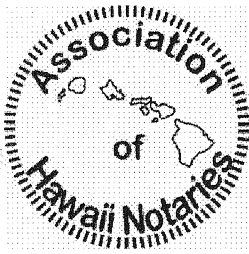


SB333

Measure Title: RELATING TO NOTARY PUBLIC FEES.
Report Title: Notary Public Fees; Increase
Description: Increases notary public fees.
Companion:
Package: None
Current Referral: CPH, WAM
Introducer(s): KEITH-AGARAN, K. RHOADS, Gabbard, Kim



**Promoting integrity, diligence and skill
in Hawaii Notarial Practice.
66 C.J.S. Notaries 17**

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TESTIMONY RE: **SB 333, RELATING TO NOTARY PUBLIC FEES**

COMMITTEE: **SENATE COMMITTEE ON COMMERCE,
CONSUMER PROTECTION AND HEALTH**

TESTIFIER: **WRITTEN AND ORAL COMMENTS
Cheryl Kaster, President, at 348-1892**

Chair Baker and Members of the Committee:

Thank you for the opportunity to present testimony. The Information provided here, although seemingly extensive, is but a small portion of what Hawaii Notaries must know if they are to provide **Notary services done with integrity, diligence and skill**. Simply saying that the last raise was from \$4 to \$5 in 1995, argues only for longevity or inflation as a justification.

I have been a Hawaii Notary since April of 1997 (20 years this April). During these 20 years, I have learned most have only a passing understanding of what is involved in notarization and what is required of Notaries if they are to perform their duties properly.

Those who have only a passing understanding of the intricacies of prudent and knowledgeable Notarial Practice include many Notaries themselves. Likewise, those who employ notaries often have no idea what is required of Notaries or that they may be held jointly liable for Notarial misconduct if they fail to insure their Notary-employee is properly trained. The average citizen, including attorneys and legislators, and dare I say, based on experience, even the Attorney General's Notary Office, are generally unaware of the extent of knowledge that is required for a Notary to performs their responsibilities with integrity, diligence and skill.

It is this understanding that led to the creation of the Association of Hawaii Notaries for the support and education of Hawaii Notaries who understand the importance of what they do and take the responsibility and duties placed on them as public officers seriously.

There are many issues that instead of supporting skillful Notarial Practice in Hawaii, make it more difficult and the Association intends to address those issues during future legislative sessions. However, the issue being addressed by this bill is one of an increase in the fees Notaries may charge. Generally, a fee for services is determined by many factors, including the time it takes to complete the service and the skill with which the service is provided. Obviously, the elephant in the room is that the Association believes that Notarial Practice in Hawaii today, by and large, is NOT being done with integrity, diligence and skill.

While it would seem I am arguing against increasing a fee, I am instead saying that those Notaries who are providing knowledgeable and prudent Notarial service, should not be financially penalized because of those who choose not to do so. The answer to better Notarial Practices is education and education for the individual Notary comes at a price. That price for continuing education must either be paid for by the independent Notary themselves, or the Notary's employer. If employed and the employer charges customers a fee for notarization, an increase in the fee will help offset the cost of the Notary's commission, which recently increased by 300%, and for the requisite education to protect the Notary and themselves.

In light of the above, the Association of Hawaii Notaries presents the following information and respectfully requests that you to pass this SB 333, to include the requested amendment to provide consistency in wording and meaning. The amendment requested to wording appears on Page 5.

1. **LAST INCREASE:** Fees Notaries may charge were last increased in 1995, from \$4 to \$5.

2. **DUTIES AND LIABILITIES:**

Definition

A notary is defined as a "public officer whose function is to attest and certify, by the notary's hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions, to take acknowledgments of deeds and other conveyances, and certify them, and to perform certain official acts, chiefly in commercial matters." 66 C.J.S. Notaries 2. (Notary Public Manual, 2016, Pg. 7)

a. **§456-6 Liabilities; limitations on; official bond.** *For the official misconduct or neglect of a notary public or breach of any of the conditions of the notary's official bond, the notary and the surety on the notary's official bond shall be liable to the party injured thereby for all the damages sustained. The party shall have a right of action in the party's own name upon the bond and may prosecute the action to final judgment and execution. [L 1941, c 322, pt of §4; RL 1945, §7666; RL 1955, §1686; HRS §456-6; gen ch 1985; am L 1996, c 18, §1]*

b. **Further:**

- i. **Notaries** may be financially liable to all parties for damages suffered due to their misconduct, neglect or breach of their duties.
- ii. **Notary-Employers** may also be held jointly liable to those same parties if they do not undertake to insure their notary-employees are educated and knowledgeable about the duties they perform.

