



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 5, 2020 **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, Deputies Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General ("the Department") supports this bill. The Department regulates and commissions the notaries public in the State of Hawaii. Notaries public are an important tool in preventing fraud in various types of transactions. The Notaries Public Act has not been updated since 2008. Accordingly, various statutes need to be clarified and changes are needed to bring Hawaii's notary laws into better conformance with national standards and the Revised Uniform Law on Notarial Acts (2018).

Furthermore, the statutes need to add wording for remote online notarizations; to 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; to 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; to update the record book or journal policy to bring it into conformity with the Revised Uniform Law on Notarial Acts (2018); to clarify that notaries public are not employees or officers of the state; and to make other amendments to strengthen Hawaii's notary practices.

This bill will help the Department modernize the program and record retention requirements with the ability to scan notary specimen cards and will decrease the

record book storage requirements by having the notaries be responsible for their records until their resignation, death, expiration of each term of office, or removal from or abandonment of office, yet allow the Department to still ensure that the record books conform to the laws and regulations of the State of Hawaii. This bill also impacts those state and county agencies such as the Judiciary and Bureau of Conveyances by allowing technology for electronic remote online notarizations.

Because remote online notarizations are relatively new (only about ten states allowed it last year), the Department believes that the technology will be constantly changing and that in order to address that technology and be flexible, any regulations regarding the technology should be done by administrative rules. The Department is currently working on amending the rules to best protect the public from potential fraud. The Department suggests the following technical amendments:

On page 14, line 11, the wording should be changed as follows:

“ . . . is personally knownu to the notary public through”

On page 16, line 16, the wording should be changed as follows:

“ . . . possess the other qualifications required of [~~public officers~~] a notary public and”

On page 19, line 1, the wording should be changed as follows:

“ . . . commissioned as a notary public under this chapter”

On page 29, line 13, the wording should be changed as follows:

“ . . . comply with this section, [~~then~~] the notary shall be subject to an”

On page 33, line 7, the wording should be changed as follows:

“ . . . ~~document~~].”

On page 33, line 9, the wording should be changed as follows:

“ . . . performed by a notary public, an official stamp [~~must~~] shall be affixed”

On page 33, line 13, the wording should be changed as follows:

“ . . . an official stamp [~~may~~] shall be affixed to the certificate. If a”

On Page 33, line 16, the wording should be changed as follows:

“ . . . specified in this section, an official stamp [~~may~~] shall be attached to”

The Department respectfully asks that the Committee pass this bill with technical amendments.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
ON H.B. NO. 2294**

RELATING TO NOTARIES PUBLIC.

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 5, 2020, at 2:05 p.m.
Conference Room 325, State Capitol

PERSON TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Lee, Vice Chair San Buenaventura, and Members of the House 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 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 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.

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.

February 4, 2020

IN OPPOSITION TO HB 2294 Relating to Notaries Public
JUDICIARY COMMITTEE
Wednesday, February 5, 2020
Conference Room 325

ChairmanLee
Vice-Chair San Buenaventura
Members of the Committee on Judiciary

Thank you for the opportunity to submit testimony in opposition to HB 2294 RELATING TO NOTARIES PUBLIC.

As a Hawaii Notary Public since April of 1997, I continue to be deeply concerned about the quality of notarial practice regularly provided to Hawaii consumers. These transactions include not only business generated in Hawaii but also for those engaged in interstate commerce of the sale, purchase and/or refinance of real property. Requests are also made for notarization of documents from foreign countries. Regardless of the source, Hawaii Notaries must notarize in accordance with Hawaii law.

NOTARY PUBLIC OFFICE DOES NOT REPRESENT THE INTERESTS OF HAWAII NOTARIES (WHO CAN BE SUED FOR VIOLATING THE LAW) NOR THOSE IN HAWAII WHO SEEK NOTARIAL SERVICES.

The justification for this bill mentions the last changes to the Notary Laws that were passed in 2008 and even then there was an outcry from Notaries about changes being made without notifying us, Hawaii Notaries, the clear stakeholders in ANY legislation affecting Notarial Practice.

