A BILL FOR AN ACT

RELATING TO NOTARIES PUBLIC.

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

SECTION 1. The legislature finds that electronic communications make it possible to perform notarial acts by new means. Some of the earliest transactions governed by law are notarial acts performed by words inscribed on paper with manual signatures and physical impressions of notarial seals. However, technology has advanced and audio and visual communications between individuals performed by electronic means are increasingly replacing in-person communications, just as electronic records are increasingly replacing paper documents.

The legislature further finds that the public will benefit from the use of modern technology to obtain notarial services; provided that consumer protections are in place to protect against incidents of fraud.

The purpose of this Act is to permit notaries public to perform notarial acts utilizing electronic documents with electronic signatures and seals, without the necessity of the notary public and the individual requesting the notarial
services being in the same physical location; provided that the
notary and the individual can communicate with each other
simultaneously by sight and sound by means of communication
technology.

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

§456- Notarial acts performed for remotely located
individual. (a) For purposes of this section, the following
definitions shall apply:

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

(1) Allows a 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
law, 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, or a federally recognized Indian tribe.
"Identity proofing" means a process or service by which a third person provides a 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.

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

(b) A remotely located individual may comply with this section by using communication technology to appear before a notary public.

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

(1) The notary public:

(A) Has personal knowledge of the individual as defined in this chapter;
(B) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under this section; 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 notary public is able to reasonably confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

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

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

(A) The record:

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

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

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

(d) If a notarial act is performed under this section, any
certificate of notarial act required by this chapter must
indicate that the notarial act was performed using communication
technology.

(e) A notary public, a guardian, conservator, or agent of
a notary public, or a personal representative of a deceased
notary public shall retain the audio visual 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 notary public performs the notary public's
initial notarial act under this section, the notary public shall
notify the attorney general that the notary public will be
performing notarial acts with respect to remotely located
individuals and identify the technologies the notary public
intends to use. If the attorney general has established
standards under this section for approval of communication
technology or identity proofing, the communication technology
and identity proofing shall conform to the standards.

(g) In addition to adopting rules under this section and
pursuant to chapter 91, the attorney general may adopt rules
regarding performance of a notarial act involving a remotely
located individual using communication technology, including:

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

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

(4) Establishing standards and a period for the retention of an audio visual recording created under this section.

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

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

(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) By allowing its communication technology or identity
proofing to facilitate a notarial act for a remotely located
individual or by providing storage of the audio visual recording
created under this section, the provider of the communication
technology, identity proofing, or storage appoints the attorney
general as the provider's agent for service of process in any
civil action in this state related to the notarial act."

SECTION 3. Section 456-1.6, Hawaii Revised Statutes, is
amended by amending the definition of "personally knowing" to
read as follows:

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

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: [Signature]
Report Title:
Notaries Public; Notarial Acts; Remotely Located Individual; Attorney General

Description:
Authorizes notaries public to perform notarial acts utilizing electronic documents with electronic signatures, without the notary public and the individual requesting the notary services being in the same physical location; provided that certain conditions are met.

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