A BILL FOR AN ACT

RELATING TO NOTARIES PUBLIC.

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

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

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

§456-A Authority to refuse to perform notarial act. (a) A notary public may refuse to perform a notarial act if the notary public is not satisfied that:

(1) The person executing the document is competent or has the capacity to execute the document; or

(2) The person's signature is knowingly and voluntarily made.
(b) A notary public may refuse to perform a notarial act unless the refusal is prohibited by any provision of law other than this chapter.

§456-B Notarial act performed for remotely located individual. (a) A remotely located individual may comply with any requirement of the laws of this State to appear personally before or be in the presence of a notary public at the time of the performance of a notarial act by using communication technology to appear before a remote online notary public.

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

(1) The remote online notary public:

   (A) Has personal knowledge of the identity of the individual;

   (B) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the remote online notary public under this chapter; or
(C) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) The remote online notary public is reasonably able to confirm that a document before the remote online notary public is the same document in which the remotely located individual made a statement or on which the remotely located individual executed a signature;

(3) The remote online notary public, or a person acting on behalf of the remote online notary public, creates an audiovisual recording of the performance of the notarial act; and

(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

(B) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(c) If a notarial act is performed under this section, any certificate of notarial act required by this chapter or other laws of this State shall indicate that the notarial act was performed using communication technology.

(d) A form of certificate of notarial act subject to this section and authorized by the laws of this State, including a certificate of acknowledgment provided in section 502-41, is sufficient if it:

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

(2) Is in the form authorized by the laws of this State and contains a statement substantially as follows:

"This notarial act involved the use of communication technology".
(e) A remote online notary public, guardian, conservator, or agent of a remote online notary public, or a personal representative of a deceased remote online notary public shall retain the audiovisual recording created under this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under this section, the recording shall be retained for a period of at least ten years after the recording is made.

(f) Before a remote online notary public performs the remote online notary public's initial notarial act under this section, the remote online notary public shall notify the attorney general that the remote online notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies that the remote online notary public intends to use. The technology selected by a remote online notary public to perform notarial acts for remotely located individuals shall conform to the attorney general's standards developed for this chapter.

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

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

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

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

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

(h) Before adopting, amending, or repealing a rule
governing the performance of a notarial act with respect to a
remotely located individual, the attorney general shall
consider:

(1) The most recent standards regarding the performance of
a notarial act with respect to a remotely located
individual promulgated by national standard-setting
organizations and the recommendations of the National
Association of Secretaries of State;
The standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

The views of governmental officials and entities and other interested persons.

(i) For purposes of this section:

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

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

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

"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, or a federally recognized Indian tribe.
"Identity proofing" means a process or service by which a third person provides a remote online notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

"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 subject to the jurisdiction of the United States.

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

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

§456-C Application; qualifications. (a) A notary public or an applicant for commission as a notary public may apply to the attorney general to be commissioned as a remote online notary public in the manner provided by this section.
(b) A person qualifies to be commissioned as a remote online notary public by:

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

(2) Paying the application fee; and

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

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

(d) The communication technology selected by a remote online notary public to perform notarial acts shall conform to the attorney general's standards developed under this section.

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

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

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

(b) Before a notary public performs the notary public's
initial notarial act with respect to an electronic document, a
notary public shall notify the attorney general that the notary
public will be performing notarial acts with respect to
electronic documents and identify the technology the notary
public intends to use. The technology selected by a remote
online notary public for remote online notarizations shall
conform to the attorney general's standards developed for this
chapter.
(c) The registrar of conveyances may accept for recording under chapter 502 a tangible copy of an electronic document containing a notarial certificate as satisfying any requirement that a document accepted for recording be an original, if the notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic document.

§456-E Validity of notarial acts. Except as otherwise provided in section 456-14(b), the failure of a notary public to perform a duty or meet a requirement specified in this chapter does not validate or invalidate a notarial act performed by the notary public. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the document or transaction that is the subject of the notarial act or from seeking other remedies based on the laws of this State other than this chapter or based on the laws of the United States. This section does not validate a purported notarial act performed by a person who does not have the authority to perform notarial acts.

§456-F Relation to federal Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and
supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, title 15 United States Code section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, title 15 United States Code section 7003(b)."

