

**Task Force on Immigration Consultant Fraud (HB 3525)**  
**September 2, 2015**  
**10:00am – 11:30am**  
**Hearing Room F, 900 Court St. NE**  
**Salem, OR 97301**

Minutes

Members Present: Senator Gelser, Representative Vega Pederson, Bonnie Allen-Sailer, Keith Bickford, Stephanie Engelsman, John Haroldson, Amber Hollister, Aaron Knott, John Marandas, Judy Parker, Chanpone Sinlapasai-Okamura, Peter Threlkel

Staff: Nancy Kramer, Oregon Advocacy Commissions Office

- I. The meeting was called to order at 10:08am, Wednesday, September 2, by Representative Vega Pederson.
- II. Review of August 18<sup>th</sup> meeting minutes – the Task Force accepted the minutes as written.
- III. Proposed Concepts:  
The discussion about where to fit prosecution of immigration consultant fraud in the Oregon Revised Statutes continued. The three proposed concepts were introduced to the members of the Task Force:
  - A. Obstruction of Government Administration and Changes to Extortion Statute – Mr. Knott

Mr. Knott spoke with Legislative Counsel prior to the Task Force meeting regarding the proposal to use obstructing government administration as a means of prosecution of Notario fraud. While this method appears to be feasible with further revisions under the Oregon constitution, it is outside of the current function of the statute as written and DOJ is concerned that this will be a difficult proposal to manage from an appellate perspective.

Mr. Knott also presented amendments to ORS § 164.075, Theft by Extortion, that included changing the name to simply “Extortion”. The document is appended to these minutes. The Task Force members discussed the other amendments Mr. Knott proposed and decided in section (1) that the word “immunity” should not be used, and that “services” and “unlawful” should be used. Mr. Knott proposed adding the word “Falsely” before “Accuse” in sub (d). The members also agreed that new sub (e) should include “or another person’s” and this line adds protection that did not exist previously. These amendments to the statute also brings Oregon law in accordance with Federal definitions of extortion for certain immigration laws which provide crime victims with additional forms of relief under limited circumstances.

Extortion would be a Class B felony and Mr. Knott noted that Class B felonies frequently result in prison sentences and a fiscal impact statement may be required if there is an uptick in sentences for this crime.

B. Criminal Impersonation – Mr. Haroldson

Mr. Haroldson proposed an amendment to ORS § 162.365, Criminal Impersonation. The document is appended to these minutes. The goal of his proposal is to protect the public from conduct and to define the conduct. He noted in his analysis that, “It is an ironic and cruel twist that the vulnerability that serves the charlatan-notario in committing Theft by Deception, also serves to prevent victims from reporting these crimes.”

His proposal adds an attorney, legal advisor or notary to the list of roles an individual may take to injure or defraud a victim. The members of the task force discussed their concerns regarding defining the term “legal advisor”, the lack of reference to immigration issues and the statute not providing protections against a licensed attorney who is extorting the vulnerable population.

C. Amendment to Notary Statute – Mr. Threlkel

Peter’s proposal had three parts:

1. Amend ORS 194.315 (2) to include convictions for impersonating a notary and acting as an illegal immigration consultant as grounds for disqualification as a notary.
2. Amend ORS 194.340 to include a conviction or admission of liability for impersonating a notary or violating a prohibited immigration consultant act as grounds to revoke a notary commission.
3. Amend ORS 194.990 (1)(b) to increase criminal penalty for impersonating a notary from a Class B Misdemeanor to a Class A Misdemeanor.

The document is appended to these minutes. The group discussed raising the Misdemeanor from a Class B to a Class A and decided it was not necessary to increase the penalty to a Class A. It was also proposed that ORS 194.340 include a judicial finding or admission of liability for impersonating a notary or violating ORS 9.280 as a grounds to revoke a notary commission. The proposed changes would bar a charlatan notary for life from every being a notary again.

