



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2275, RELATING TO NOTARIAL ACTS.

**BEFORE THE:**

SENATE COMMITTEES ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH AND ON  
TECHNOLOGY

**DATE:** Tuesday, February 11, 2020 **TIME:** 3:15 p.m.

**LOCATION:** State Capitol, Room 414

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

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Chairs Baker and Keohokalole and Members of the Committees:

The Department of the Attorney General (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 the same physical location, provided that the notary and individual can communicate with each other simultaneously by sight and sound by means of communication technology.

The Department does not support this bill. The Department supports S.B. No. 2850, which addresses our concerns in this testimony. Unlike S.B. No. 2850, this bill does not track the wording of section 14A of the Revised Uniform Law on Notarial Acts (2018) ("RULONA") drafted by the National Conference of Commissioners on Uniform States Laws regarding "Notarial Act Performed for Remotely Located Individual". This bill, unlike S.B. No. 2850, is missing wording found in section 14A of RULONA as well as other issues regarding notaries public that are needed to update the laws regarding notaries public, including the following: to conform to RULONA, the Hawaii Uniform Electronic Transactions Act, other state notary laws, and current notary practices.

Last year only ten states had implemented remote online notary laws. This year the number has increased to twenty-two. Because remote online notarizations are relatively new, the Department believes that the technology will be constantly changing and that in order to address that technology and be flexible, any regulations regarding that 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 has the following concerns:

Page 2, lines 12 to 15: The states that do define “credential analysis” like Texas and Tennessee have the process or service be approved by the regulating agency, in this case the Attorney General.

Page 2, lines 19 to 21: The states that do define “electronic record” add as a requirement that it be retrievable in a perceivable form. The lack of that requirement is a concern to the Division of Financial Institutions of the Department of Commerce and Consumer Affairs.

Page 3, lines 15 to 19: The states that do define “identify proofing” have the requirements be promulgated by the regulating agency, in this case the Attorney General. Also, we believe that that term should be “identity proofing”.

Page 3, line 20, to page 4 line 3: The term “notarial act” does not need to be defined, or if defined, should be in section 456-1.6, Hawaii Revised Statutes. Furthermore, the term "notarial act" should follow the RULONA wording to mean "an act, whether performed with respect to a tangible or electronic record, that a notary public may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument."

Page 5, lines 4 to 9: The term “remote presentation” should state that the individual’s identification card should be a government issued identification.

Page 6, lines 10 to 14: There should be no knowledge requirement to this section. The knowledge requirement is not included in RULONA. The remote online notary public should not be authorized to perform the notarial act if the act of making the

statement or signing the electronic record is prohibited by the foreign state where the remotely located individual is located.

Page 6, line 15, to page 9, line 14: The electronic record of remote online notarizations needs to be retrievable in a perceivable form. There is a concern that because the technology may be proprietary, the electronic record may require third parties to purchase the software or other technology in order to obtain the record of the notarial act. The Attorney General should also have authority to audit the electronic record to ensure compliance with the chapter.

Page 8, lines 12 to 20: There should be a separate section that states that on the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit it to the attorney general or a repository approved by the attorney general.

Page 9, line 19: The tamper-evident format should be promulgated by the regulating agency, in this case the Attorney General.

Page 10, line 9, should delete the term "reasonable". The concern that the regulating agencies have regarding electronic seals are that in this digital age, an electronic seal is very easy to be copied. The Attorney General should approve any electronic seal and the method by which it is protected from unauthorized use.

Page 10, line 19, to page 11, line 4: Because a remote online notary public would be exempt from providing the clerk of the circuit court a specimen of the notary public's signature or impression of their seal, the clerk would need notification that the notary is authorized as a remote online notary public. There should be a separate commission for remote online notaries public to be filed with the clerk of the circuit court.

Having a separate commission would also ensure that the remote online notary public be knowledgeable of the new requirements. The remote online notaries public would need to have a separate exam as the notarial requirements are significantly different.

Page 13, line 16, to page 14, line 16, should add a requirement providing proof or certification that the coding, disk, certificate, card software or password had been

destroyed. There should also be a requirement that violation of this section would be subject to a fine.

Page 14, line 17, to page 18, line 15, should be deleted because this wording does not follow either RULONA or the Mortgage Bankers Association – American Land Title Association Model Legislation for Remote Online Notarization. The Department believes that since so few states have implemented remote online notary laws and because the technology will be constantly changing with more technology companies vying for notaries public to use their products, in order to address that technology and be flexible any regulations regarding that technology should be done by administrative rules. The Department is currently drafting rules to safeguard the public from fraud.

Page 15, lines 8 to 10, should be changed as follows:

". . . has expired, has been revoked or terminated by the [~~issuing or registering authority,~~ attorney general, is invalid, or is incapable of authentication."

Page 19, line 14, to page 20, line 4, should be deleted as there should be no automatic validation of online notarial acts where the remote online notary public failed to perform a duty or meet a requirement under the section.

On page 21, lines 1 to 2, the wording should be changed as follows:

". . . that Act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b)."

The Department appreciates the opportunity to provide comments but recommends that the Committees consider S.B. No. 2850 as the preferred vehicle.



**Testimony of First American Title**  
**on**  
**S.B. 2275 Relating to Notarial Acts**  
**before the**  
**Senate Committee on Commerce, Consumer Protection, and Health**  
**Senate Committee on Technology**

**Tuesday, February 11, 2020**  
**3:15 p.m., Conference Room 414**

Chair Baker, Chair Keohokalole and Distinguished Members of the Committees:

First American Title<sup>1</sup> is grateful for the opportunity to **support** S.B. 2275 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**

S.B. 2275 would enact model legislation<sup>2</sup> to support remote online notarization. Such laws have already been adopted in 22 states and are currently under consideration in 20 others. In addition, the model legislation 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. S.B. 2275 would safeguard consumers by extending the protections of Hawaii law to this rapidly expanding type of notarial practice. By getting out in front of

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<sup>1</sup> 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.

<sup>2</sup> Mortgage Bankers Association – American Land Title Association (MBA-ALTA) Model Legislation for Remote Online Notarization.

this trend, we can make sure that the safeguards embodied in the model act and the NASS Standards are available to protect Hawaii consumers.

### **Enhanced Security for the Most Important Transactions**

S.B. 2275 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**: S.B. 2275 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**

We have been working with the Attorney General’s office on an amended version of S.B. 2275 based on the Uniform Law Commission’s **Revised Uniform Law on Notarial Acts (2018)** instead of the MBA-ALTA Model Legislation. The two models are substantively the same—with both supporting the NASS Standards—and we look forward to supplying the committee with the revised language.

