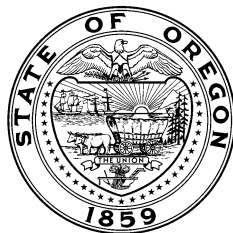


Office of the Secretary of State

BEV CLARNO  
SECRETARY OF STATE

JEFF MORGAN  
INTERIM DEPUTY SECRETARY OF STATE



Corporation Division

RUTH MILES  
DIRECTOR

255 CAPITOL STREET NE, STE 151  
SALEM OR 97310

(503) 986-2200  
(503) 378-4381 FAX

Written Testimony on HB 4212, sections 19-32 - Remote Online Notarization  
Joint Committee on the First Special Session of 2020  
June 25, 2020

The Corporation Division is the Secretary of State's arm for commissioning and regulating notaries for the State of Oregon. Since the inception of the pandemic, we have received a high level of calls and emails from notaries, consumers of notarization and industry groups requesting information on remote online notarization (RON) and direction on how to engage in safe traditional notarizations.

In 2013, the Oregon Legislature adopted the Revised Uniform Law on Notarial Acts (RULONA) in the form of [HB 2834](#). In 2018, the Uniform Law Commission updated RULONA, adding provisions associated with RON.

When the Oregon Law Commission took up the issue of RON, the Corporation Division participated in the process. A legislative concept for permanent adoption of RON was completed with our help in September 2019 (LC 9990). The bill was not introduced during the 2020 regular session.

Then came the pandemic. It's important to note that traditional and electronic notarizations - the only kind that are currently legal in Oregon - are challenging to perform while observing social distancing measures. Why? Because [ORS 194.235](#) requires the signer to appear in the physical presence of the notary public. Specifically, there's the matter of any documents and the notary's journal, which must be handled by both the notary and the signer. We've heard from notaries serving patients in hospital settings with questions about how to ensure a sanitary paper journal.

You can see why notaries and consumers are concerned. So, we took a hard look at what other states were doing to allow RON or some sort of "RON-Lite" approach. **According to figures from the [National Association of Secretaries of State](#), 47 states have adopted some form of RON**, either through legislation or emergency orders.

Of the remaining states, Oregon is one of just a couple that does not recognize RON notarizations performed for Oregonians by duly commissioned notaries from states where RON is legal. We cannot recognize RON notarizations as we do traditional notarizations because of the provisions of [ORS 194.235](#), requiring personal appearance before the notary.

I and my staff worked hard to vet what we, from a regulatory standpoint, thought were the most promising of ideas already in practice in other states. However, all but one of these concepts had faults that could increase the potential for consumer fraud and/or were unsuitable for complex, high-value transactions. The one concept left after this sifting process was temporary adoption of RON.

The Oregon Law Commission RON Workgroup met relatively recently to consider this issue. In the end, participants agreed on a second legislative concept that would allow for temporary adoption of RON, which is before you now as HB 4212 (sections 19-32).

When notaries perform a RON notarization, they use an existing online platform that meets certain criteria listed in RULONA 2018. These criteria include:

- Knowledge-Based Authentication (KBA)
- Secure document upload and transmission with tamper-evident technology
- Video and audio conferencing with recording of the notarization
- Digital stamping and signing

With respect to the platform used for this remote hearing today, it would not qualify as a RON platform. Neither would GoToMeeting, Zoom or popular phone applications for video conferencing.

From a regulatory standpoint, RON is a game-changer. Currently, notary complaints include a copy of the document notarized, if possible and when applicable. When we ask notaries about these transactions as part of our investigation, they must rely on their memory and provide us with the page(s) from their journal that references the transaction.

RON notarizations use secure video conferencing technology that is as close to realtime as possible. In addition, an audio-visual recording of the notarization is required (and kept for 10 years from the date of the notarization). This will give us the ability to review the actual transaction and determine if it meets Oregon statute. As someone who has been a notary, I think this will provide an exceptional level of protection and convenience for both notaries and consumers. From a regulatory standpoint, I'm pleased with the idea of having access to a recording of the notarization when necessary for an investigation.

If RON passed in Oregon, not all notaries would choose to perform RON notarizations. For those that want to perform RONs, it will take a little time to complete education, provide formal notification to the State, receive an acknowledgement, and get connected with a platform that meets the criteria established in temporary rule. However, if RON passed, duly commissioned notaries from other states where RON is already legal would be able to use a platform to perform a RON notarization for an Oregonian customer right away.

In the meantime, the Corporation Division has issued guidance for notaries on conducting safe traditional notarizations. Through the National Association of Secretaries of State, we have been following bipartisan legislation that would make RON legal under most circumstances in all 50 states and territories. This bill is S.3533, known as the [Secure Act](#). It has been read twice and referred to Senate Judiciary.

We continue to hear from Oregonians, from commissioned notaries, from industry groups, state legislators and members of Oregon's congressional delegation with questions about why Oregon doesn't have RON in place right now.

I want to acknowledge the work of the amazing staff in the Corporation Division. They have been working diligently for months to be ready for immediate implementation of RON. Together, we have drafted temporary rules, developed education for notaries and consumers, and even created web pages that are ready to be turned on at a moment's notice.

The Oregon Law Commission has been a key partner in helping the Corporation Division get ready for RON. We were able to not only vet ideas with the RON workgroup, but send out temporary rule drafts for consideration and comment. This input makes our preparations that much more solid and ready to deploy.