 because we believe that the Notaries Public should be available to provide a needed service to individuals who need their services. Although, I do not have information on how many Filipinos have LPDL, it is likely that it is a significant number because of the large size of the immigrant community (both undocumented and documented are Filipino. The reasons for passing legislation the Limited Purpose Driver's License continues to be valid for the many individuals who provided acceptable documents to obtain LPDL. These individuals include undocumented non-citizens but also citizens who live in our state and need their services. Because the LPDL is not an acceptable document for federal identification is not a sufficient reason to pass this bill. The national debate on immigration only increases the need to have LPDL and to not pass this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 16, 2017 6:09 AM
To: CPH Testimony
Cc: sdrmobilenotary@icloud.com
Subject: Submitted testimony for HB717 on Mar 17, 2017 09:30AM

HB717

Submitted on: 3/16/2017

Testimony for CPH on Mar 17, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Mary A Olson	Individual	Comments Only	No

Comments: Support this bill. Notaries need clarification of how the law on acceptance of these Limited Purpose LICENSES. Please amend the law to clarify that this is unacceptable ID so it does not leave it to chance for the integrity of notarial acts.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

March 14, 2017

TO: Chair Senator Rosalyn Baker
Vice-Chair Senator Clarence K. Nishihara
Committee on Commerce, Consumer Protection and Health

From: Patricia McManaman

**TESTIMONY IN STRONG OPPOSITION TO
HB717, HD1 RELATING TO NOTARIES PUBLIC**

This testimony is submitted in strong opposition to HB717, HD1 which prohibits a commissioned notary public from accepting a limited purpose driver's license for verification of identification.

In 2015, the Hawaii Legislature passed HB1007 and created a limited purpose driver's license. HB1007 permitted individuals who met stringent identification and residency requirements to obtain a motor vehicle license when they were unable to provide proof of authorized presence in the United States.

HB1007, now codified at HRS §286-104.5, also explicitly prohibits discrimination against a person who "applied for, was denied, was issued, holds or presents a limited purpose driver's license." HRS §286-104.5 (f).

In passing HB1007, this Legislature acknowledged and expressly noted in its various Committee Reports that:

- The REAL ID Act's heightened documentary requirements unduly burdened elderly individuals, houseless individuals, undocumented immigrants, lawfully-present nonimmigrants, and survivors of gender-based violence; and
- The REAL ID Act permits states to issue driver's licenses that do not comply with the minimum federal use requirements and standards of the REAL ID Act which creates a national system of identification for citizens and certain lawful residents of the United States.

The proposed legislation now seeks to undo the anti-discriminatory protections this Legislature so carefully and thoughtfully included in the 2015 law.

HB1007 purposefully set a high bar for the issuance of a limited purpose driver's license. Applicants for a limited purpose driver's license must prove their identity, legal name, date of birth, and present proof of legal residence within the State of Hawaii. Documents acceptable for proof of identity, legal name, and birth date include valid passports or consular identification

documents, an original birth certificate, specified documents issued by the Department of Homeland Security, a foreign driver's license or federal electoral card issued after 1991, specified official records issued by a school or college, a valid social security card or voter registration card. The institutions and governments that issue these documents have established, strong procedures to insure their integrity and none have an interest in enabling fraud.

Just as there is no credible evidence showing that over 3 million illegally registered or undocumented voters participated in the 2016 Presidential Election, there is no credible evidence showing that the Hawaii Department of Transportation (DOT) has intentionally, recklessly, or even negligently issued limited purpose driver's licenses to persons not otherwise entitled to the same. Similarly, there no evidence showing that the DOT has encountered a troubling use of fraudulent documents by applicants for these licenses.

In addition to impacting lawfully present non-immigrants and undocumented immigrants, the proposed legislation would also deny access to public notaries by U.S. citizens unable to their citizenship. For example:

- Kupuna whose births were never registered with the Territory will be unable to execute notarized wills, trusts, deeds and advanced health care directives; and
- Domestic violence victims whose birth certificates and other vital documents have been withheld by the abuser will be unable to execute powers of attorney for children.

In short, there is no evidence or compelling reason to limit the use of a limited purpose driver's license, as proposed by HB 717, HD1, and to thereby deny certain U.S. citizens, lawfully present non-immigrants, and undocumented persons access to the essential services provided by notary publics.