

JAN 23 2020

A BILL FOR AN ACT

RELATING TO NOTARIES PUBLIC.

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

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

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

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

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

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

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

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

1 §456- Notarial act performed for remotely located

2 individual. (a) For purposes of this section, the following
3 definitions shall apply:

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

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

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

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

18 "Identity proofing" means a process or service by which a
19 third person provides a notary public with a means to verify the
20 identity of a remotely located individual by a review of
21 personal information from public or private data sources.

22 "Outside the United States" means a location outside the
23 geographic boundaries of the United States, Puerto Rico, the

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1 United States Virgin Islands, and any territory, insular
2 possession, or other location subject to the jurisdiction of the
3 United States.

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

7 (b) A remotely located individual may comply with any
8 requirement of law of this State to appear personally before or
9 be in the presence of a notary public at the time of the
10 performance of a notarial act by using communication technology
11 to appear before a notary public.

12 (c) A notary public located in this State may perform a
13 notarial act using communication technology for a remotely
14 located individual if:

15 (1) The notary public:

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

18 (B) Has satisfactory evidence of the identity of the
19 remotely located individual by oath or
20 affirmation from a credible witness appearing
21 before the notary public under this chapter or
22 this section; or

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1 (C) Has obtained satisfactory evidence of the
2 identity of the remotely located individual by
3 using at least two different types of identity
4 proofing;

5 (2) The notary public is reasonably able to confirm that a
6 document before the notary public is the same document
7 in which the remotely located individual made a
8 statement or on which the individual executed a
9 signature; and

10 (3) The notary public, or a person acting on behalf of the
11 notary public, creates an audiovisual recording of the
12 performance of the notarial act.

13 (d) For a remotely located individual located outside the
14 United States:

15 (1) The document:

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

20 (B) Involves property located in the territorial
21 jurisdiction of the United States or involves a
22 transaction substantially connected with the
23 United States; and

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

4 (e) If a notarial act is performed under this section, any
5 certificate of notarial act required by this chapter or other
6 law of the State must indicate that the notarial act was
7 performed using communication technology.

8 (f) A form of certificate of notarial act subject to this
9 section and authorized by law of the State, including a
10 certificate of acknowledgment provided in section 502-41, is
11 sufficient if it:

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

13 (2) Is in the form authorized by law of the State and
14 contains a statement substantially as follows: "This
15 notarial act involved the use of communication
16 technology."

17 (g) A notary public, guardian, conservator, or agent of a
18 notary public, or a personal representative of a deceased notary
19 public shall retain the audiovisual recording created under this
20 section or cause the recording to be retained by a repository
21 designated by or on behalf of the person required to retain the
22 recording. Unless a different period is required by rule

1 adopted under this section, the recording must be retained for a
2 period of at least ten years after the recording is made.

3 (h) Before a notary public performs the notary public's
4 initial notarial act under this section, the notary public shall
5 notify the attorney general that the notary public will be
6 performing notarial acts with respect to remotely located
7 individuals and identify the technologies that the notary public
8 intends to use. The technology selected by a remote online
9 notary public for remote online notarizations must conform to
10 the attorney general's standards developed for this chapter.

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

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

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

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

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

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

7 (1) The most recent standards regarding the performance of
8 a notarial act with respect to a remotely located
9 individual promulgated by national standard-setting
10 organizations and the recommendations of the National
11 Association of Secretaries of State;

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

15 (3) The views of governmental officials and entities and
16 other interested persons.

17 §456- Application; qualifications. (a) A notary public
18 or an applicant for commission as a remote online notary public
19 may apply to the attorney general to be commissioned as a remote
20 online notary public in the manner provided by this section.

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

- 1 (1) Satisfying the qualification requirements for
2 commission as a notary public under this chapter;
3 (2) Paying the application fee; and
4 (3) Submitting to the attorney general an application in
5 the form prescribed by the attorney general that
6 satisfies the attorney general that the applicant is
7 qualified.

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

11 (d) The technology selected by a remote online notary
12 public for remote online notarizations must conform to the
13 attorney general's standards developed under this section.

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

18 **§456- Notification regarding performance of notarial act**
19 **on electronic record; selection of technology; acceptance of**
20 **tangible copy of electronic record.** (a) A notary public may

21 select one or more tamper-evident technologies to perform
22 notarial acts with respect to electronic documents. A person
23 may not require a notary public to perform a notarial act with

1 respect to an electronic document with a technology that the
2 notary public has not selected.

