

**Enrolled**  
**House Bill 2090**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Secretary of State Bill Bradbury)

CHAPTER .....

AN ACT

Relating to notaries public; creating new provisions; and amending ORS 73.0505, 194.070, 194.090, 194.100, 194.152 and 194.166.

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

**SECTION 1.** ORS 194.070 is amended to read:

194.070. (1) **A notary public may protest commercial paper if the notary public is:**

(a) **An officer or employee of a financial institution as defined in ORS 706.008 or an investment company, or a person serving under the direct supervision of the officer or employee; or**

(b) **An active member of the Oregon State Bar, or a person serving under the direct supervision of an active member of the Oregon State Bar.**

(2) Each notary public who protests any commercial paper shall take *[such]* **the** actions *[as are]* required by ORS 73.0505.

(3) **A notary public may not protest any commercial paper owned or held for collection by a financial institution or investment company if the notary is individually a party to the commercial paper.**

**SECTION 2.** ORS 194.090 is amended to read:

194.090. Each notary public **described in ORS 194.070** shall *[cause a record to be kept]* **keep a record** of all protests of commercial paper made by the notary public under ORS 73.0505. *[Such]* **The** record is competent evidence to prove notice of dishonor for purposes of ORS 73.0505.

**SECTION 3.** ORS 194.100 is amended to read:

194.100. (1) A notary public who is a stockholder, director, officer or employee of a bank or trust company or other corporation may:

(a) Take the acknowledgment of any party to any written instrument executed to or by such corporation; **or**

(b) Administer an oath to any other stockholder, director, officer, employee or agent of such corporation.; *and]*

*[(c) Protest commercial paper owned or held for collection by such corporation.]*

(2) A notary public *[shall]* **may** not~~[:]~~

*[(a)]* take the acknowledgment of an instrument executed by or to a bank or trust company or other corporation of which the notary is a stockholder, director, officer or employee, if the notary is a party to such instrument, either individually or as a representative of such corporation.; *or]*

*[(b) Protest any commercial paper owned or held for collection by such corporation, if the notary is individually a party to the instrument.]*

**SECTION 4.** ORS 194.152 is amended to read:

194.152. (1) Each notary public shall provide, keep, maintain and protect one or more chronological journals of notarial acts performed by the notary public except for administering an oath or affirmation or certifying or attesting a copy.

(2) The Secretary of State shall adopt rules prescribing the form of the notarial journal to promote uniformity and establish the retention or disposition of the notarial journal and other notarial records, and prescribe rules to provide for exceptions to the notarial journal.

(3) A notary public who is an employee may enter into an agreement with the employer pursuant to which agreement the notarial journal or journals of the notary, in compliance with rules adopted under subsection (2) of this section, are retained or disposed of by the employer upon termination of employment.

(4) A notarial journal in the possession of a notary public who is not a public official or employee is exempt from disclosure under ORS 192.410 to 192.505. A notarial journal in the possession of the Secretary of State, or in the possession of a notary public who is a public official or employee, is not exempt from disclosure under ORS 192.410 to 192.505 unless the Secretary of State or other custodian determines that the public interest in disclosure is outweighed by the interests of the parties in keeping the journal record of the notarial act confidential. A determination by the Secretary of State or other custodian under this subsection is subject to review under ORS 192.410 to 192.505.

(5) This section does not apply to the record of protests of commercial paper *[which shall be as provided in]* **required under** ORS 194.090.

**SECTION 5.** ORS 194.166 is amended to read:

194.166. The Secretary of State may refuse to *[appoint any person]* **issue a commission** 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.

**(16) Violation of ORS 194.070.**

**SECTION 6.** ORS 73.0505 is amended to read:

73.0505. (1) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(a) A document regular in form as provided in subsection (2) of this section which purports to be a protest;

(b) A purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; and

(c) A book or record of the drawee, payor bank or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(2) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public **described in ORS 194.070** or other person authorized to administer oaths by the law of the place where dishonor occurs. The protest may be made upon information satisfactory to that person. The protest must identify the instrument and certify that either presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

**SECTION 7. The amendments to ORS 73.0505, 194.070, 194.090, 194.100, 194.152 and 194.166 by sections 1 to 6 of this 2009 Act apply to protests of commercial paper made on or after the effective date of this 2009 Act.**

**Passed by House March 10, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate May 11, 2009**

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President of Senate

**Received by Governor:**

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

**Approved:**

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

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Governor

**Filed in Office of Secretary of State:**

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

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Secretary of State