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REVISED UNIFORM LAW ON NOTARIAL ACTS

Work Group Report

HB 2834

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Oregon Law Commission on
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*The Oregon Law Commission
is housed at the Willamette
University College of Law,
which also provides executive,
administrative and research
support for the Commission.*

I. Introduction:

The Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws (NCCUSL)) created the Uniform Law on Notarial Acts in 1982 to provide a uniform standard for notaries public across jurisdictions. In 2010 the Uniform Law Commission drafted the Revised Uniform Law on Notarial Acts (RULONA) to update and modernize the original Act and include electronic records and electronic commercial transaction laws. Like the original Act, RULONA provides a minimum standard for the laws regarding notaries public and brings uniformity to the notarization of electronic records as that medium continues to gain popularity.

II. History of the Project:

RULONA is a comprehensive revision of the original Uniform Law on Notarial Acts; the original Uniform Act was enacted in Oregon in 1983. The majority of the original act as Oregon adopted it has not been amended since its original enactment into law.

Oregon Law Commission Work Group member Tom Wrosch, of the Oregon Secretary of State's Corporation Divisions, served as an advisor to the national RULONA drafting committee. The Oregon Secretary of State's office and Uniform Law Commissioner Lane Shetterly both requested that the Commission review RULONA for possible adoption into Oregon law. Until now, the Oregon Legislative Assembly has not considered implementing RULONA into Oregon law.

The Oregon Law Commission staff assembled the RULONA work group in the summer of 2012 by direction of the Program Committee of the Oregon Law Commission and with the Commission's approval. The work group's mission was to evaluate the RULONA and determine how to best reconcile it with Oregon's current law, found in ORS Chapter 194. Members of the work group included: Chairperson Professor Bernie Vail, Lewis & Clark Law School; Dee Berman, Oregon Association of County Clerks; Lisa Ehlers, Oregon Law Commission Legal Assistant and Notary Public; Mike Eliason, Association of Oregon Counties; Amber Hollister, Oregon State Bar; Pat Ihnat, Fidelity National Title; Renee Koleen, Curry County Clerk; Diane Schwartz Sykes, Oregon Department of Justice; Kenneth Sherman, Sherman Sherman Jonnie & Hoyt; and Tom Wrosch, Oregon Secretary of State's Office. Staff for the work group included Ted Reutlinger, Legislative Counsel Office, and Wendy Johnson, Oregon Law Commission.

The work group held meetings on July 11, 2012, August 8, 2012, September 17, 2012, and November 9, 2012. Further discussion occurred via email in November and December. Ted Reutlinger circulated a draft of the bill, LC 243, prior to the July 11, 2012, meeting. The first draft represented an attempt to translate RULONA into traditional Oregon statutory vernacular and formatting. The work group spent the July 11, August 8, and September 17, 2012, meetings reviewing the provisions of LC 243 with discussion of the new RULONA provisions and current Oregon law found at Chapter 194. The work group focused much of its attention on the heart of LC 243—sections 1 through 40. In light of the comments and the consensus reached on the issues discussed during the July, August and September meetings, Ted Reutlinger drafted a revised version of LC 243 that was circulated to work group members via email on November 26, 2012. After receiving corrections to that draft, Ted Reutlinger circulated a final draft via email on December 21, 2012. In February 2013, LC 243 was introduced in the House Judicial Committee at the request of the Oregon Law Commission as HB 2834.

III. Statement of the Problem:

RULONA is an update of the notary law that addresses the societal, technological, and economic changes that have occurred since the promulgation of the first Uniform Law on Notarial Acts in 1982 and the codification of the Act in Oregon in ORS Chapter 194 (Notaries Public Chapter). Of primary concern is the dramatic increase in the use of electronic records in commercial, governmental, and personal transactions. There have been several uniform acts regarding electronic transactions, which many states have adopted, that place electronic records on par with tangible paper records.¹ These acts all recognize the validity of electronic notarial acts.² However, the only mention of electronic documents in Oregon's notarial acts law is found at ORS 194.582, which provides only that electronic signatures may be used whenever an electronic document requires a signature. That is, the Notaries Public Chapter still fails to address electronic documents. Oregon added this electronic signature reference in 2001 when Oregon passed the Uniform Electronic Transactions Act. RULONA would fully update Oregon law to include processes and rules for notarization of electronic documents. Also, as a uniform act, RULONA seeks to unify disparate state treatment of notarial acts on tangible media and electronic media, unify notarial procedure, and generally ensure the integrity and reliability of notarized transactions.