3. **DUTIES – NOTARIES MUST PERFORM FOR EVERY NOTARIZATION:**

a. **Positively identify a signer.**

- i. Notaries must know what constitutes acceptable and insure that only the type of identification permitted is used to identify a signer.
- ii. Name on I.D. must match or be MORE than the name reflected in the document, not less:
 1. If the name on the document has a "Jr., II, III, etc.," the identification presented must also have that suffix. If it does not, then **Positive Identification** has not been achieved and the Notary must refuse to notarize the document.
 2. If the document has the signer's name but shows no "Jr., II, III, etc." in the name, but the I.D. presented to the notary does have a "Jr.", then, again, there has not been positive identification and the Notary must also refuse to notarize.

b. **Carefully compare information on Identification to the signer:**

- i. **Picture and Vital Statistics.** The picture must appear to be the person and the height, weight, etc., must appear to match the person in the Notary's presence;
- ii. **Signature.** The signer's signature on the I.D., on the document, and in the Notary's Journal must be the same. **(Hawaii Notaries are not permitted to accept Active Duty Military I.D or any other "CAC" card because it does not contain a signature);**
- iii. **Expiration Date.** If the I.D. has an expiration date, it must be current.
- iv. **Unaltered.** The I.D. must be examined for signs the information has been altered.

c. Determine awareness of the purpose and willingness to sign.

Generally, for members of the public who seek out notarization services, this is relatively easy to discern through general conversation when meeting the customer. However, in all circumstances the Notary must carefully assess, by observation and conversation, whether the signer is, in fact, aware of what they are signing and are signing willingly. **The signer must be both aware and willing or the Notary must refuse to Notarize.**

d. Other situations/circumstances that prevent the Notary from performing their duties:

- i. The signer is unable to sign their signature sign;
 1. Option: Signature by Mark notarization which requires two witnesses and special form of notarial certificate;
 2. Signature by the Notary when directed to by a disabled person, with witnesses and a special form of notarial certificate.
- ii. Signer is unable to communicate in a language the Notary is fluent in.
 1. Notaries are not permitted to notarize through an interpreter (exception would be a court reported through a certified court interpreter).
 2. Signers must be able to read the language the document is written in. For example, native Japanese speakers must be able to read a Document written in English if the Notary is to notarize for them.
 3. The principle of a signer being aware of what it is they are signing and being willing to sign applies to all notarial circumstances.
- iii. The signer may be under the influence of a legally prescribed drug that impairs their ability to make decisions. In this case the Notary should not notarize until the person is no longer impaired.
- iv. Sometimes others may place pressure on a person so sign a document. A signer may be unwilling to sign, even if they are aware of the circumstances. The Notary needs to take into consideration the entire context and situation to accurately evaluate the signers willingness and awareness..

e. Notary must Review the document to determine certain criteria:

- i. The name of the signer(s) as it appears on the document.
 1. The signer's name, must appear consistently
 - a. in the body of the document,
 - b. on the signature line of the document, and
 - c. in the notarial wording of any acknowledgment required to be certified by the Notary;
 2. If the name is inconsistent only in the notarial wording, the Notary Public may correct it.
 - a. If the name is inconsistent with the identification offered by the signer the notarization cannot move forward
 - i. Unless or until the document is corrected, or
 - ii. The drafters of the document authorize a handwritten correction be made to the document(s).
 3. Verify that the signer has identification that is acceptable under Hawaii law. Positively identify the signer by insuring full name of the signer as it appears on the document is supported by the identification provided by the signer (Positive Identification).
- ii. If the document is dated and, if so, the date of the document;
- iii. If the document specifically refers to any other documents or, for example, exhibits, the document says are attached. If attachments referred to in the document the document are NOT attached, then the document is considered incomplete and the Notary must refuse to notarize until the document is complete.
- iv. Scan the document for blank lines. The presence of blank lines makes the document incomplete and the document should not be notarized. Blank lines provide the opportunity for information to be filled in AFTER the document has been seen by the signer, opening the door to fraud.

