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SYNOPSIS:

This bill would provide further for the appointment and service of notaries public and the fee collected by the judge of probate for a commission.

This bill would expand the grounds under which a judge of probate may accept or deny an application for a notary commission and would require an applicant, before being commissioned, to complete a training program.

This bill would increase the amount of the bond required of a notary public.

This bill would provide further for the acknowledgment of signatures and the fee collected for notarial acts performed.

This bill also specifies what acts committed by a notary or other individual constitute a crime.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for



29 the purpose.

30 The purpose or effect of this bill would be to  
31 require a new or increased expenditure of local funds  
32 within the meaning of the amendment. However, the bill  
33 does not require approval of a local governmental  
34 entity or enactment by a 2/3 vote to become effective  
35 because it comes within one of the specified exceptions  
36 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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43 Relating to the employment of notaries public; to amend  
44 Sections 36-20-70, 36-20-71, 36-20-72, 36-20-73.1, 36-20-74,  
45 and 36-20-75, Code of Alabama 1975; to provide further for the  
46 appointment and service of notaries public; to increase the  
47 fee collected by the judge of probate for the commission of a  
48 notary; to expand the grounds under which a judge of probate  
49 may accept or deny an application for a notary commission; to  
50 require an applicant for a notary commission to complete a  
51 training program; to increase the bond required of a notary  
52 public; to provide further for the acknowledgment of  
53 signatures; to increase the fee collected for notarial acts  
54 performed; to specify the acts of a notary or other individual  
55 that constitute a crime; and in connection therewith would  
56 have as its purpose or effect the requirement of a new or



57 increased expenditure of local funds within the meaning of  
58 Section 111.05 of the Constitution of Alabama of 2022.

59 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

60 Section 1. Sections 36-20-70, 36-20-71, 36-20-72,  
61 36-20-73.1, 36-20-74, and 36-20-75 of the Code of Alabama  
62 1975, are amended to read as follows:

63 "§36-20-70

64 (a) A competent number of notaries public for the state  
65 at large shall be appointed and commissioned by the judges of  
66 probate of the several counties of the state and shall hold  
67 office for four years from the date of their commission.  
68 Notaries public shall perform all the acts and exercise all  
69 authority under the general laws of the State of Alabama. The  
70 jurisdiction of the notaries public shall not be limited to  
71 the counties of their residence and shall extend to any county  
72 of the state. The judges of probate shall collect a fee of ~~ten~~  
73 ~~dollars~~ ~~(\$10)~~ one hundred dollars (\$100) for each notary  
74 commission issued. The judges of probate shall also report to  
75 the Secretary of State the name, county of residence, date of  
76 issuance, and date of expiration of the commission of each  
77 notary public appointed and commissioned under this  
78 subsection.

79 (b) All existing notaries public functioning on January  
80 1, ~~2012~~ 2023, shall continue to function pursuant to their  
81 existing authority for the remainder of their existing  
82 commission.

83 (c) A judge of probate may accept or deny any  
84 application for notary public commission and shall deny an



85 application for notary public commission on any of the  
86 following grounds:

87 (1) The applicant is not a resident of this state.

88 (2) The applicant makes the application to a judge who  
89 is not the judge of probate of the county of the applicant's  
90 residence.

91 (3) The applicant has been convicted of a felony or  
92 crime of moral turpitude.

93 (4) The applicant is currently a debtor in a bankruptcy  
94 proceeding.

95 (5) The applicant is under a current order adjudicating  
96 him or her incapacitated.

97 (6) The applicant provides false information on the  
98 application.

99 (7) The applicant is unable or unwilling to  
100 successfully complete the training program required in  
101 subsection (e) within 30 days after submitting his or her  
102 application. This time frame may be extended by the judge of  
103 probate upon good cause shown.

104 (d) A notary public is not an insurer but is under a  
105 duty to act honestly, skillfully, and with reasonable  
106 diligence. A notary public shall not perform an acknowledgment  
107 in any transaction where he or she has a pecuniary interest or  
108 where any signatory being acknowledged by the notary is  
109 related by blood or marriage within the fourth degree of  
110 kinship.

111 (e) Before being commissioned, an applicant for a  
112 notary public commission shall successfully complete a



113 training program prepared by the Alabama Probate Judges  
114 Association and the Alabama Law Institute that reinforces and  
115 updates the applicants knowledge of all matters relevant to  
116 the appointment, authority, duties, and legal and ethical  
117 responsibilities of a notary public. An attorney who is  
118 commissioned as a notary public under this article is not  
119 required to complete the training requirement. A notary public  
120 who is commissioned as of the effective date of this act shall  
121 be required to complete the training requirement upon  
122 submitting an application for the renewal of his or her  
123 expired commission."