NOW, with the capability of communicating with Hawaii Notaries (which they do on a regular basis when it suits them), the Notary Public Office, once again, chooses to exclude those who will be most affected by the passage of this legislation. **In doing so they intentionally deprive 1,000's of Notaries the opportunity to participate in the legislative process.**

AUTHORITY OF ATTORNEY GENERAL AUTHORITY GIVEN BY LEGISLATURE

The Attorney General is given the authority to oversee the issuance of Notary Commissions by this legislature. This legislature must also ACKNOWLEDGE its responsibility for oversight of the office which fails to require that these Public Officials actually know their duty and perform it in accordance with the law. **By keeping Notaries in the dark about potential legislation, the Notary Public Office is continuing to prevent Notaries Public from participating, as PUBLIC OFFICIALS with DUTY and LIABILITY, from having a say in the process.**

LIMITED PURPOSE DRIVER LICENSE/EXAMPLE OF FAILURE OF NOTARY PUBLIC OFFICE

I recently learned the DMV is aware that LIMITED PURPOSE DRIVER LICENSE (LPDL) is ONLY FOR DRIVING and not to be used for identification. Nevertheless, there has been no DIRECT communication, by the Notary Public Office TO Hawaii Notaries that LPDL is NOT acceptable I.D.

Even though the LPDL states on the front that it is “NOT ACCEPTABLE FOR OFFICIAL FEDERAL PURPOSES” and on that back “THIS LICENSE IS ISSUED ONLY AS A LICENSE TO DRIVE A MOTOR VEHICLE. IT DOES NOT ESTABLISH ELIGIBILITY FOR EMPLOYMENT, VOTER REGISTRATION, OR PUBLIC BENEFITS,” apart from clear instruction from the Notary Public Office to Notaries and the employers of Notaries, there is a clear PRESENT danger that Notaries who are just “stamping and signing,” without understanding the purpose and duty they have to all parties to the notarized document, will accept this LPDL as identification for the purpose of notarization.

THIS BILL FURTHER EXPANDS THE **ALREADY-UNKNOWN LAWS HAWAII NOTARIES MUST ABIDE BY AT HUGE FINANCIAL RISK TO ALL (Notarial Russian Roulette)**

The standards of integrity, diligence, and skill, from 66 C.J.S. Notaries § 26, are mentioned, in passing, in the Notary Public Manual, but there is no attempt to educate Hawaii Notaries about what that actually means.

The Notary Public Office’s failure to educate Notaries about the duty they have to all parties to a notarized transaction, what it truly means to complete a Journal entry AT LENGTH and the

potential for THEIR ULTIMATE FINANCIAL AND POTENTIALLY CRIMINAL LIABILITY. Each day these Hawaii Notaries unknowingly participate in a high-risk game of Notarial Russian Roulette (**TANTAMOUNT TO ISSUING THEM A GUN PERMIT WITH NO TRAINING**).

HAWAII NOTARIES ARE COMMISSIONED IN A PROCESS THAT COMPROMISES THE VERY BASIC TENANTS OF NOTARIZATION: INTEGRITY, DILIGENCE AND, SKILL

Notarization is DECEPTIVELY COMPLEX PROCESS, and yet there is no requirement that those applying for Commissions as Notaries Public to take any type of ADEQUATE training. The token training provided a couple of years ago by the company out of Utah was inadequate at best and totally wrong in much of the information they were giving at the least.

It was obvious that the instructor was not prepared to educate Hawaii Notaries about Hawaii Law. Even the title of the training, “Notarization made simple...” was a clear indication they did not understand the process at all. In fact, he actually advised attendees on one section of the law but INTENTIONALLY failed to explain the entire statute and requirement placed on the Notary in a transaction of that type.

MULTIPLE VIOLATION OF HAWAII LAW BY FHB NOTARY PUBLIC

The vast majority of Hawaii Notaries DO NOT GIVE THE SIGNER AN OATH WHEN REQUIRED by certain notarial acts. If a Notary signs a notarial certificate saying they have given the signer an oath, and have, in fact, failed to do so, they have completed a false notarial certificate.

HRS 502-54 Penalty for false certificate.

