



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 77, H.D. 1, RELATING TO NOTARIAL ACTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, February 22, 2019

TIME: 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Michael S. Vincent or Dean A. Soma, Deputy Attorneys General

Chair Lee and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of this bill, but the Department does not support this bill as written.

The purpose of this Act is to permit notaries public to perform notarial acts utilizing electronic documents with electronic signatures and seals, without the necessity of the notary public and the individual requesting the notarial services being at the same physical location, provided that the notary and individual can communicate with each other simultaneously by sight and sound using communication technology.

This bill is not based on the Revised Uniform Law on Notarial Acts (2018) ("RULONA") drafted by the National Conference of Commissioners on Uniform State Laws. The Department was informed that it was based on the Mortgage Bankers Association – American Land Title Association Model Legislation for Remote Online Notarization ("MBA-ALTA Model").

The Department is concerned that electronic documents with electronic signatures or seals could lead to increased fraud. There has been no comprehensive study nationwide to ensure that the available technology appropriately protects against fraud. Most of the requests to the Department's Notary Office for past record books are regarding transfers of real property where at least one party is disputing the authenticity of a signature. Before permitting notarization by using electronic signatures and seals,

the Department would like to better ensure that fraudulent activity would not be increased because of this technology.

With regards to this specific bill, the Department has the following concerns:

1. The process or service whereby the notary conducts a credential analysis, identity proofing, and using a tamper-evident format should be approved by the Attorney General.

Specifically, the definition on page 2, lines 17 to 20, in the new section 456-A should be changed as follows:

“Credential analysis” means a process or service that meets the ~~[requirements of this part]~~ standards established by the attorney general through which a third person affirms the validity of an identification card or document through review of public or private data sources.

In addition, the definition on page 3, lines 16 to 20, should be changed as follows:

“Identity proofing” means a process or service ~~[that meets the requirements of this part]~~ according to standards established by the attorney general through which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

Page 4, lines 14 to 16, should be changed as follows:

“Remote online notarization” or “remote online notarial act” means a notarial act performed by means of communication technology that meets the standards adopted under this part.

Page 9, lines 18 to 21, should be changed as follows:

(a) In performing a remote online notarization, a notary public shall attach or logically associate the notary public’s electronic signature and electronic seal to the notarial certificate in a tamper-evident format approved by the attorney general;

2. The Attorney General should also approve any electronic seal and the method by which it is protected from unauthorized use.

Specifically, page 3, lines 7 to 11, should be changed as follows:

“Electronic seal” means an electronic image approved by the attorney general containing information attached to or logically associated with an electronic record that contains the notary public’s name, the notary public’s commission number and commission expiration date, and the words “notary public” and “State of Hawaii”.

3. Page 3, lines 4 to 6, should be changed as follows:

“Electronic record” means information that is created, generated, sent, communicated, retrieved in a perceivable form, or stored by electronic means.

The electronic record must be able to be retrieved without having a specific program or code.

4. In the new section 456-D(d), page 10, lines 17 to 20, delete the “actual knowledge” requirement as that may deter the notary from reporting the loss or use by another person of the notary public’s electronic seal or journal. If the notary has a reasonable belief that the electronic seal has been lost or used by another person, the notary should report that to the Attorney General.

5. In the new section 456-G on page 13, line 17, to page 14, line 6, add the requirement that upon termination, suspension, or resignation of the notary public’s commission, the notary should provide a certification of the destruction of the coding, disk, card software, and password regarding the electronic seal to the attorney general. Failure to do so shall be subject to a fine.

6. In the new section 456-A, add a definition as follows: “Remote online notary public” means a notary public who has been authorized by the attorney general to perform remote online notarizations under this part. This definition was deleted from the MBA-ALTA Model upon which this bill is allegedly based.

7. Add a new section for rulemaking such that the Attorney General is authorized to adopt rules necessary to implement this part, including rules to facilitate remote online notarizations. This section was deleted from the MBA-ALTA Model upon which this bill is allegedly based.

