



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2294, H.D. 1, RELATING TO NOTARIES PUBLIC.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 10, 2020

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) supports this bill. The Department regulates and commissions the notaries public in the State of Hawaii.

The purpose of this bill is to modernize the laws regarding notaries public to bring them into conformity with the Revised Uniform Law on Notarial Acts (2018) (RULONA) and current practices. Specifically, this measure:

- (1) Outlines the instances in which notaries public may refuse to perform notarial acts;
- (2) Authorizes notaries public to perform notarial acts for person not in the physical presence of the notaries public and outlines the manner in which notaries public may perform such notarial acts, including through the use of authorized technologies and electronic notarial seals;
- (3) Clarifies that notaries public are not employees or officers of the state;
- (4) Clarifies the validity of notarial acts and the circumstances when notarial acts may not be performed;
- (5) Clarifies the retention of records; and
- (6) Makes various clarifying amendments to conform to national standards and practices.

Because of technological advancements, tens of thousands of remote online notarizations are already happening each year. Twenty-two states have enacted remote online notary laws, although since January 1, 2020, only thirteen of those states have fully implemented their remote online procedures. This measure would better safeguard Hawaii residents by extending the protections of existing law to this rapidly expanding type of notarial practice.

The Notaries Public Act has not been updated since 2008. The changes included in the bill will clarify the existing statutes and bring Hawaii's notary laws into better conformance with RULONA, the Hawaii Uniform Electronic Transactions Act, and current notary practices. In addition to allowing for remote online notarization, the bill would update the notary seal requirements to allow for only rubber stamp seals so that they may be scanned or copied for electronic filing and storage purposes; update the identification requirements to allow for individuals (like those in our aging population) who no longer have an active driver's license or passport to be able to get their documents notarized; update the record book or journal policy to bring it into conformity with RULONA; clarify that notaries public are not employees or officers of the state; and make other amendments to strengthen Hawaii's notary practices.

This bill reflects the joint efforts among the Department, First American Title and Commission to Promote Uniform Legislation.

The Department respectfully asks that the Committee pass this bill.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

ON H.B. NO. 2294, H.D. 1

RELATING TO NOTARIES PUBLIC.

BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 10, 2020, at 10:00 a.m.
Conference Room 016, State Capitol

PERSON TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary:

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. 2294, H.D. 1, relating to notaries public, 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 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. 2294, H.D. 1, 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.

In addition, we note that we have met with representatives of the Department of the Attorney General, the Hawaii Bankers Association, and First American Title regarding proposed amendments to this measure, and we have no objection to those amendments.

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



REVISED UNIFORM LAW ON NOTARIAL ACTS (2018)

The Revised Uniform Law on Notarial Acts (RULONA) was promulgated by the Uniform Law Commission (ULC) in 2010. Among its features, it included provisions to provide a stable infrastructure for the performance of notarial acts with respect to electronic records and signatures.

Amendments to Revised Uniform Law on Notarial Acts, including a new Section 14A on remote notarization, were approved by the ULC in 2018, resulting in RULONA (2018). If a state has already adopted RULONA, it will update to the current version by enacting new subsection 4(c), new Section 14A, and new subsection 20(c). If a state has not previously enacted RULONA, it should enact RULONA (2018).

RULONA (2018) was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audio-visual technology. Traditionally, an individual has been required to physically appear before a notary public. In recent years, technology and commercially available identification services have made it possible to perform notarial acts for persons who are not in the physical presence of a notary public. RULONA (2018) authorizes remote notarization without geographic limits on the location of the signer.

RULONA (2018) updates RULONA (2010) by authorizing 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 provisions of RULONA Section 6 calling for appearance before a notary public (Section 14A (b)).
- Define communication technology as any means or process that allows a notary public and a remotely located individual to communicate with each other simultaneously (Section 14A (1)(A)). Specific technology is not identified in the amendment.
- Specify the means by which a notary public must identify a remotely located individual (Section 14A (c)(1)). 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 (Section 14A (c)(1)(C)). This may include having a remote individual answer questions for which there is a high probability that only the true individual would be able to answer correctly, or using biometric identification technology or credential analysis.