IV. Why Enact Now?

To date, North Dakota and Iowa have adopted RULONA into their state laws. Nevada introduced the bill this year. In order to realize the efficiency afforded by the uniform nature of the act, the ULC urges each state to enact RULONA as soon as possible to ensure consistency across jurisdictions.

RULONA has received widespread endorsement by practitioners and stakeholders. The American Bar Association's Real Property Section and Science and Technology Section endorsed RULONA and the American Bar Association's full House of Delegates endorsed the Act. In addition, the National Notary Association, the American Society of Notaries, and the Property Records Industry Association all endorse RULONA. The Oregon Secretary of

¹ See e.g., Uniform Electronic Transactions Act (1999) ("UETA"), codified at ORS 84.001-84.070, in 2001. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 96 (2010) ("ESign") and Uniform Real Property Electronic Recording Act (2004) ("URPERA") were not enacted in Oregon but have been enacted in 25 other states.

² UETA §11; ESign §101(g); URPERA §3(c).

State's office similarly supports RULONA. Oregon's present statutes are particularly out of date.

V. Section-by-Section Analysis and Explanation of the Bill:

Section 1. Short title: This section provides the name of the act and allows for easier keyword searches once the Act is integrated into the Oregon Revised Statutes.

Section 2. Definitions: The corresponding section in current Oregon law is ORS 194.005(1) – (8) and ORS 194.505. RULONA continues many definitions found in Oregon law that are generally equivalent. However, some nonuniform definitions were carried over from current Oregon law due to unique circumstances in Oregon law, along with a few new nonuniform definitions that were added to reduce confusion.

One example of carrying over current Oregon law into HB 2834 is the definition of Commercial Paper (ORS 194.005(1)). This definition is found in HB 2834 at Section 2(3). The work group determined that it is necessary to maintain consistency for those who use this chapter in combination with negotiable instrument law found in ORS Chapter 73.

One source of new definitions is the work group's effort to clarify which state officials have notarial authority as part of their official position. This effort arose because of several work group members' concern that there is general confusion about which officials in Oregon have authorization to carry out notarizations and/or acknowledgments under color of statutory or other legal authority. The work group identified many positions of public officials in local government that are believed to rely on or have explicitly requested the authority to perform notarial acts and acknowledgments as part of their official duties. The work group also found that Oregon laws do not properly identify all of these eligible groups in a central statutory location. In section 2, the bill defines "clerks of a court of the state", "in a representative capacity", and "judge" to clarify and detail who has authority. See HB 2834 §2(2), (6), (7) and §9(1). To reduce confusion, the work group decided it is best to formally identify and list these officials in statute. Oregon's complex judicial organizational structure (i.e. with county judges, justices of the peace, etc.) makes it particularly necessary to spell out.

The work group reached a consensus to remove the definition of "good moral character" found at ORS 194.005(3) because of the ambiguous and unworkable nature of the standard as used to evaluate the ethical conduct of notaries public. Instead, the HB 2834 provides new language for identifying acts that preclude prospective notary public applicants from receiving or renewing a commission. That provision is found in section 22.

To maintain consistency with current Oregon law, the work group agreed that RULONA's references to "or embossed on" should not be used because all documents must be affixed with the notaries public official stamp. An embossment cannot be substituted for an official stamp. However, a notary may both emboss and stamp a document. See ORS 194.031(1)-(7). The work group found Oregon's policy better than the uniform act in this area because photocopies do not pick up embossing marks.

Section 3. Authority to perform a notarial act: The content of this section is similar to current Oregon law found at ORS 194.012, 194.100, and 194.158(1), which all pertain to the scope of the notary public’s position. RULONA adds and Oregon would adopt new language in this provision that codifies a conflict of interest rule. However, it must be noted that this conflict of interest rule was already in practice because the Oregon handbook for notaries public provides that notaries should not notarize documents for which they have a beneficial interest. Unfortunately, the phrase “direct beneficial interest” is not defined in the Act. It must also be noted that transactions are voidable if a notary performs a notarial act with respect to a record to which the notary has a direct beneficial interest. The work group decided against trying to specify exactly what interests are covered under “direct beneficial interest,” and intentionally chose to leave the issue for the courts to settle as it will continue to be a fact-specific issue. While ORS 194.100 previously codified a conflicts rule, that rule only applied to banks and financial institutions. With HB 2834, all notaries will be covered.

