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## A BILL FOR AN ACT

RELATING TO NOTARIAL ACTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that electronic  
2 communications make it possible to perform notarial acts by new  
3 means. Some of the earliest transactions governed by law are  
4 notarial acts performed by words inscribed on paper with manual  
5 signatures and physical impressions of notarial seals. However,  
6 technology has advanced and audio and visual communications  
7 between individuals performed by electronic means are  
8 increasingly replacing in-person communications, just as  
9 electronic records are increasingly replacing paper documents.  
10 The legislature further finds that the public will benefit from  
11 the use of modern technology to obtain notarial services, with  
12 consumer protections in place to protect against incidents of  
13 fraud.

14           The purpose of this Act is to permit notaries public to  
15 perform notarial acts utilizing electronic documents with  
16 electronic signatures and seals, without the necessity of the  
17 notary public and the individual requesting the notarial



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1 services being in the same physical location, provided that the  
2 notary and individual can communicate with each other  
3 simultaneously by sight and sound by means of communication  
4 technology.

5 SECTION 2. Chapter 456, Hawaii Revised Statutes, is  
6 amended as follows:

7 1. By designating sections 456-1 through 456-21 as:

8 "PART I. GENERAL PROVISIONS"

9 2. By adding a new part to be appropriately designated and  
10 to read:

11 "PART . REMOTE ONLINE NOTARIZATION

12 §456-A Definitions. As used in this part:

13 "Communication technology" means an electronic device or  
14 process that allows a notary public and a remotely located  
15 individual to communicate with each other simultaneously by  
16 sight and sound.

17 "Credential analysis" means a process or service that meets  
18 the requirements of this part through which a third person  
19 affirms the validity of an identification card or document  
20 through review of public or private data sources.



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1 "Electronic" means relating to technology having  
2 electrical, digital, magnetic, wireless, optical,  
3 electromagnetic, or similar capabilities.

4 "Electronic record" means information that is created,  
5 generated, sent, communicated, received, or stored by electronic  
6 means.

7 "Electronic seal" means an electronic image containing  
8 information attached to or logically associated with an  
9 electronic record that contains the notary public's name, the  
10 notary public's commission number and commission expiration  
11 date, and the words "notary public" and "State of Hawaii".

12 "Electronic signature" means an electronic sound, symbol,  
13 or process attached to or logically associated with an  
14 electronic record and executed or adopted by an individual with  
15 the intent to sign the electronic record.

16 "Identify proofing" means a process or service that meets  
17 the requirements of this part through which a third person  
18 provides a notary public with a means to verify the identity of  
19 a remotely located individual by a review of personal  
20 information from public or private data sources.



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1 "Notarial act" means an official act that a notary public  
2 may perform under the laws of the State. The term includes  
3 taking an acknowledgment, administering an oath, noting a  
4 protest of a negotiable instrument, and such other matters as,  
5 by mercantile usage, appertain to the notary public's office.

6 "Personally knowing" has the meaning given in section 456-  
7 1.6. "Personal knowledge" has a corresponding meaning.

8 "Principal" means a remotely located individual whose  
9 electronic signature is notarized in a remote online  
10 notarization, whether in an individual or representative  
11 capacity, or who makes an oath, affirmation, or acknowledgment  
12 in a remote online notarization, other than in the capacity of a  
13 witness.

14 "Remote online notarization" or "remote online notarial  
15 act" means a notarial act performed by means of communication  
16 technology under this part.

17 "Remote presentation" means transmission to a notary public  
18 through communication technology of an image of a remotely  
19 located individual's identification card or document that is of  
20 sufficient quality to enable the notary public to reasonably



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1 identify the remotely located individual and to perform  
2 credential analysis.

3 "Remotely located individual" means an individual who is  
4 not in the physical presence of the notary public who performs a  
5 remote online notarization.

