

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:
S.B. NO. 3002, RELATING TO LIBRARIES.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION

DATE: Friday, February 9, 2018 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Michael S. Vincent or Dean A. Soma, Deputy Attorneys General

Chair Kidani and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of this bill and submits the following comments and recommendations.

The purpose of this bill is to authorize public libraries to perform the services of a notary public for a fee by exempting the libraries from section 456-18, Hawaii Revised Statutes (HRS). It is our understanding that the public libraries would like to provide these services to the public for a fee and deposit the moneys into their special fund.

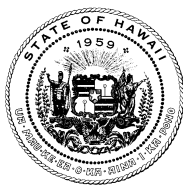
The Department is concerned about the breadth of the exemption. Section 456-18, HRS, pertains to notaries in government services, and provides that government notaries are not required to pay certain fees and shall not demand or receive fees for notary public services, except in special instances. By exempting the notaries in the public libraries from section 456-18, HRS, in its entirety, said notaries would then be required to pay for their commissions and furnish and file official bonds. It is not clear that this is intended by this bill.

The only provision regarding the collection, as opposed to payment, of fees is paragraph (3).

The Department recommends that page 1, line 9, of the bill, be deleted and the following wording added:

- (2) Have the ability to designate one or more of the public library's subordinates to be a notary public pursuant to section 456-18. Notwithstanding section 456-18, the designated subordinates, upon duly qualifying and receiving commissions as notaries public in government service, may administer oaths or take acknowledgments in nongovernmental matters, for which services the prescribed fees shall be demanded and received as governmental realizations and deposited into the "library fee for enhanced services special fund"; and

The Department appreciates the opportunity to provide comments on this measure.



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SENATE COMMITTEE ON EDUCATION
Friday, February 9, 2018
3:00 p.m.
Conference Room 229
State Capitol

By
Stacey A. Aldrich
State Librarian

S.B. 3002 – Relating to Libraries

To: Chair Kidani, Vice Chair Kahele and Members of the Committee on Education

The Hawaii State Public Library System (HSPLS) **strongly supports** S.B. 3002, which would exempt HSPLS from Hawaii Revised Statutes section 456-18, which prohibits the notaries in government service from charging a fee for matters related to the business of the State.

Over the years, HSPLS staff have received requests for notary services, particularly in rural areas of the State. Due to the rigorous requirements to obtain and maintain a notary commission, HSPLS is requesting the exemption from the prohibition from charging a fee for notary services to help to offset expenses incurred to maintain a notary commission, and yet provide a much needed service.

Thank you for the opportunity to comment on this measure.

Testimony on SB 3002 before EDU 2/9/18

My name is Cheryl Kaster. I started my 21st year as a Hawaii Notary Public in April of 2017.

The information and statements I make in this testimony are the result of the first 20 years of my career as a Notary Public in Hawaii.

I am also the Founder, President, and Executive Director of the Association of Hawaii Notaries (the Association) which was formed in October of 2016. A distinct purpose of the Association is to promote INTEGRITY, DILIGENCE, and SKILL (66 C.J.S. Section 26) in Hawaii Notarial Practice.

The expanded purpose includes educating Notaries, Notary Employers, Notary Consumers, Legislators and attorneys about why education of Notaries is so vital and what exactly are the duties required of Notaries that prevent every party to a notarized transaction (not just the signer) from becoming a victim of fraud.

The decision to start the Association was the result of the multitude of notarial acts I became aware of by commissioned notaries, all of whom took and passed a test, all of whom took an oath swearing to the fact that they had read and understood all of the laws they were required to obey. Unfortunately, many Hawaii Notaries DO NOT know the laws and pretty much do whatever they think is right, while clearly demonstrating that they really have no understanding of the purpose of notarization, the duty Notaries owe to all parties to a transaction.

Many Notaries are not aware that they can be held **personally financially and civilly or criminally liable for financial loss suffered by ANY party to a transaction they notarize**, not just the party they notarize for. Do employees of the Library System truly want to expose themselves to that potential liability?

Most Notaries do not know what it means to “positively identify” a signer yet that is second cornerstone to what I call the Four Cornerstones of Notarization: Positive Identification.

Many, many Hawaii Notaries have been told that when notarizing a Jurat (subscribed and sworn to before me) that if the person has signed the document it means they are swearing to it. This is not true and yet many notaries have never given an oath when required, and yet they will sign the Jurat certifying that they did so.

