

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
ON H.B. NO. 1803**

RELATING TO NOTARIAL ACTS.

**BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION &
COMMERCE**

DATE: Thursday, January 30, 2020, at 2:30 p.m.
Conference Room 329, State Capitol

PERSON TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Takumi, Vice Chair Ichiyama, and Members of the House
Committee on Consumer Protection and Commerce:

My name is Peter Hamasaki, and I am a member of the State of Hawai'i
Commission to Promote Uniform Legislation. Thank you for this opportunity to
submit this testimony in support of the intent of House Bill No. 1803 relating to
notarial acts, which is based upon portions of the Revised Uniform Law on
Notarial Acts relating to remote notarization, which was approved by the Uniform
Law Commission in 2018.

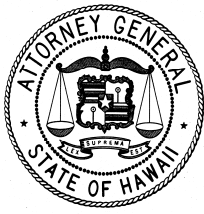
The Revised Uniform Law on Notarial Acts (2018) authorizes a notary
public to perform notarial acts for remotely located individuals using
communication and identity-proofing technology provided its requirements have
been fulfilled. The new provisions:

- Provide that an individual may appear before a notary public by
means of communication technology and thereby comply with the
requirement of an appearance before a notary public.

- Define communication technology as any means or process that allows a notary public and a remotely located individual to communicate with each other simultaneously.
- Specify the means by which a notary public must identify a remotely located individual. This includes personal knowledge of the identity of the individual, and evidence of the identity of the remotely located individual by oath or affirmation from a credible witness.
- Permit a notary public to identify a remotely located individual by at least two different types of identity-proofing processes or services.
- Require that an audio-visual recording of the performance of the notarial act be created.
- Provide that the certificate of notarial act required under Section 15 must indicate that a notarial act performed in accordance with this Section was done by means of communication technology.
- Provide that the commissioning agency may adopt rules regarding the performance of notarial acts for remotely located individuals.

We support the intent of House Bill No. 1803 insofar as it implements the provisions of the Revised Uniform Law on Notarial Acts (2018) relating to the performance of notarial acts for remotely located individuals. We defer to the appropriate testifiers comments on any differences between this measure and other measures, such as House Bill No. 2294, which also may be based on the provisions of the Revised Uniform Law on Notarial Acts (2018), to the extent that those differences are not based on the Revised Uniform Law on Notarial Acts (2018).

Thank you very much for this opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 1803, RELATING TO NOTARIAL ACTS.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

DATE: Thursday, January 30, 2020 **TIME:** 2:30 p.m.

LOCATION: State Capitol, Room 329

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

Chair Takumi and Members of the Committee:

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

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.

The Department has submitted H.B. No. 2294, which addresses our concerns below. H.B. No. 2294 also includes wording regarding notarial acts for remotely located individuals as well as other issues regarding notaries public that are needed to update the laws regarding notaries public, including the following: to conform to the Revised Uniform Law on Notarial Acts (2018) ("RULONA"), the Hawaii Uniform Electronic Transactions Act, other state notary laws, and current notary practices.

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. The Department is studying the various rules and regulations of the other states that have recently adopted this type of statute to determine the best mechanism to implement the law.

The Department has the following concerns:

1. Because the notaries public who perform a notarial act for a remotely located individual need no longer submit a sample of their seal or signature, the Department believes that it should have a separate commission for those notaries public so that the circuit court will be notified that said notary is exempt from those requirements and authorized to do so. While an endorsement from the Department may accomplish this notification, there is nothing in the proposed act to provide for rescinding of said endorsement. Furthermore, remote online notaries would need to have a separate exam as the requirements are significantly different.

Specifically, the wording on page 3, lines 8 to 10, in the new section 456-B should be changed as follows:

"(1) The notary public [~~has received from the attorney general an endorsement to the notary public's commission under section 456-C~~] is commissioned as a remote online notary public and:"

Also, the wording on page 8, line 20, to page 9, line 10, should be changed as follows:

"§456-C Application; qualifications. (a) A notary public or an applicant for [~~appointment~~] commission as a remote online notary public may apply to the attorney general [~~in the manner provided by this section for an endorsement to the notary public's commission authorizing the notary public to perform notarial acts for remotely located individual under section 456-B.~~] to be commissioned as a remote online notary public in the manner provided by this chapter.

