

1 SB247
2 216509-1
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 22-FEB-22

8 SYNOPSIS: Under existing law, notaries public may
9 administer oaths, take the acknowledgment or proof
10 of instruments of writing relating to commerce or
11 navigation and certify the same, and demand
12 acceptance and payment of bills of exchange,
13 promissory notes, and all other writings which are
14 governed by commercial law.

15 This bill would provide that a tangible copy
16 of an electronic record that has been certified by
17 a notary public is a certified copy for the
18 purposes of recording certain documents affecting
19 title to property and would authorize a notary
20 public to certify to the accuracy of certain
21 electronic records.

22 This bill would provide a process for the
23 remote notarization of documents, would require a
24 notary public to maintain a journal of notarial
25 acts, and would require a notary public to notify
26 the Secretary of State of the technology he or she

1 will use for performing notarial acts with respect
2 to electronic records.

3 This bill would also provide for notarial
4 acts performed by a notary public outside of this
5 country.

6 Amendment 621 of the Constitution of Alabama
7 of 1901, as amended by Amendment 890, now appearing
8 as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended,
10 prohibits a general law whose purpose or effect
11 would be to require a new or increased expenditure
12 of local funds from becoming effective with regard
13 to a local governmental entity without enactment by
14 a 2/3 vote unless: it comes within one of a number
15 of specified exceptions; it is approved by the
16 affected entity; or the Legislature appropriates
17 funds, or provides a local source of revenue, to
18 the entity for the purpose.

19 The purpose or effect of this bill would be
20 to require a new or increased expenditure of local
21 funds within the meaning of the amendment. However,
22 the bill does not require approval of a local
23 governmental entity or enactment by a 2/3 vote to
24 become effective because it comes within one of the
25 specified exceptions contained in the amendment.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to notary publics, to amend Sections
5 35-4-66, 36-20-73, and 36-20-74, Code of Alabama 1975, and to
6 add Sections 36-20-73.2, 36-20-73.3, 36-20-76, and 36-20-77 to
7 the Code of Alabama 1975; to provide that a tangible copy of
8 an electronic record certified by a notary public is a
9 certified copy for the purposes of recording certain documents
10 affecting title to property; to authorize a notary public to
11 certify to the accuracy of certain electronic records; to
12 provide a process for the remote notarization of documents; to
13 require a notary public to maintain a journal of notarial
14 acts; to require a notary public to notify the Secretary of
15 State of the technology he or she will use for performing
16 notarial acts with respect to electronic records; to provide
17 for notarial acts performed by a notary public outside of this
18 country; and to repeal Section 36-20-73.1, as added to the
19 Code of Alabama 1975 by Act 2021-319, 2021 Regular Session,
20 relating to attestations and remote notarizations; and in
21 connection therewith would have as its purpose or effect the
22 requirement of a new or increased expenditure of local funds
23 within the meaning of Amendment 621 of the Constitution of
24 Alabama of 1901, as amended by Amendment 890, now appearing as
25 Section 111.05 of the Official Recompilation of the
26 Constitution of Alabama of 1901, as amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 35-4-66, 36-20-73, and 36-20-74
2 of the Code of Alabama 1975, are amended to read as follows:

3 "§35-4-66.

4 "(a) For the purposes of this section, a certified
5 copy includes a tangible copy of an electronic record that has
6 been certified by a notary public.

7 "(b) It shall be lawful to record certified copies
8 of deeds, mortgages, maps, and other papers affecting the
9 title to property in any probate office in this state in which
10 the same should have been recorded when ~~such~~ the mortgages,
11 deeds, maps, or other papers have ~~heretofore~~ been or may
12 ~~hereafter~~ be recorded in any probate office in this state.

13 "(c) When a certified copy of any deed, mortgage,
14 map, or other paper affecting title to property has been
15 recorded as provided for in this section, ~~such~~ the recording
16 shall in all things be considered as and shall be given the
17 effect of the original paper if so recorded.

18 "§36-20-73.

19 "Notaries public may do all of the following:

20 "(1) Administer oaths in all matters incident to the
21 exercise of their office.

22 "(2) Take the acknowledgment or proof of instruments
23 of writing relating to commerce or navigation and certify the
24 same and all other of their official acts under their seal of
25 office.

26 "(3) Demand acceptance and payment of bills of
27 exchange, promissory notes, and all other writings which are

1 governed by the commercial law as to days of grace, demand,
2 and notice of nonpayment and protest the same for
3 nonacceptance or nonpayment and to give notice thereof as
4 required by law.

5 "(4) Certify that a tangible copy of an electronic
6 record is an accurate copy of the electronic record.