- Require that an audio-visual recording of the performance of the notarial act be created (Section 14A (c)(3)).
- 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 (Section 14A (d)).
- Provide that the commissioning officer may adopt rules regarding the performance of notarial acts for remotely located individuals (Section 14A (h)).

RULONA (2018) also now specifies that the notarial officer may certify that a tangible copy is an accurate copy of an electronic record and that such certifications may be accepted for recording into the real estate records.

For further information about the RULONA, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.



TEL:
808-524-5161
FAX:
808-521-4120
ADDRESS:
1000 Bishop Street, Suite 301B
Honolulu, HI 96813-4203

Presentation to The
Committee on Judiciary
March 10, 2020 10:00 A.M.
State Capitol Conference Room 016

Testimony in Support of HB 2294, HD 1

TO: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eight Hawaii banks and two banks from the continent with branches in Hawaii.

The Hawaii Bankers Association had concerns about the bill as introduced because of its definition of “outside the United States” because it would have rendered two FDIC insured banks, both of whom have either branches or offices in Hawaii (Bank of Hawaii and the Bank of the Federated States of Micronesia) being forced to overcome hurdles to remotely execute a document that are not applicable to an individual in Guam or American Samoa. Both Bank of Hawaii and the Bank of the Federated States of Micronesia have branches in a location in what is definitionally called “outside the United States”. Bank of Hawaii has a branch in Palau and the Bank of the Federated States of Micronesia has branches in Micronesia.

However, after a meeting with stakeholders, all agreed on an amendment which resolved the issues confronting the two FDIC insured banks in Palau and Micronesia. The agreed upon amendment is contained in the testimony of First American Title and HBA agrees and supports the amendment.

Thank you for the opportunity to submit this testimony in support of HB 2294, HD 1. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161

March 10, 2020

IN OPPOSITION TO HB 2294 HD 1 Relating to Notaries Public
JUDICIARY COMMITTEE - Public Decision Making
Tuesday, March 10, 2020
Conference Room 016

Chairman Rhoads
Vice-Chair Keohokalole

Members of the Senate Committee on Judiciary

Thank you for the opportunity to submit testimony for decision making in opposition to HB 2294 HD 1 / RELATING TO NOTARIES PUBLIC.

After a hearing on February 13, 2020, the House Judiciary Committee reported that *[T]he purpose of this measure is to “modernize the laws regarding notaries public to bring them into conformity with national standard and current practices.*

This same report also found that “[N]otaries public serve an important role in preventing fraud in various types of transactions. Your committee further finds that the state notaries public laws have not be (sic) updated for several years.”

DECEPTIVELY COMPLEX PROCESS

Notarization is a deceptively complex process. The claim that this bill will bring laws regarding notaries public “into conformity with national standards” is impossible because neither this legislature nor the Attorney General’s Notary Public Office understand what constitutes “national standards” related to Notarial Practice.

Do the Notary Laws of Hawaii need to be updated? Possibly, but what is more urgent is that those that regulate this deceptively complex process actually understand what is involved.

There are a multitude of BAD suggestions concerning Hawaii Notary law in this bill for that same reason: Those involved do not actually understand what is required of Notaries in this complex process.

The change that would have, in my opinion, the GREATEST NEGATIVE IMPACT on the protection of Hawaii Notary Consumers has to do with the oversight of the PUBLIC RECORD being totally turned over to the Notaries, themselves.

**GIVING NOTARIES TOTAL OVERSIGHT OF THE PUBLIC RECORD IS A
MONUMENTALLY BAD IDEA FOR CONSUMER PROTECTION**

And again, this is the “cherry on the top” of the OTHER bad ideas in this bill. I say bad ideas because they are founded on a false premise that this Attorney General’s Office actually understands what is involved and what best notary practices are. This is in part due to the fact that attorneys do not receive training in law school about notary law.

In past “administrations” the Notary Office did not keep track of which notaries were not turning in their Public Record at the end of their commission periods. Many Notaries, because they don’t read the laws, don’t even know they are required to turn their journals into the A/G. A former notary told me that the”Notary Office never asked for his journals.” They aren’t required to do that. We are supposed to know what is required of us.