\* \* \*

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

REVISED: ~~10/21/19~~  
REVISED: ~~10/17/19~~  
REVISED: ~~10/14/19~~  
1ST DRAFT DATE: 9/13/19

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## A BILL FOR AN ACT

RELATING TO NOTARIES PUBLIC.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The purpose of this Act is to update the laws  
2 regarding notaries public including the following: to conform to  
3 the Revised Uniform Law on Notarial Acts (2018) (RULONA), the  
4 Hawaii Uniform Electronic Transactions Act, other state notary  
5 laws, and current notary practices.

6 SECTION 2. Chapter 456, Hawaii Revised Statutes, is  
7 amended by adding new sections to be appropriately designated  
8 and to read as follows:

9 **"§456- Authority to refuse to perform notarial act. (a)**

10 A notary public may refuse to perform a notarial act if the  
11 notary public is not satisfied that:

12 (1) The person executing the document is competent or has

13 the capacity to execute the document; ~~or~~

14 (2) The person's signature is knowingly and voluntarily

15 made; or

16 (3) The notary public has proof of the signer's signature

17 and identity or, of the person is a remotely located

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1           individual, satisfactory evidence of the identity  
2           under section 456- . . .

3           (b) A notary public may refuse to perform a notarial act  
4 unless refusal is prohibited by law other than this chapter.

5           **§456- Notarial act performed for remotely located**  
6 **individual.** (a) For purposes of this section, the following  
7 definitions shall apply:

8           "Communication technology" means an electronic device or  
9 process that:

10          (1) Allows a remote online notary public and a remotely  
11           located individual to communicate with each other  
12           simultaneously by sight and sound; and

13          (2) When necessary and consistent with other applicable  
14           law, facilitates communication with a remotely located  
15           individual who has a vision, hearing, or speech  
16           impairment.

17          "Foreign state" means a jurisdiction other than the United  
18 States, a state of the United States, the District of Columbia,  
19 Puerto Rico, the United States Virgin Islands, any territory or  
20 insular possession subject to the jurisdiction of the United  
21 States, or a federally recognized Indian tribe.

22          "Identity proofing" means a process or service by which a  
23 third person provides a remote online notary public with a means



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1 to verify the identity of a remotely located individual by a  
2 review of personal information from public or private data  
3 sources.

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

9 "Remote online notary public" means an individual  
10 commissioned by the attorney general to perform notarial acts  
11 for remotely located individuals.

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

15 (b) A remotely located individual may comply with any  
16 requirement of law of this State to appear personally before or  
17 be in the presence of a notary public at the time of the  
18 performance of a notarial act by using communication technology  
19 to appear before a remote online notary public.

20 (c) A remote online notary public located in this State  
21 may perform a notarial act using communication technology for a  
22 remotely located individual if:

23 (1) The remote online notary public:

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- 1           (A) Has personal knowledge of the identity of the
- 2                   individual;
- 3           (B) Has satisfactory evidence of the identity of the
- 4                   remotely located individual by oath or
- 5                   affirmation from a credible witness appearing
- 6                   before the remote online notary public under this
- 7                   chapter or this section; or
- 8           (C) Has obtained satisfactory evidence of the
- 9                   identity of the remotely located individual by
- 10                  using at least two different types of identity
- 11                  proofing;
- 12   (2) The remote online notary public is reasonably able to
- 13                  confirm that a document before the remote online
- 14                  notary public is the same document in which the
- 15                  remotely located individual made a statement or on
- 16                  which the individual executed a signature; and
- 17   (3) The remote online notary public, or a person acting on
- 18                  behalf of the remote online notary public, creates an
- 19                  audiovisual recording of the performance of the
- 20                  notarial act.
- 21   (4) For a remotely located individual located outside the
- 22                  United States:
- 23           (A) The document:

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1           ~~(iA)~~ Is to be filed with or relates to a matter  
2                     before a public official or court,  
3                     governmental entity, or other entity subject  
4                     to the jurisdiction of the United States; or

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5           ~~(iiB)~~ Involves property located in the  
6                     territorial jurisdiction of the United  
7                     States or involves a transaction  
8                     substantially connected with the United  
9                     States; and

10          ~~(B2)~~ The act of making the statement or signing the  
11                     record is not prohibited by the foreign state in  
12                     which the remotely located individual is located.

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13          ~~(de)~~ If a notarial act is performed under this section, any  
14                     certificate of notarial act required by this chapter or other  
15                     law of the State must indicate that the notarial act was  
16                     performed using communication technology.

17          ~~(ef)~~ A form of certificate of notarial act subject to this  
18                     section and authorized by law of the State, including a  
19                     certificate of acknowledgment provided in section 502-41, is  
20                     sufficient if it:

21            (1) Complies with rules adopted under this section; or

22            (2) Is in the form authorized by law of the State and  
23                     contains a statement substantially as follows: "This

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1           notarial act involved the use of communication  
2           technology."

3           ~~(f)~~ A remote online notary public, guardian, conservator,  
4 or agent of a remote online notary public, or a personal  
5 representative of a deceased remote online notary public shall  
6 retain the audiovisual recording created under this section or  
7 cause the recording to be retained by a repository designated by  
8 or on behalf of the person required to retain the recording.  
9 Unless a different period is required by rule adopted under this  
10 section, the recording must be retained for a period of at least  
11 ten years after the recording is made.

12           ~~(g)~~ Before a remote online notary public performs the  
13 remote online notary public's initial notarial act under this  
14 section, the remote online notary public shall notify the  
15 attorney general that the remote online notary public will be  
16 performing notarial acts with respect to remotely located  
17 individuals and identify the technologies that the remote online  
18 notary public intends to use. The technology selected by a  
19 remote online notary public ~~for remote online notarizations to~~  
20 perform notarial acts for remotely located individuals must  
21 conform to the attorney general's standards developed for this  
22 chapter.

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1       ~~(h)~~ In addition to adopting, amending, or repealing rules  
2 under section 456-1.5 and section 456-8, the attorney general  
3 may adopt, amend, or repeal rules pursuant to chapter 91  
4 regarding the performance of notarial acts under this section,  
5 including:

6       (1) Prescribing the means of performing a notarial act  
7 involving a remotely located individual using  
8 communication technology;

9       (2) Establishing standards for communication technology  
10 and identity proofing;

11       (3) Establishing requirements and procedures to approve  
12 providers of communication technology and the process  
13 of identity proofing; and

14       (4) Establishing standards and a period of retention of an  
15 audiovisual recording created under this section.

16       ~~(i)~~ Before adopting, amending, or repealing a rule  
17 governing the performance of a notarial act with respect to a  
18 remotely located individual, the attorney general shall  
19 consider:

20       (1) The most recent standards regarding the performance of  
21 a notarial act with respect to a remotely located  
22 individual promulgated by national standard-setting

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1           organizations and the recommendations of the National  
2           Association of Secretaries of State;

3           (2) The standards, practices, and customs of other  
4           jurisdictions that have laws substantially similar to  
5           this section; and

6           (3) The views of governmental officials and entities and  
7           other interested persons.