7 "(4)(5) Exercise such other powers, according to
8 commercial usage or the laws of this state, as may belong to
9 notaries public.

10 "§36-20-74.

11 "Notaries public are entitled to the sum of five
12 ~~dollar~~ dollars (\$5) for carrying out any of the enumerated
13 powers in Section 36-20-73, and a sum not to exceed
14 twenty-five dollars (\$25) for carrying out any of the
15 enumerated powers in Section 36-20-73 pursuant to Section
16 36-20-73.2."

17 Section 2. Sections 36-20-73.2, 36-20-73.3,
18 36-20-76, and 36-20-77, are added to the Code of Alabama 1975,
19 to read as follows:

20 §36-20-73.2.

21 (a) For the purposes of this section, the following
22 terms shall have the following meanings:

23 (1) COMMUNICATION TECHNOLOGY. An electronic device
24 or process that does both of the following:

25 a. Allows a notary public and a remotely located
26 individual to communicate with each other simultaneously by
27 sight and sound.

1 b. When necessary and consistent with other
2 applicable law, facilitates communication with a remotely
3 located individual who has a vision, hearing, or speech
4 impairment.

5 (2) FOREIGN STATE. A jurisdiction other than the
6 United States, a state, or a federally recognized Native
7 American tribe.

8 (3) IDENTITY PROOFING. A process or service by which
9 a third person provides a notary public with a means to verify
10 the identity of a remotely located individual by a review of
11 personal information from public or private data sources.

12 (4) NOTARIAL ACT. An act, whether performed with
13 respect to a tangible or electronic record, that a notary
14 public may perform under the laws of this state.

15 (5) OUTSIDE THE UNITED STATES. A location outside
16 the geographic boundaries of the United States, Puerto Rico,
17 the United States Virgin Islands, and any territory, insular
18 possession, or other location subject to the jurisdiction of
19 the United States.

20 (6) REMOTELY LOCATED INDIVIDUAL. An individual who
21 is not in the physical presence of the notary public who
22 performs a notarial act under this section.

23 (b) If a law requires an individual to appear
24 personally before a notary public, the requirement is
25 satisfied by that individual using communication technology to
26 appear before a notary public.

1 (c) A notary public located in this state may use
2 communication technology to perform a notarial act for a
3 remotely located individual if all of the following are
4 satisfied:

5 (1) The notary public has any of the following:

6 a. Personal knowledge of the identity of the
7 remotely located individual.

8 b. Satisfactory evidence of the identity of the
9 remotely located individual by oath or affirmation from a
10 credible witness appearing before the notary public pursuant
11 to this section.

12 c. Satisfactory evidence of identity of the remotely
13 located individual by using at least two different types of
14 identity proofing.

15 (2) The notary public is able to reasonably confirm
16 that a record before the notary public is the same record in
17 which the remotely located individual made a statement or on
18 which the individual executed a signature.

19 (3) The notary public, or a person acting on behalf
20 of the notary public, creates an audiovisual recording of the
21 performance of the notarial act.

22 (4) For a remotely located individual located
23 outside the United States, both of the following:

24 a. The record satisfies either of the following:

25 1. Is to be filed with or relates to a matter before
26 a public official or court, governmental entity, or other
27 entity subject to the jurisdiction of the United States.

1 2. Involves property located in the territorial
2 jurisdiction of the United States or involves a transaction
3 substantially connected with the United States.

4 b. The act of making the statement or signing the
5 record is not prohibited by the foreign state in which the
6 remotely located individual is located.

7 (d) If a notarial act is performed under this
8 section, the certificate of notarial act shall indicate that
9 the notarial act was performed using communication technology.

10 (e) A notary public, a guardian, conservator, or
11 agent of a notary public, or a personal representative of a
12 deceased notary public shall retain the audiovisual recording
13 created under subdivision (c) (3) or cause the recording to be
14 retained by a repository designated by or on behalf of the
15 person required to retain the recording. The recording shall
16 be retained for at least 10 years.

17 (f) Before a notary public performs his or her
18 initial notarial act under this section, the notary public
19 shall notify the Secretary of State that the notary public
20 will be performing notarial acts with respect to remotely
21 located individuals and identify the technologies the notary
22 public intends to use. The communication technology and
23 identity proofing shall conform to the standards adopted by
24 the Secretary of State pursuant to this section.

25 (g) The Secretary of State shall adopt rules
26 regarding performance of a notarial act under this section and

1 to implement Sections 36-20-73.3 and 36-20-76. The rules shall
2 do all of the following:

3 (1) Prescribe the means of performing a notarial act
4 involving a remotely located individual using communication
5 technology.