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

"§456-1 [Appointment,] Commission; renewal. (a) The attorney general may, in the attorney general's discretion, commission such number of notaries public for the State as the attorney general deems necessary for the public good and convenience. The term of commission of a notary public shall be four years from the date of the notary public's commission, unless sooner removed by the attorney general for cause after [due] the opportunity for hearing; provided that after [due] the opportunity for hearing the commission of a notary public may be revoked or the notary public may be otherwise disciplined by the attorney general in any case where any change occurs in the [notary's office,
notary public's commission, occupation, residence, or employment

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

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

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

"[§]§456-1.6[§] Definitions. As used in this chapter,
unless the context requires otherwise:
"Acknowledgment" means a declaration by a person before a notary public that the person has signed a document for the purpose stated in the document and, if the document is signed in a representative capacity, that the person signed the document with proper authority and signed it as the act of the person or entity identified in the document.

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

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

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

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

"In a representative capacity" means acting as:
(1) An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

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

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

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

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

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

["Personally knowing" means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty.]
"Proof of the signer's signature and identity" means [proof evidenced by production of a current identification card or
document issued by the United States, this State, any other
state, or a national government that contains the bearer's
photograph and signature.] satisfactory evidence of the identity
of an individual appearing before the notary public if the
notary public can identify the individual:

(1) By means of:

(A) Having personal knowledge of the identity of an
individual before the officer if the individual
is personally known to the notary public through
dealings sufficient to provide reasonable
certainty that the individual has the identity
claimed;

(B) A passport, driver's license, or
government-issued non-driver identification card
that is valid or expired no more than three years
before the performance of the notarial act and
contains the signature and photograph of the
individual;
(C) Another form of government identification issued to an individual that is valid or expired no more than three years before performance of the notarial act, contains the signature and photograph of the individual, and is satisfactory to the notary public; or

(D) By verification on oath or affirmation of a credible witness personally appearing before the notary public and known to the notary public or whom the notary public can identify on the basis of a passport, driver's license, or government-issued non-driver identification card that is valid or expired no more than three years before performance of the notarial act; or

(2) By requiring an individual to provide additional information or identification credentials necessary to assure the notary public of the identity of the individual.

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

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

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

"Stamping device" means:

(1) A physical device capable of stamping or impressing upon a tangible document a notary seal; or

(2) An electronic device or process capable of attaching to or logically associating with an electronic document a notary seal.

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

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

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

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

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

"§456-3 Seal. Every notary public shall constantly keep
[an engraved seal of office or] a rubber stamp [facsimile]
notary seal which shall clearly show, when [embossed]
stamped[,] or impressed upon a tangible document[,] or when
attached to or logically associated with an electronic document,
only the [notary's] notary public's name, the [notary's] notary
public's commission number, and the words, "notary public" and
"State of Hawaii". The notary seal shall be capable of being
copied together with the document to which it is stamped,
impressed, or attached, or with which it is logically
associated. The notary public shall authenticate all the
[notary's] notary public's official acts, attestations,
certificates, and instruments therewith, and shall always add to
an official signature the typed or printed name of the notary
public and a statement showing the date that the [notary's]
notary public's commission expires. Upon resignation, death,
expiration of term of [office] commission without
[reappointment,] renewal, or [removal from] revocation or
abandonment of [office,] commission, the notary public, or in
the case of the death of the notary public, the notary public's
personal representative, shall immediately deliver the
[notary's] notary public's seal to the attorney general who
shall deface or destroy the same. [If any notary fails to
comply with this section within ninety days of the date of the
notary's resignation, expiration of term of office without
reappointment, or removal from or abandonment of office or if
the notary's personal representative fails to comply with this
section within ninety days of the notary's death, then the
notary public or the notary's personal representative shall
forfeit to the State not more than $200, in the discretion of
the court, to be recovered in an action to be brought by the
attorney general on behalf of the State.] If a notary public
has used an electronic stamping device, upon resignation, death,
expiration of term of commission without renewal, or revocation
or abandonment of commission, the notary public, or in the case of the death of the notary public, the notary public's personal representative, shall disable the electronic stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable and shall submit a declaration to the attorney general that the electronic stamping device was disabled and indicate the date and manner in which the device was disabled."