- v. Scan the document for any interlineations or handwritten corrections. The Notary must call these to the attention of the signer and the Notary must initial any changes they find. The Notary should also request that the signer(s) initial the changes, acknowledging their awareness of the change.
- vi. If the document has page numbers, the Notary must quickly scan the document to insure all pages are present. If no page numbers are present the Notary must count the number of pages to accurately record them in the Notary Certification, notary must scan the document to look for any discrepancies that indicate pages may be missing.

f. Administer an Oath when required by wording in the notarial certificate.

i. Jurats

- 1. Jurats are the certificates that contain the wording: "Subscribed and sworn to before me this _____ day of _____, _____."
- 2. These require that the signer sign the document in the presence of the Notary ("Subscribed") and that the Notary has the signer to raise their right hand and the Notary gives the signer an oath swearing (or affirming) them to the truth of the statements/information in the document they just signed (sworn to).

ii. Certain Acknowledgment also require an oath:

- 1. Documents that are signed by parties holding a specific capacity with an entity (owners, officers, board members, trustees of trusts, Personal Representatives, of estate, attorneys-in-fact) sign in a representative capacity, for example.
- 2. Capacity acknowledgments that specifically name the entity, require that the signers swear an oath that they hold the position indicated, and that they authorized to sign the document in that position.
- 3. Some special forms require the signer to swear to the fact that they have been duly authorized to do so by the entities board of directors.
 - a. An alternative to a specific capacity acknowledgment, the Hawaii All Purpose Acknowledgment, is an alternative form that can be used. In the HI All Purpose Acknowledgment the Notary swears the signer to the fact that they have executed the document as their free act and deed and that they are authorized to do so in the capacity indicated in the document.

- g. **POA acknowledgment:** A special form of acknowledgement is specified an AIF to sign on behalf of the Principal. The AIF is not required to swear to their capacity but is only required to acknowledge they executed the document on behalf of the principal, and did so as the free act and deed of the Principal.

4. NOTARIAL RECORD BOOK (also commonly referred to as the Notary Journal).

§456-15 Record; copies as evidence.

Every notary public shall record at length in a book of records all acts, protests, depositions, and other things, by the notary noted or done in the notary's official capacity. For each official act, the notary shall enter in the book:

- (1) The type, date, and time of day of the notarial act;
- (2) The title or type and date of the document or proceeding and the nature of the act, transaction, or thing to which the document relates;
- (3) The signature, printed name, and address of each person whose signature is notarized and of each witness;
- (4) Other parties to the instrument; and
- (5) The manner in which the signer was identified.

All copies or certificates granted by the notary shall be under the notary's hand and notarial seal, and shall be received as evidence of such transactions. [CC 1859, §1273; RL1925, §3181; RL 1935, §5207; RL 1945, §7674; RL 1955, §168-14; HRS §456-15; gen ch 1985; am L 1995, c 141, §2; am L 2008, c 175, §8]

- a. The above details of **each notarial act, INCLUDING EACH DUPLICATE ORIGINAL OF ANY DOCUMENT NOTARIZED**, must be entered on a separate line of the Notary's journal. **This requirement significantly increases the time it takes to notarize when a Notary is presented with multiple duplicate originals of one or more documents.**
- b. The purpose of requiring journal entries is for the protection of both the Notary Public AND the consumer public.
 - i. Many notaries are either unaware of the purpose for entering complete information for every document they notarize, or simply refuse to take the time and effort to enter information with the requisite specificity to later provide sufficient evidence of the exact nature of the document notarized.
 - 1. A bill of sale should reflect:
 - a. The name of the Seller;
 - b. The name of the Buyer;
 - c. Exactly what it was that was sold. And not just a "car" but the make, model, license plate number, etc.; and
 - d. Any other party, such as a lienholder, etc.
 - 2. Journal entry Notarizing a document as a Deed, Warranty Deed, or Grant Deed.
 - a. Identification of the property (TMKs don't usually change whereas addresses can);
 - b. All other parties to the document in addition to the specific signer must be entered on the line item for the signer.
 - c. Three parties signing one document requires three journal entries. The two parties who are not the signer for the specific line entry, must be entered as "other parties" on each entry.
 - ii. The Notary's Journal can be called upon to verify or disprove the validity of a document purported to have been notarized by the Notary. The condition and detail with which a Notary keeps their journal has been and may be used as a positive defense by a Notary against a charge they notarized a document they did not notarize.
 - iii. **Recording entries in the journal is time-consuming, but it is a vital part of the notarial process both for the protection of the Notary themselves, the signer that appeared before the Notary, and all parties to the document.**