8           **§456- Application; qualifications.** (a) A notary public  
9           or an applicant for commission as a ~~remote online~~ notary public  
10           may apply to the attorney general to be commissioned as a remote  
11           online notary public in the manner provided by this section.

12           (b) A person qualifies to be commissioned as a remote  
13           online notary public by:

14           (1) Satisfying the qualification requirements for  
15           commission as a notary public under this chapter;

16           (2) Paying the application fee; and

17           (3) Submitting to the attorney general an application in  
18           the form prescribed by the attorney general that  
19           satisfies the attorney general that the applicant is  
20           qualified.

21           (c) The attorney general may charge a fee for an  
22           application submitted under this section in an amount necessary  
23           to administer this section.

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1       (d) The technology selected by a remote online notary  
2 public to perform notarial acts~~for remote online notarizations~~  
3 must conform to the attorney general's standards developed under  
4 this section.

5       (e) The remote online notary public under this chapter  
6 shall forthwith file a literal or photostatic copy of the  
7 person's commission with the clerk of the circuit court of the  
8 circuit in which the remote online notary public resides.

9       (f) An individual commissioned as a remote online notary  
10 public by the attorney general under this section is a notary  
11 public for purposes of this chapter and is subject to the  
12 requirements, powers, and duties of a notary public under this  
13 chapter.

14       §456-     Notification regarding performance of notarial act  
15 on electronic record; selection of technology; acceptance of  
16 tangible copy of electronic record. (a) A notary public may  
17 select one or more tamper-evident technologies to perform  
18 notarial acts with respect to electronic documents. A person  
19 may not require a notary public to perform a notarial act with  
20 respect to an electronic document with a technology that the  
21 notary public has not selected.

22       (b) Before a notary public performs the notary public's  
23 initial notarial act with respect to an electronic document, a

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1 notary public shall notify the attorney general that the notary  
2 public will be performing notarial acts with respect to  
3 electronic documents and identify the technology the notary  
4 public intends to use. The technology selected by a remote  
5 online notary public for remote online notarizations must  
6 conform to the attorney general's standards developed for this  
7 chapter.

8       (c) The registrar may accept for recording under chapter  
9 502 a tangible copy of an electronic document containing a  
10 notarial certificate as satisfying any requirement that a  
11 document accepted for recording be an original, if the notary  
12 public executing the notarial certificate certifies that the  
13 tangible copy is an accurate copy of the electronic document.

14       **~~§456-~~ Validity of notarial acts.** Except as otherwise  
15 provided in section 456-14(b), the failure of a notary public to  
16 perform a duty or meet a requirement specified in this chapter  
17 does not validate or invalidate a notarial act performed by the  
18 notary public. The validity of a notarial act under this  
19 chapter does not prevent an aggrieved person from seeking to  
20 invalidate the document or transaction that is the subject of  
21 the notarial act or from seeking other remedies based on law of  
22 the State other than this chapter or based on law of the United  
23 States. This section does not validate a purported notarial act



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1 performed by a person who does not have the authority to perform  
2 notarial acts.

3 **§456- Relation to federal Electronic Signatures in**  
4 **Global and National Commerce Act.** This chapter modifies,  
5 limits, and supersedes the federal Electronic Signatures in  
6 Global and National Commerce Act, 15 United States Code section  
7 7001, et seq., but does not modify, limit, or supersede section  
8 101(c) of that Act, 15 U.S.C. section 7001(c), or authorize  
9 electronic delivery of any of the notices described in section  
10 103(b) of that Act, 15 U.S.C. section 7003(b)."

11 SECTION 3. Section 456-1, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "~~§456-1 [Appointment]~~ **Commission; renewal.** (a) The  
14 attorney general may, in the attorney general's discretion,  
15 ~~[appoint and]~~ commission such number of notaries public for the  
16 State as the attorney general deems necessary for the public  
17 good and convenience. The term of ~~[office]~~ commission of a  
18 notary public shall be four years from the date of the notary's  
19 commission, unless sooner removed by the attorney general for  
20 cause after ~~[due]~~ the opportunity for hearing; provided that  
21 after ~~[due]~~ the opportunity for hearing the commission of a  
22 notary public may be revoked or the notary public may be  
23 otherwise disciplined by the attorney general in any case where

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1 any change occurs in the notary's [~~office~~] commission,  
2 occupation, residence, or employment [~~which~~] that in the  
3 attorney general's judgment renders the holding of such  
4 commission by the notary no longer necessary for the public good  
5 and convenience. Each notary shall, upon any change in the  
6 notary's [~~office~~] commission, occupation, residence, or  
7 employment, forthwith report the same to the attorney general.

8 (b) Each notary public shall be responsible for renewing  
9 the notary public's commission on a timely basis and satisfying  
10 the renewal requirements provided by law. The failure to renew  
11 a commission in a timely manner [~~may~~] shall cause the commission  
12 to be forfeited[~~, if the attorney general finds that the failure~~  
13 ~~was done knowingly~~]; provided that a forfeited commission may be  
14 restored by the attorney general within one year after the date  
15 of forfeiture upon compliance with the commission renewal  
16 requirements provided by law and upon written application and  
17 payment of all applicable fees."

18 SECTION 4. Section 456-1.6, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§456-1.6 Definitions.** As used in this chapter, unless  
21 the context requires otherwise:

22 "Acknowledgment" means a declaration by a person before a  
23 notary public that the person has signed a document for the

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1 purpose stated in the document and, if the document is signed in  
2 a representative capacity, that the person signed the document  
3 with proper authority and signed it as the act of the person or  
4 entity identified in the document.

5 "Alter" means to change by means of erasure, obliteration,  
6 deletion, insertion of new content, or transposition of content.

7 "Document" means information that is inscribed on a  
8 tangible medium or that is stored in an electronic or other  
9 medium and is retrievable in perceivable form.

10 "Electronic" means relating to technology having  
11 electrical, digital, magnetic, wireless, optical,  
12 electromagnetic, or similar capabilities.

13 "Electronic signature" means an electronic symbol, sound,  
14 or process attached to or logically associated with a document  
15 and executed or adopted by a person with the intent to sign the  
16 document.

17 "In a representative capacity" means acting as:

18 (1) An authorized officer, agent, partner, trustee, or  
19 other representative for a person other than an  
20 individual;

21 (2) A public officer, personal representative, guardian,  
22 or other representative, in the capacity stated in a  
23 document;

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1 (3) An agent or attorney-in-fact for a principal; or

2 (4) An authorized representative of another in any other  
3 capacity.

