

SB322 INTRODUCED



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



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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



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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



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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 and
70 shall be appointed and serve at the discretion of the judge of
71 probate issuing their commission or the judge's successor in
72 office. The jurisdiction of the notaries public shall not be
73 limited to the counties of their residence and shall extend to
74 any county of the state. The judges of probate shall collect a
75 fee of ~~ten dollars (\$10)~~ one hundred dollars (\$100) for each
76 notary commission issued. The judges of probate shall also
77 report to the Secretary of State the name, county of
78 residence, date of issuance, and date of expiration of the
79 commission of each notary public appointed and commissioned
80 under this subsection.

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



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85 (c) A judge of probate may accept or deny any
86 application for notary public commission and shall deny an
87 application for notary public commission on any of the
88 following grounds:

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

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

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

95 (4) The applicant is currently a party to a bankruptcy
96 proceeding.

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

99 (6) The applicant provides false information on the
100 application.

101 (7) The applicant is unable or unwilling to
102 successfully complete the training program required in
103 subsection (e).

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 may 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



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

123 "§36-20-71

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

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

138 "§36-20-72

139 (a) For the authentication of his or her official acts,
140 each notary shall provide a seal of office, which shall



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141 present, by its impression or stamp, the name, office, and the
142 state for which he or she was appointed.

143 (b) The form and content of any notarial act shall
144 include an oath, acknowledgment, and signature of each party
145 to the document, or his or her mark, and the signature of the
146 notary public and their seal of office by either ink stamp or
147 embossed impression."

148 "§36-20-73.1

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

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

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

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

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

166 ~~(e)~~ (d) For purposes of this article, and subject to
167 subsections ~~(d) to (f)~~ (e) to (g), inclusive, an individual
168 may personally appear before an acknowledging notary by either



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169 of the following:

170 (1) Physically appearing before the notary as provided
171 in subsection (a).

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

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

183 (1) The personal knowledge of the notary public of the
184 identity of the signatory.

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

188 b. A process by which the notary public verifies the
189 identity of the signatory through a review of public or
190 private data sources.

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

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

194 (2) A description of the documents to which the remote
195 notarial act relates.

196 (3) An attestation by the notary public of being



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197 physically located in this state.

198 (4) A description of how the identification of the
199 signatory was verified.

200 (5) A clear image of any government issued
201 identification, if applicable.

202 (6) A clear image of the act of signing observed by the
203 notary public.

204 ~~(f)~~ (g) The official date and time of the notarization
205 is the date and time the notary public witnessed the
206 signature, including the date and time the signature was
207 witnessed via two-way audio-video communication technology.

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

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

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

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

220 "§36-20-74

221 ~~Notaries public are entitled to the sum of five dollar~~
222 ~~(\$5) for carrying out any of the enumerated powers in Section~~
223 ~~36-20-73.~~ A notary public commissioned pursuant to this article
224 is permitted a reasonable fee, not to exceed ten dollars



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225 (\$10), for each notarial act performed. No fee may be charged
226 by a state, county, or municipal employee for a notarial act
227 performed during, and as a part of, his or her public service,
228 unless otherwise provided by law."

229 "§36-20-75

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

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

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

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

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

250 (3) Performing a notarial act before taking an oath of
251 office.

252 (4) Charging a fee for a notarial act in excess of the



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253 maximum fee allowed by this article.

254 (c) A notary is guilty of a Class B misdemeanor if the
255 notary does any of the following:

256 (1) Takes an acknowledgment or administers an oath or
257 affirmation without the principal appearing in person before
258 the notary or following the procedures for remote notarization
259 set out in this article.

260 (2) Takes a verification or proof without the
261 subscribing witness appearing in person before the notary or
262 following the procedures for remote notarization set out in
263 this article.

264 (3) Takes an acknowledgment or administers an oath or
265 affirmation without personal knowledge or satisfactory
266 evidence of the identity of the principal.

267 (4) Takes a verification or proof without personal
268 knowledge or satisfactory evidence of the identity of the
269 subscribing witness.

270 (d) A notary is guilty of a Class C felony if the
271 notary does any of the following:

272 (1) Takes an acknowledgment, or a verification or
273 proof, or administers an oath or affirmation if the notary
274 knows it is false or fraudulent.

275 (2) Takes an acknowledgment or administers an oath or
276 affirmation without the principal appearing in person before
277 the notary, or without following the procedures for remote
278 notarization set out in this article, if the notary does so
279 with the intent to commit fraud.

280 (3) Takes a verification or proof without the



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281 subscribing witness appearing in person before the notary, or
282 without following the procedures for remote notarization set
283 out in this article, if the notary does so with the intent to
284 commit fraud.

285 (e) An individual is guilty of a Class C felony if he
286 or she does any of the following:

287 (1) Performs notarial acts in this state with the
288 knowledge that the individual is not commissioned under this
289 chapter.

290 (2) Without authority, obtains, uses, conceals,
291 defaces, or destroys the seal or notarial records of a notary.

292 (f) For purposes of enforcing this chapter, all of the
293 following are applicable:

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

308 (2) Resignation or expiration of a notarial commission



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309 does not terminate or preclude an investigation into the
310 conduct of a notary by the Secretary of State, a judge of
311 probate, or a law enforcement agency who may pursue the
312 investigation to a conclusion, whereupon it may be a matter of
313 public record whether or not the finding would have been
314 grounds for disciplinary action.

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

319 (g) Any individual who knowingly solicits, coerces, or
320 in any material way influences a notary to commit official
321 misconduct is guilty as an aider and abettor and is subject to
322 the same level of punishment as the notary."

323 Section 2. Although this bill would have as its purpose
324 or effect the requirement of a new or increased expenditure of
325 local funds, the bill is excluded from further requirements
326 and application under Section 111.05 of the Constitution of
327 Alabama of 2022, because the bill defines a new crime or
328 amends the definition of an existing crime.

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