

SB322 ENGROSSED



1 F14LC5-2
2 By Senator Givhan
3 RFD: Judiciary
4 First Read: 16-May-23
5 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to the employment of notaries public; to amend Sections 36-20-70, 36-20-71, 36-20-72, 36-20-73.1, 36-20-74, and 36-20-75, Code of Alabama 1975; to provide further for the appointment and service of notaries public; to increase the fee collected by the judge of probate for the commission of a notary; to expand the grounds under which a judge of probate may accept or deny an application for a notary commission; to require an applicant for a notary commission to complete a training program; to increase the bond required of a notary public; to provide further for the acknowledgment of signatures; to increase the fee collected for notarial acts performed; to specify the acts of a notary or other individual that constitute a crime; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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



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29 "§36-20-70

30 (a) A competent number of notaries public for the state
31 at large shall be appointed and commissioned by the judges of
32 probate of the several counties of the state and shall hold
33 office for four years from the date of their commission.
34 Notaries public shall perform all the acts and exercise all
35 authority under the general laws of the State of Alabama. The
36 jurisdiction of the notaries public shall not be limited to
37 the counties of their residence and shall extend to any county
38 of the state. The judges of probate shall collect a fee of ~~ten~~
39 ~~dollars (\$10)~~ one hundred dollars (\$100) for each notary
40 commission issued. The judges of probate shall also report to
41 the Secretary of State the name, county of residence, date of
42 issuance, and date of expiration of the commission of each
43 notary public appointed and commissioned under this
44 subsection.

45 (b) All existing notaries public functioning on January
46 1, ~~2012~~ 2023, shall continue to function pursuant to their
47 existing authority for the remainder of their existing
48 commission.

49 (c) A judge of probate may accept or deny any
50 application for notary public commission and shall deny an
51 application for notary public commission on any of the
52 following grounds:

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

54 (2) The applicant makes the application to a judge who
55 is not the judge of probate of the county of the applicant's
56 residence.



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

59 (4) The applicant is currently a debtor in a bankruptcy
60 proceeding.

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

63 (6) The applicant provides false information on the
64 application.

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

70 (d) A notary public is not an insurer but is under a
71 duty to act honestly, skillfully, and with reasonable
72 diligence. A notary public shall not perform an acknowledgment
73 in any transaction where he or she has a pecuniary interest or
74 where any signatory being acknowledged by the notary is
75 related by blood or marriage within the fourth degree of
76 kinship.

77 (e) Before being commissioned, an applicant for a
78 notary public commission shall successfully complete a
79 training program prepared by the Alabama Probate Judges
80 Association and the Alabama Law Institute that reinforces and
81 updates the applicants knowledge of all matters relevant to
82 the appointment, authority, duties, and legal and ethical
83 responsibilities of a notary public. An attorney who is
84 commissioned as a notary public under this article is not

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85 required to complete the training requirement. A notary public
86 who is commissioned as of the effective date of this act shall
87 be required to complete the training requirement upon
88 submitting an application for the renewal of his or her
89 expired commission."

90 "§36-20-71

91 (a) Notaries public shall give bond with sureties,
92 obtained from an Alabama licensed producer of such bonds, to
93 be approved by the judge of probate of the county of their
94 residence, in the sum of ~~twenty-five thousand dollars~~
95 ~~(\$25,000)~~ fifty thousand dollars (\$50,000), payable to the
96 State of Alabama, and conditioned to faithfully discharge the
97 duties of ~~such~~ the office so long as they may continue therein
98 or discharge any of the duties thereof. ~~Such~~ The bond shall be
99 executed, approved, filed, and recorded in the office of the
100 judge of probate of the county of their residence, before they
101 enter on the duties of ~~such~~ the office.

102 (b) All existing notaries public functioning on January
103 1, ~~2012~~ 2023, shall continue to function pursuant to their
104 existing bond for the remainder of their existing commission."

105 "§36-20-72

106 (a) For the authentication of his or her official acts,
107 each notary shall provide a seal of office, which shall
108 present, by its impression or stamp, the name, office, and the
109 state for which he or she was appointed.

110 (b) The form and content of any notarial act on an
111 instrument to be recorded in the public records, including the
112 court system, shall include an oath, acknowledgment, and



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113 signature of each party to the document, or his or her mark,
114 and the signature of the notary public and their seal of
115 office by either ink stamp or embossed impression."

116 "§36-20-73.1

117 (a) Except as otherwise provided in this section, any
118 signature acknowledged by a notary public shall be executed
119 within this state and shall be executed in the physical
120 presence of the notary public at the time of the
121 acknowledgment, only after the notary public has positively
122 identified the prospective signatory via personal knowledge of
123 the affiant or the examination of photo identification issued
124 by a governmental entity or agency.

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

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

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

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

135 ~~(e)~~ (d) For purposes of this article, and subject to
136 subsections ~~(d) to (f)~~ (e) to (g), inclusive, an individual
137 may personally appear before an acknowledging notary by either
138 of the following:

139 (1) Physically appearing before the notary as provided
140 in subsection (a).



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141 (2) Appearing through the use of two-way audio-video
142 communication technology that allows a notary public and a
143 remotely located signatory to communicate with each other
144 simultaneously by sight and sound, provided that the notary
145 public is physically located in this state and the two-way
146 audio-video communication is recorded and maintained for a
147 period of seven years by the notary public.

