

JAN 17 2020

A BILL FOR AN ACT

RELATING TO NOTARIAL ACTS.

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

1 SECTION 1. The legislature finds that electronic
2 communications make it possible to perform notarial acts by new
3 means. Some of the earliest transactions governed by law are
4 notarial acts performed by words inscribed on paper with manual
5 signatures and physical impressions of notarial seals. However,
6 technology has advanced and audio and visual communications
7 between individuals performed by electronic means are
8 increasingly replacing in-person communications, just as
9 electronic records are increasingly replacing paper documents.
10 The legislature further finds that the public will benefit from
11 the use of modern technology to obtain notarial services, with
12 consumer protections in place to protect against incidents of
13 fraud.

14 The purpose of this Act is to permit notaries public to
15 perform notarial acts utilizing electronic documents with
16 electronic signatures and seals, without the necessity of the
17 notary public and the individual requesting the notarial



1 services being in the same physical location, under certain
2 circumstances.

3 SECTION 2. Chapter 456, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . REMOTE ONLINE NOTARIZATION

7 §456-A Definitions. As used in this part:

8 "Communication technology" means an electronic device or
9 process that allows a notary public and a remotely located
10 individual to communicate with each other simultaneously by
11 sight and sound.

12 "Credential analysis" means a process or service that meets
13 the requirements of this part through which a third person
14 affirms the validity of an identification card or document
15 through review of public or private data sources.

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

19 "Electronic record" means information that is created,
20 generated, sent, communicated, received, or stored by electronic
21 means.



1 "Electronic seal" means an electronic image containing
2 information attached to or logically associated with an
3 electronic record that contains the notary public's name, the
4 notary public's commission number and commission expiration
5 date, and the words "notary public" and "State of Hawaii".

6 "Electronic signature" means an electronic sound, symbol,
7 or process attached to or logically associated with an
8 electronic record and executed or adopted by an individual with
9 the intent to sign the electronic record.

10 "Foreign state" means a jurisdiction other than the United
11 States, a state of the United States, the District of Columbia,
12 Puerto Rico, the United States Virgin Islands, any territory or
13 insular possession subject to the jurisdiction of the United
14 States, or a federally recognized Indian tribe.

15 "Identify proofing" means a process or service that meets
16 the requirements of this part through which a third person
17 provides a notary public with a means to verify the identity of
18 a remotely located individual by a review of personal
19 information from public or private data sources.

20 "Notarial act" means an official act that a notary public
21 may perform under the laws of the State. "Notarial act"



1 includes taking an acknowledgment, administering an oath, noting
2 a protest of a negotiable instrument, and such other matters as,
3 by mercantile usage, appertain to the notary public's office.

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

9 "Person" means an individual, corporation, business trust,
10 statutory trust, estate, trust, partnership, limited liability
11 company, association, joint venture, public corporation,
12 government or governmental subdivision, agency, or
13 instrumentality, or any other legal or commercial entity.

14 "Personally knowing" has the meaning given in section
15 456-1.6, and "personal knowledge" has a corresponding meaning.

16 "Principal" means a remotely located individual whose
17 electronic signature is notarized in a remote online
18 notarization, whether in an individual or representative
19 capacity, or who makes an oath, affirmation, or acknowledgment
20 in a remote online notarization, other than in the capacity of a
21 witness.



1 "Remote online notarization" or "remote online notarial
2 act" means a notarial act performed by means of communication
3 technology under this part.

4 "Remote presentation" means transmission to a notary public
5 through communication technology of an image of a remotely
6 located individual's identification card or document that is of
7 sufficient quality to enable the notary public to reasonably
8 identify the remotely located individual and to perform
9 credential analysis.

10 "Remotely located individual" means an individual who is
11 not in the physical presence of the notary public who performs a
12 remote online notarization.

13 **§456-B Authority to perform remote online notarizations.**

14 A notary public commissioned under section 456-1 and physically
15 located in the State may perform a remote online notarial act by
16 means of communication technology for a remotely located
17 individual who is physically located:

- 18 (1) In the State;
- 19 (2) Outside the State but not outside the United States;
- 20 or
- 21 (3) Outside the United States if:



- 1 (A) The electronic record:
 - 2 (i) Is to be filed with or relates to a matter
 - 3 before a court, governmental entity, public
 - 4 official, or other entity subject to the
 - 5 jurisdiction of the United States; or
 - 6 (ii) Involves property located in the territorial
 - 7 jurisdiction of the United States or a
 - 8 transaction substantially connected to the
 - 9 United States; and
- 10 (B) The notary public has no actual knowledge that
- 11 the act of making the statement or signing the
- 12 electronic record is prohibited by the foreign
- 13 state in which the remotely located individual is
- 14 located.