Section 4. Requirements for certain notarial acts: This section is substantially similar to ORS 194.515(1) to (5). The requirements contained in this section identify what is involved when a notarial officer takes an acknowledgment of a record, takes verification on oath or affirmation, witnesses or attests a signature, or certifies or attests a copy of a record. The bill also directs that matters involving the making or noting of a protest of a negotiable instrument are located at ORS 73.0505.

Section 5. Personal appearance required: Although this section is a new provision, ORS 194.515(3) already implies a “presence” requirement anyway and that has actually been the practice. Section 4(c) formally adopts a presence requirement by mandating that “the individual making the statement or executing the signature” appear before the notarial officer. Appearance by webcam does not meet the presence requirement.

Section 6. Identification of individual: This section brings significant changes to Oregon notary public law. The first change is that while current Oregon law requires current identification to be used, RULONA (and now HB 2834) allows identification that expired not more than three years prior to performance of the notarial act. See Section 6(2)(a). The purpose for this policy is to be less restrictive to sections of the population who frequently do not have up-to-date identification because they no longer drive or have less opportunity to timely renew their identification. The thought process behind this policy in RULONA is that the identification is not truly less capable of being used to identify the individual in the weeks, months, and even a couple years after it expired. More importantly, to restrict notarization in such a way that disallows individuals who have difficulty maintaining current identification creates an additional barrier for these individuals to conduct normal business and only exacerbates their alienation from normal participation in essential civic activities. The elderly, the hospitalized, and undocumented immigrants were noted as three groups that have particular problems with present identification requirements. That is, while many of these individuals may have an expired driver’s license that is no longer valid for driving, that same driver’s license still serves as an adequate way to identify the individual.

While most commercial notary interests are in favor of the expired identification provision because it will ease business transactions involving individuals who often do not have current identification, other commercial interests (notably, banks) expressed concern that allowing pieces of identification to be valid beyond their expiration date would violate accepted commercial practices. The work group acknowledged this concern, but the work group also noted that two provisions of the new bill would mediate the risks in the expired identification provision. First, according to section 6(3), notaries are permitted to request that the individual seeking the notarial act provide additional

information or identification credentials to confirm the identity of the individual. Second, section 7 allows a notary public to refuse to perform a notarial act if the notary is not satisfied that the individual has the necessary competency and capacity, that the individual's signature is not knowingly and voluntarily made, or because the individual has not provided sufficient identification credentials necessary to confirm the identity of the individual.

The second significant change in this section involves the credible witness identification. The RULONA allows the witness to be unknown to the notary as long as the credible witness can produce valid identification and knows the person seeking the notarial act. See section 2(2)(b). Previously, only credible witnesses personally known to the notary could serve to identify the individual seeking the notarial act. Like the new expansion to allow the use of expired identifications, the policy behind this provision in RULONA is to increase access to notarial acts, especially in communities where notaries are less prevalent and more individuals struggle to maintain current identification.

In light of the variety and variation of physical descriptions currently in use on some pieces of government-issued identification cards and documents, the work group also discussed the need for additional clarification on what would be accepted. The work decided on recommending that the individual's signature and picture be required on the identification. See section 6(2)(a) and (b). Having this standard ensures reliability in verification.

Section 7. Authorization to refuse to perform notarial act: As mentioned in the discussion for section 6, there is no requirement in the act that a notary is compelled to perform a notarial act. Thus, the notary always retains the right to refuse to perform a notarial act if the notary has legitimate concerns about authenticity, identification or capacity of the individual requesting performance. A notary has broad discretion over whom the notary agrees to provide notary services, except for situations involving unlawful discrimination prohibited by law (e.g. civil rights, etc.). This position codifies existing policy previously found in the Oregon Notary Handbook.

Section 8. Signature if individual unable to sign: Work group members summarily confirmed that this is an important new section since it allows a proxy to sign for individuals who are temporarily disabled or permanently disabled. An individual can still use a signature stamp if they have one (see definition of signature that is a "tangible symbol"). A tangible symbol can include a stamp, an X, a signature, etc. Compare ORS 194.578. This new section fixes what has been a simple but real problem (e.g. a person with a broken arm, etc.). Work group members noted that there is a similar provision for wills that allows a proxy.