*Any officer authorized to take acknowledgments to instruments who knowingly incorporates in the certificate of acknowledgment any **false or misleading statement as to the facts** therein contained, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. **Nothing in this section shall be construed to do away with the liability for civil damages for such act.** [L 1882, c 41; am L 1903, c 8, §2; RL 1925, §3159; RL 1935, §5145; am L 1941, c 22, §1; RL 1945, §12745; RL 1955, §343-38; HRS §502-54] [emphasis added]*

I recently posted an article in LinkedIn article about my attempt to get an Affidavit notarized by a FHB Notary Public. The Notary violated the law in three respects, two of which were ultimately

corrected by him. However, that violation that would have resulted in a violation of HRS 502-54, above, was that after I signed the document he signed and stamped the jurat wording and handed the document back to me, FAILING TO DO WHAT HE HAD CERTIFIED HE HAD DON (subscribed and **sworn...**) because he failed to give me the required oath. Someone down the line has misinformed many Notaries in Hawaii that the fact that the signer signs the document that means that they are swearing to the truth of the statements in that document. NOTHING COULD BE FURTHER FROM THE TRUTH.

I pointed out, as required by the NNA Notary Public Code of Professional Responsibility, that by notarizing my signature but failing to administer an oath he had completed **A FALSE NOTARIAL CERTIFICATE [HRS §502-54 Penalty for false certificate]**. I offered to let him correct that by giving me the required oath. Instead, he took the document back from me, crossed out the entire notarial wording, handed it back to me and suggested I not let the door hit me on my way out.

FHB's response was to have their attorney issue me a "cease and desist" from ever attempting to get notarization from any FHB notary, which I deem an illegal attempt to prevent me, a member of the public, from seeking notarial service from FHB Public Notaries (after telling me how well FHB Notaries know how to do their job.). **HRS 456-1** The Notary Public Office was informed of this but to this date, months later has not communicated with me concerning this behavior of one of their commissioned Notaries.

FURTHER CHANGES TO HAWAII NOTARY LAW MUST CEASE UNLESS OR UNTIL THERE IS A SYSTEM IN PLACE THAT ACTUALLY RECOGNIZES THE IMPORTANCE OF NOTARIZATION, THE HUGE FINANCIAL RISK TO ALL PARTIES WHEN NOTARIZATION IS NOT CARRIED OUT ACCORDING TO LAW, AND TRAINING AND CONTINUING EDUCATION OF HAWAII NOTARIES IS INSTITUTED

What I have written here is just the tip of the proverbial ICEBERG OF THE LESS-THAN-KNOWLEDGEABLE Notarial Practice being performed by Hawaii's **1,000's of Notaries who have not taken any training, and have only taken one test in their entire career.**

Unfortunately, the Notary Office is not prepared to train others because they themselves do not have the requisite training.

There is a GENERAL FAILURE of all parties concerned of the HUGE consumer protection risk to consumers AND to Notaries if the Notary does not know and follow the law cause financial damage to any or all parties to the notarized transaction. There MUST BE initial and continuing education of Hawaii Notaries.

NOTARY PUBLIC OFFICE REFUSES TO ACKNOWLEDGE RISK

Attorneys do not receive training about Notary law in Law school but that should not be an excuse and one day someone will suffer damages sufficient for legislators to sit up and take notice.

At some point, the financial damage done to a notary consumer will rise to the level that the Hawaii Government will have to acknowledge responsibility for commissioning 1,000's of uneducated Notaries Public and permitting them to provide unlawful notarial service for unsuspecting consumers, including interstate transactions. This is the situation the Notary Public Office refuses to recognize exists.

Ask yourself these questions:

Are you willing to have a deed to YOUR property notarized by a signer presenting a Limited Purpose Driver license with YOUR name but their picture on it?

Or how about the title to your vehicle transferred to someone else in the same situation?

Maybe you would feel better if your vehicle was just stolen and shipped to the mainland by a person "you" authorize to take your vehicle to the docks?

Thank you,

Cheryl Kaster
Honest Notary



Testimony of First American Title
on
H.B. 2294 Relating to Notarial Acts
before the
House Committee on Judiciary

Wednesday, February 5, 2020
2:05 p.m., Conference Room 325

Chair Lee and Distinguished Members of the Committee on Judiciary:

First American Title¹ is grateful for the opportunity to **support** H.B. 2294 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. 2294 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 able to use Hawaii notaries operating under Hawaii law. H.B. 2294 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.