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

"§456-4 Filing copy of commission; authentication of acts. (a) Each person [appointed and] commissioned as a notary public under this chapter shall forthwith file a literal or photostatic copy of the person's commission, an impression of the person's tangible seal, and a specimen of the person's official signature with the clerk of the circuit court of the circuit in which the notary public resides. Each person [appointed and] commissioned as a notary public under this chapter may also, at the person's option, file the above-named documents with the clerk of any other circuit court. Thereafter any clerk, when [thereunto] requested, shall certify to the official character and acts of
any such notary public whose commission, impression of tangible
seal, and specimen of official signature [as are so filed in
the clerk’s office. A notary public’s electronic seal is not
subject to the requirements of this section.
(b) All documents filed under this section may be
maintained in tangible or electronic format."

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

"§456-5 Official bond. Each notary public forthwith and
before entering upon the duties of the notary
public’s commission shall execute, at the notary
public’s own expense, an official surety bond which shall be in
the sum of $1,000. Each bond shall be approved by a judge of
the circuit court.

The obligee of each bond, or bond continuation certificate,
shall be the State and the condition contained therein shall be
that the notary public will well, truly, and faithfully perform
all the duties of the notary public’s
commission which are then or may thereafter be required,
prescribed, or defined by law or by any rule made under the
express or implied authority of any statute, and all duties and
acts undertaken, assumed, or performed by the notary public by virtue or color of the [notary's office] notary public's commission. The surety on any such bond, or bond continuation certificate, shall be a surety company authorized to do business in the State. After approval the bond, or bond continuation certificate, shall be deposited and kept on file in the office of the clerk of the circuit court of the judicial circuit in which the notary public resides. The clerk shall keep a book to be called the "bond record", in which the clerk shall record such data in respect to each of the bonds or bond continuation certificates deposited and filed in the clerk's office as the attorney general may direct."

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

"(a) A person commits the offense of unauthorized practice as a notary public if the person knowingly engages in or offers to engage in any duties of [the office of] a notary public without first complying with all of the following:

(1) Being [appointed and] commissioned as a notary public by the attorney general;
(2) Filing a copy of the person's commission, an
impression of the person's seal, and a specimen of the
person's official signature with the clerk of the
circuit court of the circuit in which the person
resides; and
(3) Executing an official surety bond pursuant to section
456-5."

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

"§456-8 Rules. The attorney general, subject to chapter
91, may prescribe such rules as the attorney general deems
advisable concerning the administration of this chapter, the
[appointment] commission and duties of notaries public, [the
duties of other officers thereunder,] and such measures as may
be necessary to prevent the fraudulent use of a notarized
document after placement of the [notary's] notary public's seal.
The rules shall have the force and effect of law."

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

"§456-9 Fees and administrative fines. (a) The attorney
general shall charge and collect the following fees for:
(1) Issuing the original commission, $40; [and]

(2) Renewing the commission, $40; and

(3) Electronic processing service fees of up to ten per cent of the amount of the transaction.

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

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

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

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

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

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

(4) Authenticate every acknowledgment or jurat with a certificate that shall be signed and dated by the notary public, include the printed name and official stamp or seal of the notary public, and identify the jurisdiction in which the notarial act is performed, [describe in close proximity to the acknowledgment or jurat the document being notarized, and state the number of pages and date of the document] $500;

(5) [Record] Chronicle all of the notary public's transactions notarial acts as prescribed by section 456-15 and applicable rules, $200; and

(5) Surrender the notary public's record books to the attorney general within ninety days of the end date of
the commission, resignation, or removal from office, $500; and]

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

(d) The [foregoing] moneys collected by the attorney general pursuant to this section shall be deposited into the notaries public revolving fund established by section 456-9.5, except that if that fund is terminated, the [foregoing] moneys shall thereafter be deposited with the director of finance to the credit of the general fund.

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

SECTION 12. Section 456-9.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established in the state treasury the notaries public revolving fund into which shall be deposited:
(1) All fees, administrative fines, charges, or other payments received pursuant to section 456-9;

(2) Penalties and fines for violations of section 456-3[,] or 456-7[,] or 456-16;]

(3) Appropriations made for deposit into the notaries public revolving fund; and

(4) Interest earned on money in the notaries public revolving fund."

