

# House Bill 2090

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows notary public to protest commercial paper if notary is officer or employee of financial institution or investment company or member of Oregon State Bar, or serves under supervision of officer, employee or member.

## A BILL FOR AN ACT

1  
2 Relating to notaries public; creating new provisions; and amending ORS 73.0505, 194.070, 194.090,  
3 194.100, 194.152 and 194.166.

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

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

6 194.070. (1) **A notary public may protest commercial paper if the notary public is:**

7 (a) **An officer or employee of a financial institution as defined in ORS 706.008 or an in-**  
8 **vestment company, or a person serving under the direct supervision of the officer or em-**  
9 **ployee; or**

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

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

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

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

18 194.090. Each notary public **described in ORS 194.070** shall *[cause a record to be kept]* **keep a**  
19 **record** of all protests of commercial paper made by the notary public under ORS 73.0505. *[Such]*  
20 **The** record is competent evidence to prove notice of dishonor for purposes of ORS 73.0505.

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

22 194.100. (1) A notary public who is a stockholder, director, officer or employee of a bank or trust  
23 company or other corporation may:

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

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

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

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

30 *[(a)]* take the acknowledgment of an instrument executed by or to a bank or trust company or

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 other corporation of which the notary is a stockholder, director, officer or employee, if the notary  
 2 is a party to such instrument, either individually or as a representative of such corporation.[: or]

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

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

6 194.152. (1) Each notary public shall provide, keep, maintain and protect one or more chrono-  
 7 logical journals of notarial acts performed by the notary public except for administering an oath or  
 8 affirmation or certifying or attesting a copy.

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

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

16 (4) A notarial journal in the possession of a notary public who is not a public official or em-  
 17 ployee is exempt from disclosure under ORS 192.410 to 192.505. A notarial journal in the possession  
 18 of the Secretary of State, or in the possession of a notary public who is a public official or employee,  
 19 is not exempt from disclosure under ORS 192.410 to 192.505 unless the Secretary of State or other  
 20 custodian determines that the public interest in disclosure is outweighed by the interests of the  
 21 parties in keeping the journal record of the notarial act confidential. A determination by the Sec-  
 22 retary of State or other custodian under this subsection is subject to review under ORS 192.410 to  
 23 192.505.

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

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

27 194.166. The Secretary of State may refuse to *[appoint any person]* **issue a commission** as  
 28 notary public or may revoke or suspend the commission of any notary public upon any of the fol-  
 29 lowing grounds:

30 (1) Failure to meet or maintain the qualifications required under ORS 194.005 to 194.200 or re-  
 31 fusals of the consent described under ORS 194.024.

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

34 (3) Engaging in official misconduct.

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

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

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

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

44 (8) Engaging in the unauthorized practice of law.

45 (9) Charging more than the maximum fees adopted by the Secretary of State by rule under ORS

1 194.164.

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

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

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

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

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

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

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

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

15 73.0505. (1) The following are admissible as evidence and create a presumption of dishonor and  
16 of any notice of dishonor stated:

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

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

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

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

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

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