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.

Enhanced Security for the Most Important Transactions

H.B. 2294 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. 2294 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 online 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.

Suggested Amendments

There are a few minor and merely technical inconsistencies in the commissioning process for a notary to perform remote online notarizations in H.B. 2294. We are continuing to work with the Attorney General's office on amendments to address these issues.

* * *

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

Presentation to The
Committee on Human Services & Homelessness
February 5, 2020 2:05 P.M.
State Capitol Conference Room 325

Testimony in Opposition to HB 2294

TO: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, 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 has no objection to the concept of the bill but notes that the language in the bill needs to be amended in certain areas to provide greater clarity.

On page 1, in section (a), a notary public may refuse to perform a notarial act if the notary is not satisfied that the person is not competent or did not voluntarily sign the signature. However, that section does not provide that the notary may refuse to perform if the notary is not satisfied that the person before the notary is the person the person purports to be. That provision should be added to the bill.

On pages two and three, there is an attempt to define “foreign state”, and “outside the United States”, but the definitions can be confusing and should be clarified. For example, in the definition of a “foreign state”, territories and Puerto Rico and the United States Virgin Islands are named as included under the definition, but according to the Department of Interior, Office of Insular Affairs, both Puerto Rico and the United States Virgin Islands are territories and thus there is redundancy in the definition of a “foreign state”. Further, the term “insular possession” is used in the definition of “foreign state”, but the Office of Insular Affairs says that “insular possession” is the equivalent of a territory and is no longer current colloquial language. “Insular possession” can be a confusing term because “insular possession” is used in federal statutes but in the context of tariffs (19 CFR section 7.2).

It should be noted that Puerto Rico is also a commonwealth and a territory and so is the Commonwealth of the Northern Mariana Islands.

The term “Outside the United States” also suffers from the foregoing language issues. It also states that a location “outsides the United States” includes a location not subject to the jurisdiction of the United States. However, there are locations which are not totally under the jurisdiction of the United States but are partially under the jurisdiction of the United States. For example, those born in American Samoa do not enjoy birth rights of citizenship. There is a question about the islands in the Pacific that have signed the Compact of Free Association and whether they would be subject to the

United States jurisdiction. After all, the Bank of the Federated States of Micronesia does have FDIC insurance which raises the issue of jurisdiction.

On page 4, lines 20 and 21, the term of “territorial jurisdiction” is used but is not defined. That term should be defined in accordance with the definition used by the Office of Insular Affairs.

It may be better to limit the jurisdictions as being a state, the District of Columbia or an insular area.

On page 10 of the bill, there is a section that references the federal Electronic Signatures law, better known as E-Signs, but the bill does not consider that Hawaii has its own Electronic Transactions Act (Chapter 489E) and also the implication of section 502-122, Hawaii Revised Statutes in the Bureau of Conveyances chapter.

HBA does not consider these issues to be major but consideration should be given to amending the bill to ensure clarity in any law that is enacted.

Thank you for the opportunity to submit this testimony in opposition to HB 2294. Please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

February 4, 2020

House Committee on Judiciary
The Honorable Chis Lee, Chair
The Honorable Joy San Buenaventura, Vice-Chair
Members of the Committee

February 5, 2020, 2:05 PM
State Capitol Conference Room 235

Re: Testimony to **SUPPORT** HB 2294 Relating to Notarial Acts

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii and includes banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. MBAH members originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

We support this bill in concept, as well as companion bill SB 2850, and similar bills HB 1803 and SB 2275, as they will augment:

- Convenience and cost savings to handicapped, home-bound, or rural signers
- Increased efficiencies for local entities
- Control of notarial acts within Hawaii that affect Hawaii properties
- Increased efficiencies in record keeping and search capability of notarial acts
- Additional security in attempted fraud situations
- A more "green" environmentally friendly process that relies on less paper and less gasoline

Remote online notarization provides convenience and cost savings for handicapped, home-bound, and rural signers.

For home-bound and handicapped signers, and those in rural neighbor-island locations, remote online notarization provides additional flexibility for scheduling a notary session, and may provide cost savings, as the cost of a remote online notarization session may be substantially lower than having a "mobile notary" drive to a remote location in order to witness an in-person signing. Also, online notarization is more "green" than having a "mobile notary" drive to a far-away rural location.