The members of the Task Force agreed that adopting a multimodal approach will only strengthen protections against Notario fraud; that the first two proposals require further discussion; and the third proposal, the amendment to the Notary Statute, can move forward minus the third proposed amendment.

IV. Status of Draft Report:

Ms. Kramer will draft the report of the Task Force's activities to be presented to the Judiciary Committee and send it to the Co-Chairs for their review. Then it will be sent to all Task Force members for their review before the next meeting.

The report will cover:

1. How the Task Force was created
2. Who the appointed members represent
3. The problem as it was defined
4. Summaries of the meetings held to date
5. Ancillary issues raised
6. Proposed solutions
7. Goal of submitting legislation to address the problem for the February 2016 Oregon Legislative Session

The report will be presented at the Joint Judiciary Committee meeting on Wednesday, September 30<sup>th</sup>, early in the agenda. The meeting runs from 2pm – 5pm and the Co-Chairs asked that Mr. Knott, Mr. Haroldson and Mr. Threlkel be present for the report to the committee, to answer any specific questions that might come up regarding their individual proposals.

- V. Next Steps – the Task Force will meet on Thursday, September 17<sup>th</sup>, from 10am – 11:30am in the Capitol Building. They will review the report and have further discussion on the proposals.
- VI. Adjourn – the meeting was adjourned at 11:17am.

NOTE: The official record of this meeting is the video recording. If you would like a copy of this recording contact Nancy Kramer at [nancy.kramer@oregon.gov](mailto:nancy.kramer@oregon.gov).

## ORS 164.075 Extortion

**164.075 Theft by eExtortion.** (1) A person commits ~~theft by~~ extortion when the person compels or induces another to deliver any property ~~or, -services, -or immunity~~ to the person or to a third person, or by preventing another person from reporting unlawful conduct, by instilling in the other a fear that, if these ~~are~~ property is not so delivered, the actor or a third person will in the future:

- (a) Cause physical injury to some person;
  - (b) Cause damage to property;
  - (c) Engage in other conduct constituting a crime;
  - (d) Accuse some person of a crime or cause criminal charges to be instituted against the person;
  - ~~(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;~~
  - (ef) Report his, her, or their immigration status or suspected immigration status;
  - ~~(ff)~~ (f) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such conduct is not considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act;
  - ~~(gg)~~ (g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
  - ~~(hh)~~ (h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
  - ~~(ii) Inflict any other harm that would not benefit the actor.~~
- (2) ~~Theft by e~~Extortion is a Class B felony. [1971 c.743 §127; 1987 c.158 §27; 2007 c.71 §48]

## ORS § 162.365 Criminal impersonation

(1) A person commits the crime of criminal impersonation if with intent to obtain a benefit, to injure or defraud another or to facilitate an unlawful activity, the person does an act in the assumed character of:

(a) A public servant; or

**(c) An attorney, legal advisor, or notary;**

(b) An active member or veteran of the Armed Forces of the United States.

(2) It is no defense to a prosecution for criminal impersonation that:

(a) The office, position or title that the person pretended to hold did not in fact exist; or

(b) The unit of government that the person pretended to represent did not in fact exist.

(3)(a) Criminal impersonation is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, criminal impersonation is a Class C felony if the public servant impersonated is a peace officer, judge or justice of the peace. [1971 c.743 §211; 1993 c.243 §1; 1997 c.395 §2; 2003 c.577 §12; 2007 c.510 §1]

## Suggested amendments to Notary Statute ORS § 194

Amend ORS 194.315 (2) to include convictions for impersonating a notary and acting as an illegal immigration consultant as grounds for disqualification as a notary.

Amend ORS 194.340 to include a conviction or admission of liability for impersonating a notary or violating a prohibited immigration consultant act as grounds to revoke a notary commission.

Amend ORS 194.990 (1)(b) to increase criminal penalty for impersonating a notary from a Class B Misdemeanor to a Class A Misdemeanor.

**194.315 Commission as notary public; qualifications; no immunity or benefit.** (1) An individual qualified under subsection (2) of this section may apply to the Secretary of State for a commission as a notary public. The applicant shall comply with and provide the information required under rules adopted by the secretary and pay the application fee described in ORS 194.365.