6 **§456-B Authority to perform remote online notarizations.**

7 (a) A notary public commissioned under section 456-1 and  
8 physically located in the State may perform a remote online  
9 notarial act for a remotely located individual who is physically  
10 located:

11 (1) In the United States; or

12 (2) Outside the United States; provided that:

13 (A) The electronic record:

14 (i) Is to be filed with or relates to a matter  
15 before a court, governmental entity, public  
16 official, or other entity subject to the  
17 jurisdiction of the United States; or

18 (ii) Involves property located in the territorial  
19 jurisdiction of the United States or a  
20 transaction substantially connected to the  
21 United States; and



1           (B) The notary public has no actual knowledge that  
2           the act of making the statement or signing the  
3           electronic record is prohibited by the foreign  
4           state in which the remotely located individual is  
5           located.

6           (b) For the purposes of this section:

7           "Foreign state" means a jurisdiction other than the United  
8           States, a state of the United States, the District of Columbia,  
9           Puerto Rico, the United States Virgin Islands, any territory or  
10          insular possession subject to the jurisdiction of the United  
11          States, or a federally recognized Indian tribe.

12          "Outside the United States" means a location outside the  
13          geographic boundaries of the United States, Puerto Rico, the  
14          United States Virgin Islands, and any territory, insular  
15          possession, or other location subject to the jurisdiction of the  
16          United States.

17          **§456-C Electronic record of remote online notarizations.**

18          (a) A notary public shall maintain a journal in a tamper-  
19          evident electronic format in which the notary public chronicles  
20          all remote online notarial acts that the notary public performs.  
21          An entry in a journal must be made contemporaneously with the



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1 performance of the remote online notarial act and contain the  
2 following information:

- 3 (1) The date and time of the remote online notarial act;
- 4 (2) A description of the record, if any, and type of  
5 notarial act;
- 6 (3) The full name and address of each individual for whom  
7 the remote online notarial act is performed;
- 8 (4) If identity of the individual is based on personal  
9 knowledge, a statement to that effect;
- 10 (5) If identity of the individual is based on credential  
11 analysis and identity proofing, a brief description of  
12 the results of the identity verification process  
13 including the date of issuance and expiration of the  
14 identification card or document;
- 15 (6) If identity of a principal is based on oath or  
16 affirmation of a credible witness, the information  
17 required by paragraphs (3), (4) and (5) with respect  
18 to the credible witness; and
- 19 (7) The fee, if any, charged by the notary public.



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1           (b) A notary public is not required to record a remote  
2 online notarial act in the book of records required under  
3 section 456-15.

4           (c) A notary public, or a person acting on behalf of the  
5 notary public, shall create an audio and visual recording of the  
6 performance of each remote online notarial act.

7           (d) A notary public shall take reasonable steps to:

8           (1) Ensure the integrity, security, and authenticity of  
9 remote online notarizations;

10           (2) Maintain a backup of the journal required by  
11 subsection (a) and the audio and visual recording  
12 required by subsection (c); and

13           (3) Protect a backup required by paragraph (2) from  
14 unauthorized use.

15           (e) A notary public, a guardian, conservator, or agent of  
16 the notary public, or a personal representative of a deceased  
17 notary public shall retain the journal required by subsection  
18 (a) and the audio and visual recording required by subsection  
19 (c) or cause the journal and recording to be retained by a  
20 depository designated by or on behalf of the person required to  
21 retain the journal and recording. The journal and recording





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1 shall be retained for at least ten years from the date of the  
2 remote online notarial act.

3 (f) If any portion of the audio-visual recording created  
4 under subsection (c) contains an image of an identification card  
5 or document or an electronic record, that portion may not be  
6 disclosed by the notary public to another person without the  
7 consent of the individual who presented the card, document, or  
8 record, except:

- 9 (1) By order of a court of competent jurisdiction;
- 10 (2) To comply with a civil, criminal, or regulatory  
11 investigation or subpoena or summons by federal,  
12 state, or local authorities; or
- 13 (3) Upon request or direction of the attorney general.

14 (g) The journal required by subsection (a) and the audio  
15 and visual recording required by subsection (c) are not subject  
16 to the provisions of sections 456-16 and 502-72.

