HOUSE OF REPRESENTATIVES
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

H.B. NO. 2294 H.D. 1 S.D. 1

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;

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

1 remote online notary public to perform notarial acts for
2 remotely located individuals shall conform to the attorney
3 general's standards developed for this chapter.
4 (g) In addition to adopting, amending, or repealing rules
5 under sections 456-1.5 and 456-8, the attorney general may
6 adopt, amend, or repeal rules pursuant to chapter 91 regarding
7 the performance of notarial acts under this section, including:
8 (1) Prescribing the means of performing a notarial act
9 involving a remotely located individual using
10 communication technology;
11 (2) Establishing standards for communication technology
12 and identity proofing;
13 (3) Establishing requirements and procedures to approve
14 providers of communication technology and the process
15 of identity proofing; and
16 (4) Establishing standards and a period of retention of an
17 audiovisual recording created under this section.
18 (h) Before adopting, amending, or repealing a rule
19 governing the performance of a notarial act with respect to a
20 remotely located individual, the attorney general shall
21 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;

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

(3) 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.

1 **§456-C Application; qualifications.** (a) A notary public
2 or an applicant for commission as a notary public may apply to
3 the attorney general to be commissioned as a remote online
4 notary public in the manner provided by this section.
5 (b) A person qualifies to be commissioned as a remote
6 online notary public by:
7 (1) Satisfying the qualification requirements for
8 commission as a notary public under this chapter;
9 (2) Paying the application fee; and
10 (3) Submitting to the attorney general an application in
11 the form prescribed by the attorney general that
12 satisfies to the attorney general that the applicant
13 is qualified.
14 (c) The attorney general may charge a fee for an
15 application submitted under this section in an amount necessary
16 to administer this section.
17 (d) The communication technology selected by a remote
18 online notary public to perform notarial acts shall conform to
19 the attorney general's standards developed under this section.
20 (e) The remote online notary public under this chapter
21 shall forthwith file a literal or photostatic copy of the

1 person's commission with the clerk of the circuit court of the
2 circuit in which the remote online notary public resides.
3 (f) An individual commissioned as a remote online notary
4 public by the attorney general under this section is a notary
5 public for purposes of this chapter and is subject to the
6 requirements, powers, and duties of a notary public under this
7 chapter.
8 **§456-D Notification regarding performance of notarial act**
9 **on electronic record; selection of technology; acceptance of**
10 **tangible copy of electronic record.** (a) A notary public may
11 select one or more tamper-evident technologies to perform
12 notarial acts with respect to electronic documents. A person
13 shall not require a notary public to perform a notarial act with
14 respect to an electronic document with a technology that the
15 notary public has not selected.
16 (b) Before a notary public performs the notary public's
17 initial notarial act with respect to an electronic document, a
18 notary public shall notify the attorney general that the notary
19 public will be performing notarial acts with respect to
20 electronic documents and identify the technology the notary
21 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, [~~appoint and~~] commission [~~such~~] the number of notaries public for the State as the attorney general deems necessary for the public good and convenience. The term of [~~office~~] commission of a notary public shall be four years from the date of the [~~notary's~~] 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~~] the 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

1 and executed or adopted by a person with the intent to sign the
2 document.
3 "In a representative capacity" means acting as:
4 (1) An authorized officer, agent, partner, trustee, or
5 other representative for a person other than an
6 individual;
7 (2) A public officer, personal representative, guardian,
8 or other representative, in the capacity stated in a
9 document;
10 (3) An agent or attorney-in-fact for a principal; or
11 (4) An authorized representative of another in any other
12 capacity.
13 "Notarial act" means an act, whether performed with respect
14 to a tangible or electronic document, that a notary public may
15 perform under the laws of this State. The term includes taking
16 an acknowledgment, administering an oath or affirmation, taking
17 a verification upon oath or affirmation, witnessing or attesting
18 a signature, certifying or attesting a copy, and noting a
19 protest of a negotiable instrument.
20 "Notary public" means an individual commissioned to perform
21 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 identify 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 [~~is~~] 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's office~~] notary public's commission shall execute, at the [~~notary's~~] 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's office~~] 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 456-6, Hawaii Revised Statutes, is amended to read as follows:

"**§456-6 Liabilities; limitations on; official bond.** (a) In the performance of a notarial act, a [~~notary's~~] notary public's liability shall be limited to a failure by the notary

public to perform properly the actions required for the jurat, acknowledgment, or other notarial act. The [~~notary's~~] notary public's liability shall not be based on statements in a notarized document apart from the notarial certificate.

(b) For the official misconduct or neglect of a notary public or breach of any of the conditions of the [~~notary's~~] notary public's official bond, the notary public and the surety on the [~~notary's~~] notary public's official bond shall be liable to the party injured thereby for all the damages sustained. The party shall have a right of action in the party's [~~own~~] name upon the bond and may prosecute the action to final judgment and execution."

SECTION 10. 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 11. 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 12. 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;

[~~(3)~~] (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;

[~~(4)~~] (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 13. 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 14. 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 15. Section 456-15, Hawaii Revised Statutes, is amended to read as follows:

"§456-15 [~~Record;~~] 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 [~~signature,~~] 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 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's~~] notary public's hand and notary seal and shall be received as evidence of [~~such~~] the transactions.

(j) The journals shall be subject to 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 16. 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's~~] notary public's certificate of the acknowledgment, $2.50 for each person making the acknowledgment[~~.~~]; 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 17. Section 456-19, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§456-19**[~~]~~] **Notary public signing for disabled person.** 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 18. 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~~] 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 19. 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 [~~notarizes~~] 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.

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

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

SECTION 20. 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 [~~officer~~] notary public granting the certificate and acknowledged or stated that the person executed the same, and that [~~such~~] the person was

personally known to the [~~officer~~] notary public granting [~~such~~] the certificate to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be [~~such~~] the party 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~~] the 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 21. 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~~] the party 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 22. 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~~] the 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 23. 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 24. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 25. In codifying the new sections added by section 2 and referenced in sections 16, 18, 20, and 21 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 26. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 27. This Act shall take effect on July 1, 2050.

H.B. NO. 2294 H.D. 1 S.D. 1

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. (SD1)

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