8. Add a new section for registration requirements as follows:

Registration required. A notary public commissioned in this State may become a remote online notary public in accordance with this part. Before a notary

performs a remote online notarization, the notary must register with the attorney general in accordance with rules for registration as a remote online notary and identify the technology that the electronic notary public intends to use, which must conform to any standards adopted by the attorney general.

This requirement was deleted from the MBA-ALTA Model upon which this bill is allegedly based.

9. The Department does not have the expertise to implement this bill. The Department will need additional funds to conduct the research, hire a consultant, and hire a specialist to ensure that the available technology appropriately protects against fraud and to promulgate the standards by which electronic signatures and seals may be utilized.

The Department appreciates the opportunity to provide comments on this measure and recommends that the bill be held.

Testimony of First American Title
on
H.B. 77, H.D.1 Relating to Notarial Acts
before the
House Committee on Judiciary

Friday, February 22, 2019
2:05 p.m., Room 325

Chair Lee and Distinguished Members of the Committee on Judiciary:

First American Title¹ is grateful for the opportunity to **support** H.B. 77, H.D.1 relating to notarial acts and to discuss how this legislation will benefit Hawaii’s residents and business community.

This bill would enact “remote online notarization” in Hawaii. Just like it sounds, remote online notarization takes the traditional notarial process and moves it online—allowing a signer to get a document notarized over a webcam or smart phone. Remote online notarization benefits and protects consumers through its convenience and by providing enhanced security to the notarial process.

Along with others in the mortgage and land title industries, we have taken a keen interest in remote online notary laws because notaries are the lynchpin of our system of real estate transfer and recording. As a leading settlement provider, we are also a major consumer of notary services. We are therefore extremely interested in making sure that any remote online notary law provides sufficient safeguards and protections to consumers’ identities.

Nationally Vetted Model and a National Trend

H.B. 77, H.D.1 is based on a nationally vetted model already adopted in 10 states and currently under consideration in 26 others, and it would implement a legal framework to support the National Electronic Notarization Standards adopted by the National Association of Secretary of States (NASS) in February 2018.

Because the internet knows no borders, tens of thousands of remote online notarizations are already happening each year across the country and in every state. Today, Hawaii residents are going online to use the services of remote online notaries based in other states instead of being able to use Hawaii notaries operating under Hawaii law. H.B. 77, H.D.1 would safeguard consumers by extending the protections of Hawaii law to this rapidly expanding type of notarial

¹ First American Title Insurance Company is a subsidiary of First American Financial Corporation (NYSE:FAF), one of the nation’s largest title insurance companies and providers of real estate settlement services.

practice. By getting out in front of this trend, we can make sure that the safeguards embodied in the national model and the NASS Standards are available to protect Hawaii consumers.

Enhanced Security for the Most Important Transactions

With fraud and other scams hitting both Hawaii's residents and its business community, remote online notarization is a secure option that uses the latest technologies to prevent fraud. It is crucial to use available tools to protect people's most valuable assets—ownership of their homes.

- Enhanced Identification Requirements: With enhanced ID requirements and using a multi-factor approach to authenticate signers, remote online notarization leverages the latest technologies and forensic tools to stop fraud before it happens.
- Robust Audit Trail: With a secure electronic journal entry and audio-video recording made of each notarization, there will be an auditable record to deter potential fraudsters. Criminals will be much less likely to steal someone's identity when the camera is rolling.
- Secure Technologies: H.B. 77, H.D.1 supports the latest tamper-evident technologies so that third parties can detect whether someone has tried to alter an electronically notarized document.

The Consumer-Friendly Choice

Remote notarization is the consumer-friendly alternative to the difficult and time-consuming process of finding a traditional notary for an in-person notarization. Significant benefits include:

- Ease of Access: Hawaii residents can get documents notarized *anywhere, anytime*. It is especially useful to disadvantaged or immobilized residents who need to notarize official documents.
- Save on Time, Lost Wages and Travel Costs: Remote online notarization eliminates the need to make appointments, take leave from work, or drive for miles to find a notary—all you need is a computer and an internet connection.
- Good for Rural Residents and Members of the Military: It benefits Hawaii residents who live in remote areas and members of the military on deployment.
- Consumer Choice: Remote online notarization will be strictly optional and preserve consumer choice. It will simply be an alternative for Hawaii residents who wish to use it.