15 **§456-C Electronic record of remote online notarizations.**

16 (a) A notary public shall maintain a journal in a tamper-
17 evident electronic format in which the notary public chronicles
18 all remote online notarial acts that the notary public performs.
19 An entry in a journal shall be made contemporaneously with the
20 performance of the remote online notarial act and contain the
21 following information:



- 1 (1) The date and time of the remote online notarial act;
- 2 (2) A description of the record, if any, and type of
- 3 notarial act;
- 4 (3) The full name and address of each individual for whom
- 5 the remote online notarial act is performed;
- 6 (4) If identity of the individual is based on personal
- 7 knowledge, a statement to that effect;
- 8 (5) If identity of the individual is based on credential
- 9 analysis and identity proofing, a brief description of
- 10 the results of the identity verification process
- 11 including the date of issuance and expiration of the
- 12 identification card or document;
- 13 (6) If identity of a principal is based on oath or
- 14 affirmation of a credible witness, the information
- 15 required by paragraphs (3), (4), and (5) with respect
- 16 to the credible witness; and
- 17 (7) The fee, if any, charged by the notary public.
- 18 (b) A notary public is not required to record a remote
- 19 online notarial act in the book of records required under
- 20 section 456-15.



1 (c) A notary public, or a person acting on behalf of the
2 notary public, shall create an audio and visual recording of the
3 performance of each remote online notarial act.

4 (d) A notary public shall take reasonable steps to:

5 (1) Ensure the integrity, security, and authenticity of
6 remote online notarizations;

7 (2) Maintain a backup of the journal required by
8 subsection (a) and the audio and visual recording
9 required by subsection (c); and

10 (3) Protect a backup required by paragraph (2) from
11 unauthorized use.

12 (e) A notary public, guardian, conservator, or agent of
13 the notary public, or a personal representative of a deceased
14 notary public shall retain the journal required by subsection
15 (a) and the audio and visual recording required by subsection
16 (c), or cause the journal and recording to be retained by a
17 depository designated by or on behalf of the person required to
18 retain the recording. The journal and recording shall be
19 retained for at least ten years from the date of the remote
20 online notarial act.



1 (f) If any portion of the audio-visual recording created
2 under subsection (c) contains an image of an identification card
3 or document or an electronic record, that portion shall not be
4 disclosed by the notary public to another person without the
5 consent of the individual who presented the card, document, or
6 record, except:

7 (1) By order of a court of competent jurisdiction;

8 (2) To comply with a civil, criminal, or regulatory
9 investigation or subpoena or summons by federal,
10 state, or local authorities; or

11 (3) Upon request or direction of the attorney general.

12 (g) The journal required by subsection (a) and the audio
13 and visual recording required by subsection (c) shall not be
14 subject to sections 456-16 and 502-72.

15 **§456-D Use of electronic signature and electronic seal.**

16 (a) In performing a remote online notarization, a notary public
17 shall attach or logically associate the notary public's
18 electronic signature and electronic seal to the notarial
19 certificate in a tamper-evident format. The electronic seal
20 shall be capable of being copied together with the electronic
21 record to which it is attached or with which it is logically



1 associated. The notarial certificate shall be attached to or
2 logically associated with the electronic record that is the
3 subject of the remote online notarial act.

4 (b) A notary public's use of an electronic seal under this
5 section shall be considered as satisfying the requirement of
6 section 456-3 that a notary public authenticate an official act,
7 attestation, certificate, or instrument with a seal of office.

8 (c) A notary public shall take reasonable steps to protect
9 the notary public's electronic seal from unauthorized use. A
10 notary public shall not allow another person to use the notary
11 public's electronic seal.

12 (d) A notary public shall immediately notify an
13 appropriate law enforcement agency and the attorney general upon
14 actual knowledge of the theft or vandalism of the notary
15 public's electronic seal or electronic record book. A notary
16 public shall immediately notify the attorney general upon actual
17 knowledge of the loss or use by another person of the notary
18 public's electronic seal or electronic record book.

19 (e) A notary public's electronic signature and electronic
20 seal used to perform remote online notarizations shall not be
21 subject to the provisions of section 456-4. A person shall not



1 be in violation of section 456-7(a)(2) for not filing a specimen
2 of the person's electronic signature or impression of the
3 person's electronic seal used to perform remote online
4 notarizations with a clerk of the circuit court.

5 **§456-E Remote online notarization procedures.** (a) Before
6 performing a remote online notarization, a notary public shall:

7 (1) Reasonably confirm that the electronic record before
8 the notary public is the same electronic record in
9 which the principal made a statement or on which the
10 principal executed or adopted an electronic signature;
11 and

12 (2) Take reasonable steps to ensure that the communication
13 technology used in the remote online notarization is
14 secure from unauthorized interception.

