

Enrolled House Bill 2085

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CHAPTER

AN ACT

Relating to notaries public; creating new provisions; and amending ORS 194.164, 194.166 and 194.515.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 194.515 is amended to read:

194.515. (1) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(2) In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(3) In witnessing or attesting a signature the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

(4) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true and accurate transcription or reproduction of that which was copied.

(5) In making or noting a protest of a negotiable instrument a notarial officer must determine the matters set forth in ORS 73.0505.

(6) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person:

(a) Is personally known to the notarial officer;

(b) Is identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(c) Is identified on the basis of identification documents.

(7) For purposes of this section, "personally known" means familiarity with a person resulting from interactions with that person over a period of time sufficient to eliminate every reasonable doubt that the person has the identity claimed.

(8) For purposes of subsection (6)(c) of this section, a notarial officer has satisfactory evidence upon which to identify a person if **the person:**

(a) **Produces a current driver license or current identity card issued by any state;**

(b) **Produces a current United States passport or a current officially recognized passport of a foreign country;**

(c) **Produces a current United States military identification card;**

(d) **Produces a current identity card issued by a federally recognized Indian tribe;**

[(a)] (e) [The person] Produces at least one current document, **other than a document described in paragraphs (a) to (d) of this subsection**, issued by the federal government or a state, county, municipal or other local government and containing the person's photograph, signature and physical description;

[(b)] *The person produces at least two current documents, each issued by an institution, a business entity, the federal government or a state, county, municipal or other local government and each containing the person's signature;* or

[(c)] (f) [The person] Is confined in a correctional facility and has been positively identified through examination or comparison of official government documents or records.

[(9)] *If a notarial officer is also an employee of a financial institution, as defined in ORS 706.008, and the person to be identified is a customer of the financial institution, one of the two current documents required under subsection (8)(b) of this section may be a signature card signed by the customer and held by the financial institution in connection with the financial institution's transactions with the customer.*

SECTION 2. ORS 194.164 is amended to read:

194.164. (1) The Secretary of State shall adopt by rule a schedule fixing the [maximum] fees that a notary public may charge for performing notarial acts. **A fee may not exceed \$10 per notarial act.** The schedule shall include, but **need** not be limited to, [maximum] fees for the following notarial acts:

- (a) Acknowledgments.
- (b) Oaths or affirmations without a signature.
- (c) Verifications upon oath or affirmation.
- (d) Copy certifications.

(e) **Protesting commercial paper, except that [no fees shall be allowed] a notary public may not charge a fee for protesting a check because of the insolvency of the financial institution upon which the check was written.**

(2) A notary public may charge an additional fee for traveling to perform a notarial act if:

- (a) The notary explains to the person requesting the notarial act that the fee is in addition to the fee specified under subsection (1) of this section and is not required by law; and
- (b) The person requesting the notarial act agrees in advance upon the amount of the additional fee.

(3) [Notaries] **A notary public** shall display an English-language schedule of fees for notarial acts, as specified under subsection (1) of this section.

(4) **A notary public who is employed by a private entity may enter into an agreement with the entity under which fees collected by the notary under this section are collected by and accrue to the entity.**

(5) **For purposes of defraying costs incurred by the public body for providing notarial services, a public body as defined in ORS 174.109 may collect the fees described in this section for notarial acts performed in the course of employment by notaries public who are employed by the public body.**

SECTION 3. ORS 194.166 is amended to read:

194.166. The Secretary of State may refuse to appoint any person as notary public or may revoke or suspend the commission of any notary public upon any of the following grounds:

(1) Failure to meet or maintain the qualifications required under ORS 194.005 to 194.200 or refusal of the consent described under ORS 194.024.

(2) Substantial and material misstatement or omission of fact in the application submitted to the Secretary of State.

(3) Engaging in official misconduct.

(4) Conviction of a felony, or of a lesser offense incompatible with the duties of a notary public.

(5) Revocation, suspension, restriction or denial of a professional license issued by a governmental entity, if the revocation, suspension, restriction or denial was for misconduct, dishonesty or any cause substantially relating to the duties or responsibilities of a notary public.

(6) When adjudged liable for damages in any suit grounded in fraud or misrepresentation or in any suit based upon a failure to discharge fully and faithfully the duties as notary public.

(7) The use of false or misleading advertising wherein the notary public has represented that the notary public has powers, qualifications, rights or privileges that the office of notary does not have, including the power to counsel on immigration matters.

(8) Engaging in the unauthorized practice of law.

(9) Charging more than the [maximum] fees adopted by the Secretary of State by rule under ORS 194.164.

(10) Failure to comply with ORS 194.162 (3) and (4).

(11) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit the notary public or another or substantially injure another.

(12) Failure to complete an acknowledgment at the time the notary's signature and official seal are affixed to the document.

(13) Execution of any certificate as a notary public containing a statement known to the notary public to be false.

(14) Using officially an official seal, seal embosser or other device making an imprint or impression that does not conform to ORS 194.031 or to the rules of the Secretary of State.

(15) Failure to give notice of change of address as required under ORS 194.047 or apply for, or give notice of, a change of name as required under ORS 194.052.

SECTION 4. (1) The amendments to ORS 194.515 by section 1 of this 2009 Act apply to identification documents provided to or relied upon by a notarial officer on or after the effective date of this 2009 Act.

(2) The amendments to ORS 194.164 and 194.166 by sections 2 and 3 of this 2009 Act apply to fees charged or collected on or after the effective date of this 2009 Act.

Passed by House March 11, 2009

Received by Governor:

Repassed by House May 20, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

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Governor

Passed by Senate May 18, 2009

Filed in Office of Secretary of State:

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President of Senate

.....M.,....., 2009

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Secretary of State