

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
ON S.B. NO. 2275, H.D.1**

RELATING TO NOTARIAL ACTS.

BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: Monday, June 29, 2020, at 2:00 p.m.
Conference Room 329, State Capitol

PERSON SUBMITTING TESTIMONY: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance:

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 written testimony in **support** of the intent of Senate Bill No. 2275, H.D. 1, relating to notaries public. Senate Bill No. 2275, House Draft 1, 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 Senate Bill No. 2275, 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.

Thank you very much for this opportunity to submit comments on this measure.



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: June 28, 2020

TO: Representative Sylvia Luke
Chair, Committee on Finance
Submitted Via Capitol Website

FROM: Mihoko Ito

RE: **S.B. 2275, S.D.2, H.D.1 Relating to Notarial Acts**
Hearing Date: Monday, June 29, 2020 at 2:00 p.m.
Conference Room: 329

Dear Chair Luke, Vice Chair Cullen and Members of the House Committee on Finance:

We submit this testimony **in support of S.B. 2275, S.D.2, H.D.1** on behalf of First American Title Insurance Company, a subsidiary of First American Financial Corporation and one of the nation's largest title insurance companies and providers of real estate settlement services.

First American Title supports S.B. 2275, S.D.2, H.D.1 Relating to Notarial Acts. This bill will benefit Hawaii's residents and business community by enacting 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 25 states and are currently under consideration in 18 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.

Under the Governor's Emergency Proclamation due to COVID-19, notarial acts have been permitted to be done remotely utilizing audio-visual technology. When the Emergency Proclamation expires, the passage of this bill will allow for remote online notaries to continue to facilitate business transactions, while promoting social distancing.

Given the pandemic circumstances, we would respectfully request that the effective date of this measure be amended to January 1, 2020.

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

Presentation to The
Committee on Finance
June 29, 2020 2:00 P.M.
State Capitol Conference Room 329

Testimony in Support of SB 2275, SD 2, HD 1

TO: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, 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 it would have rendered two FDIC insured banks, both (Bank of Hawaii and the Bank of the Federated States of Micronesia) have either branches or offices in Hawaii and they would have being forced to overcome hurdles to remotely execute a document in the Trust Territories. 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, the stakeholders, all agreed on an amendment which resolved the issues and such amendment was incorporated in SB 2275, SD 2, HD 1.

Thank you for this opportunity to offer testimony in support of SB 2275, SD 1, HD 1. Please let us know if we can provide further information on this measure.

Neal K. Okabayashi
(808) 524-5161



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

June 27, 2020

House Committee on Finance

June 29, 2020, 2:00 PM
State Capitol Conference Room 329

Re: Testimony to **SUPPORT** SB 2275, SD2, HD1 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 similar bills SB 2850, HB 1803 HD1, and HB 2294 SD2, 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.

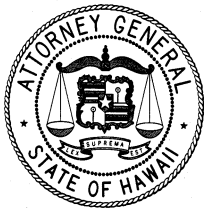
Our position: SUPPORT

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 with a qualifier that approval of this bill, or similar, should stipulate both a specific deadline for the AG’s office to finalize rules as well as sufficient funding and resources for the AG to investigate relevant technologies and best practices in order to formulate these rules to comply with this deadline.

Thank you for the opportunity to present this testimony.

VICTOR BROCK
Mortgage Bankers Association of Hawaii

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



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2275, S.D. 2, H.D. 1, RELATING TO NOTARIES ACTS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

LATE

DATE: Monday, June 29, 2020

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact DEAN A. SOMA,
Deputy Attorney General, at 586-0817)

Chair Luke 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 a person, not in the physical presence of the notaries public and outlines how 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 fourteen of those states have fully implemented their remote online procedures. More recently, in response to the COVID-19 emergency, many other states put in place emergency measures to allow remote notarization to varying degrees. Additionally, Congress is currently considering to pass the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 (SECURE Notarization Act), bipartisan legislation to authorize and establish minimum standards for remote notarizations that occur in or affect interstate commerce. See Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020, S.3533, 16 Congress (2019-2020)

In the State of Hawaii, Governor Ige issued Executive Order No. 20-02 and emergency rules allowing remote ink-signed notarizations (RIN). RIN is a paper-based video-chat notarization and differs from the remote online notarization (RON) proposed under this bill. Unlike RON, RIN does not use electronic documents or require credential analysis and identity proofing. In short, RON is considered a more secure and streamlined method for remote notarization. As such, the extent of notarial acts permissible with RIN under the emergency notary rules has been set purposefully more limited.

It is our understanding that the increasing numbers of notaries public in Hawaii are utilizing RIN to perform notarial acts to ensure their safety and that of their clients. We believe it is imperative to authorize remote notarization beyond the expiration of the emergency notary rules and implement RON in the State of Hawaii as soon as possible by the passage of this bill.

The Notaries Public Act has not been updated since 2008. The changes included in the bill 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; and make other amendments to strengthen Hawaii's notary practices.

Presently, the Department does not foresee any need for additional funds due to the passage of this bill. The Department's Notaries Public Office is self-sustained by the Notaries Public Revolving Fund (Fund) and will utilize the moneys in the Fund to cover the costs and expenses arising from the proposed amendments to the statutes.

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.



1654 South King Street
Honolulu, Hawaii 96826-2097
Telephone: (808) 941.0556
Fax: (808) 945.0019
Web site: www.hcul.org
Email: info@hcul.org



House Committee on Finance
Monday, June 29, 2020, 2:00 pm
Hawaii State Capitol, Room 229

LATE

Testimony in Support of SB 2275, Relating to Notarial Acts

To: The Honorable Brian Taniguchi, Chair
The Honorable Les Ihara, Jr., Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 51 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following testimony in support of SB 2275, Relating to Notarial Acts.

This bill modernizes and updates the laws pertaining to notaries public, allowing for remote notaries.

While we still have some concerns about the potential for fraud in notarization, we understand the need for remote online notary services. With the current pandemic situation, many aspects of life and doing business have had to evolve. Allowing for remote online notary services would help consumers and businesses such as financial institutions, by expediting certain transactions in need of notarization while minimizing health risk.

Thank you for the opportunity to provide comments on this issue.