SECTION 13. Section 456-14, Hawaii Revised Statutes, is amended to read as follows:

"§456-14 [Notary] Authority to perform notarial act;

notary public connected with a corporation or trust company[,] authority to act]. (a) Except as otherwise provided in subsection (b):

(1) A notary public may perform a notarial act authorized by this chapter or by the laws of this State; and

(2) It shall be lawful for any notary public, although an officer, employee, shareholder, or director of a corporation or trust company to take the acknowledgment of any party to any written instrument executed to or by the corporation or trust company, or
to administer an oath to any shareholder, director, officer, employee, or agent of the corporation or trust company, or to protest for nonacceptance or nonpayment of bills of exchange, drafts, checks, notes, and other negotiable instruments [which] that may be owned or held for collection by the corporation or trust company [provided it shall be unlawful for any notary public to take the acknowledgment of any party to an instrument, or to protest any negotiable instrument, where the notary is individually a party to the instrument].

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

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

SECTION 14. Section 456-15, Hawaii Revised Statutes, is amended to read as follows:
§456-15  [Record of] Journal; copies as evidence.  [Every
notary public shall record at length in a book of records all
acts, protests, depositions, and other things, by the notary
noted or done in the notary's official capacity. For each
official act, the notary shall enter in the book:] (a) A notary
public shall maintain a journal in which the notary public
chronicles all notarial acts that the notary public performs.
The notary public shall retain the journal for ten years after
the performance of the last notarial act chronicled in the
journal.

(b) A journal may be created on a tangible medium or in an
electronic format. A notary public shall maintain only one
tangible journal at a time to chronicle all notarial acts
performed regarding tangible documents and one electronic
journal at a time to chronicle all notarial acts performed
regarding electronic documents. If the journal is maintained on
a tangible medium, it shall be a permanent, bound register with
numbered pages. If the journal is maintained in an electronic
format, it shall be in a permanent, tamper-evident electronic
format complying with the rules of the attorney general.
(c) A notary public having the care and custody of the journal may cause the same to be photographed, microphotographed, reproduced on film, or copied to an electronic format. Any device or electronic storage system used to copy or reproduce the journal shall accurately reflect the information in the original thereof in all details.

(d) A photograph, microphotograph, reproduction on film, or electronic copy of a journal shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, facsimile, or certified copy thereof, for all purposes recited in this section, shall be deemed to be a transcript, exemplification, facsimile, or certified copy of the original record.

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

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

(2) The title or type and date of the document or proceeding and the nature of the act, transaction, or thing to which the document relates;
(3) The full printed name and address of each person whose signature is notarized and of each witness and, if the journal is maintained in a tangible medium, the signature of each such person;

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

(5) [The manner in which the signer was identified.] If the identity of the person is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the identification number and date of expiration of any identification credentials; and

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

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

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

(h) 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.

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

(j) The journals are subject to such reasonable periodic, special, or other audits or inspections by the department of the attorney general, within or without this State, as the attorney general considers necessary or appropriate. An audit or inspection may be made at any time and without prior notice. The department of the attorney general may copy, and remove for audit or inspection copies of, all records the department of the attorney general reasonably considers necessary or appropriate to conduct the audit or inspection. If any notary public fails to comply with this section, the notary public shall be subject
to an administrative fine of no less than $50 nor more than $500. All unpaid fees, fines, and forfeitures shall constitute a debt due and owing to the State."

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

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

For noting the protest of mercantile paper, $5;

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

For noting any other protest, $5;

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

For every deposition, or official certificate, $5;

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

For taking any acknowledgment, $5 for each party signing;

for affixing to every duplicate original beyond one of any instrument acknowledged before the notary[ public, the notary public's certificate of the acknowledgment, $2.50 for each person making the acknowledgment[ public]; and
For any of the foregoing notarial acts performed for a remotely located individual under section 456-B, other than affixing a notary public's certificate to a duplicate original, $25."

