

A Bill for an Act Relating to Fraud Prevention.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that every notary public must keep an engraved seal of office or a rubber stamp facsimile seal that clearly shows, when embossed, stamped, or impressed upon a document, the notary's name and the words, "notary public" and "State of Hawaii." The notary public must authenticate all the notary's official acts, attestations, certificates, and instruments and always add to an official signature the typed or printed name of the notary and a statement showing the date that the notary's commission expires.

The legislature also finds that each time a notary public notarizes a document, the notary public must record the type, date, and time of day of the notarial act, the title or type and date of the document or proceeding, the signature, printed name, and address of each person whose signature is notarized and of each witness, other parties to the instrument, and the manner in which the signer was identified. All copies or certificates granted by the notary must be under the notary's hand and notarial seal and shall be received as evidence of such transactions.

The legislature further finds that, notwithstanding the requirements that attend notarization of documents, there is an alarming increase in the alteration of notarized documents for the purpose of identity theft and fraud. For example, a Hawaii man with a federal criminal record involving bank fraud, bogus names, and false checks was recently convicted of identity theft and other offenses arising from the use of a notarized document, relating to the sale of an automobile, to transfer land and property.

The purpose of this Act is to deter the commission of crimes against people and property by the use of fraudulent notarized documents by comprehensively strengthening the notary public laws relating to the authentication of certified statements.

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

"§456-A Definitions. As used in this chapter, unless the context requires otherwise:

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

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

"Proof of the signer's signature and identity" means proof evidenced by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature.

§456-B Powers and duties of the attorney general. In addition to any other powers and duties authorized by law, the attorney general shall have all powers necessary or convenient to effectuate the purposes of this chapter, including, without limitation, the following powers:

- (1) Issue notary public commissions to applicants pursuant to this chapter;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91;
- (3) Suspend or revoke any commission for any cause prescribed by this chapter or for any violation of the rules adopted pursuant to this chapter,

and refuse to issue any commission for any cause that would be grounds for suspension or revocation of a commission; and

- (4) Impose administrative fines for any cause prescribed by this chapter or for any violation of the rules adopted pursuant to this chapter.

§456-C Failure to verify identity and signature. (a) A person commits the offense of failure to verify identity and signature if the person is a commissioned notary public and knowingly notarizes a document and:

- (1) If a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or
- (2) If not a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or fails to verify the signature of the signer by recognizing the signature of the signer by personal familiarity with the signature, or by comparing the signature with satisfactory proof of the signer's signature.

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

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

§456-D Failure to authenticate with a certification statement. (a) A person commits the offense of failure to authenticate with a certification statement if the person is a commissioned notary public and knowingly notarizes a document and fails to include any of the following in the notary certification:

- (1) Date of notarization and signature of the notary public;
- (2) The printed name and stamp or seal of the notary public;
- (3) Identification of the jurisdiction in which the notarial act is performed;
- (4) Identification or description of the document being notarized, placed in close proximity to the acknowledgment or jurat; and
- (5) A statement of the number of pages and date of the document.

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

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

SECTION 3. Chapter 710, Hawaii Revised Statutes, is amended by adding to part V two new sections to be appropriately designated and to read as follows:

"§710-A Misrepresenting a notarized document in the first degree. (1)

A person commits the offense of misrepresenting a notarized document in the first degree if the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction, and:

- (a) The offense was committed with intent to mislead a public servant; or
- (b) The offense was committed for purpose of commercial or private financial gain.

(2) Misrepresenting a notarized document in the first degree is a class C felony.

§710-B Misrepresenting a notarized document in the second degree. (1)

A person commits the offense of misrepresenting a notarized document in the second degree if, with intent to mislead another, the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction.

(2) Misrepresenting a notarized document in the second degree is a misdemeanor.”

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

~~“§456-7 [Acts prohibited; penalty. No person shall be qualified to act as a notary public or shall enter upon any of the duties of the office or offer or assume to perform any such duties until the person has fully complied with each of the requirements in each of the foregoing sections of this chapter. Any person wilfully violating this section shall be fined not more than \$500, or imprisoned not more than one year, or both.]~~ **Unauthorized practice as a notary public.** (a) A person commits the offense of unauthorized practice as a notary public if the person knowingly engages in or offers to engage in any duties of the office of a notary public without first complying with all of the following:

- (1) Being appointed and commissioned as a notary public by the attorney general;
- (2) Filing a copy of the person’s commission, an impression of the person’s seal, and a specimen of the person’s official signature with the clerk of the circuit court of the circuit in which the person resides; and
- (3) Executing an official surety bond pursuant to section 456-5.

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

(c) Nothing in this section shall be construed to restrict or to do away with any liability for civil damages.”

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

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

SECTION 6. Section 456-9, Hawaii Revised Statutes, is amended to read as follows:

“§456-9 Fees[-] and administrative fines. (a) The attorney general shall charge and collect the following fees for:

- (1) Issuing the original commission, \$40; and
- (2) Renewing the commission, \$40.

Notwithstanding the foregoing, the attorney general may establish and adjust fees pursuant to chapter 91.

~~[The foregoing fees collected by the attorney general shall be deposited into the notaries public revolving fund established by section 456-9.5, except that if that fund is terminated, the foregoing fees shall thereafter be deposited with the director of finance to the credit of the general fund.]~~

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

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

- (1) Maintain an official seal of one type, either a single engraved seal or a single rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, and the words "notary public" and "State of Hawaii" only, \$20;
- (2) Surrender the notary public's seal and certificate to the attorney general within ninety days of resignation, removal from office, or the expiration of a term without renewal, \$200;
- (3) Authenticate every acknowledgment or jurat with a certificate that shall be signed and dated by the notary, include the printed name and official stamp or seal of the notary, identify the jurisdiction in which the notarial act is performed, describe in close proximity to the acknowledgment or jurat the document being notarized, and state the number of pages and date of the document, \$500;
- (4) Record all of the notary public's transactions as prescribed by section 456-15 and applicable rules, \$200;
- (5) Surrender the notary public's record books to the attorney general within ninety days of the end date of the commission, resignation, or removal from office, \$500; and
- (6) Notify the attorney general within ten days after loss, misplacement, or theft of the notary public's seal, stamp, or any record book, inform the appropriate law enforcement agency in the case of theft, and deliver a copy of the law enforcement agency's report of the theft to the attorney general, \$20.

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

SECTION 7. Section 456-9.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established in the state treasury the notaries public revolving fund into which shall be deposited:

- (1) All fees, administrative fines, charges, or other payments received pursuant to section 456-9;
- (2) Penalties and fines for violations of section 456-3, 456-7, or 456-16;
- (3) Appropriations made for deposit into the notaries public revolving fund; and
- (4) Interest earned on money in the notaries public revolving fund."

SECTION 8. Section 456-15, Hawaii Revised Statutes, is amended to read as follows:

"§456-15 Record; copies as evidence. Every notary public shall record at length in a book of records all acts, protests, depositions, and other things, by the notary noted or done in the notary's official capacity. For each official act, the notary shall enter in the book:

- (1) The type, date, and time of day of the notarial act;
- (2) The title or type and date of the document or proceeding[;] and the nature of the act, transaction, or thing to which the document relates;

- (3) The signature, printed name, and address of each person whose signature is notarized and of each witness;
- (4) Other parties to the instrument; and
- (5) The manner in which the signer was identified.

All copies or certificates granted by the notary shall be under the notary's hand and notarial seal[,] and shall be received as evidence of such transactions.”

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

SECTION 10. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 12. This Act shall take effect on January 1, 2009.
(Approved June 13, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.