4 "Notarial act" means an act, whether performed with respect  
5 to a tangible or electronic document, that a notary public may  
6 perform under the law of this State. The term includes taking  
7 an acknowledgment, administering an oath or affirmation, taking  
8 a verification upon oath or affirmation, witnessing or attesting  
9 a signature, certifying or attesting a copy, and noting a  
10 protest of a negotiable instrument.

11 "Notary public" means an individual commissioned to perform  
12 a notarial act by the attorney general under this chapter.

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

17 "Proof of the signer's signature and identity" means [proof  
18 evidenced by production of a current identification card or  
19 document issued by the United States, this State, any other  
20 state, or a national government that contains the bearer's  
21 photograph and signature.] satisfactory evidence of the identity  
22 of an individual appearing before the notary public if the  
23 notary public can identify the individual:

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- 1       (1) By means of:
- 2           (A) Having personal knowledge of the identify of an  
3           individual before the officer if the individual  
4           is personally known to the notary public through  
5           dealings sufficient to provide reasonable  
6           certainty that the individual has the identity  
7           claimed; or
- 8           (B) A passport, driver's license, or government  
9           issued nondriver identification card that is  
10           valid or expired not more than three years before  
11           the performance of the notarial act and contains  
12           the signature and photograph of the individual;  
13           or
- 14           (C) Another form of government identification issued  
15           to an individual that is valid or expired not  
16           more than three years before performance of the  
17           notarial act, contains the signature and  
18           photograph of the individual, and is satisfactory  
19           to the notary public; or
- 20           (D) By verification on oath or affirmation of a  
21           credible witness personally appearing before the  
22           notary public and known to the notary public or  
23           whom the notary public can identify on the basis

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1           of a passport, driver's license, or government  
2           issued nondriver identification card ~~which that~~  
3           is valid or expired not more than three years  
4           before performance of the notarial act; or

5           (2) By requiring an individual to provide additional  
6           information or identification credentials necessary to  
7           assure the notary public of the identify of the  
8           individual.

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9           "Sign" means, with present intent to authenticate or adopt  
10          a document:

- 11           (1) To execute or adopt a tangible symbol; or  
12           (2) To attach or logically associate with the document an  
13           electronic symbol, sound, or process.

14           "Signature" means a tangible symbol or an electronic  
15          signature that evidences the signing of a document.

16           "Stamping device" means:

- 17           (1) A physical device capable of stamping or impressing  
18           upon a tangible document a notary seal; or  
19           (2) An electronic device or process capable of attaching  
20           to or logically associating with an electronic  
21           document a notary seal.

22           "Tamper-evident" means any changes to an electronic  
23          document that display evidence of the change.

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1 "Verification on oath or affirmation" means a declaration,  
2 made by a person on oath or affirmation before a notary public,  
3 that a statement in a document is true."

4 SECTION 5. Section 456-2, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§456-2 Qualifications; oath.** Every person [appointed]  
7 commissioned as a notary public shall, at the time of the  
8 person's [appointment,] commission, be a resident of the State,  
9 possess the other qualifications required of a notary  
10 publicpublic officers and be at least eighteen years of age.  
11 Every person [appointed to that office] before being  
12 commissioned as a notary public, shall [before entering  
13 thereon,] take and subscribe an oath for the faithful discharge  
14 of the person's duties, which oath shall be filed in the  
15 department of the attorney general."

16 SECTION 6. Section 456-3, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§456-3 Seal.** Every notary public shall constantly keep  
19 [an engraved seal of office or] a rubber stamp [facsimile]  
20 notary seal which shall clearly show, when [embossed,]  
21 stamped[7] or impressed upon a tangible document[7] or when  
22 attached to or logically associated with an electronic document,  
23 only the notary's name, the notary's commission number, and the

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1 words, "notary public" and "State of Hawaii". The notary seal  
2 must be capable of being copied together with the document to  
3 which it is stamped, impressed, or attached, or with which it is  
4 logically associated. The notary public shall authenticate all  
5 the notary's official acts, attestations, certificates, and  
6 instruments therewith, and shall always add to an official  
7 signature the typed or printed name of the notary and a  
8 statement showing the date that the notary's commission  
9 expires. Upon resignation, death, expiration of term of  
10 ~~[office]~~ commission without ~~[reappointment]~~ renewal, or  
11 ~~[removal from]~~ revocation, or abandonment of ~~[office]~~  
12 commission, the notary public shall immediately deliver the  
13 notary's seal to the attorney general who shall deface or  
14 destroy the same. ~~[If any notary fails to comply with this~~  
15 ~~section within ninety days of the date of the notary's~~  
16 ~~resignation, expiration of term of office without reappointment,~~  
17 ~~or removal from or abandonment of office or if the notary's~~  
18 ~~personal representative fails to comply with this section within~~  
19 ~~ninety days of the notary's death, then the notary public or the~~  
20 ~~notary's personal representative shall forfeit to the State not~~  
21 ~~more than \$200, in the discretion of the court, to be recovered~~  
22 ~~in an action to be brought by the attorney general on behalf of~~  
23 ~~the State.]~~ If a notary public has used an electronic stamping

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1 device, upon resignation, death, expiration of term of  
2 commission without renewal, or revocation or abandonment of  
3 commission, the notary public shall disable the electronic  
4 stamping device by destroying, defacing, damaging, erasing, or  
5 securing it against use in a manner that renders it unusable and  
6 shall submit a declaration to the attorney general that the  
7 electronic stamping device was disabled and state the date and  
8 manner in which the device was disabled."

9 SECTION 7. Section 456-4, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§456-4 Filing copy of commission; authentication of**  
12 **acts.** (a) Each person [~~appointed and~~] as a  
13 notary public under this chapter shall forthwith file a literal  
14 or photostatic copy of the person's commission, an impression of  
15 the person's tangible seal, and a specimen of the person's  
16 official signature with the clerk of the circuit court of the  
17 circuit in which the notary public resides. Each person  
18 [~~appointed and~~] commissioned as a notary public under this  
19 chapter may also, at the person's option, file the above-named  
20 documents with the clerk of any other circuit court. Thereafter  
21 any clerk, when [~~thereunto~~] requested, shall certify to the  
22 official character and acts of any such notary public whose  
23 commission, impression of tangible seal, and specimen of

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1 official signature [~~is~~] are so filed in the clerk's office. A  
2 notary public's electronic seal is not subject to the  
3 requirements of this section.

4 (b) All documents filed under this section may be  
5 maintained in tangible or electronic format."

6 SECTION 8. Section 456-5, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "~~§456-5~~ **Official bond.** Each notary public forthwith and  
9 before entering upon the duties of the notary's [~~office~~]  
10 commission shall execute, at the notary's own expense, an  
11 official surety bond which shall be in the sum of \$1,000. Each  
12 bond shall be approved by a judge of the circuit court.

13 The obligee of each bond, or bond continuation certificate,  
14 shall be the State and the condition contained therein shall be  
15 that the notary public will well, truly, and faithfully perform  
16 all the duties of the notary's [~~office~~] commission which are  
17 then or may thereafter be required, prescribed, or defined by  
18 law or by any rule made under the express or implied authority  
19 of any statute, and all duties and acts undertaken, assumed, or  
20 performed by the notary public by virtue or color of the

21 notary's [~~office.~~] commission. The surety on any such bond, or  
22 bond continuation certificate, shall be a surety company  
23 authorized to do business in the State. After approval the

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1 bond, or bond continuation certificate, shall be deposited and  
 2 kept on file in the office of the clerk of the circuit court of  
 3 the judicial circuit in which the notary public resides. The  
 4 clerk shall keep a book to be called the "bond record", in which  
 5 the clerk shall record such data in respect to each of the bonds  
 6 or bond continuation certificates deposited and filed in the  
 7 clerk's office as the attorney general may direct."

8 SECTION 9. Section 456-7~~(a)~~, Hawaii Revised Statutes, is  
 9 amended by amending subsection (a) to read as follows:

10 ~~"§456-7 Unauthorized practice as a notary public.~~ (a) A  
 11 person commits the offense of unauthorized practice as a notary  
 12 public if the person knowingly engages in or offers to engage in  
 13 any duties of ~~[the office of]~~ a notary public without first  
 14 complying with all of the following:

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15 (1) Being ~~[appointed and]~~ commissioned as a notary public  
 16 by the attorney general;

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17 (2) Filing a copy of the person's commission, an  
 18 impression of the person's seal, and a specimen of the  
 19 person's official signature with the clerk of the  
 20 circuit court of the circuit in which the person  
 21 resides; and

22 (3) Executing an official surety bond pursuant to section  
 23 456-5."

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1           SECTION 10. Section 456-8, Hawaii Revised Statutes, is  
2 amended to read as follows:

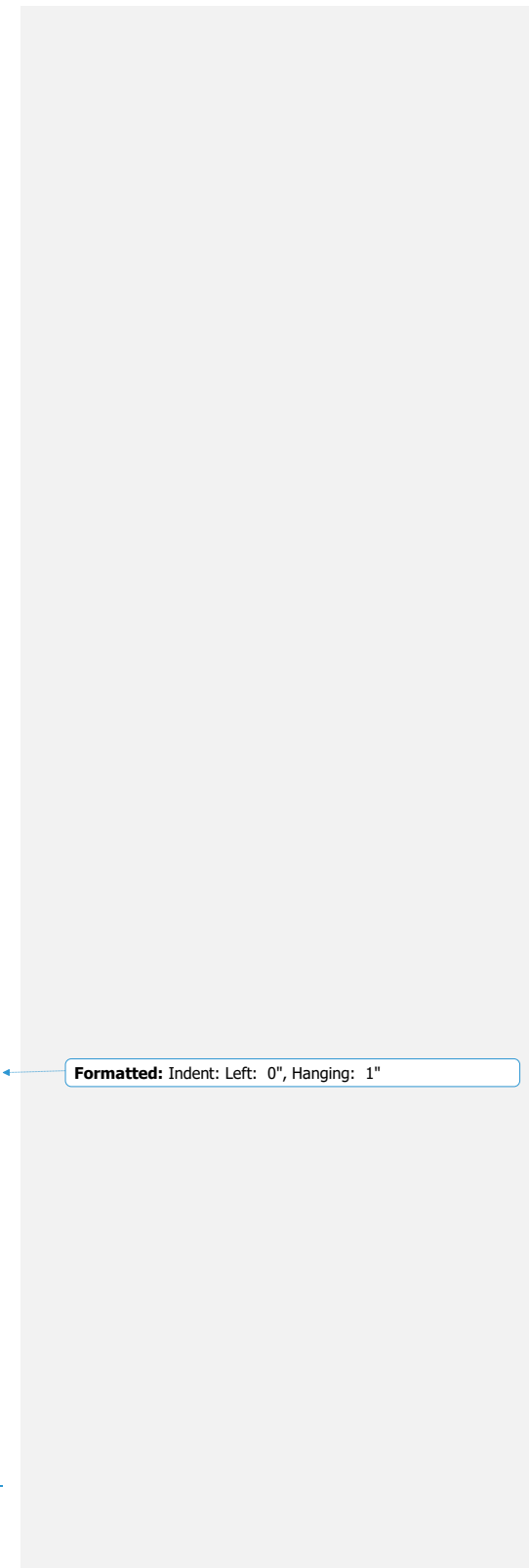
3           "**S456-8 Rules.** The attorney general, subject to chapter  
4 91, may prescribe such rules as the attorney general deems  
5 advisable concerning the administration of this chapter, the  
6 ~~[appointment]~~ commission and duties of notaries public, ~~[the~~  
7 ~~duties of other officers thereunder,]~~ and such measures as may  
8 be necessary to prevent the fraudulent use of a notarized  
9 document after placement of the notary's seal. The rules shall  
10 have the force and effect of law."

11           SECTION 11. Section 456-9, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "**S456-9 Fees and administrative fines.** (a) The attorney  
14 general shall charge and collect the following fees for:

- 15           (1) ~~\_\_\_~~ Issuing the original commission, \$40; ~~[and]~~  
16           (2) ~~\_\_\_~~ Renewing the commission, \$40~~[-]~~; and  
17           ~~\_\_\_~~ (3) ~~\_\_\_~~ Electronic processing service fees of up to  
18           ~~10%~~ten percent of the amount of the transaction.

19           These fees may be adjusted, and any other fees may be  
20 established and adjusted, by adopting rules pursuant to chapter  
21 91.



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1 (b) The court fees for filing a copy of a commission and  
2 for each certificate of authentication shall be specified by the  
3 supreme court.

4 (c) The attorney general may impose and collect the  
5 following administrative fines for a notary public's failure to:

6 (1) Maintain an official seal of [~~one type, either a~~  
7 ~~single engraved seal or~~] a single rubber stamp  
8 [~~facsimile~~] seal, on which shall be inscribed the name  
9 of the notary public, the commission number of the  
10 notary public, and the words "notary public" and  
11 "State of Hawaii" only, \$20;

12 (2) Surrender the notary public's [~~seal~~] physical stamping  
13 device and certificate to the attorney general within  
14 ninety days of resignation, [~~removal from office~~]  
15 revocation of commission, or the expiration of a term  
16 without renewal, \$200;

17 (3) Disable the notary public's electronic stamping device  
18 within ninety days of resignation, revocation of  
19 commission, or the expiration of a term without  
20 renewal, \$200;

21 [~~3~~] (4) Authenticate every acknowledgment or jurat with  
22 a certificate that shall be signed and dated by the  
23 notary, include the printed name and official stamp or

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1 seal of the notary, identify the jurisdiction in which  
2 the notarial act is performed, [~~describe in close~~  
3 ~~proximity to the acknowledgment or jurat the document~~  
4 ~~being notarized, and state the number of pages and~~  
5 ~~date of the document,~~] \$500;

6 [(4)] (5) Record all of the notary public's transactions  
7 as prescribed by section 456-15 and applicable rules,  
8 \$200;

9 [(5)] (6) Surrender the notary public's ~~record~~  
10 ~~books~~[~~record books~~] ~~journals~~ to the attorney general  
11 within ninety days of the end date of the  
12 [~~commission,~~] ~~resignation,~~ ~~or removal from office~~[~~or~~  
13 ~~removal from office,~~] ~~revocation of commission,~~ ~~or~~  
14 ~~expiration of term without renewal,~~ ~~\$500,~~] and

15 [(6)] (7) Notify the attorney general within ten days  
16 after loss, misplacement, or theft of the notary  
17 public's [~~seal, stamp,~~] stamping device or any [~~record~~  
18 ~~book,~~] journal, inform the appropriate law enforcement  
19 agency in the case of theft, and deliver a copy of the  
20 law enforcement agency's report of the theft to the  
21 attorney general, \$20.

22 (d) The foregoing moneys collected by the attorney general  
23 pursuant to this section shall be deposited into the notaries

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1 public revolving fund established by section 456-9.5, except  
2 that if that fund is terminated, the foregoing moneys shall  
3 thereafter be deposited with the director of finance to the  
4 credit of the general fund.

5 (e) All unpaid fees, fines, and forfeitures shall  
6 constitute a debt due and owing to the State."

7 SECTION 12. Section 456-14, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "~~S~~456-14 ~~[Notary]~~ Authority to perform notarial act;  
10 notary connected with a corporation or trust company~~[+ authority~~  
11 ~~to act]~~. (a) Except as otherwise provided in subsection (b):

12 (1) A notary public may perform a notarial act authorized  
13 by this chapter or by law of the State other than this  
14 chapter; and

15 (2) It shall be lawful for any notary public, although an  
16 officer, employee, shareholder, or director of a  
17 corporation or trust company to take the  
18 acknowledgment of any party to any written instrument  
19 executed to or by the corporation or trust company, or  
20 to administer an oath to any shareholder, director,  
21 officer, employee, or agent of the corporation or  
22 trust company, or to protest for nonacceptance or  
23 nonpayment of bills of exchange, drafts, checks,

.B. NO.    

1 notes, and other negotiable instruments [~~which~~] that  
2 may be owned or held for collection by the corporation  
3 or trust company[~~; provided it shall be unlawful for~~  
4 ~~any notary public to take the acknowledgment of any~~  
5 ~~party to an instrument, or to protest any negotiable~~  
6 ~~instrument, where the notary is individually a party~~  
7 ~~to the instrument].~~

8 (b) A notary public may not perform a notarial act with  
9 respect to a document to which the notary public or the notary  
10 public's spouse or civil partner is a party or in which either  
11 of them has a direct beneficial interest. A notarial act  
12 performed in violation of this section is voidable.

13 (c) A notary public may certify that a tangible copy of an  
14 electronic document is an accurate copy of the electronic  
15 document."

16 SECTION 13. Section 456-15, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§456-15 [Record;] Journal; copies as evidence. [Every**  
19 ~~notary public shall record at length in a book of records all~~  
20 ~~acts, protests, depositions, and other things, by the notary~~  
21 ~~noted or done in the notary's official capacity. For each~~  
22 ~~official act, the notary shall enter in the book.] (a) A notary~~

23 public shall maintain a journal in which the notary public



.B. NO.    

1 chronicles all notarial acts that the notary public performs.  
2 The notary public shall retain the journal for ten years after  
3 the performance of the last notarial act chronicled in the  
4 journal.

5 (b) A journal may be created on a tangible medium or in an  
6 electronic format. A notary public shall maintain only one  
7 tangible journal at a time to chronicle all notarial acts  
8 performed regarding tangible documents and one electronic  
9 journal at a time to chronicle all notarial acts performed  
10 regarding electronic documents. If the journal is maintained on  
11 a tangible medium, it must be a permanent, bound register with  
12 numbered pages. If the journal is maintained in an electronic  
13 format, it must be in a permanent, tamper-evident electronic  
14 format complying with the rules of the attorney general.

15 (c) A notary public having the care and custody of the  
16 journal may cause the same to be photographed,  
17 microphotographed, reproduced on film, or copied to an  
18 electronic format. Any device or electronic storage system used  
19 to copy or reproduce the journal shall accurately reflect the  
20 information in the original thereof in all details.

21 (d) A photograph, microphotograph, reproduction on film,  
22 or electronic copy of a journal shall be deemed to be an  
23 original record for all purposes, including introduction in

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1 evidence in all courts or administrative agencies. A  
2 transcript, exemplification, facsimile, or certified copy  
3 thereof, for all purposes recited in this section, shall be  
4 deemed to be a transcript, exemplification, facsimile, or  
5 certified copy of the original record.

6 (e) An entry in a journal must be made contemporaneously  
7 with performance of the notarial act and contain the following  
8 information:

9 (1) The type, date, and time of day of the notarial act;

10 (2) The title or type and date of the document or  
11 proceeding and the nature of the act, transaction, or  
12 thing to which the document relates;

13 (3) The ~~[signature,]~~ full printed name~~[,]~~ and address of  
14 each person whose signature is notarized and of each  
15 witness~~[,]~~ and, if the journal is maintained in a  
16 tangible medium, the signature of each such person;

17 (4) ~~[Other parties to the instrument, and]~~ If identity of  
18 the person is based on personal knowledge, a statement  
19 to that effect;

20 (5) ~~[The manner in which the signer was identified.]~~ If  
21 identity of the person is based on satisfactory  
22 evidence, a brief description of the method of  
23 identification and the identification credential

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1           presented, if any, including the identification number  
2           and date of expiration of any identification  
3           credential; and

4           (6) The fee, if any, charged by the notary public.

5           (f) If a notary public's journal is lost or stolen, the  
6           notary public shall promptly notify the attorney general on  
7           discovering that the journal is lost or stolen.

8           (g) On resignation from, or the expiration, revocation, or  
9           suspension of, a notary public's commission, the notary public  
10           shall retain the notary public's journal in accordance with this  
11           section and inform the attorney general where the journal is  
12           located.

13           (h) On the death or adjudication of incompetency of a  
14           current or former notary public, the notary public's personal  
15           representative or guardian or any other person knowingly in  
16           possession of the journal shall transmit it to the attorney  
17           general or a repository approved by the attorney general.

18           (i) All copies or certificates granted by the notary shall  
19           be under the notary's hand and notary seal and shall be received  
20           as evidence of such transactions.

21           (j) The journals are subject to such reasonable periodic,  
22           special, or other audits or inspections by the department of the  
23           attorney general, within or without this State, as the attorney

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1 general considers necessary or appropriate. An audit or  
2 inspection may be made at any time and without prior notice.  
3 The department of the attorney general may copy, and remove for  
4 audit or inspection copies of, all records the department of the  
5 attorney general reasonably considers necessary or appropriate  
6 to conduct the audit or inspection. If any notary fails to  
7 comply with this section, then the notary shall be subject to an  
8 administrative fine of not less than \$50 nor more than \$500.  
9 All unpaid fees, fines, and forfeitures shall constitute a debt  
10 due and owing to the State."

11       SECTION 14. Section 456-17, Hawaii Revised Statutes, is  
12 amended to read as follows:

13       "~~§456-17~~ **Fees.** Subject to section 456-18, every notary  
14 public is entitled to demand and receive the following fees:

15       For noting the protest of mercantile paper, \$5;

16       For each notice and certified copy of protest, \$5;

17       For noting any other protest, \$5;

18       For every notice thereof, and certified copy of protest,  
19 \$5;

20       For every deposition, or official certificate, \$5;

21       For the administration of oath, including the certificate  
22 of the oath, \$5; for affixing the certificate of the oath to  
23 every duplicate original instrument beyond four, \$2.50;

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1           For taking any acknowledgment, \$5 for each party signing;  
2 for affixing to every duplicate original beyond one of any  
3 instrument acknowledged before the notary, the notary's  
4 certificate of the acknowledgment, \$2.50 for each person making  
5 the acknowledgment[-];

6           For any of the foregoing notarial acts performed for a  
7 remotely located individual under section 456-    , other than  
8 affixing a notary's certificate to a duplicate original, \$25."

9           SECTION 15. Section 456-19, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "~~§~~**456-19**~~§~~ **Notary signing for disabled person.** A  
12 notary may sign the name of a person physically unable to sign  
13 or to make a mark on a document presented for notarization;  
14 provided that the notary is satisfied that the person has  
15 voluntarily given consent for the notary to sign on the person's  
16 behalf, if the notary writes, in the presence of the person:  
17 "Signature affixed by notary pursuant to section 456-19, Hawaii  
18 Revised Statutes." beneath the signature, and if a doctor's  
19 written certificate is provided to the notary certifying that  
20 the person is unable to physically sign or make a mark because  
21 of the disability, ~~which certificate shall be attached to the~~  
22 ~~document,~~ and that the person is capable of communicating the

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1 person's intentions. The certificate shall be attached to the  
2 document."

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3 SECTION 16. Section 456-20, Hawaii Revised Statutes, is  
4 amended ~~by amending subsection (a)~~ to read as follows:

5 "~~[f]§456-20[.]~~ Failure to verify identity and signature.

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6 (a) A person commits the offense of failure to verify identity  
7 ~~and signature~~ if the person is a commissioned notary public and  
8 knowingly notarizes a document and[+

9 ~~(1) If]~~ if a witness to the signing of the instrument,  
10 fails to verify the identity of the signer by  
11 ~~[personally knowing the signer or, by comparing the~~  
12 ~~personal appearance of the signer with satisfactory~~  
13 ~~proof of the signer's identity; or]~~ proof of the  
14 signer's signature and identity, or by obtaining  
15 satisfactory evidence of identity under section 456-  
16 of a remotely located individual.

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17 ~~[(2) If not a witness to the signing of the instrument,~~  
18 ~~fails to verify the identity of the signer by~~  
19 ~~personally knowing the signer or by comparing the~~  
20 ~~personal appearance of the signer with satisfactory~~  
21 ~~proof of the signer's identity; or fails to verify the~~  
22 ~~signature of the signer by recognizing the signature~~  
23 ~~of the signer by personal familiarity with the~~

.B. NO.

~~signature, or by comparing the signature with  
satisfactory proof of the signer's signature.]~~

(b) Any person who violates this section shall be guilty  
of a misdemeanor and shall be sentenced in accordance with  
chapter 706.

(c) A conviction under this section shall result in the  
automatic revocation of the notary public's commission."

SECTION 17. Section 456-21, Hawaii Revised Statutes, is  
amended to read as follows:

"~~[f]~~**\$456-21[+]** **Failure to authenticate with a  
certification statement.** (a) A person commits the offense of  
failure to authenticate with a certification statement if the  
person is a commissioned notary public and knowingly notarizes a  
document and fails to include any of the following in the notary  
certification:

(1) Date of notarization and signature of the notary  
public;

(2) The printed name, date of expiration, and stamp or  
seal of the notary public; and

(3) Identification of the jurisdiction in which the  
notarial act is performed~~[+]~~.

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1       ~~(4) Identification or description of the document being~~  
2               ~~notarized, placed in close proximity to the~~  
3               ~~acknowledgment or jurat; and~~

4       ~~(5) A statement of the number of pages and date of the~~  
5               ~~document.]~~

6       (b) If a notarial act regarding a tangible record is  
7 performed by a notary public, an official stamp shall~~must~~ be  
8 affixed to or embossed on the certificate. If a notarial act is  
9 performed regarding a tangible record by a notary public and the  
10 certificate contains the information specified in this section,  
11 an official stamp shall~~may~~ be affixed to the certificate. If a  
12 notarial act regarding an electronic record is performed by a  
13 notarial public and the certificate contains the information  
14 specified in this section, an official stamp shall~~may~~ be  
15 attached to or logically associated with the certificate.

16       ~~(b)~~ (c) Any person who violates this section shall be  
17 guilty of a misdemeanor and shall be sentenced in accordance  
18 with chapter 706.

19       ~~(e)~~ (d) A conviction under this section shall result in  
20 the automatic revocation of the notary public's commission."