17 **§456-D Use of electronic signature and electronic seal.**

18 (a) In performing a remote online notarization, a notary public  
19 shall attach or logically associate the notary public's  
20 electronic signature and electronic seal to the notarial  
21 certificate in a tamper-evident format. The electronic seal must



1 be capable of being copied together with the electronic record  
2 to which it is attached or with which it is logically  
3 associated. The notarial certificate shall be attached to or  
4 logically associated with the electronic record that is the  
5 subject of the remote online notarial act.

6 (b) A notary public's use of an electronic seal under this  
7 section satisfies the requirement of section 456-3 that a notary  
8 public authenticate an official act, attestation, certificate,  
9 or instrument with a seal of office.

10 (c) A notary public shall take reasonable steps to protect  
11 the notary public's electronic seal from unauthorized use. A  
12 notary public shall not allow another person to use the notary  
13 public's electronic seal.

14 (d) A notary public shall immediately notify an  
15 appropriate law enforcement agency and the attorney general upon  
16 actual knowledge of the theft or vandalism of the notary  
17 public's electronic seal or journal. A notary public shall  
18 immediately notify the attorney general upon actual knowledge of  
19 the loss or use by another person of the notary public's  
20 electronic seal or journal.



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1 (e) A notary public's electronic signature and electronic  
2 seal used to perform remote online notarizations are not subject  
3 to the provisions of section 456-4. A notary public is not in  
4 violation of section 456-7(a)(2) for not filing a specimen of  
5 the notary public's electronic signature or impression of the  
6 notary public's electronic seal used to perform remote online  
7 notarizations with a clerk of the circuit court.

8 **§456-E Remote online notarization procedures.** (a) Before  
9 performing a remote online notarization, a notary public shall:

10 (1) Reasonably confirm that the electronic record before  
11 the notary public is the same electronic record in  
12 which the principal made a statement or on which the  
13 principal executed or adopted an electronic signature;  
14 and

15 (2) Take reasonable steps to ensure that the communication  
16 technology used in the remote online notarization is  
17 secure from unauthorized interception.

18 (b) In performing a remote online notarization, a notary  
19 public shall reasonably verify the identity of the principal by:

20 (1) The notary public's personal knowledge of the  
21 principal;



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- 1           (2) Each of the following:
- 2           (A) Remote presentation by the principal of a current
- 3           identification card or document issued by the
- 4           United States, the State, any other state, or a
- 5           national government that contains the bearer's
- 6           photograph and signature;
- 7           (B) Credential analysis of the identification card or
- 8           document; and
- 9           (C) Identity proofing of the principal; or
- 10          (3) Oath or affirmation of a credible witness personally
- 11          knowing the principal if the notary public has
- 12          personal knowledge of the credible witness or has
- 13          reasonably verified the identity of the credible
- 14          witness according to paragraph (2).
- 15          (c) A credible witness under subsection (b) may be a
- 16          remotely located individual if the credible witness, the
- 17          principal, and the notary public communicate by means of
- 18          communication technology.
- 19          (d) A notary public may:
- 20          (1) Require a principal or credible witness to provide
- 21          additional information necessary to assure the notary



1 public of the identity of the principal or credible  
2 witness; and  
3 (2) Refuse to perform a remote online notarization if the  
4 notary public is not satisfied as to the identity of a  
5 principal.

6 (e) The notarial certificate for a remote online  
7 notarization performed under this part shall indicate that the  
8 notarial act was performed using communication technology. A  
9 notarial certificate is sufficient to satisfy the requirement of  
10 this subsection if it is in a form otherwise sufficient under  
11 the laws of the State and contains a statement substantially as  
12 follows: "This remote online notarial act involved the use of  
13 communication technology."

14 **§456-F Fees.** Subject to section 456-18, a notary public  
15 is entitled to demand and receive a fee for the performance of  
16 each remote online notarial act not to exceed \$25.