6 (2) Establish standards for communication technology
7 and identity proofing.

8 (3) Establish requirements or procedures to approve
9 providers of communication technology and the process of
10 identity proofing.

11 (4) Include provisions to ensure that any change to
12 or tampering with a record bearing a certificate of a notarial
13 act is self-evident.

14 (5) Include provisions to ensure integrity in the
15 creation, transmittal, storage, and authentication of
16 electronic records or signatures.

17 (6) Prescribe the process of notification under
18 subsection (f).

19 (7) Prescribe the manner of performing notarial acts
20 pursuant to this section.

21 (h) Before adopting, amending, or repealing a rule
22 governing performance of a notarial act with respect to a
23 remotely located individual, the Secretary of State shall
24 consider all of the following:

25 (1) The most recent standards regarding the
26 performance of a notarial act with respect to a remotely
27 located individual adopted by national standard-setting

1 organizations and the recommendations of the National
2 Association of Secretaries of State.

3 (2) Standards, practices, and customs of other
4 jurisdictions that have laws substantially similar to this
5 section.

6 (3) The views of governmental officials and entities
7 and other interested persons.

8 (i) Any action taken before July 1, 2021, allowing
9 for the remote notarization of signatures under the Emergency
10 Management Act of 1955, Chapter 9 of Title 31, is ratified and
11 confirmed.

12 (j) Remote notarization may not be used to notarize
13 an absentee ballot application or an absentee ballot
14 affidavit, or for any purpose related to voting.

15 (k) A notary who intentionally or fraudulently
16 violates this section shall be guilty of a Class C
17 misdemeanor.

18 §36-20-73.3.

19 (a) A notary public shall maintain a journal in
20 which the notary public chronicles all notarial acts that the
21 notary public performs pursuant to Section 36-20.73.2. The
22 notary public shall retain the journal for 10 years after the
23 performance of the last notarial act chronicled in the
24 journal.

25 (b) A journal may be created on a tangible medium or
26 in an electronic format. A notary public shall maintain only
27 one tangible journal at a time, but may maintain multiple

1 electronic journals. If the journal is maintained on a
2 tangible medium, it shall be a permanent, bound register with
3 numbered pages. If the journal is maintained in an electronic
4 format, it shall be in a permanent, tamper-evident electronic
5 format complying with the rules of the Secretary of State.

6 (c) An entry in a journal shall be made
7 contemporaneously with the performance of the notarial act and
8 shall contain all of the following information:

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

10 (2) A description of the record, if any, and type of
11 notarial act.

12 (3) The full name and address of each individual for
13 whom the notarial act is performed.

14 (4) A statement as to the method of identification
15 under subdivision 36-20-73.2(c)(1).

16 (5) The fee charged by the notary public, if any.

17 (d) A notary public shall promptly notify the
18 Secretary of State upon discovering his or her journal is lost
19 or stolen.

20 (e) On resignation from, or the revocation or
21 suspension of, the commission of a notary public, the notary
22 public shall retain his or her journal in accordance with
23 subsection (a) and shall inform the Secretary of State of the
24 location of the journal.

25 (f) In lieu of retaining a journal pursuant to
26 subsections (a) and (e), a current or former notary public may

1 transmit the journal to the Secretary of State or a repository
2 approved by the Secretary of State.

3 (g) On the death or adjudication of incompetency of
4 a current or former notary public, his or her personal
5 representative or guardian, or any other person knowingly in
6 possession of his or her journal, shall transmit the journal
7 to the Secretary of State or a repository approved by the
8 Secretary of State.

9 §36-20-76.

10 (a) A notary public may select one or more
11 tamper-evident technologies to perform notarial acts with
12 respect to electronic records. A person may not require a
13 notary public to perform a notarial act with respect to an
14 electronic record with a technology that the notary public has
15 not selected.

16 (b) Before a notary public performs his or her
17 initial notarial act with respect to an electronic record, a
18 notary public shall notify the Secretary of State that the
19 notary public will be performing notarial acts with respect to
20 electronic records and identify the technology the notary
21 public intends to use. The technology shall conform to the
22 standards adopted by the Secretary of State pursuant to
23 Section 36-20-73.2. If the technology conforms to the
24 standards, the Secretary of State shall approve the use of the
25 technology.

26 (c) A probate office in this state shall accept for
27 recording a tangible copy of an electronic record containing a

1 notarial certificate as satisfying any requirement that a
2 record accepted for recording be an original, if the tangible
3 copy is certified as an accurate copy of the electronic
4 record.

5 §36-20-77.

