



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2275, S.D. 1, RELATING TO NOTARIAL ACTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 11, 2020 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Lee and Members of the Committee:

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

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

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

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

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

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

The Department respectfully asks that the Committee pass this bill.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
ON S.B. NO. 2275, S.D.2
RELATING TO NOTARIAL ACTS.**

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, March 11, 2020, at 2:00 p.m.
Conference Room 325, State Capitol

PERSON TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Lee, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary:

My name is Peter Hamasaki, and I am a member of the State of Hawai'i Commission to Promote Uniform Legislation. Thank you for this opportunity to submit these comments in **support** of the intent of Senate Bill No. 2275, S.D. 2, relating to notaries public. Senate Draft 2 is based on Senate Bill No. 2850, which in turn 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, S.D. 2, 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.



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.

Date: March 10, 2020

To: Chair Lee, Vice Chair Buenaventura and Distinguished Members of the House Committee on Judiciary

Re: S.B. 2275, SD2, Relating to Notarial Acts
Hearing Date: Wednesday, March 11, 2020 at 2:00 P.M.
Conference Room: 325

Submitted via capitol website

Chair Lee, Vice Chair Buenaventura and Members of the Committee on Judiciary

Hawaii Land Title Association appreciates the opportunity to testify in support of S.B. 2275, SD2, Relating to Notarial Acts. This measure would enact relevant portions of the Revised Uniform Law on Notarial Acts (2018) which provides the framework to authorize remote online notarization through secure audio-visual communication and identity-proofing technology.

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

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

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

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

HAWAII LAND TITLE ASSOCIATION

Presentation to The
Committee on Judiciary
March 11, 2020 2:00 P.M.
State Capitol Conference Room 325

Testimony in Support of Amendments to SB 2275, SD 2

TO: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the Committee

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

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

However, after a meeting with stakeholders, all agreed on an amendment which resolved the issues confronting the two FDIC insured banks in Palau and Micronesia. The agreed upon amendment begins on page 3, line 14, to be inserted therein and read as follows:

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

(A) The document:

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

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

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

We support the above amendment, and respectfully request the inclusion of this amendment as SD 3.

Please let us know if we can provide further information on SB 2275, SD2.

Neal K. Okabayashi
(808) 524-5161



Testimony of First American Title
on
S.B. 2275, S.D. 2 Relating to Notarial Acts
before the
House Committee on Judiciary

Wednesday, March 11, 2020
2:00 p.m., Conference Room 325

Chair Lee and Distinguished Members of the Committee on Judiciary:

First American Title¹ is grateful for the opportunity to **support S.B. 2275, S.D. 2** Relating to Notarial Acts and to discuss how this legislation will benefit Hawaii’s residents and business community.

S.B. 2275, S.D. 2 would enact relevant portions of the Revised Uniform Law on Notarial Acts (2018) (also known as “RULONA”) to support electronic and remote online notarization. RULONA or similar laws supporting remote online notarization have already been adopted in 23 states and are currently under consideration in 20 others. In addition, RULONA provides a statutory framework to implement the National Electronic Notarization Standards adopted in 2018 by the National Association of Secretaries of State.

Just like it sounds, remote online notarization takes the traditional notarial process and moves it online, allowing a signer to get a document notarized over a webcam or smart phone. Remote online notarization benefits and protects Hawaii residents through its:

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

¹ First American Title Insurance Company is a subsidiary of First American Financial Corporation (NYSE:FAF), one of the nation’s largest title insurance companies and providers of real estate settlement services.

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

Insert language on Page 4, after Line 4:

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

(A) The document:

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

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

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

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

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

ESCROW ASSOCIATION OF HAWAII

**MAILING
ADDRESS**

P.O. Box 4513
Honolulu, Hawaii 96812-4513

To: Chair Lee, Vice Chair Buenaventura and Distinguished
Members of the House Committee on Judiciary
(*via capitol website*)

Board and Members
.....

From: Escrow Association of Hawaii

PRESIDENT

Jackye A. Chai
Old Republic Title & Escrow
Of Hawaii, Ltd.

Date: March 10, 2020

Re: S.B. 2275 Relating to Notarial Acts
Hearing Date: Wednesday, March 11, 2020 at 2:00 PM.
Conference Room: 325

VICE-PRESIDENT

Dawn DeRego
Old Republic Title & Escrow
Of Hawaii, Ltd.

TREASURER

Joyce S. Yokota
Title Guaranty Hawaii

Escrow Association of Hawaii ("EAH") appreciates the opportunity
to testify in support of S.B. 2275 Relating to Notarial Acts.

SECRETARY

Brenda Betz
Fidelity National Title & Escrow

EAH is an association of escrow companies licensed in the State of
Hawaii. It is important for escrow companies to be able to rely on
validly signed and acknowledged real estate instruments in order to
facilitate the closing of transactions.

PRINCIPAL REP

Kelly M.K. Miller
First American Title

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

PRINCIPAL REP

Will Tanaka
First Hawaii Title

PRINCIPAL REP

Monica Koikoinui
Premier Title & Escrow

For the above reasons, EAH supports this bill and respectfully
requests that it be passed out of this committee.

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