21       SECTION 18. Section 502-42, Hawaii Revised Statutes, is  
22 amended to read as follows:



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1           "~~§502-42~~ **Certificate, contents.** The certificate of  
2 acknowledgment shall state in substance that the person who  
3 executed the instrument appeared before the [~~officer~~] notary  
4 public granting the certificate and acknowledged or stated that  
5 the person executed the same, and that such person was  
6 personally known to the [~~officer~~] notary public granting such  
7 certificate to be the person whose name is subscribed to the  
8 instrument as a party thereto, or was proved to be such by the  
9 oath or affirmation of a credible witness known to the [~~officer~~]  
10 notary public whose name shall be inserted in the certificate[~~-~~]  
11 or by other satisfactory evidence of identity under the law of  
12 this State. If the person who executed the instrument appeared  
13 before a notary public as a remotely located individual under  
14 section 456- , then the certificate must indicate that the  
15 notarial act was performed using communication technology in a  
16 manner provided in section 456- . It shall not be ground for  
17 the rejection of any such certificate, or for refusing to accept  
18 such instrument for record or in evidence, that the certificate  
19 fails to state that the person making the acknowledgment stated  
20 or acknowledged that the instrument was executed freely or  
21 voluntarily by the person or as the person's free act and deed."

22           SECTION 19. Section 502-48, Hawaii Revised Statutes, is  
23 amended to read as follows:

\_\_\_\_.B. NO.\_\_\_\_

1           "~~§502-48~~ **Identification of person making.** No  
2 acknowledgment of any conveyance or other instrument, except as  
3 provided by this chapter, whereby any real estate is conveyed or  
4 may be affected, shall be taken, unless the person offering to  
5 make the acknowledgment is personally known to the [~~officer~~]  
6 notary public taking the acknowledgment to be the person whose  
7 name is subscribed to the conveyance or instrument as a party  
8 thereto, or is proved to be such by the oath or affirmation of a  
9 credible witness known to the [~~officer~~] notary public, or by  
10 production of a [~~current~~] valid identification card or document  
11 issued by the United States, [~~the~~] this State, any other state,  
12 or a national government that contains the bearer's photograph  
13 and signature[~~-~~], or by obtaining satisfactory evidence of  
14 identity of a remotely located individual under section 456- ."

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15           SECTION 20. Section 456-16, Hawaii Revised Statutes, is  
16 repealed.

17           [~~"§456-16 Disposition of records, penalty.~~ The records of  
18 each notary public shall be deposited with the office of the  
19 attorney general upon the resignation, death, expiration of each  
20 term of office, or removal from or abandonment of office. If  
21 any notary fails to comply with this section within ninety days  
22 of the date of the resignation, expiration of any term of  
23 office, or removal from or abandonment of office or if the

\_\_\_\_.B. NO.\_\_\_\_

1 ~~notary's personal representative fails to comply with this~~  
2 ~~section within ninety days of the notary's death, then the~~  
3 ~~notary or the notary's personal representative shall forfeit to~~  
4 ~~the State not less than \$50 nor more than \$500, in the~~  
5 ~~discretion of the court, in an action brought by the attorney~~  
6 ~~general on behalf of the State."]~~

7 SECTION 21. This Act does not affect rights and duties  
8 that matured, penalties that were incurred, and proceedings that  
9 were begun before its effective date.

10 SECTION 22. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 23. This Act, upon its approval, shall take effect  
13 on July 1, 2021.

14  
15 INTRODUCED BY: \_\_\_\_\_

16 BY REQUEST

17

\_\_\_**.B. NO.**\_\_\_

**Report Title:**

Notaries Public

**Description:**

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

Presentation to The  
Committee on Commerce, Consumer Protection, and Health  
Committee on Technology  
February 11, 2020 3:15 P.M.  
State Capitol Conference Room 414

**Testimony in Opposition to SB 2275**

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Jarrett Keohokalole, Chair  
The Honorable Stanley Chang, Vice Chair  
The Honorable J. Kalani English, Vice Chair  
Members of the Committees

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 on definition needs to be amended to provide greater clarity and thus, stands in opposition for the moment.

The definitions of “foreign state” and “outside the United States” should be amended to be consistent with the definitions used by the Department of Interior, Office of Insular Affairs. For example, the Office of Insular Affairs says “possession” is no longer the current colloquial usage.

I recommend the following language for the definitions:

"Foreign state" means a jurisdiction other than the United States, a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any [territory or insular possession subject to the jurisdiction of the United States] any insular area defined by the United States Department of Interior, Office of Insular Affairs except for The Federated States of Micronesia, or a federally recognized Indian tribe."

"Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any [territory, insular possession, or other location] insular area defined by the United States Department of Interior, Office of Insular Affairs, except for The Federated States of Micronesia, subject to the jurisdiction of the United States.

This language means that Guam, the Commonwealth of the Northern Mariana Islands, and The Federated States of Micronesia are not a Foreign State or Outside the United States but also means that the Republic of the Marshall Islands and Republic of Palau, which are freely associated states because of the Compact of Free Association, are a Foreign State and are Outside the United States.

The Federated States of Micronesia are included as part of the United States only for the purposes of this bill because the Bank of the Federated States of Micronesia enjoys the benefit of FDIC insurance and has two offices in Hawaii. It should be noted that two Hawaii banks have branches in Guam and the Commonwealth of the Northern Mariana Islands.

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 SB 2275. Please let us know if we can provide further information.

Neal K. Okabayashi  
(808) 524-5161

**TESTIMONY OF THE  
COMMISSION TO PROMOTE UNIFORM LEGISLATION  
ON S.B. NO. 2275**

**RELATING TO NOTARIAL ACTS.**

**BEFORE THE SENATE COMMITTEE ON COMMERCE, CONSUMER  
PROTECTION AND HEALTH, AND SENATE COMMITTEE ON  
TECHNOLOGY**

**DATE:** Wednesday, February 11, 2020, at 3:15 p.m.  
Conference Room 414, State Capitol

**PERSON TESTIFYING:** PETER HAMASAKI  
Commission to Promote Uniform Legislation

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Chairs Baker and Keohokalole, Vice Chairs Chang and English, and Members of the Senate Committees on Commerce, Consumer Protection and Health, and on Technology:

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 offering comments on Senate Bill No. 2275, relating to notarial acts.

The Commission notes that there are several measures authorizing remote notarization based on the Revised Uniform Law on Notarial Acts (2018) ("RULONA"). These measures include Senate Bill No. 2850, House Bill No. 2294, House Draft 1. House Bill No. 1803, House Draft 1, and we respectfully request that the Committees consider amending Senate Bill No. 2275 to be based on RULONA similar to the aforementioned bills. In the short period since its approval by the ULC, nine states have adopted RULONA.

RULONA 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.

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](mailto:krobinson@uniformlaws.org).

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**From:** "Burdick, Alan B" <Alan.B.Burdick@Hawaii.gov>  
**Date:** February 6, 2020 at 2:06:22 PM HST  
**To:** "Sen. Roz Baker" <senbaker@capitol.hawaii.gov>  
**Subject:** Typo SB2275 Notary bill

Page 3 line 15 – "Identify proofing" should be "Identity proofing"

Mahalo ~

\*\*\*\*\*

**Alan B. Burdick**

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