148 ~~(d)~~ (e) If appearing through the use of two-way
149 audio-video communication, the identity of the signatory shall
150 be verified by the notary public using either of the following
151 methods:

152 (1) The personal knowledge of the notary public of the
153 identity of the signatory.

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

157 b. A process by which the notary public verifies the
158 identity of the signatory through a review of public or
159 private data sources.

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

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

163 (2) A description of the documents to which the remote
164 notarial act relates.

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

167 (4) A description of how the identification of the
168 signatory was verified.



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169 (5) A clear image of any government issued
170 identification, if applicable.

171 (6) A clear image of the act of signing observed by the
172 notary public.

173 ~~(f)~~ (g) The official date and time of the notarization
174 is the date and time the notary public witnessed the
175 signature, including the date and time the signature was
176 witnessed via two-way audio-video communication technology.

177 All documents used during the two-way audio-video
178 communication, shall be provided to the notary for his or her
179 authentication and original signature.

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

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

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

189 "§36-20-74

190 ~~Notaries public are entitled to the sum of five dollar~~
191 ~~(\$5) for carrying out any of the enumerated powers in Section~~
192 ~~36-20-73.~~ A notary public commissioned pursuant to this article
193 is permitted a reasonable fee, not to exceed ten dollars
194 (\$10), for each notarial act performed. No fee may be charged
195 by a state, county, or municipal employee for a notarial act
196 performed during, and as a part of, his or her public service,



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197 unless otherwise provided by law."

198 "§36-20-75

199 ~~Any person who, having been a notary, willfully~~
200 ~~performs or assumes the authority to perform a notarial act~~
201 ~~after his or her commission expires, with knowledge that his~~
202 ~~or her commission has expired, or any person who without a~~
203 ~~notary's commission assumes the authority and performs a~~
204 ~~notarial act shall be guilty of a Class C misdemeanor.~~

205 (a) The commissioning judge of probate, or his or her
206 successor in office, may issue a warning to a notary or
207 restrict, suspend, or revoke a notarial commission for a
208 violation of this article and on any ground for which an
209 application for a commission may be denied under this article.
210 A period of restriction, suspension, or revocation does not
211 extend the expiration date of a commission.

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

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

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

219 (3) Performing a notarial act before taking an oath of
220 office.

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

223 (5) Taking an acknowledgment or administering an oath
224 or affirmation without the principal appearing in person



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225 before the notary or following the procedures for remote
226 notarization set out in this article.

227 (6) Taking an acknowledgment or administering an oath
228 or affirmation without personal knowledge or satisfactory
229 evidence of the identity of the principal.

230 (7) Taking a verification or proof without personal
231 knowledge or satisfactory evidence of the identity of the
232 subscribing witness.

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

236 (1) Takes an acknowledgment, or a verification or
237 proof, or administers an oath or affirmation he or she knows
238 or reasonably believes to be false.

239 (2) Takes an acknowledgment or administers an oath or
240 affirmation without the principal appearing in person before
241 the notary, or without following the procedures for remote
242 notarization set out in this article.

243 (3) Takes a verification or proof without the
244 subscribing witness appearing in person before the notary, or
245 without following the procedures for remote notarization set
246 out in this article.

247 (4) Performs notarial acts in this state with the
248 knowledge that he or she is not properly commissioned under
249 this chapter.

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

252 (1) Any party to a transaction requiring a notarial



253 certificate for verification and any attorney licensed in this
254 state who is involved in such a transaction in any capacity,
255 may execute an affidavit and file it with either the Secretary
256 of State or the judge of probate who issued the commission to
257 the notary public, setting forth the actions which the affiant
258 alleges are violations. Upon receipt of an affidavit, the
259 Secretary of State or judge of probate shall forward the
260 affidavit to the Alabama State Law Enforcement Agency. Upon
261 receipt of the affidavit, the Alabama State Law Enforcement
262 Agency shall initiate and carry out, on their own or in
263 coordination with local law enforcement agencies,
264 investigations of violations. Founded investigations shall be
265 referred to the appropriate district attorney for prosecution.

266 (2) Resignation or expiration of a notarial commission
267 does not terminate or preclude an investigation into the
268 conduct of a notary by the Secretary of State, a judge of
269 probate, or a law enforcement agency who may pursue the
270 investigation to a conclusion, whereupon it may be a matter of
271 public record whether or not the finding would have been
272 grounds for disciplinary action.

273 (3) The commissioning judge of probate may order
274 injunctive relief against any individual who violates this
275 chapter including, but not limited to, ordering the surrender
276 and destruction of a notary commission and a notary seal.

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



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281 Section 2. Although this bill would have as its purpose
282 or effect the requirement of a new or increased expenditure of
283 local funds, the bill is excluded from further requirements
284 and application under Section 111.05 of the Constitution of
285 Alabama of 2022, because the bill defines a new crime or
286 amends the definition of an existing crime.

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

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290
291
292 Senate

293 Read for the first time and referred16-May-23
294 to the Senate committee on Judiciary

295
296 Read for the second time and placed24-May-23
297 on the calendar:

298 0 amendments

299
300 Read for the third time and passed25-May-23
301 as amended

302 Yeas 25

303 Nays 4

304 Abstains 0

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306
307
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Patrick Harris,
Secretary.