* * *

Thank you for the opportunity to provide testimony in support of this bill.



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Testimony to the House Committee on Judiciary
Friday, February 22, 2019, 2:05 pm
Hawaii State Capitol, Room 325

LATE

Comments on HB 77, Relating to Notarial Acts

To: The Honorable Chris Lee, Chair
The Honorable Joy Sanbuenaventura, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following comments on HB 77, Relating to Notarial Acts.

While we understand the intent of this proposed legislation, we have some concerns regarding the process involved in providing remote notarizations. There needs to be adequate safeguards in place to ensure that this does not open the door to fraudulent notarizations. The purpose of having documents notarized is to provide a third-party witness to the signature that would also certify that the person or persons signing did so willingly. A remote notary would have to be able to also certify those things on a remote basis.

Thank you for the opportunity to provide comments.

**Testimony for Public Hearing
House Committee on Judiciary Committee
State Capitol, Conference Room 325
February 22nd, 2019 at 2:05 PM**



**Liz Facemire, Director of State Government Affairs, Quicken Loans
1 N Central Ave Ste 2000
Phoenix, AZ 85006**

Testimony Reg: H.B. No. 77 (Committee) – Relating to Notarial Acts

Good afternoon House Consumer Protection and Commerce Committee Chairman Lee, Vice Chair Buenaventura and members of the committees. My name is Liz Facemire, and I am the Director of State Government Affairs with Quicken Loans.

We thank the committee for its discussion on remote online notarization. I appreciate the opportunity to provide testimony and express support for Hawaii HB77, which modifies provisions relating to notaries public and allows for remote online notarization.

We believe a mortgage closing utilizing a digital format combined with remote online notarization provides choices throughout the process, including for the notary, technology, and the consumer.

Quicken Loans is the nation’s largest retail home and online mortgage lender with more than 12,000 team members across the country, including our local team members on Oahu. Providing the best client service is one of our most important core values. For this very reason, we have received the J.D Power Associate Award for highest customer satisfaction for the past nine consecutive years.

At Quicken Loans, we are fond of saying, “we are a technology company who happens to do mortgages”. Our passion is to revolutionize the mortgage process by creating a completely digital online experience for consumers starting at initial contact through the closing. This option gives the consumer extraordinary visibility and control of their process.

In today’s world, a notary is constrained to conduct a closing in person which creates an inefficient process for clients in a digital age. In the world of tomorrow, it would be possible for a servicemember, whom is actively serving overseas, to have the choice and the convenience to conduct their mortgage closing remotely with their family using remote online notarization.

It’s now time to upgrade the traditional paper heavy in-person closing process to provide consumers and the notary the choice to utilize remote online notarization to conduct a more and efficient way to close a mortgage in an online world.

Remote online notarization gives users three distinct advantages over the traditional in-person notarial process:

- The first and greatest value is consumer choice. They would have the option to conduct their closing anywhere through a digital, paperless experience and all without the burden of having to be physically present.
- The next value is notary choice. Allowing the notary to have the choice to utilize the advancement in technology to offer their consumers a more efficient and secure ability to sign their closing documents. Also, this extends the notaries' ability to operate throughout with less travel time which allows the notary to perform more closings.
- The third and last value is technology choice of a more secure notarial experience. Advancements in identity verification which use public data sources and client specific questions to prove a client's identity, as well as an independent third-party authentication of a client's state issued id helps to keep the process more secure for consumers. To further cement the increased security and fraud deterrence for remote online notarization process, an audio-video recording is made of the notarial act and retained for a future review if the need should ever arise.

In closing, I appreciate the committee's discussion and leadership on this topic. By embracing remote online notarization and innovation in technology, we will be able to enhance the convenience and security of the mortgage closing process in a world where consumers are constantly on the move. Should you require more information, please reach out to me at 480-305-9135 or lizfacemire@quickenloans.com. Thank you for the opportunity to provide testimony.

HB-77-HD-1

Submitted on: 2/20/2019 2:26:52 PM

Testimony for JUD on 2/22/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ko?i	Individual	Oppose	No

Comments: