



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 2275, S.D. 1, RELATING TO NOTARIAL ACTS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 25, 2020 **TIME:** 12:30 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Dean A. Soma,
Deputy Attorney General, at (808) 586-0817)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) supports this bill. The Department regulates and commissions the notaries public in the State of Hawaii.

The purpose of this bill is to update the Notaries Public Act, which has not been updated since 2008. The changes included in the bill will clarify the existing statutes and bring Hawaii's notary laws into better conformance with the Revised Uniform Law on Notarial Acts (2018) (RULONA), the Hawaii Uniform Electronic Transactions Act, other states' notary laws, and current notary practices.

Specifically, the proposed amendment to the statutes will make remote online notarizations available to Hawaii's consumers; update the notary seal requirements to allow for only rubber stamp seals so that they may be scanned or copied for electronic filing and storage purposes; update the identification requirements to allow for individuals (like those in our aging population) who no longer have an active driver's license or passport to be able to get their documents notarized; update the record book or journal policy to bring it into conformity with RULONA; clarify that notaries public are not employees or officers of the state; and make other amendments to strengthen Hawaii's notary practices.

This bill will help the Department modernize the program and record retention requirements with the ability to scan notary specimen cards and will 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, yet allow the Department to still ensure that the record books conform to the laws and regulations of the State of Hawai'i. This bill also benefits those state agencies such as the Judiciary and Bureau of Conveyances by allowing technology for electronic remote online notarizations.

This bill reflects the joint efforts among the Department, First American Title and Commission to Promote Uniform Legislation.

The Department respectfully asks that the Committee pass this bill.

**COMMENTS OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION
ON S.B. NO. 2275, S.D.1
RELATING TO NOTARIAL ACTS.**

BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 25, 2020, at 12:30 p.m.
Conference Room 016, State Capitol

PERSON SUBMITTING COMMENTS: PETER HAMASAKI
Commission to Promote Uniform Legislation

Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary:

My name is Peter Hamasaki, and I am a member of the State of Hawai'i Commission to Promote Uniform Legislation. Thank you for this opportunity to submit these comments in **support** of the intent of Senate Bill No. 2275, S.D. 1, relating to notaries public. Senate Draft 1 is based on Senate Bill No. 2850, which in turn is based upon portions of the Revised Uniform Law on Notarial Acts relating to remote notarization, which was approved by the Uniform Law Commission in 2018.

The Revised Uniform Law on Notarial Acts (2018) authorizes a notary public to perform notarial acts for remotely located individuals using communication and identity-proofing technology provided its requirements have been fulfilled. The new provisions:

- Provide that an individual may appear before a notary public by means of communication technology and thereby comply with the requirement of an appearance before a notary public.

- Define communication technology as any means or process that allows a notary public and a remotely located individual to communicate with each other simultaneously.
- Specify the means by which a notary public must identify a remotely located individual. This includes personal knowledge of the identity of the individual, and evidence of the identity of the remotely located individual by oath or affirmation from a credible witness.
- Permit a notary public to identify a remotely located individual by at least two different types of identity-proofing processes or services.
- Require that an audio-visual recording of the performance of the notarial act be created.
- Provide that the certificate of notarial act must indicate that a notarial act performed in accordance with this Section was done by means of communication technology.
- Provide that the commissioning agency may adopt rules regarding the performance of notarial acts for remotely located individuals.

We support the intent of Senate Bill No. 2275, S.D. 1, insofar as it implements the provisions of the Revised Uniform Law on Notarial Acts (2018) relating to the performance of notarial acts for remotely located individuals.

Thank you very much for this opportunity to submit comments on this measure.



REVISED UNIFORM LAW ON NOTARIAL ACTS (2018)

The Revised Uniform Law on Notarial Acts (RULONA) was promulgated by the Uniform Law Commission (ULC) in 2010. Among its features, it included provisions to provide a stable infrastructure for the performance of notarial acts with respect to electronic records and signatures.

Amendments to Revised Uniform Law on Notarial Acts, including a new Section 14A on remote notarization, were approved by the ULC in 2018, resulting in RULONA (2018). If a state has already adopted RULONA, it will update to the current version by enacting new subsection 4(c), new Section 14A, and new subsection 20(c). If a state has not previously enacted RULONA, it should enact RULONA (2018).

RULONA (2018) was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audio-visual technology. Traditionally, an individual has been required to physically appear before a notary public. In recent years, technology and commercially available identification services have made it possible to perform notarial acts for persons who are not in the physical presence of a notary public. RULONA (2018) authorizes remote notarization without geographic limits on the location of the signer.

RULONA (2018) updates RULONA (2010) by authorizing a notary public to perform notarial acts for remotely located individuals using communication and identity-proofing technology provided its requirements have been fulfilled. The new provisions:

- Provide that an individual may appear before a notary public by means of communication technology and thereby comply with the provisions of RULONA Section 6 calling for appearance before a notary public (Section 14A (b)).
- Define communication technology as any means or process that allows a notary public and a remotely located individual to communicate with each other simultaneously (Section 14A (1)(A)). Specific technology is not identified in the amendment.
- Specify the means by which a notary public must identify a remotely located individual (Section 14A (c)(1)). This includes personal knowledge of the identity of the individual, and evidence of the identity of the remotely located individual by oath or affirmation from a credible witness.
- Permit a notary public to identify a remotely located individual by at least two different types of identity-proofing processes or services (Section 14A (c)(1)(C)). This may include having a remote individual answer questions for which there is a high probability that only the true individual would be able to answer correctly, or using biometric identification technology or credential analysis.

- Require that an audio-visual recording of the performance of the notarial act be created (Section 14A (c)(3)).
- Provide that the certificate of notarial act required under Section 15 must indicate that a notarial act performed in accordance with this Section was done by means of communication technology (Section 14A (d)).
- Provide that the commissioning officer may adopt rules regarding the performance of notarial acts for remotely located individuals (Section 14A (h)).

RULONA (2018) also now specifies that the notarial officer may certify that a tangible copy is an accurate copy of an electronic record and that such certifications may be accepted for recording into the real estate records.

For further information about the RULONA, please contact ULC Legislative Program Director Katie Robinson at (312) 450-6600 or krobinson@uniformlaws.org.



Testimony of First American Title
on
S.B. 2275, S.D. 1 Relating to Notarial Acts
before the
Senate Committee on Judiciary

Tuesday, February 25, 2020
12:30 p.m., Conference Room 016

Chair Rhoads and Distinguished Members of the Committee on Judiciary:

First American Title¹ is grateful for the opportunity to **support** S.B. 2275, S.D. 1 relating to notarial acts and to discuss how this legislation will benefit Hawaii's residents and business community.

S.B. 2275, S.D. 1 would enact relevant portions of the Revised Uniform Law on Notarial Acts (2018) (also known as "RULONA") to support electronic and remote online notarization. RULONA or similar laws supporting remote online notarization have already been adopted in 22 states and are currently under consideration in 21 others. In addition, RULONA provides a statutory framework to implement the National Electronic Notarization Standards adopted in 2018 by the National Association of Secretaries of State.

Just like it sounds, remote online notarization takes the traditional notarial process and moves it online, allowing a signer to get a document notarized over a webcam or smart phone. Remote online notarization benefits and protects Hawaii residents through its:

- ▶ **Convenience to consumers** and ease of access, allowing Hawaii residents can get documents notarized *anywhere, anytime*—eliminating the need to make appointments, take leave from work, or drive for miles to find a notary.
- ▶ **Enhanced security** to the notarial process, using a multi-factor approach to authenticate signers, creating a robust audit trail of each notarization, and deploying the latest technologies and forensic tools to stop fraud before it happens.

Technical Amendments: We have been working with the Attorney General's office, the Uniform Law Commission, and other stakeholders on minor amendments to address a few tweaks to definitions and technical clarifications to make S.B. 2275, S.D. 1 consistent with existing Hawaii notarial law. We note that these discussions are continuing and support the committee moving the bill forward as these discussions continue.

Thank you for the opportunity to provide testimony in support of this bill.

¹ First American Title Insurance Company is a subsidiary of First American Financial Corporation (NYSE:FAF), one of the nation's largest title insurance companies and providers of real estate settlement services.



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

February 24, 2020

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice-Chair
Committee Members

February 25, 2020, 12:30 PM
State Capitol Conference Room 016

Re: Testimony to **SUPPORT** SB 2275 SD1 Relating to Notarial Acts

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii and includes banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. MBAH members originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

We support this bill in concept, as amended, as well as similar bills SB 2850, HB 1803, and HB 2294 , as they will augment:

- Convenience and cost savings to handicapped, home-bound, or rural signers
- Increased efficiencies for local entities
- Control of notarial acts within Hawaii that affect Hawaii properties
- Increased efficiencies in record keeping and search capability of notarial acts
- Additional security in attempted fraud situations
- A more “green” environmentally friendly process that relies on less paper and less gasoline

Remote online notarization provides convenience and cost savings for handicapped, home-bound, and rural signers.

For home-bound and handicapped signers, and those in rural neighbor-island locations, remote online notarization provides additional flexibility for scheduling a notary session, and may provide cost savings, as the cost of a remote online notarization session may be substantially lower than having a “mobile notary” drive to a remote location in order to witness an in-person signing. Also, online notarization is more “green” than having a “mobile notary” drive to a far-away rural location.

Electronic notarial and online notarial acts performed in other states are already allowed.

Under current Hawaii notary law, electronic notarizations are not allowed by Hawaii notaries. However, the Bureau and Land Court will record documents that affect Hawaii properties that are electronically notarized by out-of-state notaries according to those states' laws. This has two effects:

1. We have disadvantaged Hawaii notaries and institutions that want to use their own employees to notarize documents using the efficiencies of electronic notarization. For each document under current Hawaii law, the document must be "papered out" (meaning physically printed on paper), wet-signed by the person executing the document, and then wet signed again by the notary. This document may then be submitted in original "wet-signed" copy to the Bureau or Land Court for recording, OR re-scanned and converted to an electronic document for electronic recording using an interfacing software provided by a vendor. Also, the paper "record book" must be manually completed to log the transaction by the notary and then signed by the by the signer, instead of allowing the software system to electronically capture and transfer the data to the notary's electronic log of all notarial acts. In this case, we have wasted paper and eliminated the efficiencies of allowing both the executing employee and the notary employee (who may sit at the same desk) to electronically sign the document, and then forwarding that document electronically for recording without ever having to print it out. Allowing electronic notarization without the "paper out" process is much more "green" and efficient. Hawaii financial institutions are outsourcing work to the mainland that could otherwise be performed in Hawaii with the adoption of electronic notarization.
2. Lenders may "notary shop" to find a state in which remote online notary acts are already permitted. Under current Virginia law, a notary in Virginia may perform a remote notarial act irrespective of the location of the signer, the location of the property, or the state in which the document will be recorded. The lender or settlement agent needs only to initiate the session with the notary in order to begin this process. Hence, online remote notarization is already taking place that affects Hawaii properties and it is out of our control. As more states pass laws to allow remote online notarization the situation will amplify.

Electronic log of notarial acts is more effective, more environmentally friendly, and easier to search than paper "record books".

Under current law, each notary must maintain a separate paper "record book" in which all notarial acts are journaled. Neither HRS 456-15 nor HAR 5-11-9 / 15-11-17 specify that these acts must be sequential logged within each book. Instead it only specifies that each book must record the date range of the acts that are logged within the book. Thus, a notary may log transactions in a non-sequential manner within each record book, making it more challenging to search a disputed notarial act by date. The notary must surrender the original record book to the AG's office when it is full, upon death, termination of commission, or termination of employment, as applicable. Not only does the AG's office have to store copious amounts of paper record books, it is substantially more difficult to search paper record books for disputed transactions than electronic records. The adoption of electronic logs that may be transmitted to the AG's office would be more "green", more secure, more cost-effective for storage, and save time should search of a disputed transaction be necessary.

Remote online notarization may be more secure than in-person notarization

Hawaii depositories institutions have experienced situations in which fraudsters were able to provide identification that was either

1. legitimately issued by another state to someone who was not indeed the person who appears on the identification, or
2. were fabricated so well that they passed the ID scanners similar to those used by the TSA.

Not only do the remote online notarization software systems and process scan the ID bar coding to verify that the ID is legitimate, it then (as one vendor described) runs “a comparison to state databases to ensure the address on the ID is an expected address. . . All of this is in conjunction with the comparison of the information on the front of the ID and the barcode on the back of the ID, as well as checks against state ID templates and security features.” (1)

The process then includes out-of-wallet challenge questions generated from a couple of confidential national databases (e.g. “which addresses have you been associated with”, “which model of car was registered to you”, etc.) before the notary session is begun. Therefore, a fraudster with a fabricated identification may have a more difficult time in an online session than in a person-to-person session unless the entire life history of the true intended signer is known.

Additionally, each online session incorporates a recording, which may deter fraudsters who may not want to be recorded for future incrimination should their deception be discovered.

Our position: SUPPORT

In summary, we strongly support this bill due to the increased efficiencies and in order to grant our notaries the same flexibility as out of state notaries currently enjoy with a qualifier that approval of this bill, or similar, should include sufficient funding and resources for the AG’s office to investigate relevant technologies and best practices in order to formulate these rules to comply with the July 1, 2021 deadline.

Thank you for the opportunity to present this testimony.

VICTOR BROCK
Mortgage Bankers Association of Hawaii

(1) Nick Rogerio, *Director of Operations, Nexsys Technologies*

LATE

Date: February 24, 2020

To: Chair Rhoads, Vice Chair Keohokalole and Distinguished Members of the House Committee on Judiciary

Re: S.B. 2275 Relating to Notarial Acts
Hearing Date: Tuesday, February 25, 2020 at 12:30 PM.
Conference Room: 016

Submitted via capitol website

Chair Rhoads, Vice Chair Keohokalole, and members of the Committee on Judiciary:

Hawaii Land Title Association (“HLTA”) appreciates the opportunity to testify in support of S.B. 2275 Relating to Notarial Acts. This measure would enact relevant portions of the Revised Uniform Law on Notarial Acts (2018) which provides the framework to authorize remote online notarization through secure audio-visual communication and identity-proofing technology.

HLTA is an association of title companies licensed to issue policies of title insurance to buyers, lenders, and owners of other interests in land in the State of Hawaii. It is important for title insurance companies to be able to rely on validly signed and acknowledged real estate instruments in order to facilitate the closing of transactions.

Rapidly evolving technology is changing how we connect and conduct business in Hawaii and across the globe. Remote online notarization is a convenient and secure alternative to traditional notarial services that will benefit Hawaii residents by making notarial services more convenient, while still protecting the security of the transaction. HLTA supports this bill because it provides for enhanced electronic protection and identification requirements that utilize the latest technologies to safeguard against fraud and identity theft. Twenty-two states have already passed laws that allow for remote online notary to be used, and we believe that Hawaii with its geographic isolation stands to benefit in particular from this bill. With access to a computer and internet, neighbor island residents, immobile/disadvantaged individuals, deployed military members, and residents traveling out of state will be able to conveniently and securely notarize official documents.

For the above reasons, HLTA supports this bill and respectfully requests that it be passed out of this committee.

Thank you for the opportunity to submit this testimony in support of this measure.

February 24, 2020

IN OPPOSITION TO SB 2275 HD 1 Relating to Notarial Acts
JUDICIARY COMMITTEE - Public Decision Making
Tuesday, February 25, 2020
Conference Room 016

LATE

Chairman Rhoads
Vice-Chair Keohokaloler

Members of the Senate Committee on Judiciary

Thank you for the opportunity to submit testimony for decision making in opposition to SB 2275 SD 1 / RELATING TO NOTARIAL ACTS.

A report of the House Judiciary Committee on HB 2294 HD 1 rightly acknowledges that Notaries Public serve an important role in preventing fraud, and that notary public laws have not been updated for several years, at least not in a proper way. This Senate bill, and other bills like it, should not be passed because of the failure on the part of the Attorney General to perform on behalf of Notarial Practice and Notaries Public in Hawaii.

AUTHORITY OF THE ATTORNEY GENERAL

A/G FAILURE TO ENFORCE EXISTING LAW

HRS 456-1(a) gives the Attorney General the authority to appoint Hawaii Notaries they feel necessary for the **GOOD AND CONVENIENCE OF THE PUBLIC**.

FACT: The A/G consistently refuses to enforce this law by permitting big banks to make notarial service ANYTHING BUT convenient when they limit the hours Notaries are available and give priority to bank customers over members of the public (HAR 5-11-11 Display of commission; hours of business).

A/G FAILURE TO NOTIFY HAWAII NOTARIES OF CHANGE TO LAW

HAR 5-11-3 Conduct, requires that Hawaii Notaries abide by "[T]he notary public code of professional responsibility as adopted by the National Notary Association, and as...amended."