SECTION 16. Section 456-19, Hawaii Revised Statutes, is amended to read as follows:

A notary public may sign the name of a person physically unable to sign or to make a mark on a document presented for notarization; provided that the notary public is satisfied that the person has voluntarily given consent for the notary public to sign on the person's behalf, if the notary public writes, in the presence of the person: "Signature affixed by notary public pursuant to section 456-19, Hawaii Revised Statutes." beneath the signature, and if a doctor's written certificate is provided to the notary public certifying that the person is unable to physically sign or make a mark because of the disability, and that the person is capable of communicating the person's intentions. The certificate shall be attached to the document."

SECTION 17. Section 456-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:
"(a) A person commits the offense of failure to verify identity [and signature] if the person is a commissioned notary public and knowingly notarizes a document and [+] (1) if a witness to the signing of the instrument, fails to verify the identity of the signer by [personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or (2) If not a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or fails to verify the signature of the signer by recognizing the signature of the signer by personal familiarity with the signature, or by comparing the signature with satisfactory proof of the signer's signature.] proof of the signer's signature and identity, or by obtaining satisfactory evidence of identity under section 456-B of a remotely located individual."
SECTION 18. Section 456-21, Hawaii Revised Statutes, is amended to read as follows:

"[§]§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 performs a notarial act with respect to 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;

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

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

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be
stamped, impressed, or attached on the certificate. If a
notarial act is performed regarding a tangible record by a
notary public and the certificate contains the information
specified in this section, an official stamp shall be affixed to
the certificate. If a notarial act regarding an electronic
record is performed by a notary public and the certificate
contains the information specified in this section, an official
stamp shall be attached to or logically associated with the
certificate.

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

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

SECTION 19. Section 502-42, Hawaii Revised Statutes, is
amended to read as follows:

"§502-42 Certificate, contents. The certificate of
acknowledgment shall state in substance that the person who
executed the instrument appeared before the notary
public granting the certificate and acknowledged or stated that
the person executed the same, and that such person was

stamped, impressed, or attached on the certificate. If a
notarial act is performed regarding a tangible record by a
notary public and the certificate contains the information
specified in this section, an official stamp shall be affixed to
the certificate. If a notarial act regarding an electronic
record is performed by a notary public and the certificate
contains the information specified in this section, an official
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personally known to the [officer] notary public granting such certificate to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by the oath or affirmation of a credible witness known to the [officer] notary public whose name shall be inserted in the certificate[—] or by other satisfactory evidence of identity under the laws of this State. If the person who executed the instrument appeared before a notary public as a remotely located individual under section 456-B, then the certificate shall indicate that the notarial act was performed using communication technology in a manner provided in section 456-B. It shall not be ground for the rejection of any such certificate, or for refusing to accept such instrument for record or in evidence, that the certificate fails to state that the person making the acknowledgment stated or acknowledged that the instrument was executed freely or voluntarily by the person or as the person's free act and deed."

SECTION 20. Section 502-48, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 21. Section 502-72, Hawaii Revised Statutes, is amended to read as follows:

"§502-72 Disposition of records. [Except as otherwise provided in respect to notaries public by section 456-16, the] The books of record so kept shall every five years, and upon the resignation, death, or removal from office of such judge or other officer, be deposited with the clerk of the circuit court of the judicial circuit for and in which the judge or other officer was or is authorized to act."
SECTION 22. Section 456-16, Hawaii Revised Statutes, is repealed.

["§456-16 Disposition of records; penalty. The records of each notary public shall be deposited with the office of the attorney general upon the resignation, death, expiration of each term of office, or removal from or abandonment of office. If any notary fails to comply with this section within ninety days of the date of the resignation, expiration of any term of office, or removal from or abandonment of office or if the notary's personal representative fails to comply with this section within ninety days of the notary's death, then the notary or the notary's personal representative shall forfeit to the State not less than $50 nor more than $500, in the discretion of the court, in an action brought by the attorney general on behalf of the State."

SECTION 23. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 24. In codifying the new sections added by section 2 and referenced in sections 15, 17, 19, and 20 of this Act, the revisor of statutes shall substitute appropriate section numbers...
for the letters used in designating the new sections in this Act.

SECTION 25. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 26. This Act shall take effect on July 1, 2050.
Report Title:
Notaries Public

Description:
Updates the laws regarding notaries public to conform to the Revised Uniform Law on Notarial Acts (2018), the Hawaii Uniform Electronic Transactions Act, other state notary laws, and current notary practices. Takes effect on 7/1/2050. (HD1)

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