6 (a) For the purposes of this section, the following
7 terms shall have the following meanings:

8 (1) FOREIGN STATE. A government other than the
9 United States, a state, or a federally recognized Native
10 American tribe.

11 (2) NOTARIAL ACT. An act, whether performed with
12 respect to a tangible or electronic record, that a notary
13 public may perform under the laws of the commissioning
14 jurisdiction.

15 (b) (1) A notarial act performed in another state has
16 the same effect under the law of this state as if performed by
17 a notary public of this state, if the act performed in that
18 state is performed by any of the following:

19 a. A notary public of that state.

20 b. A judge, clerk, or deputy clerk of a court of
21 that state.

22 c. Any other individual authorized by the law of
23 that state to perform the notarial act.

24 (2) The signature and title of an individual
25 performing a notarial act in another state are prima facie
26 evidence that the signature is genuine and that the individual
27 holds the designated title.

1 (3) The signature and title of a notarial officer
2 described in paragraph (b) (1)a. or (b) (1)b. conclusively
3 establish the authority of the officer to perform the notarial
4 act.

5 (c) (1) A notarial act performed under the authority
6 and in the jurisdiction of a federally recognized Native
7 American tribe has the same effect as if performed by a notary
8 public of this state, if the act performed in the jurisdiction
9 of the tribe is performed by any of the following:

10 a. A notary public of the tribe.

11 b. A judge, clerk, or deputy clerk of a court of the
12 tribe.

13 c. Any other individual authorized by the law of the
14 tribe to perform the notarial act.

15 (2) The signature and title of an individual
16 performing a notarial act under the authority of and in the
17 jurisdiction of a federally recognized Native American tribe
18 are prima facie evidence that the signature is genuine and
19 that the individual holds the designated title.

20 (3) The signature and title of a notarial officer
21 described in paragraph (c) (1)a. or (c) (1)b. conclusively
22 establish the authority of the officer to perform the notarial
23 act.

24 (d) (1) A notarial act performed under federal law
25 has the same effect under the law of this state as if
26 performed by a notary public of this state, if the act

1 performed under federal law is performed by any of the
2 following:

3 a. A judge, clerk, or deputy clerk of a court.

4 b. An individual in military service or performing
5 duties under the authority of military service who is
6 authorized to perform notarial acts under federal law.

7 c. An individual designated a notarizing officer by
8 the United States Department of State for performing notarial
9 acts overseas.

10 d. Any other individual authorized by federal law to
11 perform the notarial act.

12 (2) The signature and title of an individual acting
13 under federal authority and performing a notarial act are
14 prima facie evidence that the signature is genuine and that
15 the individual holds the designated title.

16 (3) The signature and title of an officer described
17 in paragraph (d)(1)a., (d)(1)b., or (d)(1)c. conclusively
18 establish the authority of the officer to perform the notarial
19 act.

20 (e)(1) If a notarial act is performed under
21 authority and in the jurisdiction of a foreign state or
22 constituent unit of the foreign state or is performed under
23 the authority of a multinational or international governmental
24 organization, the act has the same effect under the law of
25 this state as if performed by a notarial public of this state.

26 (2) If the title of office and indication of
27 authority to perform notarial acts in a foreign state appears

1 in a digest of foreign law or in a list customarily used as a
2 source for that information, the authority of an officer with
3 that title to perform notarial acts is conclusively
4 established.

5 (3) The signature and official stamp of an
6 individual holding an office described in this subsection are
7 prima facie evidence that the signature is genuine and the
8 individual holds the designated title.

9 (4) An apostille certification in the form
10 prescribed by the Hague Convention of October 5, 1961, and
11 issued by a foreign state party to the convention conclusively
12 establishes that the signature of the notarial officer is
13 genuine and that the officer holds the indicated office.

14 (5) A consular authentication issued by an
15 individual designated by the United States Department of State
16 as a notarizing officer for performing notarial acts overseas
17 and attached to the record with respect to which the notarial
18 act is performed conclusively establishes that the signature
19 of the notarial officer is genuine and that the officer holds
20 the indicated office.

21 Section 3. Section 36-20-73.1, as added to the Code
22 of Alabama 1975 by Act 2021-319, 2021 Regular Session,
23 relating to attestations and remote notarizations, is
24 repealed.

25 Section 4. Although this bill would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds, the bill is excluded from further

1 requirements and application under Amendment 621, as amended
2 by Amendment 890, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of Alabama of 1901,
4 as amended, because the bill defines a new crime or amends the
5 definition of an existing crime.

6 Section 5. This act shall become effective on July
7 1, 2022, following its passage and approval by the Governor,
8 or its otherwise becoming law.