Section 9. Notarial act in this state: As mentioned in section 2 above, the work group gave serious consideration to clarification of precisely which state officials are authorized to perform notarial acts. Additionally, the work group received requests from government officials who already perform duties similar to notarial acts, some of whom previously had authority to perform notarial acts in the recent past (county clerks had clear authority before the court reorganization). In part to reduce confusion and to improve access to notarial acts, the work group modified the language of RULONA (section 10) and current Oregon law (ORS 194.525) to clarify that county clerks (or the county appointee, for counties that do not have the county clerk position), clerks of the court, and all forms of municipal and county judges—including justices of the peace—have authority to perform a notarial act under HB 2834. This special language is necessary to cover Oregon's unique judicial forms that vary throughout the state.

Similar to the current law found at ORS 194.525(2), section 9 now includes subsection 2, which clarifies that the notarial acts performed under the authority of other states, federally recognized Indian tribes, federal authority, and recognized multinational or international governmental organizations all have the same effect under the law of Oregon as if performed by an Oregon notary public.

Section 10. Notarial act in another state: This section is essentially the same as ORS 194.535, and thus has no difference from current law other than to reduce any redundancy present in ORS 194.535(2). The work group recognized that Oregon adopted the Uniform Acknowledgment Act, which is the foundation for this and similar statutes. In short, Oregon will generally recognize notary acts performed in another state.

Section 11. Notarial act under authority of federally recognized Indian tribe: The content of this section corresponds to current Oregon law found at ORS 194.558. In short, Oregon will generally recognize notary acts performed under authority of federally recognized Indian tribes.

Section 12. Notarial act under federal authority: While this section corresponds to current Oregon law found at ORS 194.545, the work group discussed the possibility of clarifying the section by identifying the individuals that have been granted authority to perform notarial acts under federal authority. For instance, it was suggested that subsection (1)(b) could include a list of individuals in the military that are authorized to perform notarial acts under federal law. The goal behind this would be to allow individuals questioning whether someone holding him or herself out as having notarial powers could be easily confirmed.

Research revealed, however, that the federal authorization underpinning this grant of authority is not conducive to reproduction within this statute, and thus the ultimate goal of making it easier to ascertain the legitimacy of the a notary operating under federal authority would not be helped by attempting to include all of the military officials (or any of the other individuals authorized under federal authority) in HB 2834. That is, the list in federal law is long and complicated and not conducive to listing within Oregon statute.

Section 13. Foreign notarial act: Aside from a change of terms from “foreign nation” to “foreign state,” this section remains substantially the same as current Oregon law found at ORS 194.555. A reference to an official seal has been omitted to reflect the change away from embossing in favor of an official stamp only. In short, Oregon will generally recognize notary acts performed under the jurisdiction of a foreign state or an international governmental organization.

Section 14. Certificate of notarial act: Much of the current law on certificates of notarial acts has been retained from ORS 194.565. This section provides that a notarial act must be evidenced by a certificate and the details of the certificate requirements are listed. As mentioned earlier, the work group agreed to remove any reference to “or embossed on” (usually mentioned in tandem with stamping) in RULONA because of the earlier work group decision that embossing alone should remain insufficient under Oregon law due to the photocopying problems inherent with embossing.

Also, the work group agreed that the HB 2834 should retain the current law found at ORS 194.565(1) that allows the notary to correct the date of expiration on the certificate for errors. It states “omission of [date of expiration] information may subsequently be corrected.” The work group expanded this provision to allow notaries to subsequently correct any information included or omitted from the certificate (see subsection 14(2)). The work group’s rationale for allowing a notary to correct all

aspects of the certificate come from the notion that if the notary is otherwise trustworthy enough to maintain his or her commission and make corrections to the date of commission expiration, the notary might as well be able to correct or include any information that was omitted from the certificate. The valid but unlikely concern with forged certificates is valid in either circumstance, and is not intensified by the expansion of the notary's power to correct the certificate. In the end, the work group decided that the undue cost and delay associated with receiving notarized documents with an invalid certificate warrants notaries having the authority to correct invalid certificates.