3 (b) Before a notary public performs the notary public's
4 initial notarial act with respect to an electronic document, a
5 notary public shall notify the attorney general that the notary
6 public will be performing notarial acts with respect to
7 electronic documents and identify the technology the notary
8 public intends to use. The technology selected by a remote
9 online notary public for remote online notarizations must
10 conform to the attorney general's standards developed for this
11 chapter.

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

18 §456- **Validity of notarial acts.** Except as otherwise
19 provided in section 456-14(b), the failure of a notary public to
20 perform a duty or meet a requirement specified in this chapter
21 does not validate or invalidate a notarial act performed by the
22 notary public. The validity of a notarial act under this
23 chapter does not prevent an aggrieved person from seeking to

1 invalidate the document or transaction that is the subject of
2 the notarial act or from seeking other remedies based on law of
3 the State other than this chapter or based on law of the United
4 States. This section does not validate a purported notarial act
5 performed by a person who does not have the authority to perform
6 notarial acts.

7 §456- Relation to federal Electronic Signatures in
8 Global and National Commerce Act. This chapter modifies,
9 limits, and supersedes the federal Electronic Signatures in
10 Global and National Commerce Act, 15 United States Code section
11 7001, et seq., but does not modify, limit, or supersede section
12 101(c) of that Act, or authorize electronic delivery of any of
13 the notices described in section 103(b) of that Act."

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

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

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1 after ~~[due]~~ the opportunity for hearing the commission of a
2 notary public may be revoked or the notary public may be
3 otherwise disciplined by the attorney general in any case where
4 any change occurs in the notary's ~~[office,]~~ commission,
5 occupation, residence, or employment ~~[which]~~ that in the
6 attorney general's judgment renders the holding of such
7 commission by the notary no longer necessary for the public good
8 and convenience. Each notary shall, upon any change in the
9 notary's ~~[office,]~~ commission, occupation, residence, or
10 employment, forthwith report the same to the attorney general.

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

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

1 "**§456-1.6 Definitions.** As used in this chapter, unless
2 the context requires otherwise:

3 "Acknowledgment" means a declaration by a person before a
4 notary public that the person has signed a document for the
5 purpose stated in the document and, if the document is signed in
6 a representative capacity, that the person signed the document
7 with proper authority and signed it as the act of the person or
8 entity identified in the document.

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

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

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

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

21 "In a representative capacity" means acting as:

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

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

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

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

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

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

19 [~~"Personally knowing" or "personal knowledge" means having~~
20 ~~an acquaintance, derived from association with the individual,~~
21 ~~which establishes the individual's identity with at least a~~
22 ~~reasonable certainty.]~~

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1 "Proof of the signer's signature and identity" means [~~proof~~
2 ~~evidenced by production of a current identification card or~~
3 ~~document issued by the United States, this State, any other~~
4 ~~state, or a national government that contains the bearer's~~
5 ~~photograph and signature.~~] satisfactory evidence of the identity
6 of an individual appearing before the notary public if the
7 notary public can identify the individual:

8 (1) By means of:

9 (A) Having personal knowledge of the identify of an
10 individual before the officer if the individual
11 is personally know to the notary public through
12 dealings sufficient to provide reasonable
13 certainty that the individual has the identity
14 claimed; or

15 (B) A passport, driver's license, or government
16 issued nondriver identification card that is
17 valid or expired not more than three years before
18 the performance of the notarial act and contains
19 the signature and photograph of the individual;
20 or

21 (C) Another form of government identification issued
22 to an individual that is valid or expired not
23 more than three years before performance of the

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1 notarial act, contains the signature and
2 photograph of the individual, and is satisfactory
3 to the notary public; or

4 (D) By verification on oath or affirmation of a
5 credible witness personally appearing before the
6 notary public and known to the notary public or
7 whom the notary public can identify on the basis
8 of a passport, driver's license, or government
9 issued nondriver identification card that is
10 valid or expired not more than three years before
11 performance of the notarial act; or

12 (2) By requiring an individual to provide additional
13 information or identification credentials necessary to
14 assure the notary public of the identify of the
15 individual.