124 "§36-20-71

125 (a) Notaries public shall give bond with sureties,  
126 obtained from an Alabama licensed producer of such bonds, to  
127 be approved by the judge of probate of the county of their  
128 residence, in the sum of ~~twenty-five thousand dollars~~  
129 ~~(\$25,000)~~ fifty thousand dollars (\$50,000), payable to the  
130 State of Alabama, and conditioned to faithfully discharge the  
131 duties of ~~such~~ the office so long as they may continue therein  
132 or discharge any of the duties thereof. ~~Such~~ The bond shall be  
133 executed, approved, filed, and recorded in the office of the  
134 judge of probate of the county of their residence, before they  
135 enter on the duties of ~~such~~ the office.

136 (b) All existing notaries public functioning on January  
137 1, ~~2012~~ 2023, shall continue to function pursuant to their  
138 existing bond for the remainder of their existing commission."

139 "§36-20-72

140 (a) For the authentication of his or her official acts,



141 each notary shall provide a seal of office, which shall  
142 present, by its impression or stamp, the name, office, and the  
143 state for which he or she was appointed.

144 (b) The form and content of any notarial act on an  
145 instrument to be recorded in the public records, including the  
146 court system, shall include an oath, acknowledgment, and  
147 signature of each party to the document, or his or her mark,  
148 and the signature of the notary public and their seal of  
149 office by either ink stamp or embossed impression."

150 "§36-20-73.1

151 (a) Except as otherwise provided in this section, any  
152 signature acknowledged by a notary public shall be executed  
153 within this state and shall be executed in the physical  
154 presence of the notary public at the time of the  
155 acknowledgment, only after the notary public has positively  
156 identified the prospective signatory via personal knowledge of  
157 the affiant or the examination of photo identification issued  
158 by a governmental entity or agency.

159 (b) For the purposes of this section, the following  
160 terms shall have the following meanings:

161 (1) ORIGINAL SIGNATURE. A signature signed directly  
162 onto a document in wet ink by an individual who is named on  
163 the document.

164 (2) SIGNATORY. The individual who is named on the  
165 document and is to sign the document.

166 ~~(b)~~ (c) Unless otherwise provided by law, the powers and  
167 functions of a notary public require his or her original  
168 signature.



169 ~~(e)~~ (d) For purposes of this article, and subject to  
170 subsections ~~(d) to (f)~~ (e) to (g), inclusive, an individual  
171 may personally appear before an acknowledging notary by either  
172 of the following:

173 (1) Physically appearing before the notary as provided  
174 in subsection (a).

175 (2) Appearing through the use of two-way audio-video  
176 communication technology that allows a notary public and a  
177 remotely located signatory to communicate with each other  
178 simultaneously by sight and sound, provided that the notary  
179 public is physically located in this state and the two-way  
180 audio-video communication is recorded and maintained for a  
181 period of seven years by the notary public.

182 ~~(d)~~ (e) If appearing through the use of two-way  
183 audio-video communication, the identity of the signatory shall  
184 be verified by the notary public using either of the following  
185 methods:

186 (1) The personal knowledge of the notary public of the  
187 identity of the signatory.

188 (2)a. The presentation of two valid forms of government  
189 issued identification, one of which shall include the face and  
190 signature of the signatory; and

191 b. A process by which the notary public verifies the  
192 identity of the signatory through a review of public or  
193 private data sources.

194 ~~(e)~~ (f) The two-way audio-video communication recording  
195 shall contain all of the following:

196 (1) The date and time of the remote notarial act.



197 (2) A description of the documents to which the remote  
198 notarial act relates.

199 (3) An attestation by the notary public of being  
200 physically located in this state.

201 (4) A description of how the identification of the  
202 signatory was verified.

203 (5) A clear image of any government issued  
204 identification, if applicable.

205 (6) A clear image of the act of signing observed by the  
206 notary public.

207 ~~(f)~~ (g) The official date and time of the notarization  
208 is the date and time the notary public witnessed the  
209 signature, including the date and time the signature was  
210 witnessed via two-way audio-video communication technology.  
211 All documents used during the two-way audio-video  
212 communication, shall be provided to the notary for his or her  
213 authentication and original signature.

214 ~~(g)~~ (h) Any action taken before July 1, 2021, allowing  
215 for the remote notarization of signatures under the Emergency  
216 Management Act of 1955, Article 1 of Chapter 9 of Title 31, is  
217 ratified and confirmed.

218 ~~(h)~~ (i) Remote notarization may not be used to notarize  
219 an absentee ballot application or an absentee ballot  
220 affidavit, or for any purpose related to voting.

221 ~~(i) A notary who intentionally or fraudulently violates~~  
222 ~~this section shall be guilty of a Class C misdemeanor."~~

223 "§36-20-74

224 ~~Notaries public are entitled to the sum of five dollar~~





225 ~~(\$5) for carrying out any of the enumerated powers in Section~~  
226 ~~36-20-73.~~A notary public commissioned pursuant to this article  
227 is permitted a reasonable fee, not to exceed ten dollars  
228 (\$10), for each notarial act performed. No fee may be charged  
229 by a state, county, or municipal employee for a notarial act  
230 performed during, and as a part of, his or her public service,  
231 unless otherwise provided by law."