Electronic notarial and online notarial acts performed in other states are already allowed.

Under current Hawaii notary law, electronic notarizations are not allowed by Hawaii notaries. However, the Bureau and Land Court will record documents that affect Hawaii properties that are electronically notarized by out-of-state notaries according to those states' laws. This has two effects:

1. We have disadvantaged Hawaii notaries and institutions that want to use their own employees to notarize documents using the efficiencies of electronic notarization. For each document under current Hawaii law, the document must be "papered out" (meaning physically printed on paper), wet-signed by the person executing the document, and then wet signed again by the notary. This document may then be submitted in original "wet-signed" copy to the Bureau or Land Court for recording, OR re-scanned and converted to an electronic document for electronic recording using an interfacing software provided by a vendor. Also, the paper "record book" must be manually completed to log the transaction by the notary and then signed by the by the signer, instead of allowing the software system to electronically capture and transfer the data to the notary's electronic log of all notarial acts. In this case, we have wasted paper and eliminated the efficiencies of allowing both the executing employee and the notary employee (who may sit at the same desk) to electronically sign the document, and then forwarding that document electronically for recording without ever having to print it out. Allowing electronic notarization without the "paper out" process is much more "green" and efficient. Hawaii financial institutions are outsourcing work to the mainland that could otherwise be performed in Hawaii with the adoption of electronic notarization.
2. Lenders may "notary shop" to find a state in which remote online notary acts are already permitted. Under current Virginia law, a notary in Virginia may perform a remote notarial act irrespective of the location of the signer, the location of the property, or the state in which the document will be recorded. The lender or settlement agent needs only to initiate the session with the notary in order to begin this process. Hence, online remote notarization is already taking place that affects Hawaii properties and it is out of our control. As more states pass laws to allow remote online notarization the situation will amplify.

Electronic log of notarial acts is more effective, more environmentally friendly, and easier to search than paper "record books".

Under current law, each notary must maintain a separate paper "record book" in which all notarial acts are journaled. Neither HRS 456-15 nor HAR 5-11-9 / 15-11-17 specify that these acts must be sequential logged within each book. Instead it only specifies that each book must record the date range of the acts that are logged within the book. Thus, a notary may log transactions in a non-sequential manner within each record book, making it more challenging to search a disputed notarial act by date. The notary must surrender the original record book to the AG's office when it is full, upon death, termination of commission, or termination of employment, as applicable. Not only does the AG's office have to store copious amounts of paper record books, it is substantially more difficult to search paper record books for disputed transactions than electronic records. The adoption of electronic logs that may be transmitted to the AG's office would be more "green", more secure, more cost-effective for storage, and save time should search of a disputed transaction be necessary.

Remote online notarization may be more secure than in-person notarization

Hawaii depositories institutions have experienced situations in which fraudsters were able to provide identification that was either

1. legitimately issued by another state to someone who was not indeed the person who appears on the identification, or
2. were fabricated so well that they passed the ID scanners similar to those used by the TSA.

Not only do the remote online notarization software systems and process scan the ID bar coding to verify that the ID is legitimate, it then (as one vendor described) runs “a comparison to state databases to ensure the address on the ID is an expected address. . . All of this is in conjunction with the comparison of the information on the front of the ID and the barcode on the back of the ID, as well as checks against state ID templates and security features.” (1)

The process then includes out-of-wallet challenge questions generated from a couple of confidential national databases (e.g. “which addresses have you been associated with”, “which model of car was registered to you”, etc.) before the notary session is begun. Therefore, a fraudster with a fabricated identification may have a more difficult time in an online session than in a person-to-person session unless the entire life history of the true intended signer is known.

Additionally, each online session incorporates a recording, which may deter fraudsters who may not want to be recorded for future incrimination should their deception be discovered.

Our position: SUPPORT

In summary, we strongly support this bill due to the increased efficiencies and in order to grant our notaries the same flexibility as out of state notaries currently enjoy.

Thank you for the opportunity to present this testimony.

VICTOR BROCK
Mortgage Bankers Association of Hawaii

(1) Nick Rogerio, *Director of Operations, Nexsys Technologies*