The work group also agreed that the form certificate should be revised to also "contain the name of the person for whom the notarial act is performed[.]" (See section 14(1)(d)). This seemed like an omission in RULONA.

Section 15. Short form certificates: This section includes only minor changes to existing law that deal with change of phrasing from "seal" to "stamp," (explained above), and dropping the "(and Rank)" from the form with the understanding that title is sufficient. Otherwise, it is essentially the same as current Oregon law under ORS 194.575. Although the work group entertained a suggestion that this section could be referred to as simply "form certificates," the work group decided to keep "short" in the title in cognition that long form certificates are still valid and some people still use them.

Section 16. Official stamp: Much of the substance of the RULONA version of this section essentially already exists in Oregon law by administrative rule. See OAR 160-100-0100. One issue that the work group considered is whether the requirement specified in ORS 194.031(1) for black ink should be maintained in light of an interest expressed by some clerks to have the standard change to blue ink to order to make the stamp more legible. However, the work group determined that other states have reversed course after experimenting with colors other than black after discovering that colors do not photocopy well. HB 2834 would ultimately replace ORS 194.031(1) with section 16(2): "[the stamp must] [b]e a legible imprint capable of being copied together with the record to which it is affixed or attached or with which it is logically associated." The work group further decided that any requirement regarding ink color could be achieved by rulemaking power, as provided in Section 26 of the act, to allow for flexibility and compromises.

Section 17. Stamping device: Current law found at ORS 194.154(1)(a) requires the notary to return the stamping device to the Secretary of State when the notary's commission is resigned or revoked. ORS 194.154(1)(b) directs a notary whose commission expires under normal conditions to destroy the seal (stamp) as soon as it is reasonably practical. HB 2834 reflects a policy change in RULONA that instructs notaries who are resigning their commission to also disable the stamping device by destroying, defacing, damaging, erasing or securing the device against use, instead of notaries returning the stamp to the Secretary of State. The work group decided that it is best not to burden the Secretary of State's office with retrieving and receiving stamps of notaries whose commissions had expired or voluntarily resigned. However, it is important for notaries whose commissions have been revoked to be required to return their stamps because these notaries can no longer be trusted to destroy their stamps.

Section 18. Journal: The work group devoted a significant portion of at least two meetings discussing the rules surrounding recording rules for journaling, exceptions to journaling, and who is to maintain possession of the notary's journal after the notary's commission ends.

Like the rules for destroying or remitting the notary's stamp to the Secretary of State after a notary's

commission ends, journals pose a similar problem of what to do with a notary's journal when a commission ends because of death, non-renewal, resignation or revocation. Current Oregon law, found at ORS 194.154(2), requires the notary to "dispose of the notarial journal and records pursuant to rules adopted by the Secretary of State within 30 days after the effective date of the resignation, revocation or expiration, whichever occurs first." Additionally, ORS 194.154(3) allows former notaries who intend to reapply for a commission within 90 days after expiration to delay disposal of the journal until the expiration of that period. The difficulty with the current system, according to work group members with experience at the Secretary of State's office, is that it puts a significant burden on the Secretary of State to store old notary journals, and enforcement is impossible. Work group members, however, also expressed the competing interest for keeping the journals in the possession of the Secretary of State to make the record accessible for verification purposes.

RULONA provides flexibility for journal policy by allowing states the option to select one of two different courses of action. One option directs the notary public to retain the journal and inform the Secretary of State's office of where the journal is stored. Another option would direct the former notary public to transmit the journal to the commissioning agency or an approved repository approved by the commissioning agency.

The work group determined that the benefit of having the Secretary of State receive the journal is greatest when a notary's commission has been revoked because the journal may be important evidence for prosecuting the notary. As a result, the work group drafted HB 2834 to maintain current law that requires a notary whose commission has been revoked to remit the notary's journal to the Secretary of State's office within 30 days. (Section 18(7)).

RULONA's policy for notaries public that die or are adjudged incompetent corresponds to current Oregon law; the deceased notary's personal representative must submit the notary's journal to the Secretary of State. For notaries public that resign or let their commission expire, HB 2834 requires the former notary to "retain the journal for 10 years after the performance of the last notarial act chronicled in the journal." (Section 18(1)). Additionally, HB 2834 allows notaries to enter into agreements with their employer to keep the notary's journal after their employment ends, as current Oregon law allows. (Section 18(10)).

