

JAN 18 2019

A BILL FOR AN ACT

RELATING TO NOTARIES PUBLIC.

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;
12 provided that consumer protections are in place to protect
13 against incidents of 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



1 services being in the same physical location; provided that the
2 notary and the 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 by adding a new section to be appropriately designated
7 and to read as follows:

8 "§456- Notarial acts performed for remotely located
9 individual. (a) For purposes of this section, the following
10 definitions shall apply:

11 "Communication technology" means an electronic device or
12 process that:

- 13 (1) Allows a notary public and a remotely located
14 individual to communicate with each other
15 simultaneously by sight and sound; and
16 (2) When necessary and consistent with other applicable
17 law, facilitates communication with a remotely located
18 individual who has a vision, hearing, or speech
19 impairment.

20 "Foreign state" means a jurisdiction other than the United
21 States, a state, or a federally recognized Indian tribe.



1 "Identity proofing" means a process or service by which a
2 third person provides a notary public with a means to verify the
3 identity of a remotely located individual by a review of
4 personal information from public or private data sources.

5 "Outside the United States" means a location outside the
6 geographic boundaries of the United States, Puerto Rico, the
7 United States Virgin Islands, and any territory, insular
8 possession, or other location subject to the jurisdiction of the
9 United States.

10 "Remotely located individual" means an individual who is
11 not in the physical presence of the notary public who performs a
12 notarial act under this section.

13 (b) A remotely located individual may comply with this
14 section by using communication technology to appear before a
15 notary public.

16 (c) A notary public located in this State may perform a
17 notarial act using communication technology for a remotely
18 located individual if:

19 (1) The notary public:

20 (A) Has personal knowledge of the individual as
21 defined in this chapter;



- 1 (B) Has satisfactory evidence of the identity of the
2 remotely located individual by oath or
3 affirmation from a credible witness appearing
4 before the notary public under this section; or
- 5 (C) Has obtained satisfactory evidence of the
6 identity of the remotely located individual by
7 using at least two different types of identity
8 proofing;
- 9 (2) The notary public is able to reasonably confirm that a
10 record before the notary public is the same record in
11 which the remotely located individual made a statement
12 or on which the individual executed a signature;
- 13 (3) The notary public, or a person acting on behalf of the
14 notary public, creates an audio visual recording of
15 the performance of the notarial act; and
- 16 (4) For a remotely located individual located outside the
17 United States:
 - 18 (A) The record:
 - 19 (i) Is to be filed with or relates to a matter
20 before a public official or court,



1 governmental entity, or other entity subject
2 to the jurisdiction of the United States; or
3 (ii) The record involves property located in the
4 territorial jurisdiction of the United
5 States or involves a transaction
6 substantially connected with the United
7 States; and

8 (B) The act of making the statement or signing the
9 record is not prohibited by the foreign state in
10 which the remotely located individual is located.

11 (d) If a notarial act is performed under this section, any
12 certificate of notarial act required by this chapter must
13 indicate that the notarial act was performed using communication
14 technology.

15 (e) A notary public, a guardian, conservator, or agent of
16 a notary public, or a personal representative of a deceased
17 notary public shall retain the audio visual recording created
18 under this section or cause the recording to be retained by a
19 repository designated by or on behalf of the person required to
20 retain the recording. Unless a different period is required by



1 rule adopted under this section, the recording shall be retained
2 for a period of at least ten years after the recording is made.

3 (f) Before a notary public performs the notary public's
4 initial notarial act under this section, the notary public shall
5 notify the attorney general that the notary public will be
6 performing notarial acts with respect to remotely located
7 individuals and identify the technologies the notary public
8 intends to use. If the attorney general has established
9 standards under this section for approval of communication
10 technology or identity proofing, the communication technology
11 and identity proofing shall conform to the standards.

12 (g) In addition to adopting rules under this section and
13 pursuant to chapter 91, the attorney general may adopt rules
14 regarding performance of a notarial act involving a remotely
15 located individual using communication technology, including:

16 (1) Prescribing the means of performing a notarial act
17 involving a remotely located individual using
18 communication technology;

19 (2) Establishing standards for communication technology
20 and identity proofing;



1 (3) Establishing requirements or procedures to approve
2 providers of communication technology and the process
3 of identity proofing; and

4 (4) Establishing standards and a period for the retention
5 of an audio visual recording created under this
6 section.

7 (h) Before adopting, amending, or repealing a rule
8 governing performance of a notarial act with respect to a
9 remotely located individual, the attorney general shall
10 consider:

11 (1) The most recent standards regarding the performance of
12 a notarial act with respect to a remotely located
13 individual promulgated by national standard-setting
14 organizations and the recommendations of the National
15 Association of Secretaries of State;

16 (2) The standards, practices, and customs of other
17 jurisdictions that have laws substantially similar to
18 this section; and

19 (3) The views of governmental officials and entities and
20 other interested persons.



1 (i) By allowing its communication technology or identity
2 proofing to facilitate a notarial act for a remotely located
3 individual or by providing storage of the audio visual recording
4 created under this section, the provider of the communication
5 technology, identity proofing, or storage appoints the attorney
6 general as the provider's agent for service of process in any
7 civil action in this state related to the notarial act."

8 SECTION 3. Section 456-1.6, Hawaii Revised Statutes, is
9 amended by amending the definition of "personally knowing" to
10 read as follows:

11 "'Personally knowing" or "personal knowledge" means having
12 an acquaintance, derived from association with the individual,
13 which establishes the individual's identity with at least a
14 reasonable certainty."

15 SECTION 4. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

17

INTRODUCED BY: 



S.B. NO. 562

Report Title:

Notaries Public; Notarial Acts; Remotely Located Individual;
Attorney General

Description:

Authorizes notaries public to perform notarial acts utilizing electronic documents with electronic signatures, without the notary public and the individual requesting the notary services being in the same physical location; provided that certain conditions are met.

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