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

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

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

23 "Stamping device" means:

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

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

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

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

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

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

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

1 "**§456-3 Seal.** Every notary public shall constantly keep
2 ~~[an engraved seal of office or]~~ a rubber stamp ~~[facsimile]~~
3 notary seal which shall clearly show, when ~~[embossed,]~~
4 stamped~~[,]~~ or impressed upon a tangible document~~[,]~~ or when
5 attached to or logically associated with an electronic document,
6 only the notary's name, the notary's commission number, and the
7 words, "notary public" and "State of Hawaii". The notary seal
8 must be capable of being copied together with the document to
9 which it is stamped, impressed, or attached, or with which it is
10 logically associated. The notary public shall authenticate all
11 the notary's official acts, attestations, certificates, and
12 instruments therewith, and shall always add to an official
13 signature the typed or printed name of the notary and a
14 statement showing the date that the notary's commission
15 expires. Upon resignation, death, expiration of term of
16 ~~[office]~~ commission without ~~[reappointment,]~~ renewal, or
17 ~~[removal from]~~ revocation, or abandonment of ~~[office,]~~
18 commission, the notary public shall immediately deliver the
19 notary's seal to the attorney general who shall deface or
20 destroy the same. ~~[If any notary fails to comply with this~~
21 ~~section within ninety days of the date of the notary's~~
22 ~~resignation, expiration of term of office without reappointment,~~
23 ~~or removal from or abandonment of office or if the notary's~~

1 ~~personal representative fails to comply with this section within~~
2 ~~ninety days of the notary's death, then the notary public or the~~
3 ~~notary's personal representative shall forfeit to the State not~~
4 ~~more than \$200, in the discretion of the court, to be recovered~~
5 ~~in an action to be brought by the attorney general on behalf of~~
6 ~~the State.] If a notary public has used an electronic stamping
7 device, upon resignation, death, expiration of term of
8 commission without renewal, or revocation or abandonment of
9 commission, the notary public shall disable the electronic
10 stamping device by destroying, defacing, damaging, erasing, or
11 securing it against use in a manner that renders it unusable and
12 shall submit a declaration to the attorney general that the
13 electronic stamping device was disabled and state the date and
14 manner in which the device was disabled."~~

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

17 **"§456-4 Filing copy of commission; authentication of**
18 **acts.** (a) Each person [~~appointed and~~] commissioned as a notary
19 public under this chapter shall forthwith file a literal or
20 photostatic copy of the person's commission, an impression of
21 the person's tangible seal, and a specimen of the person's
22 official signature with the clerk of the circuit court of the
23 circuit in which the notary public resides. Each person

1 ~~[appointed and]~~ commissioned a notary public under this chapter
2 may also, at the person's option, file the above-named documents
3 with the clerk of any other circuit court. Thereafter any
4 clerk, when ~~[thereunto]~~ requested, shall certify to the official
5 character and acts of any such notary public whose commission,
6 impression of tangible seal, and specimen of official signature
7 ~~[is]~~ are so filed in the clerk's office. A notary public's
8 electronic seal is not subject to the requirements of this
9 section.

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

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

14 "**§456-5 Official bond.** Each notary public forthwith and
15 before entering upon the duties of the notary's ~~[office]~~
16 commission shall execute, at the notary's own expense, an
17 official surety bond which shall be in the sum of \$1,000. Each
18 bond shall be approved by a judge of the circuit court.

19 The obligee of each bond, or bond continuation certificate,
20 shall be the State and the condition contained therein shall be
21 that the notary public will well, truly, and faithfully perform
22 all the duties of the notary's ~~[office]~~ commission which are
23 then or may thereafter be required, prescribed, or defined by

1 law or by any rule made under the express or implied authority
2 of any statute, and all duties and acts undertaken, assumed, or
3 performed by the notary public by virtue or color of the
4 notary's [~~office.~~] commission. The surety on any such bond, or
5 bond continuation certificate, shall be a surety company
6 authorized to do business in the State. After approval the
7 bond, or bond continuation certificate, shall be deposited and
8 kept on file in the office of the clerk of the circuit court of
9 the judicial circuit in which the notary public resides. The
10 clerk shall keep a book to be called the "bond record", in which
11 the clerk shall record such data in respect to each of the bonds
12 or bond continuation certificates deposited and filed in the
13 clerk's office as the attorney general may direct."

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

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

- 20 (1) Being [~~appointed and~~] commissioned as a notary public
21 by the attorney general;
- 22 (2) Filing a copy of the person's commission, an
23 impression of the person's seal, and a specimen of the

1 person's official signature with the clerk of the
2 circuit court of the circuit in which the person
3 resides; and

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

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

8 "**§456-8 Rules.** The attorney general, subject to chapter
9 91, may prescribe such rules as the attorney general deems
10 advisable concerning the administration of this chapter, the
11 ~~[appointment]~~ commission and duties of notaries public, ~~[the~~
12 ~~duties of other officers thereunder,~~] and such measures as may
13 be necessary to prevent the fraudulent use of a notarized
14 document after placement of the notary's seal. The rules shall
15 have the force and effect of law."