RULONA also allows flexibility for states to choose whether to limit notaries public to one journal. ORS 194.152(1) permits notaries to maintain "one or more chronological journals of notarial acts." The work group elected to maintain the current language in recognition that maintaining only one journal is impractical given current practices of notaries operating separately in commercial setting as part of the notary's employment and outside of their employment. Still, one journal is preferred and the journaling should be chronological.

Although the work group decided to adopt the new policy in RULONA directing the notary to make entries in the journal contemporaneously with the performance of the notarial act under subsection (3), subsection (4) allows single entries to suffice for certain duplicate notarial acts or situations involving multiple statements or signatures on the same date for the same person.

Also, while RULONA does not make any allowance for exceptions to the journaling of notarial acts, HB 2834 subsection (11) provides nonuniform exceptions to journaling currently codified in ORS 194.152(1) including the following: (a) recording a protest of commercial paper; (b) administering an oath or affirmation; (c) certifying or attesting a copy of a document; (d) taking an affidavit; (e) verifying a billing statement for media advertising; and (f) taking a verification upon oath or

affirmation. The Oregon State Bar remains the main proponent for continuing the exceptions to journaling. Law offices conduct a lot of notarizations and requiring journaling is time consuming.

Section 19. Notification regarding performance of notarial act with respect to electronic records: This section reflects an acknowledgment in RULONA that many forms of electronic notarization are found in the market and no one electronic system has become the de facto standard. Because electronic notarization remains an area that continues to experience significant changes on a regular basis, the work group determined the regulation of electronic notarization remains best left to the Secretary of State to control under its rulemaking authority as this section provides.

Section 20. Commission as notary public; qualifications; no immunity or benefit: This section deals with the application and qualifications for becoming a notary. The language laying out the application process intentionally allows flexibility for the Secretary of State's office to shift from receiving paper applications by mail to receiving online applications.

The work group removed the citizenship requirement found in RULONA notary public qualification requirements as it determined *Bernal v. Fainter*, 467 U.S. 216 (1984), to still be good law. The Court's conclusion in that case was the State of Texas violated the Equal Protection Clause by prohibiting noncitizens from applying for a commission as a notary public. This holding has not been overturned, despite evidence that several states seem to maintain prohibitions that are in violation of the Court's holding.

The work group wrestled with a requirement in current Oregon law that requires that the notary public "be a resident of this state . . . or be a resident of an adjacent state and be regularly employed or carry on a trade or business within this state at the time of appointment." ORS 194.022(1)(b). While some states have opened up their notary public laws to be effective outside of their state (i.e. Virginia's notaries public can lawfully electronically notarize in California), work group members chose not to follow this approach because of worries that it leads to great difficulty in tracking down and enforcing violators of the notary public statutes. Instead, the work group opted to maintain RULONA's language that an applicant must "be a resident of or have a place of employment or practice in this state."

This section also includes nonuniform language meant to clarify the type of crimes or adjudications that would prevent an individual from being able to become a notary. ORS 194.022(e) and (f) currently provide that an applicant for notary commission or renewal must not have had a notary commission revoked within the five year period preceding the date of application. The applicant must also not have been convicted of a felony or "of a lesser offense incompatible with the duties of a notary public during the 10 year period preceding the application." The list of these offenses that are incompatible are provided by rule in 160-100-0510. The new language about "fraud, dishonesty or deceit" is meant to parallel the contents of section 22, which regulates the grounds for denial, revocation, suspension and other acts which are inconsistent with the principles of being a notary public. This section includes a 10-year look-back period prior to the time of application; thus, an individual who has committed a felony earlier than 10 years ago is not automatically barred from being granted a commission. The work group considered the value of having a rule that essentially prevents a person with a felony conviction from ever being a notary, but the work group ultimately decided that this idea is too severe because of the overly harmful employment repercussions that are likely to result from the inability to have the level of responsibilities that come with being a notary public. Collateral consequences to conviction should be thoughtful and constrained.

Additionally, while RULONA continues the tradition in many jurisdictions that requires notaries to procure a surety bond prior to being receiving a commission, the work group agreed that Oregon should continue to not impose bonding requirements. The work group's reasoning is that bonding requirements only tend to shift the regulation of notaries' qualifications to the bonding issuers, and the protection that bonding offers tends to be a trivial amount that does not provide a meaningful remedy to the victims harmed by improper notarial acts.