17 **§456-G Termination of notary public's commission.** (a)  
18 Except as provided by subsection (b), a notary public who has  
19 performed remote online notarial acts during the term of the  
20 notary public's commission and whose commission is terminated or  
21 revoked shall destroy the coding, disk, certificate, card,



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1 software, or password that enables the notary public to attach  
2 or logically associate the notary public's electronic signature  
3 and electronic seal to an electronic record. On the death or  
4 adjudication of incompetency of a notary public, the notary  
5 public's personal representative or guardian shall comply with  
6 the provisions of this subsection.

7 (b) A former notary public whose commission terminated for  
8 a reason other than revocation or a denial of renewal is not  
9 required to destroy the items described by subsection (a) if the  
10 former notary public is re-commissioned as a notary public  
11 within three months of the termination of the notary public's  
12 former commission.

13 (c) A notary public's electronic seal is not subject to  
14 the requirement of delivery to the attorney general under  
15 section 456-3 or the fine authorized under section 456-9(c)(2).

16 (d) The termination of a notary public's commission does  
17 not affect the retention requirements of section 456-C(e).

18 **§456-H Standards for remote online notarization.** (a) A  
19 notary public shall comply with the requirements of this section  
20 when performing a remote online notarial act unless the attorney



1 general has adopted a rule, pursuant to chapter 91, that imposes  
2 a contrary requirement.

3 (b) A notary public shall attach or logically associate  
4 the notary public's electronic signature and electronic seal to  
5 an electronic record by use of a digital certificate complying  
6 with the X.509 standard promulgated by the International  
7 Telecommunication Union or a similar industry-standard  
8 technology. A notary public shall not perform a notarial act  
9 with respect to an electronic record if the digital certificate  
10 has expired, has been revoked or terminated by the issuing or  
11 registering authority, is invalid, or is incapable of  
12 authentication.

13 (c) Communication technology shall provide for continuous  
14 and synchronous audio and video feeds of sufficient clarity to  
15 enable the notary public and remotely located individual to see  
16 and speak to each other through live, real-time transmissions.  
17 The technology must provide reasonable security measures to  
18 prevent unauthorized access to the live transmission of the  
19 audio and video feeds, the methods used to verify the identity  
20 of a remotely located individual, the electronic record that is  
21 the subject of the notarial act, the questions asked as part of



1 the identity proofing quiz, and the means and methods used to  
2 generate the credential analysis output. If the remotely located  
3 individual exits the identify verification workflow or otherwise  
4 terminates the audio and video session before completion of the  
5 notarial act, the individual shall restart the processes  
6 described in subsections (e) and (f) from the beginning.

7 (d) Credential analysis and identity proofing shall be  
8 performed by a reputable third person who has provided  
9 reasonable evidence to the notary public of the person's ability  
10 to satisfy the requirements of subsections (e) and (f).

11 (e) Credential analysis shall use automated software  
12 processes to confirm the validity of the identification card or  
13 document. Confirmation is provided if the card or document  
14 passes an authenticity test that uses appropriate technologies  
15 consistent with sound commercial practices to confirm it is not  
16 fraudulent or inappropriately modified and to verify the  
17 integrity of visual, physical, or cryptographic security  
18 features. The authenticity test shall use information held or  
19 published by the issuing source or an authoritative source, as  
20 available, to confirm the validity of personal details and card  
21 or document details.





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1           (f) Identity proofing shall be performed by means of a  
2 knowledge-based authentication that meets the following  
3 requirements:

4           (1) The remotely located individual shall answer a quiz  
5 consisting of at least five questions related to the  
6 individual's personal history or identity, formulated  
7 from public or private data sources;

8           (2) Each question shall have at least five possible answer  
9 choices;

10          (3) At least eighty per cent of the questions shall be  
11 answered correctly;

12          (4) All questions shall be answered within two minutes;

13          (5) If the remotely located individual fails the first  
14 attempt, the individual may retake the quiz one time  
15 within twenty-four hours;

16          (6) During a retake of the quiz, a minimum of sixty per  
17 cent of the prior questions shall be replaced;

18          (7) If the remotely located individual fails the second  
19 attempt, the individual is not permitted to retry with  
20 the same notary public or the same third person



1 providing the identity proofing service within twenty-  
2 four hours of the second failed attempt; and

3 (8) The notary public shall not be able to see or record  
4 the questions or answers.