Now they are doing a better job keeping track of who is delinquent but apparently have decided it is too inconvenient so they’ll just hand it off to the notaries themselves. **A “convenience-over-doing-what-is-right” maneuver in the guise of “national standards.”**

GIVING NOTARIES (MOST WHO DON’T KNOW HOW TO PROPERLY COMPLETE THE RECORD TO BEGIN WITH) EXCLUSIVE CONTROL OVER ALL OF THEIR JOURNALS IS NOT A NATIONAL STANDARD, but is a VERY, VERY BAD IDEA.

In the past, the A/G would review journals turned in to see if the law concerning completion of the journal was being followed. If it wasn’t they could and did, at times, revoke a Notary’s commission for failure to follow **THE LAW DESIGNED FOR THE PROTECTION OF ALL PARTIES TO THE NOTARIZED TRANSACTION.**

The Notary Journal is a PUBLIC RECORD in which the Notary Public is required to record specific crucial information about the notarized transaction. This record is often vital for the court record if a notarization is called into question. The manner in which the Notary Public routinely keeps this PUBLIC RECORD will either support the proposition that the Notary Public

actually did their duty or not. Ensuring that Notaries are completing this vital public record accurately, and further ensuring that notaries are even maintaining the Public Record at all, is in the best interest of ALL PARTIES TO THE NOTARIZED TRANSACTION.

If this LEGISLATURE and the Notary Public Office insist on passing this bill, despite repeated warning about the danger to all parties to the notarized transaction, then they should also acknowledge that they accept responsibility for financial damages when a damaged party is not able to demonstrate the misconduct of the Notary Public because that Notary has failed to maintain control over the PUBLIC RECORD. **The end result would be the same as if they did away with the requirement to maintain a Public Record at ALL.**

GIVING NOTARIES RESPONSIBILITY FOR KEEPING THEIR PUBLIC RECORD IS TANTAMOUNT TO HAVING OBY-GYN DOCTORS KEEP THE BIRTH RECORDS OF THE BABIES THEY DELIVER.

Of all of the proposed changes to Hawaii Notary Law, this proposed change regarding the Public Record is the best proof that **the Attorney General's Notary Public Office HAS NO IDEA WHAT CONSTITUTES THE NATIONAL STANDARD OF NOTARIAL PRACTICE, and yet they are given oversight of what this legislature CLAIMS TO BELIEVE IS AN "IMPORTANT ROLE IN PREVENTING FRAUD IN VARIOUS TYPES OF TRANSACTIONS."**

DOES THE NOTARY SYSTEM NEED REVAMPING?

Absolutely, but not by the A/G who knows next to nothing about this deceptively complex process and is unwilling to learn and is only looking to make their job "easier." Ripping the VERY HEART out of the PUBLIC RECORD of the notarial act intended to be done with integrity, diligence, and skill (66 C.J.S. Notaries 26), in the name of CONVENIENCE, must be rejected, as should any change based on the misguided belief that the Notary Public Office knows anything about a national standard of notarial practice.

That the office of the chief law enforcement officer of the State of Hawaii would be willing to follow the **PIED PIPER OF CONVENIENCE** should be criminal. Exactly how will this legislature explain to future victims of fraud why they have permitted procedures that protect

consumers from fraud to be removed from Hawaii Notarial Practice, if this bill is passed, will be interesting to watch.

In the last hearing in the House Finance Committee, Legislator Matayoshi had a concern about a section of this bill that seemed to indicate that Notaries would be required or permitted to make a determination as to a signer's competence. He had a question about whether Hawaii Notaries receive any training on how to actually go about making that type of determination.

Instead of asking the only Notary Public who testified publicly at that hearing, he called on one of the representatives from a title company who came to the podium and told him she believed that the Notary Office did provide training for notaries on how to do that.

She was totally wrong. The Notary Office does not and will not because that is not what ANY NOTARY IN ANY STATE IN THIS COUNTRY is permitted to do. WHAT THIS TITLE COMPANY EMPLOYEE TOLD A LEGISLATOR IS AS FAR FROM STANDARD NOTARIAL PRACTICE AS IT COULD BE.