Signing a notarial certificate stating you have done something you haven't means you have completed a false notarial certificate. The penalty for a false certificate is discussed in HRS 502-54. The penalty for which is a fine of up to \$1,000 fine or 1 year in jail, or both.

Many **Notary-Employers** are unaware that they may be held jointly liable for monetary damages if notary-employee breaks the law resulting in financial loss to any or all parties to the transaction. Their only protection in that case is if they can demonstrate that they have taken steps to ensure that their notary-employee has received adequate training in their duty and are performing their duties with integrity, diligence, and skill. Errors & Omissions insurance does not cover those who break the law.

I am adamantly opposed to this bill because of the mere suggestion that people who have absolutely no training and have not been required to fulfill the same testing and application be permitted to provide notarial services.

Further, this bill wants HRS 456-18 to be ignored. Besides not having to qualify and receive a commission, they will be government notaries who don't have to pay anything for a commission and the Library will be able to charge the public a fee for the services they have not been trained or qualified to perform.

The entire concept of having untrained, un-commissioned library employees people performing notary services simply demonstrates a complete failure on the part of the Library System to understand what it is that Notaries do. There is a failure to understand the role of Notaries as Public Officials.

This bill demonstrates a severe underestimation/understanding of exactly what Notaries do, and the complexity of the notarization process. We do not "just stamp and sign."

Notarization that the Notarial Practice be done with integrity, diligence, and skill...skill that must be taught, learned, tested. Plus, that education must be continuous, just as any other professional must be continually improving their skill.

The fact that the State of Hawaii does not recognize or value the importance of Notaries Public does not mean just anyone should be able to provide notarial services. Should this bill pass this committee? Absolutely not. Let me count the ways...

FIRST

The major concern is that, currently, even the notaries who are required to take the test 1) often don't pass the first time, some have to take it three and four times, and 2) when they do pass, they are woefully unprepared for the very important role of being a Public Official and notarizing the 1,000's of documents that are financial transactions and **part of interstate commerce**.

SECOND

I am in my 21st year as a Notary Public and just this month is the first time **IN 21 YEARS** that the Notary Public Office is offering a training for Notaries. The efficacy of the the content of that training is yet to be determined, **but there is no way 2.5 hours of training can prepare anyone for the very important duty Notaries owe to Hawaii's consumer public**. Notaries (those who have taken and passed the test) are still not satisfactorily prepared to perform this important job.

THIRD

Sincere, but uneducated, notaries are a huge consumer protection risk for Hawaii (referring to most of those who actually have a commission) and for themselves. As with any profession that requires a skill, when you offer your services to the public, if you cause damage to a customer because you break the law, you will be held liable.

FOURTH

HAR 5-11-9 requires that the pages of notarial record (the PUBLIC RECORD) into which the Notary records, AT LENGTH, the details of the notarial transaction, must be consecutively numbered.

For years Conrad Enterprises has been publishing a journal that does not have the pages pre-numbered. For the same number of years the Notary Public Office has been looking the other way at this blatant violation of their own law.

The Notary Office's "solution" is to suggest to Notaries use a journal that violates Hawaii Law. They suggest that the notaries number the pages themselves, demonstrating a failure by the agency that oversees Notaries to understand that it isn't about PAGE NUMBERS. It's about preventing FRAUD.

Failing to enforce this law is putting not only Hawaii consumers at risk but also the Notaries at risk because how do you prove a negative...I didn't remove any pages...I did number the pages..how do you prove that?

So the use of this journal by the "library notaries" would also put them at risk? Put the Libraries at risk?

FIFTH

The need for notaries that are actually available to the public, unlike the notaries at banks, etc., **(also breaking HAR 5-11-11 BUT the A/G again refuses to enforce their own law)**, is large.

To compound failure of the A/G to enforce its own law, by endangering the untrained, uncommissioned notaries and the state Library System by causing them to be at risk for lawsuits because of financial damages to consumers by those uncommissioned Notaries is not wise.

Would the Library Notaries also be available all the hours that the Libraries are open or would they also violate this rule. Oh, but they aren't really notaries, so maybe they will be exempt?

FINALLY:

This bill represents such a serious breach of the very essence of the purpose of notarization that I simply don't know what else to say.

They want to raise money? Sell books! Sell pens and paper! Rent out computer time. Open a gift shop. But, I beg this committee to not pass this poorly-thought-out SB3002 beyond this committee because of the extreme risk for consumer fraud that it represents.

Thank you for the opportunity to submit this testimony. I intend to be at the hearing and give oral testimony as well. Cheryl