The work group also decided that four year commission term remains the most appropriate term length because it allows commission renewals to coincide with continuing education needs and the need to maintain accurate contact information for notaries public.

Section 21. Examination of notary public: This bill continues to require applicants for notary commissions to pass an examination administered by the Secretary of State.

Section 22. Grounds to deny, revoke, suspend or condition commission of notary public: This section contains rules for revoking a notary's commission. The analogous section in current law is ORS 194.166. The work group restructured RULONA's language for this section because the arrangement of clauses made for a needlessly compounded list of qualities that apply to a list of sub-clauses. Instead, HB 2834 consolidates the section without any loss of meaning and reduces the redundancies. Section 20 and 22 work together to address qualifications and grounds for denying, revoking, suspending, and conditioning commissions.

Section 23. Database of notaries public: This section requires the Secretary of State to maintain an electronic notary database; the Secretary of State's office already maintains a voluntary listing of notaries. The new database would permit the public to look up a notary public's commission status.

Section 24. Prohibited acts: This section shares many similarities to current law codified at ORS 194.166. It is updated to remove unnecessary references to no longer applicable rules, and to cross reference definitions from other statutes (for instance, "immigration consultant," as defined in ORS 9.280). This section also maintains enhanced nonuniform posting requirements for advertisements found at ORS 194.162(3), which requires a statement in English about the inability of the notary to give legal advice and the requirement that fees for services are posted according to the terms found at ORS 194.164. In short, having a commission as a notary public does not authorize a person to practice law or act as an immigration consultant. This section restricts advertising to help prevent deception regarding a notary's authority. Subsection (7) is a new important requirement – it provides that a notary public may not withhold original records provided by a person that seeks a notary act.

Section 25. Validity of notarial acts: This section helps maintain the validity of a notarial act even if a notary fails to complete the act correctly. This provision is new with RULONA.

Section 26. Rules: This section pertains to the Secretary of State's rulemaking authority, which is still treated as being very broad, and comes from ORS 194.335. The only significant change is the editing of this section to remove any reference to bonding.

Application Fee, Investigation, Change of Address

Section 27. ORS 194.020 repealed: Section 28 replaces current ORS 194.020 regarding the application fee.

Section 28. Application fee: This section sets out a \$40 limit for the non-refundable application fee, which maintains the current limit under Oregon law for applicants seeking a commission as a notary public.

Section 29. ORS 194.024 repealed: This section repeals ORS 194.024 regarding the applicant's consent to a background check and Section 30 is enacted in lieu thereof.

Section 30. Investigation of applicant; consent: This is a new provision authorizing a background check of applicants for a commission as a notary public.

Commercial Paper

Sections 31 – 40: These sections are drawn directly from [194.070, 194.090, 194.100, 194.130, and 194.150]. HB 2834 represents no notable changes from the current law, and alters RULONA only to use language commonly used in Oregon (e.g. “personal representative” instead of “executor.”) In short, these sections continue to provide that a notary public may protest commercial paper procedures, including record keeping requirements for protests are also maintained.

Specific Oregon Provisions/Miscellaneous Changes

Section 44. Action for damages or injunction; attorney fees and costs; employer's liability: This section continues and improves upon current Oregon law found at ORS 194.200. Instead of providing a remedy for only a select number of injuries caused by notaries who perform prohibited acts, section 44 now provides a remedy for eleven violations of section 24. In addition, in subsection (2), the provision now allows the Attorney General to bring a civil action. Present law only allows the Secretary of State to enforce on behalf of injured persons. The remedies made available are also made more consistent, and equitable relief is available.

This revised section also includes a new six-year statute of limitations in (4) which was recommended by the work group based on six years being a common standard for similar causes of action under Oregon law.

Section 45 and 46. Attorney General to investigate or prosecute violation; payment of expenses: This section maintains current law codified at ORS 194.330 and renumbers it. This provision allows the Secretary of State to direct the Attorney General to take charge of an investigation or prosecution.

Section 49. Uniformity of application and construction: This section is essentially an interpretation provision that reminds courts that “consideration must be given to promote uniformity of the law with respect to the subject matter of sections 1 to 50” of this Act. As other states apply the law, uniformity in application is expected.