5 (g) A notary public shall retain the journal and the  
6 audio-visual recordings required under section 456-C in a  
7 computer or other electronic storage device that protects such  
8 information against unauthorized access by password or  
9 cryptographic process. A notary public may, by written contract,  
10 engage a third person to act as a depository to provide the  
11 storage required by this subsection. The contract shall enable  
12 the notary public to comply with the retention requirements of  
13 section 456-C(e) even if such contract is terminated or provide  
14 that, if the contract is terminated, the information will be  
15 transferred to the notary public.

16 **§456-I Relation to other laws.** (a) A remote online  
17 notarization performed under this part satisfies any requirement  
18 of law of the State that an individual appear before, appear  
19 personally before, or be in the presence of a notary public at  
20 the time of the performance of the notarial act.



1           (b) A notary public's verification of an individual's  
2 identity under section 456-E(b) satisfies any requirement of law  
3 of the State that the notary public obtain satisfactory proof of  
4 the principal's identity for a remote online notarization.

5           (c) A notary public has not violated section 456-20 for  
6 the performance of a remote online notarization if the notary  
7 public has verified the principal's identity under section 456-  
8 E(b).

9           **§456-J Validity of remote online notarial acts.** The  
10 failure of a notary public to perform a duty or meet a  
11 requirement specified in this part shall not invalidate a remote  
12 online notarial act performed by the notary public. The validity  
13 of a remote online notarial act under this part shall not  
14 prevent an aggrieved person from seeking to invalidate the  
15 electronic record or transaction that is the subject of the  
16 remote online notarial act or from seeking other remedies based  
17 on law of the State other than this part or based on law of the  
18 United States. This section shall not validate a purported  
19 remote online notarial act performed by an individual who does  
20 not have the authority to perform remote online notarial acts.



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1           **§456-K Applicable law; conflict of laws.** (a) The validity  
2 of a remote online notarization performed under this part shall  
3 be determined by applying the laws of the State, regardless of  
4 the physical location of the principal at the time of the remote  
5 online notarization.

6           (b) A notary public who performs remote online  
7 notarizations shall comply with all provisions of this chapter  
8 except as modified or supplemented by this part.

9           (c) In the event of a conflict between a provision of this  
10 part and any other law of the State, the provision of this part  
11 controls.

12           **§456-L Relation to federal Electronic Signatures in Global**  
13 **and National Commerce Act.** This part modifies, limits, and  
14 supersedes the federal Electronic Signatures in Global and  
15 National Commerce Act, 15 United States Code section 7001, et  
16 seq., but does not modify, limit or supersede section 101(c) of  
17 that Act, or authorize electronic delivery of any of the notices  
18 described in section 103(b) of that Act."

19           SECTION 3. Section 502-48, Hawaii Revised Statutes, is  
20 amended to read as follows:



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1           "§502-48 Identification of person making. No  
2 acknowledgment of any conveyance or other instrument, except as  
3 provided by this chapter, whereby any real estate is conveyed or  
4 may be affected, shall be taken, unless the person offering to  
5 make the acknowledgment is personally known to the officer  
6 taking the acknowledgment to be the person whose name is  
7 subscribed to the conveyance or instrument as a party thereto,  
8 or is proved to be such by the oath or affirmation of a credible  
9 witness known to the officer or by production of a current  
10 identification card or document issued by the United States,  
11 this State, any other state, or a national government that  
12 contains the bearer's photograph and signature [-], or by a  
13 method authorized under section 456-E, if the acknowledgement is  
14 taken as a remote online notarization."

15           SECTION 4. In codifying the new sections added by section  
16 2 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19           SECTION 5. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



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1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2019.

4

INTRODUCED BY: \_\_\_\_\_



JAN 17 2019



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**Report Title:**

Remote Notarization

**Description:**

Authorizes notaries public to perform remote notarizations under certain circumstances.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