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

18 "**§456-9 Fees and administrative fines.** (a) The attorney
19 general shall charge and collect the following fees for:

20 (1) Issuing the original commission, \$40; ~~and~~

21 (2) Renewing the commission, \$40~~[-]~~; and

22 (3) Electronic processing service fees of up to ten
23 percent of the amount of the transaction.

1 These fees may be adjusted, and any other fees may be
2 established and adjusted, by adopting rules pursuant to chapter
3 91.

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

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

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

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

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

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- 1 [~~3~~] (4) Authenticate every acknowledgment or jurat with
2 a certificate that shall be signed and dated by the
3 notary, include the printed name and official stamp or
4 seal of the notary, identify the jurisdiction in which
5 the notarial act is performed, [~~describe in close~~
6 ~~proximity to the acknowledgment or jurat the document~~
7 ~~being notarized, and state the number of pages and~~
8 ~~date of the document,~~] \$500;
- 9 [~~4~~] (5) Record all of the notary public's transactions
10 as prescribed by section 456-15 and applicable rules,
11 \$200;
- 12 [~~5~~] (6) Surrender the notary public's [~~record books~~
13 journals to the attorney general within ninety days of
14 the end date of the [~~commission,~~] resignation, [~~or~~
15 ~~removal from office,~~] revocation of commission, or
16 expiration of term without renewal, \$500; and
- 17 [~~6~~] (7) Notify the attorney general within ten days
18 after loss, misplacement, or theft of the notary
19 public's [~~seal, stamp,~~] stamping device or any [~~record~~
20 ~~book,~~] journal, inform the appropriate law enforcement
21 agency in the case of theft, and deliver a copy of the
22 law enforcement agency's report of the theft to the
23 attorney general, \$20.

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

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

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

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

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

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

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

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

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

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

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

1 ~~official act, the notary shall enter in the book:]~~ (a) A notary
2 public shall maintain a journal in which the notary public
3 chronicles all notarial acts that the notary public performs.
4 The notary public shall retain the journal for ten years after
5 the performance of the last notarial act chronicled in the
6 journal.

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

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

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

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

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

13 (2) The title or type and date of the document or
14 proceeding and the nature of the act, transaction, or
15 thing to which the document relates;

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

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

- 1 (5) ~~[The manner in which the signer was identified.]~~ If
2 identity of the person is based on satisfactory
3 evidence, a brief description of the method of
4 identification and the identification credential
5 presented, if any, including the identification number
6 and date of expiration of any identification
7 credential; and
- 8 (6) The fee, if any, charged by the notary public.
- 9 (f) If a notary public's journal is lost or stolen, the
10 notary public shall promptly notify the attorney general on
11 discovering that the journal is lost or stolen.
- 12 (g) On resignation from, or the expiration, revocation, or
13 suspension of, a notary public's commission, the notary public
14 shall retain the notary public's journal in accordance with this
15 section and inform the attorney general where the journal is
16 located.
- 17 (h) On the death or adjudication of incompetency of a
18 current or former notary public, the notary public's personal
19 representative or guardian or any other person knowingly in
20 possession of the journal shall transmit it to the attorney
21 general or a repository approved by the attorney general.

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

4 (j) The journals are subject to such reasonable periodic,
5 special, or other audits or inspections by the department of the
6 attorney general, within or without this State, as the attorney
7 general considers necessary or appropriate. An audit or
8 inspection may be made at any time and without prior notice.
9 The department of the attorney general may copy, and remove for
10 audit or inspection copies of, all records the department of the
11 attorney general reasonably considers necessary or appropriate
12 to conduct the audit or inspection. If any notary fails to
13 comply with this section, then the notary shall be subject to an
14 administrative fine of not less than \$50 nor more than \$500.
15 All unpaid fees, fines, and forfeitures shall constitute a debt
16 due and owing to the State."