Section 51. This section would amend ORS 194.980 clarify that the Secretary of State may impose a civil penalty for each violation of any provision of sections 1 to 50 of the Act or any rule adopted by the secretary under the same sections of this Act. Form and style changes are made throughout this section as well.

Sections 54 to 57. These sections make conforming changes to largely reflect cross-reference citation changes necessitated by the new act. Section 56(2) contains bold language that is already in existing law. The Work Group concluded that it is more appropriately located in Section 56, rather than ORS

194.040 of present law. The provision now provides for both the authentication powers the Secretary of State has and does not have. The statement of powers not afforded to the Secretary of State is necessary to clarify common misperceptions in accessible statutory form.

Section 61. Save for the penalties section (194.980, 194.985, and 194.990), all of Chapter 194 is repealed with this bill. Several provisions are essentially retained from present law, but are renumbered to create a new series as provided in this bill.

Specifically, ORS 194.005 and 194.505 are replaced by section 2. ORS 194.010, 194.012, 194.014, 194.020, and 194.022(a)-(c) are replaced by section 20. Other sections subsume the remainder of ORS 194.022. ORS 194.024 is repealed by section 29 and section 30 is in lieu of it. ORS 194.028 is replaced by section 21. The content of ORS 194.031 is primarily replaced by section 16. ORS 194.040 is repealed; subsection 1 is essentially replaced with the maintaining of a database requirement in section 23 and subsection 2 is moved to ORS 177.065 in Section 56. Multiple sections subsume ORS 194.043. ORS 194.047, ORS 194.052 and 194.063 are repealed; these provisions regarding change of address and name as well as renewals and resignations are not replaced as they will be handled by administrative rules. Section 31 repeals ORS 194.070 and it is replaced by section 32. Section 33 repeals ORS 194.090 and it is replaced by section 34. ORS 194.100 is repealed by section 35 and replaced by section 36. ORS 194.130 is repealed by section 37 and it is replaced by section 38. Section 39 repeals ORS 194.150, and it is replaced by section 40. ORS 194.152, 194.154, and ORS 194.156 are subsumed by section 18. ORS 194.158 is subsumed by section 3 (though section 24 now has the title “prohibited acts”). ORS 194.162 is subsumed by section 24. ORS 194.164 is repealed by section 41, and it is replaced by section 42. ORS 194.166 and ORS 194.168 are replaced by section 22. Section 43 repeals ORS 194.200 and section 44 replaces it. Section 45 repeals ORS 194.330, and section 46 replaces it. Section 26 replaces ORS 194.335. Section 4 replaces ORS 194.515. Section 9 replaces ORS 194.525. Section 10 replaces ORS 194.535. Section 12 replaces ORS 194.545. Section 13 replaces ORS 194.555. Section 11 replaces ORS 194.558. Section 14 replaces ORS 194.565. Section 15 replaces ORS 194.575. Section 8 replaces ORS 194.578. ORS 194.582 is subsumed by several sections of the bill. Section 49 replaces ORS 194.585. Section 1 replaces ORS 194.595. Section 47 repeals ORS 194.700 and it is replaced by section 48.

Miscellaneous Transition Provisions

Section 64. Operative date: HB 2834, if passed, would become operative September 1, 2013. The timing of this operative date is meant to efficiently coincide with a change in systems at the Secretary of State’s office. Nevertheless, this section also allows the Secretary of State to take any action prior to the operative date to allow the secretary to carry out sections 1 to 50 of the Act.

Section 65. Effective date: This Act will take effect on its passage. The emergency clause provision was requested by the Secretary of State’s office as the office is writing the update to finish some of its programming.

VI. Conclusion

The Revised Uniform Law on Notarial Acts would put in place an updated structure and rules to address both the increasing non-uniformity between states and the ever-growing use of technology. The Act makes improvements in the law to provide a system that will better support the integrity of notarial acts. The comprehensive rewrite of Oregon’s notary chapter provided for in this bill

represents a consensus product among key stakeholders and will aid all Oregonians who need notarial acts performed.

VII. Appendix [Revised Uniform Law on Notarial Acts with comments]

(Due to the size of the appendix, it is not reprinted in this Biennial Report. It is, however, available online at the Commission's website

<http://www.willamette.edu/wucl/centers/olc/groups/2011-2013/rulna/index.html>. The uniform act was submitted to the legislature and is available on OLIS.)