(2) An applicant for a commission as a notary public must:

(a) Be at least 18 years of age;

(b) Be a resident of this state or have a place of employment or practice in this state;

(c) Be able to read and write English;

(d) Not have been convicted of a felony or any crime involving fraud, dishonesty or deceit during the 10-year period preceding the date of application;

(e) Not have been convicted of a violation of impersonating a notary as described in ORS 194.990 (1)(b);

(f) Not have been convicted of a violation of a prohibited immigration consultant act as described in ORS 9.280

(g) Not have had a commission as a notary public revoked during the 10-year period preceding the date of application;

(h) Not be disqualified under ORS 194.340 to receive a commission;

(i) Complete the course of study described in ORS 194.325; and

(j) Have passed the examination required under ORS 194.325.

(3) Before the Secretary of State may issue a commission as a notary public, the applicant shall execute an oath of office and submit it to the secretary.

(4) Upon the applicant's compliance with this section, the Secretary of State shall issue a commission as a notary public to the applicant for a term of four years.

(5) A commission as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees of this state.

(6) Each notary public may file with the Secretary of State a statement waiving the fees specified under ORS 194.400. If a notary public files the statement waiving the fees, the office of that notary public is not considered a lucrative office.

(7) The functions of a notary public are not considered official duties under Article III, section 1, of the Oregon Constitution.

(8) A commission as a notary public is not considered a commission under Article V, section 18, of the Oregon Constitution. [2013 c.219 §20]

**194.340 Grounds to deny, revoke, suspend or condition commission of notary public. (1)**

The Secretary of State may deny, revoke, suspend or impose a condition on a commission as a notary public for:

(a) Failure of the applicant or notary public to comply with any provision of this chapter, any rule adopted by the Secretary of State under this chapter or any other state or federal law relating to any duty required of a notary public;

(b) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the secretary;

(c) A conviction of the applicant or notary public for any felony or for a crime involving fraud, dishonesty or deceit;

(d) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;

(e) Use of false or misleading advertising or representation by the notary public representing that the notary public has powers, qualifications, rights or privileges that the notary public does not have, including the power to counsel on immigration matters;

(f) Denial, revocation, suspension or conditioning of a commission as a notary public in another state; or

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

(2) Upon receipt of a notice of conviction, or admission of liability by the notary public for a violation of ORS 9.280 or 194.990 (1)(b) the Secretary of State may revoke the commission of the notary public.

~~(23)~~ If the Secretary of State denies, revokes, suspends or imposes a condition on a commission as a notary public, opportunity for hearing shall be accorded as provided in ORS chapter 183 for a contested case.

~~(34)~~ The authority of the Secretary of State to deny, revoke, suspend or impose a condition on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law. [2013 c.219 §22]

**194.990 Criminal penalties. (1)(a)** A notary public who knowingly performs or fails to perform any act prohibited or mandated respectively by this chapter, or rules adopted by the Secretary of State under this chapter, is guilty of a Class B misdemeanor.

(b) Any individual not a notary public who knowingly acts as or otherwise impersonates a notary public is guilty of a ~~Class B~~Class A misdemeanor.

(c) Any person who knowingly obtains, conceals, defaces or destroys the official seal, journal or official records of a notary public is guilty of a Class B misdemeanor.

(d) Any person who knowingly solicits, coerces or in any way influences a notary public to commit a violation of any provision of this chapter, or any rule adopted by the secretary under this chapter, is guilty of a Class B misdemeanor.

(2) The penalties described in subsection (1) of this section are in addition to other remedies provided by law.

(3) The clerk of the court in which a conviction under any provision of subsection (1) of this section is had shall transmit to the Secretary of State a duly certified copy of the judgment, which is sufficient grounds for revocation of the commission of the convicted notary public. [Amended by 1967 c.541 §21; 1989 c.976 §34; 2013 c.219 §53]