15 (b) In performing a remote online notarization, a notary
16 shall reasonably verify the identity of the principal by:

17 (1) The notary public's personal knowledge of the
18 principal;

19 (2) Each of the following:

20 (A) Remote presentation by the principal of a current
21 identification card or document issued by the



1 United States, the State, any other state, or a
2 national government that contains the bearer's
3 photograph and signature;

4 (B) Credential analysis of the identification card or
5 document; and

6 (C) Identity proofing of the principal; or

7 (3) Oath or affirmation of a credible witness personally
8 knowing the principal if the notary public has
9 personal knowledge of the credible witness or has
10 reasonably verified the identity of the credible
11 witness under paragraph (2).

12 (c) A credible witness under subsection (b) may be a
13 remotely located individual if the credible witness, principal,
14 and notary public communicate by means of communication
15 technology.

16 (d) A notary public may:

17 (1) Require a principal or credible witness to provide
18 additional information necessary to assure the notary
19 public of the identity of the principal or credible
20 witness; and



1 (2) Refuse to perform a remote online notarization if the
2 remote online notary public is not satisfied as to the
3 identity of a principal.

4 (e) The notarial certificate for a remote online
5 notarization performed under this part shall indicate that the
6 notarial act was performed using communication technology. A
7 notarial certificate is sufficient to satisfy the requirement of
8 this subsection if it is in a form otherwise sufficient under
9 the laws of the State and contains a statement substantially as
10 follows: "This remote online notarial act involved the use of
11 communication technology."

12 **§456-F Fees.** Subject to section 456-18, a notary public
13 shall be entitled to demand and receive a fee for the
14 performance of each remote online notarial act not to exceed
15 \$25.

16 **§456-G Termination of notary public's commission.** (a)
17 Except as provided by subsection (b), a notary public who has
18 performed remote online notarial acts during the term of the
19 notary public's commission and whose commission is terminated or
20 revoked shall destroy the coding, disk, certificate, card,
21 software, or password that enables the notary public to attach



1 or logically associate the notary public's electronic signature
2 and electronic seal to an electronic record. On the death or
3 adjudication of incompetency of a notary public, the notary
4 public's personal representative or guardian shall comply with
5 the provisions of this subsection.

6 (b) A former notary public whose commission terminated for
7 a reason other than revocation or a denial of renewal shall not
8 be required to destroy the items described by subsection (a) if
9 the former notary public is recommissioned as a notary public
10 within three months of the termination of the notary public's
11 former commission.

12 (c) A notary public's electronic seal shall not be subject
13 to the requirement of delivery to the attorney general under
14 section 456-3 or the fine authorized under section 456-9(c)(2).

15 (d) The termination of a notary public's commission does
16 not affect the retention requirements of section 456-C(e).

17 **§456-H Standards for remote online notarization.** (a) A
18 notary public shall comply with the requirements of this section
19 when performing a remote online notarial act unless the attorney
20 general has adopted an applicable rule under section 456-I that
21 imposes a contrary requirement.



1 (b) A notary public shall attach or logically associate
2 the notary public's electronic signature and electronic seal to
3 an electronic record by use of a digital certificate complying
4 with the X.509 standard adopted by the International
5 Telecommunication Union or a similar industry-standard
6 technology. A notary public shall not perform a notarial act
7 with respect to an electronic record if the digital certificate
8 has expired, has been revoked or terminated by the issuing or
9 registering authority, is invalid, or is incapable of
10 authentication.

11 (c) Communication technology shall provide for continuous
12 and synchronous audio and video feeds of sufficient clarity to
13 enable the notary public and remotely located individual to see
14 and speak to each other through live, real-time transmissions.
15 The technology shall provide reasonable security measures to
16 prevent unauthorized access to the live transmission of the
17 audio and video feeds, methods used to verify the identity of a
18 remotely located individual, electronic record that is the
19 subject of the notarial act, questions asked as part of the
20 identity proofing quiz, and means and methods used to generate
21 the credential analysis output. If the remotely located



1 individual exits the identify verification workflow or otherwise
2 terminates the audio and video session before completion of the
3 notarial act, the individual shall restart the processes
4 described in subsections (e) and (f) from the beginning.

5 (d) Credential analysis and identity proofing shall be
6 performed by a reputable third person who has provided
7 reasonable evidence to the notary public of the person's ability
8 to satisfy the requirements of subsections (e) and (f).

9 (e) Credential analysis shall use automated software
10 processes to confirm the validity of the identification card or
11 document. Confirmation is provided if the card or document
12 passes an authenticity test that uses appropriate technologies
13 consistent with sound commercial practices to confirm it is not
14 fraudulent or inappropriately modified and to verify the
15 integrity of visual, physical, or cryptographic security
16 features. The authenticity test shall use information held or
17 published by the issuing source or an authoritative source, as
18 available, to confirm the validity of personal details and card
19 or document details.