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

19 "**§456-17 Fees.** Subject to section 456-18, every notary
20 public is entitled to demand and receive the following fees:

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

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

23 For noting any other protest, \$5;

1 For every notice thereof, and certified copy of protest,
2 \$5;

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

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

7 For taking any acknowledgment, \$5 for each party signing;
8 for affixing to every duplicate original beyond one of any
9 instrument acknowledged before the notary, the notary's
10 certificate of the acknowledgment, \$2.50 for each person making
11 the acknowledgment[-];

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

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

17 "[+]§456-19[+] **Notary signing for disabled person.** A
18 notary may sign the name of a person physically unable to sign
19 or to make a mark on a document presented for notarization;
20 provided that the notary is satisfied that the person has
21 voluntarily given consent for the notary to sign on the person's
22 behalf, if the notary writes, in the presence of the person:
23 "Signature affixed by notary pursuant to section 456-19, Hawaii

1 Revised Statutes." beneath the signature, and if a doctor's
2 written certificate is provided to the notary certifying that
3 the person is unable to physically sign or make a mark because
4 of the disability, which certificate shall be attached to the
5 document, and that the person is capable of communicating the
6 person's intentions."

7 SECTION 16. Section 456-20, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~f~~]**\$456-20[~~f~~]** **Failure to verify identity and signature.**

10 (a) A person commits the offense of failure to verify identity
11 ~~and signature~~ if the person is a commissioned notary public and
12 knowingly notarizes a document and[~~÷~~

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

21 ~~[(2) If not a witness to the signing of the instrument,~~
22 ~~fails to verify the identity of the signer by~~
23 ~~personally knowing the signer or by comparing the~~

1 ~~personal appearance of the signer with satisfactory~~
2 ~~proof of the signer's identity; or fails to verify the~~
3 ~~signature of the signer by recognizing the signature~~
4 ~~of the signer by personal familiarity with the~~
5 ~~signature, or by comparing the signature with~~
6 ~~satisfactory proof of the signer's signature.]~~

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

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

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

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

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

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

1 (3) Identification of the jurisdiction in which the
2 notarial act is performed[~~+~~
3 ~~(4) Identification or description of the document being~~
4 ~~notarized, placed in close proximity to the~~
5 ~~acknowledgment or jurat; and~~
6 ~~(5) A statement of the number of pages and date of the~~
7 ~~document.]~~

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

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

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

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

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

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

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

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

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

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

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

12 SECTION 22. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

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

16

17

INTRODUCED BY:



18

19

BY REQUEST

Report Title:

Notaries Public

Description:

Updates the laws regarding notaries public including the following: to conform to the Revised Uniform Law on Notarial Acts (2018) (RULONA), the Hawaii Uniform Electronic Transactions Act, other state notary laws, and current notary practices.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO NOTARIES PUBLIC.

PURPOSE: The purpose of this bill is to update the law regarding notaries public to bring chapters 456 and 502 into conformity with national standards and current practices.

MEANS: Adding six new sections to chapter 456, amend sections 456-1, 456-1.6, 456-2, 456-3, 456-4, 456-5, 456-7(a), 456-8, 456-9, 456-14, 456-15, 456-17, 456-19, 456-20, 456-21, 502-42, and 502-48, and repeal section 456-16, Hawaii Revised Statutes.

JUSTIFICATION: The Notaries Public statute has not been updated since 2008. Since then the Notary Office has found that various statutes need to be clarified and changes are needed to bring Hawaii's notary laws into better conformance with national standards and the Revised Uniform Law on Notarial Acts (2018). Furthermore, the statutes need to add language for remote online notarizations; update the identification requirements to allow for only rubber stamp seals to allow for electronic filing and storage; to update the record book or journal policy to bring it into conformity with other states; to clarify that notaries public are not employees of the state; and other amendments to strengthen Hawaii's notary practices.

Impact on the public: This bill will benefit the public interest by allowing remote online notarizations; assisting notaries in clarifying their procedures to conform to the Revised Uniform Law on Notarial Acts (2018), the Hawaii Uniform

Electronic Transaction Act, other state notary laws, and current notary practices; assist those who no longer have a current identification card to be able to get their documents notarized; and creating uniformity by conforming with national standards and current practices.

Impact on the department and other agencies:
This bill will help the department modernize the program and record retention requirements with the ability to scan notary specimen cards; decrease the record book storage requirements by having the notaries be responsible for their records until their resignation, death, expiration of each term of office, or removal from or abandonment of office.

This bill will impact those state and county agencies such as the Judiciary and Bureau of Conveyances by allowing technology for electronic remote online notarizations.

GENERAL FUND: None.

OTHER FUNDS: Notaries Public Revolving Fund by adding additional fees, fines, and forfeitures to be set by rule.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Hawaii Bureau of Conveyances; Hawaii Judiciary

EFFECTIVE DATE: July 1, 2021.