(b) A person shall qualify [~~for an endorsement~~] as a remote online notary public under this section by:

- (1) Satisfying the qualification requirements for [~~appointment~~] commission as a remote online notary public under this chapter and having or receiving an active commission as a notary public;"

Also, the wording on page 10, lines 4 to 6, should be changed as follows:

". . . photostatic copy of the [~~endorsement to the~~] person's commission as a remote online notary public with the clerk of the circuit court of the circuit in which the notary public resides."

The wording on page 21, lines 18 to 19, should be changed as follows:

"(b) The court fees for filing a copy of a commission [~~or endorsement to a commission~~] and for each certificate of"

2. The Department has also become aware that notaries public may have the erroneous assumption that they are government employees or officers and the statute needs to clarify that issue. The Department requests that any references to offices and appointments be deleted.

Specifically, wording should be changed as follows:

On page 9, line 8:

". . . [~~appointment~~] commission as a notary public under this chapter and

On page 12, line 10:

"§456-1 [Appointment;] Commission; renewal. (a) The attorney general
."

On page 12, line 11:

". . . may, in the attorney general's discretion, [~~appoint and~~]"

On page 12, line 14:

". . . convenience. The term of [~~office~~] commission of a notary public shall be
."

On page 12, line 21:

". . . any change occurs in the [~~notary's~~] notary public's [~~office~~] commission."

On page 13, line 5:

". . . change in the [~~notary's~~] notary public's [~~office,~~] commission, occupation,
."

On page 18, line 2:

". . . impressing upon a tangible document a notary seal [~~of office~~]; or"

On page 19, lines 8 to 9:

". . . resignation, death, expiration of term of [~~office~~] commission without [~~reappointment~~] renewal, or [~~removal~~] revocation or abandonment of [~~office,~~] commission, the"

On page 20, lines 2 to 3:

". . . expiration of term of [~~office~~] commission without [~~reappointment,~~] renewal, or [~~removal~~] revocation or abandonment of [~~office,~~] commission, the notary public shall disable the"

On page 20, line 12:

". . . (a) Each person [~~appointed and~~] commissioned as a notary public"

On page 20, line 17:

". . . notary public resides. Each person [~~appointed and~~] commissioned a"

On page 22, line 11:

". . . ninety days of resignation, [~~removal from office,~~] revocation of commission, or"

On page 22, lines 14 to 15:

". . . device within ninety days of resignation, [~~removal from office,~~] revocation of commission, or the expiration of a term without renewal,"

On page 33, line 5:

". . . executed the instrument appeared before the [~~officer~~] notary public granting the"

On page 33, line 8:

". . . [~~officer~~] notary public granting such certificate to be the person whose name is"

On page 33, lines 11 to 15:

". . . known to the [~~officer~~] notary public whose name shall be inserted in the certificate. A person is known to the [~~officer~~] if the person is personally known by the [~~officer,~~] notary public, if the [~~officer~~] notary public has proof of the signer's signature and

identity as defined in section 456-1.6, or if the ~~[officer]~~ notary public has satisfactory evidence of identity of a"

On page 34, line 12:

". . . make the acknowledgment is personally known to the ~~[officer]~~ notary public"

On page 34, line 16:

". . . witness known to the ~~[officer,]~~ notary public, or by"

3. The Department opposes any automatic validation of notarial acts where a notary public failed to perform a duty or meet a requirement under the Act under section 456-E as referenced on page 11, lines 10 to 21.

4. The Department has become aware of persons, such as our aging population, who no longer have a current driver's license or passport, who need to notarize their documents. In order to address this issue, the Department believes that notaries public should be allowed to use additional information or identification to assure the identity of the individual.

Specifically, on page 17, line 8, the wording should be changed as follows:

". . . notarial act; ~~[and]~~ or"

5. The Department has become aware that embossed seals either become flattened out over time or are unable to be scanned or photocopied and would recommend no longer allowing embossed seals.