1 (f) Identity proofing shall be performed by means of a
2 knowledge-based authentication that meets the following
3 requirements:

4 (1) The remotely located individual shall answer a quiz
5 consisting of at least five questions related to the
6 individual's personal history or identity, formulated
7 from public or private data sources;

8 (2) Each question shall have at least five possible answer
9 choices;

10 (3) At least eighty per cent of the questions shall be
11 answered correctly;

12 (4) All questions shall be answered within two minutes;

13 (5) If the remotely located individual fails the first
14 attempt, the individual may retake the quiz one time
15 within twenty-four hours;

16 (6) During a retake of the quiz, a minimum of sixty per
17 cent of the prior questions shall be replaced;

18 (7) If the remotely located individual fails the second
19 attempt, the individual shall not be permitted to
20 retry with the same notary public or the same third



1 person providing the identity proofing service within
2 twenty-four hours of the second failed attempt; and
3 (8) The notary public shall not be able to see or record
4 the questions or answers.

5 (g) A notary public shall retain the journal and the audio
6 and visual recordings required under section 456-C in a computer
7 or other electronic storage device that protects the information
8 against unauthorized access by password or cryptographic
9 process. A notary public may, by written contract, engage a
10 third person to act as a depository to provide the storage
11 required by this subsection. The contract shall enable the
12 notary public to comply with the retention requirements of
13 section 456-C(e) even if the contract is terminated or provide
14 that, if the contract is terminated, the information will be
15 transferred to the notary public.

16 **§456-I Rules.** The attorney general may adopt, amend, or
17 repeal rules pursuant to chapter 91 to administer this part.
18 The rules adopted under this section shall have the force and
19 effect of law.

20 **§456-J Relation to other laws.** (a) A remote online
21 notarization performed under this part shall satisfy any



1 requirement of law of the State that an individual appear
2 before, appear personally before, or be in the presence of a
3 notary public at the time of the performance of the notarial
4 act.

5 (b) A notary public's verification of an individual's
6 identity under section 456-E(b) shall satisfy any requirement of
7 law of the State that the notary public obtain satisfactory
8 proof of the principal's identity for a remote online
9 notarization.

10 (c) A notary public shall not be considered having
11 violated section 456-20 for the performance of a remote online
12 notarization if the notary public has verified the principal's
13 identity under section 456-E(b).

14 **§456-K Validity of remote online notarial acts.** The
15 failure of a notary public to perform a duty or meet a
16 requirement specified in this part does not invalidate a remote
17 online notarial act performed by the notary public. The
18 validity of a remote online notarial act under this part does
19 not prevent an aggrieved person from seeking to invalidate the
20 electronic record or transaction that is the subject of the
21 remote online notarial act or from seeking other remedies based



1 on law of the State other than this part or based on law of the
2 United States. This section does not validate a purported
3 remote online notarial act performed by an individual who does
4 not have the authority to perform remote online notarial acts.

5 **§456-L Applicable law; conflict of laws.** (a) The
6 validity of a remote online notarization performed under this
7 part shall be determined by applying the laws of the State,
8 regardless of the physical location of the principal at the time
9 of the remote online notarization.

10 (b) A notary public who performs remote online
11 notarizations shall comply with all provisions of this chapter
12 except as modified or supplemented by this part.

13 (c) In the event of a conflict between a provision of this
14 part and any other law of the State, the provisions of this part
15 prevail.

16 **§456-M Relation to federal electronic signatures in global
17 and national commerce act.** This part modifies, limits, and
18 supersedes the federal Electronic Signatures in Global and
19 National Commerce Act, 15 United States Code section 7001, et
20 seq., but does not modify, limit or supersede section 101(c) of



1 that Act, or authorize electronic delivery of any of the notices
2 described in section 103(b) of that Act."

3 SECTION 3. Section 502-48, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§502-48 Identification of person making. No
6 acknowledgment of any conveyance or other instrument, except as
7 provided by this chapter, whereby any real estate is conveyed or
8 may be affected, shall be taken, unless the person offering to
9 make the acknowledgment is personally known to the officer,
10 taking the acknowledgment to be the person whose name is
11 subscribed to the conveyance or instrument as a party thereto,
12 or is proved to be such by the oath or affirmation of a credible
13 witness known to the officer or by production of a current
14 identification card or document issued by the United States,
15 this State, any other state, or a national government that
16 contains the bearer's photograph and signature[-], or by a
17 method authorized under section 456-E if the acknowledgement is
18 taken as a remote online notarization under chapter 456."

19 SECTION 4. In codifying the new sections added by section
20 2 of this Act, the revisor of statutes shall substitute



S.B. NO. 2275

1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2020.
6

INTRODUCED BY:

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S.B. NO. 2275

Report Title:

Notaries Public; Remote Notarization; Electronic Documents

Description:

Authorizes notaries public to perform remote notarial acts utilizing electronic documents with electronic signatures and seals.

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