232 "§36-20-75

233 ~~Any person who, having been a notary, willfully~~  
234 ~~performs or assumes the authority to perform a notarial act~~  
235 ~~after his or her commission expires, with knowledge that his~~  
236 ~~or her commission has expired, or any person who without a~~  
237 ~~notary's commission assumes the authority and performs a~~  
238 ~~notarial act shall be guilty of a Class C misdemeanor.~~

239 (a) The commissioning judge of probate, or his or her  
240 successor in office, may issue a warning to a notary or  
241 restrict, suspend, or revoke a notarial commission for a  
242 violation of this article and on any ground for which an  
243 application for a commission may be denied under this article.  
244 A period of restriction, suspension, or revocation does not  
245 extend the expiration date of a commission.

246 (b) Except as otherwise permitted by law, an individual  
247 who commits any of the following acts is guilty of a Class C  
248 misdemeanor:

249 (1) Holding one's self out to the public as a notary  
250 without being commissioned.

251 (2) Performing a notarial act with an expired,  
252 suspended, or restricted commission.



253           (3) Performing a notarial act before taking an oath of  
254 office.

255           (4) Charging a fee for a notarial act in excess of the  
256 maximum fee allowed by this article.

257           (5) Taking an acknowledgment or administering an oath  
258 or affirmation without the principal appearing in person  
259 before the notary or following the procedures for remote  
260 notarization set out in this article.

261           (6) Taking an acknowledgment or administering an oath  
262 or affirmation without personal knowledge or satisfactory  
263 evidence of the identity of the principal.

264           (7) Taking a verification or proof without personal  
265 knowledge or satisfactory evidence of the identity of the  
266 subscribing witness.

267           (c) A notary is guilty of a Class D felony if he or she  
268 does any of the following with the intent to commit fraud or  
269 to intentionally assist in the commission of a fraudulent act:

270           (1) Takes an acknowledgment, or a verification or  
271 proof, or administers an oath or affirmation he or she knows  
272 or reasonably believes to be false.

273           (2) Takes an acknowledgment or administers an oath or  
274 affirmation without the principal appearing in person before  
275 the notary, or without following the procedures for remote  
276 notarization set out in this article.

277           (3) Takes a verification or proof without the  
278 subscribing witness appearing in person before the notary, or  
279 without following the procedures for remote notarization set  
280 out in this article.



281           (4) Performs notarial acts in this state with the  
282 knowledge that he or she is not properly commissioned under  
283 this chapter.

284           (d) For purposes of enforcing this chapter, all of the  
285 following are applicable:

286           (1) Any party to a transaction requiring a notarial  
287 certificate for verification and any attorney licensed in this  
288 state who is involved in such a transaction in any capacity,  
289 may execute an affidavit and file it with either the Secretary  
290 of State or the judge of probate who issued the commission to  
291 the notary public, setting forth the actions which the affiant  
292 alleges are violations. Upon receipt of an affidavit, the  
293 Secretary of State or judge of probate shall forward the  
294 affidavit to the Alabama State Law Enforcement Agency. Upon  
295 receipt of the affidavit, the Alabama State Law Enforcement  
296 Agency shall initiate and carry out, on their own or in  
297 coordination with local law enforcement agencies,  
298 investigations of violations. Founded investigations shall be  
299 referred to the appropriate district attorney for prosecution.

300           (2) Resignation or expiration of a notarial commission  
301 does not terminate or preclude an investigation into the  
302 conduct of a notary by the Secretary of State, a judge of  
303 probate, or a law enforcement agency who may pursue the  
304 investigation to a conclusion, whereupon it may be a matter of  
305 public record whether or not the finding would have been  
306 grounds for disciplinary action.

307           (3) The commissioning judge of probate may order  
308 injunctive relief against any individual who violates this



309 chapter including, but not limited to, ordering the surrender  
310 and destruction of a notary commission and a notary seal.

311 (e) Any individual who knowingly solicits, coerces, or  
312 in any material way influences a notary to commit official  
313 misconduct is guilty as an aider and abettor and is subject to  
314 the same level of punishment as the notary."

315 Section 2. Although this bill would have as its purpose  
316 or effect the requirement of a new or increased expenditure of  
317 local funds, the bill is excluded from further requirements  
318 and application under Section 111.05 of the Constitution of  
319 Alabama of 2022, because the bill defines a new crime or  
320 amends the definition of an existing crime.

321 Section 3. This act shall become effective on the first  
322 day of the third month following its passage and approval by  
323 the Governor, or its otherwise becoming law.