Specifically, the wording pertaining to seals should be changed as follows:

On page 18, line 1:

". . . (1) A physical devise capable of ~~[embossing,]~~ stamping, or"

On page 18, lines 14 to 16:

". . . ~~[an engraved seal of office or]~~ a rubber stamp ~~[facsimile]~~ or electronic notary seal ~~[of office]~~ which shall clearly show, when ~~[embossed,]~~ stamped~~[,]~~ or impressed upon a tangible document~~[,]~~ or"

On page 18, line 20:

". . . "notary public" and "State of Hawaii". The notary seal ~~[of office]~~ must"

On page 19, line 1:

". . . it is [~~embossed,~~] stamped, impressed, or attached, or with which"

On page 22, lines 3 to 4:

". . . (1) Maintain an official seal of [~~one type either a single engraved seal or~~] a single rubber stamp [~~facsimile~~] seal,"

6. The Department recommends that the record book requirement follow the RULONA.

Specifically, the wording on page 23, lines 9 to 11, should be changed as follows:

". . . (6) Surrender the notary public's [~~record books~~] journals to the attorney general within ninety days of the end date of the [~~commission,~~] resignation[;] or [~~removal of office,~~] revocation of commission, or expiration of term without renewal,"

7. The Department also recommends that there should also be an audit to ensure that the journal requirements are meeting the requirements of the law. Such wording may follow the books and records requirement under the Hawaii Uniform Securities Act.

Specifically, additional wording should be added after page 28, line 17, as follows:

"(h) The journals are subject to such reasonable periodic, special, or other audits or inspections by the department of the attorney general, within or without this State, as the attorney general considers necessary or appropriate. An audit or inspection may be made at any time and without prior notice. The department of the attorney general may copy, and remove for audit or inspection copies of, all records the department of the attorney general reasonably considers necessary or appropriate to conduct the audit or inspection. If any notary fails to comply with this section, then the notary shall be subject to an administrative fine of not less than \$50 nor more than \$500. All unpaid fees fines, and forfeitures shall constitute a debt due and owing to the State."

8. The Department recommends that the certification requirements should follow the RULONA.

On page 23, lines 2 to 5, the wording should be changed as follows:

~~". . . paper or tangible document, [describe in close proximity to the acknowledgment or jurat the document being notarized, and state the number of pages and date of the document,] \$500;"~~

On page 32, lines 14 to 20, the following wording should be deleted:

~~". . . [(4) — If the notarial act is performed on a paper or tangible document, identification or description of the document being notarized, placed in close proximity to the acknowledgment or jurat; and
(5) — If the notarial act is performed on a paper or tangible document, a statement of the number of pages and date of the document.]"~~

The Department appreciates the opportunity to provide comments but recommends that the Committees consider H.B. No. 2294 as the preferred vehicle.



Testimony of First American Title
on
H.B. 1803 Relating to Notarial Acts
before the
House Committee on Consumer Protection and Commerce

Thursday, January 30, 2020
2:00 p.m., Conference Room 329

Chair Takumi and Distinguished Members of the Committee on Consumer Protection and Commerce:

First American Title¹ is grateful for the opportunity to **support** H.B. 1803 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.

A Uniform Law and a National Trend

H.B. 1803 would enact relevant portions of the Revised Uniform Law on Notarial Acts (2018) (also known as “RULONA”) to support electronic and remote online notarization. RULONA or similar laws supporting remote online notarization have already been adopted in 22 states and is currently under consideration in 20 others. In addition, RULONA provides a statutory framework to implement the National Electronic Notarization Standards adopted in 2018 by the National Association of Secretaries of State (“NASS Standards”).

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

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.

able to use Hawaii notaries operating under Hawaii law. H.B. 1803 would safeguard consumers by extending the protections of Hawaii law to this rapidly expanding type of notarial practice. By getting out in front of this trend, we can make sure that the safeguards embodied in RULONA and the NASS Standards are available to protect Hawaii consumers.

Enhanced Security for the Most Important Transactions

H.B. 1803 embraces the latest technologies to prevent fraud in the notarial process. 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. 1803 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.