5. EXAMPLES OF JOURNAL ENTRIES

- a. **DISCLAIMER: Fictitious names and identifying information in Exhibits.**
 - i. I used my name, and other fictitious names and identifying information.
 - ii. What was replicated was the extent of the content as it appears in my journal to give the sense of the extent of the information required and the extent to which notarizing for multiple signers and/or multiple duplicate documents requires a Notary's time and attention to detail.
 - iii. No information used in the exhibits will identify either the original signer, transaction, or property in my own journal.
- b. **EXHIBIT A:**
 - i. One signer
 - ii. Three duplicate original documents.
- c. **Exhibit B:**
 - i. A loan document from a refinance package.
 - ii. Three signers who are borrowers in the transaction.
- d. **Exhibit C: Last will and testament with Self-proving affidavit**
 - i. Testator
 - ii. Two witnesses.

6. **REQUEST FOR AMENDMENT TO WORDING IN "For the administration of oath...**

– Pg 1, lines 11-12 of SB 333

Text in bold is text that has either been ~~removed from~~ or added to the current SB 333 wording.

I provided the wording for changes in the original SB 2446 and inadvertently failed to make changes so that wording about the certificate of oath in lines 11-14 would be consistent with that provided for "Taking any acknowledgment" appearing on pg 1, line 16 thru pg 2 line 6.

The intention was for the wording in the "administration of oath" and "taking an acknowledgment" to be the same, except for the identification of the type of certificate being provided.

After receiving the draft there was not sufficient time for the requested revision to be made prior to filing. I apologize for my oversight in this regard.

REQUESTED FORM OF NEW WORDING:

For the administration of oath, **including and affixing** the certificate of ~~the~~ **oath to that document**, ~~[\$5;]~~ \$10 per signer, per document, including up to one duplicate original; for affixing the certificate of the oath to every duplicate original instrument beyond ~~four, \$2.50;~~ one, \$5 per singer, per duplicate original.

EXHIBIT A One signer, Three Duplicate NOTARIAL Originals LEFT

NAME OF NOTARY PUBLIC: Nancy Notary

Month, day, and year of the notarial act Time of the notarial act	Signature of each signer/witness Printed name of each signer/witness	Address of each signer/witness	Manner in which the signer/witness was identified
1/16/17 6:30 pm	<i>Ceryl R.L. Kaster</i> Ceryl R.L. Kaster	1717 Poki St Apt A Honolulu, HI 96822	HI DL 12345 Exp 1/20/30
1/16/17 6:30 pm	<i>Ceryl R.L. Kaster</i> Ceryl R.L. Kaster	1717 Poki St, Apt A Honolulu, HI 96822	HI DL 12345 Exp 1/20/30
1/16/17 6:30 pm	<i>Ceryl R.L. Kaster</i> Ceryl R.L. Kaster	1717 Poki St, Apt A Honolulu, HI 96822	HI DL 12345 Exp 1/20/30

This form of Notarial Record does not meet the requirements of HAR 5-11-9 (c) because the pages are not consecutively numbered.

RIGHT

COMMISSION NUMBER: 99-999

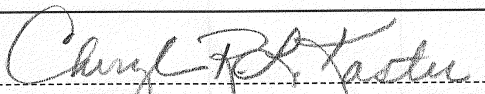

Title or type of document/proceeding	Date of document/proceeding	Other parties to instrument	Type of notarial act	Other information	Notarial fee
Cheryl R.L. Kaster Short Form Trust Agreement	1/6/17	Successor Trustees Kathy Spencer Alfred R. Matson Mary Jane Blain	HI APA (L)	Cheryl signed as trustee and Seller <u>Aug 10/3</u>	
Cheryl R.L. Kaster Short Form Trust Agreement	1/6/17	Successor Trustees Kathy Spencer Alfred R. Matson Mary Jane Blain	HI APA (L)	Cheryl Signed as Trustee and Seller <u>Aug 20/3</u>	
Cheryl R.L. Kaster Short Form Trust Agreement	1/6/17	Successor Trustees Kathy Spencer Alfred R. Matson Mary Jane Blain	HI APA (L)	Cheryl signed as Trustee and Seller <u>Aug 30/3</u>	
<p>This journal from Conrad Enterprises of 100 pgs is "bound" only by three staples in the center which are easily demonstrated by the fact that I removed them to from a new/blank Notarial Record in order to create these exhibits.</p> <p>Huge potential for journal pages to be removed!!</p>					