This Code of Professional Responsibility was amended in 2020 and is now the law for Hawaii Notaries. After I notified the A/G that there was a new version out they did post it on the Notary Office's website. I emailed them to ask if they were going to also send out an email to the >5,000 Hawaii Notaries informing them that there had been a change in a significant section of the law we are required to abide by.

They answered as follows on 2/4/2020: *We periodically send out emails to the active notaries public. We are planning on sending out the update regarding the National Notary Association's new Notary Public Code of Professional Responsibility in our upcoming email to the notaries.*

GIVING NOTARIES TOTAL OVERSIGHT OF THE PUBLIC RECORD AFTER THEIR COMMISSION IS A MONUMENTALLY BAD IDEA FOR CONSUMER PROTECTION

In past "administrations" of the A/G, the Notary Office did not keep track of which notaries were not turning in their journals. Many Notaries, because they don't read the laws don't even know they are required to turn their journals into the A/G.

Now they are doing a better job but apparently have decided it is too inconvenient so they'll just hand it off to the notaries themselves. **THIS IS NOT A NATIONAL STANDARD and is a VERY, VERY BAD IDEA.**

Also in the past, the A/G would review journals turned in to see if the law concerning completion of the journal, for the protection of parties from fraud, was being followed. If it wasn't they could and did, at times, revoke a notary's commission for failure to follow the law concerning this PUBLIC RECORD: a record of the very important transactions kept for protection against fraud.

Now, the A/G somehow thinks it is a really good idea to give Notaries total control over the PUBLIC RECORD they heretofore didn't even know how to properly complete or what the law was about the requirement they turn them in.

The Public Record is a hugely important Public Record relied on in court when notaries are faced with misconduct charges or there is the potential that a signer was actually committing a crime of fraud, and the A/G thinks this is a GOOD IDEA? If anything, these Public Records should be digitized and kept for way more than 10 years beyond the end of the last notarization in the record because the validity of the notarization does not expire as long as result of the transaction is still in effect.

WRONG INFORMATION ON FAQ'S

The FAQ's created by the A/G and posted on the website gives wrong information when it ADVISES notaries that if a document needing notarization names two people that BOTH THE PEOPLE NEED TO APPEAR BEFORE THE NOTARY AT THE SAME TIME.

In my 22 years as a Hawaii Notary Public I have NEVER heard this ridiculous idea put forth, which only further demonstrates that the A/G has no idea what is a national standard about anything. And this is **NOT AT ALL A STANDARD OF NOTARIAL PRACTICE HERE OR ANYWHERE IN THE U.S.**

Notaries routinely notarize for individuals signing the same document. This would be like telling attorneys you have to have ALL PARTIES TO THE TRANSACTION TOGETHER in the same place at the same time, to execute a document. That is the purpose of "counterparts" and that is what makes this bad advice so blatant. This occurs on a regular basis in loan signings when sometimes parties are separated by distance in the same state or even on opposite sides of the country. THIS IS A HUGE INCONVENIENCE for notarial customers, on top of the restricted hours the banks make notaries available for anyone but their own customers.

Besides the fact that it is totally inconvenient (the opposite of the purpose of notarization) it also further demonstrates how deficient notarial practice in the State of Hawaii already is.

To say that notarization is a valuable and important services and to tolerate a notarial fee of \$5 since 1995 and refusal to realize the importance of actually requiring notaries to be educated is a direct contradiction and more accurately reflects this legislatures TRUE feeling of the value of notarization.

That deficiency is further demonstrated by the failure of the legislature to adequately oversee the agency they give this uninformed power of oversight to.

DOES THE NOTARY SYSTEM NEED REVAMPING?

Absolutely, but not by the A/G who knows next to nothing about this deceptively complex process and is unwilling to learn and is only looking to make their job “easier.” .Ripping the heart out of the notarial act intended to be done with integrity, diligence, and skill (66 C.J.S. Notaries 26), in the name of CONVENIENCE, should be UNTHINKABLE.

That the office of the chief law enforcement officer of the State of Hawaii would be willing to follow the **PIED PIPER OF CONVENIENCE** is unfortunate. Exactly how will this legislature explain to the victims of fraud as a result of this boondoggle (we are already paying for one on wheels), if this bill is passed, will be interesting to watch.

The Department of the Attorney General must be held accountable for the failure in oversight of the Notary Public Office.