But, this is just another example of how legislators who **PRETEND THEY UNDERSTAND THE IMPORTANCE OF NOTARIZATION TOTALLY IGNORE INPUT FROM THE VERY PUBLIC OFFICIALS THEY ALLOW THE NOTARY PUBLIC OFFICE TO ISSUE COMMISSIONS TO.**

This Legislature and Department of the Attorney General must be held accountable for their failure to oversee notarial practice in Hawaii in accordance with standard notarial practice because they have no idea what that actually is.

Cheryl Kaster
Honest Notary
Owner, Honest Hawaii Notaries

Date: March 9, 2020

To: Chair Rhoads, Vice Chair Keohokalole, Vice Chair Ho'omalua and Distinguished Members of the Senate Committee on Judiciary

Re: H.B. 2294, HD1, Relating to Notaries Public
Hearing Date: Tuesday, March 10, 2020 at 10:00 A.M.
Conference Room: 016

Submitted via capitol website

Chair Rhoads, Vice Chair Keohokalole, Vice Chair Ho'omalua, and members of the Committee on Judiciary

Hawaii Land Title Association appreciates the opportunity to testify in support of H.B. 2294, HD1, Relating to Notaries Public. This measure would enact relevant portions of the Revised Uniform Law on Notarial Acts (2018) which provides the framework to authorize remote online notarization through secure audio-visual communication and identity-proofing technology.

HLTA is an association of title companies licensed to issue policies of title insurance to buyers, lenders, and owners of other interests in land in the State of Hawaii. It is important for title insurance companies to be able to rely on validly signed and acknowledged real estate instruments in order to facilitate the closing of transactions.

Rapidly evolving technology is changing how we connect and conduct business in Hawaii and across the globe. Remote online notarization is a convenient and secure alternative to traditional notarial services that will benefit Hawaii residents by making notarial services more convenient, while still protecting the security of the transaction. HLTA supports this bill because it provides for enhanced electronic protection and identification requirements that utilize the latest technologies to safeguard against fraud and identity theft. Twenty-two states have already passed laws that allow for remote online notary to be used, and we believe that Hawaii with its geographic isolation stands to benefit in particular from this bill. With access to a computer and internet, neighbor island residents, immobile/disadvantaged individuals, deployed military members, and residents traveling out of state will be able to conveniently and securely notarize official documents.

For the above reasons, Hawaii Land Title Association supports this bill with amendments and respectfully requests that it be passed out of this committee.

Thank you for the opportunity to submit this testimony in support of this measure.

HAWAII LAND TITLE ASSOCIATION



Testimony of First American Title
on
H.B. 2294, H.D. 1 Relating to Notaries Public
before the
Senate Committee on Judiciary

Tuesday, March 10, 2020
10:00 a.m., Conference Room 016

Chair Rhoads and Distinguished Members of the Committee on Judiciary:

First American Title¹ is grateful for the opportunity to **support** H.B. 2294, H.D. 1 relating to notaries public and to discuss how this legislation will benefit Hawaii’s residents and business community.

H.B. 2294, H.D. 1 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 23 states and are 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.

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 Hawaii residents through its:

- ▶ **Convenience to consumers** and ease of access, allowing Hawaii residents to have documents notarized *anywhere, anytime*—eliminating the need to make appointments, take leave from work, or drive for miles to find a notary.
- ▶ **Enhanced security** to the notarial process, using a multi-factor approach to authenticate signers, creating a robust audit trail of each notarization, and deploying the latest technologies and forensic tools to stop fraud before it happens.

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.

Technical Amendments: Please note that we have worked with the Attorney General's office, the Uniform Law Commission, and other Hawaii stakeholders on a minor amendment to clarify when remote online notarial acts outside the United States may be allowed:

Insert language on Page 4, after Line 4:

(4) For a remotely located individual located outside the United States:

(A) The document:

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

(ii) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; ~~and or~~

(iii) Involves a transaction with a bank whose deposits are insured by the Federal Deposit Insurance Corporation, including such banks located in the Federated States of Micronesia, Republic of the Marshall Islands, or Republic of Palau; and

We support the committee adopting the above amendment, and respectfully request that the bill pass so that further discussions may continue on this measure.

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

HB 2294 HD 1