Left

EXHIBIT B

NOTARIAL

NAME OF NOTARY PUBLIC: Nathan Notary

Month, day, and year of the notarial act	Signature of each signer/witness	Address of each signer/witness	Manner in which the signer/witness was identified
Time of the notarial act	Printed name of each signer/witness		
11/25/16 Noon	 CHERYL R. KASTER	1717 Poki Street #A Honolulu, HI 96822	HDL 12345 Exp 1/20/30
11/25/16 Noon	 MICHAEL D. KASTER	1717 Poki Street #A Honolulu, HI 96822	HI ID 12345 2/2/30
11/25/16 Noon	Buttons Kaster BUTTONS KASTER	1717 Poki Street #A Honolulu, HI 96822	Personal Knowledge
<p>Exhibit B demonstrates the journal entries that should be made when one document has been executed by three separate parties</p>			
<p>All information in this section will vary depending on the name and address of the party signing.</p>			

RECORD EXHIBIT B

Right

COMMISSION NUMBER: 99-999

Title or type of document/proceeding	Date of document/proceeding	Other parties to instrument	Type of notarial act	Other information	Notarial fee
Correction Agreement/ Ltd Power of attorney	11/25/16	Michael D. Kaster & Buttons Kaster	HI APA (L)	Loan #567890 123 Anywhere Dr. Anywhere, USA 01234	
Correction Agreement/ Ltd Power of attorney	11/25/16	Cheryl R. Kaster Buttons Kaster	HI APA (L)	Loan #567890 123 Anywhere Dr. Anywhere, USA 01234	
Correction Agreement/ Ltd Power of attorney	11/25/16	Cheryl R. Kaster Michael D. Kaster	HI APA (L)	Loan #567890 123 Anywhere Dr. Anywhere, USA 01234	
✓	✓	○	✓	✓	
✓ all three entries contain the same information repeated for each entry.					
○ This information is different for each entry because the paper for each line is different, and, therefore the "other" parties differ accordingly.					

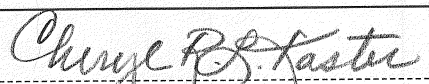
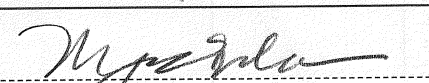
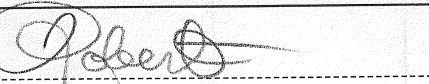
Title or type of document/proceeding	Date of document/proceeding	Other parties to instrument	Type of notarial act	Other information	Notarial fee
Last Will and Testament of Cheryl Rae Lobo Kaster	12/19/16	Witnesses Mary Jane Blain Robert Blain	Oath Juror	Personal Rep: Michael Kaster; Successor PR Jennette Blain	
Witness to Last Will and Testament of Cheryl Rae Lobo Kaster	12/19/16	Cheryl Rae Lobo Kaster, Testatrix & Robert Blain	Oath Juror	Personal Rep: Michael Kaster; Successor PR Jennette Blain	
Witness to Last Will and Testament of Cheryl Rae Lobo Kaster	12/19/16	Cheryl Rae Lobo Kaster, Testatrix & Mary Jane Blain	Oath Juror	Personal Rep, Michael Kaster, Successor PR Jennette Blain	
✓	✓	○	✓	✓	
Will and Testament					
✓ This column has same info repeated.					
○ This column has different info for each signer.					
Last Will and Testament.					

left

EXHIBIT C

NOTARIAL

NAME OF NOTARY PUBLIC: Nancy Notary

Month, day, and year of the notarial act	Signature of each signer/witness	Address of each signer/witness	Manner in which the signer/witness was identified
Time of the notarial act	Printed name of each signer/witness		
12/19/16		1717 Pokist #A	HDL 123456
4pm	CHERYL R L KASTER	Honolulu, HI 96822	Exp 1/20/30
12/19/16		1234 Anywhere Dr.	HDL 634681
4pm	MARY JANE BLAIR	Anywhere, USA 12345	Exp 4/15/25
12/19/16		5678 Anywhere Dr.	HDL 482916
4pm	ROBERT BLAIR	Anywhere, USA 67890	Exp 1/1/21
✓	O	O	O
EXHIBIT C - Last W			
✓ This column has same info repeated.			
O These columns have different info on each line because they are identifying different signers.			
Last Will and Testament			