

**SB322 ENROLLED**



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



**SB322 Enrolled**

1 Enrolled, An Act,

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

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 36-20-70, 36-20-71, 36-20-72,  
22 36-20-73.1, 36-20-74, and 36-20-75 of the Code of Alabama  
23 1975, are amended to read as follows:

24 "§36-20-70

25 (a) A competent number of notaries public for the state  
26 at large shall be appointed and commissioned by the judges of  
27 probate of the several counties of the state and shall hold  
28 office for four years from the date of their commission.



## SB322 Enrolled

29 Notaries public shall perform all the acts and exercise all  
30 authority under the general laws of the State of Alabama. The  
31 jurisdiction of the notaries public shall not be limited to  
32 the counties of their residence and shall extend to any  
33 county<sup>+</sup> of the state. The judges of probate shall collect a  
34 fee of ~~ten dollars (\$10)~~ twenty-five dollars (\$25) for each  
35 notary commission issued. The judges of probate shall also  
36 report to the Secretary of State the name, county of  
37 residence, date of issuance, and date of expiration of the  
38 commission of each notary public appointed and commissioned  
39 under this subsection.

40 (b) All existing notaries public functioning on January  
41 1, ~~2012~~ 2023, shall continue to function pursuant to their  
42 existing authority for the remainder of their existing  
43 commission.

44 (c) Each applicant for notary public commission shall  
45 pay a ten dollar (\$10) application fee. A Judge of probate may  
46 accept or deny any application for notary public commission,  
47 as developed by the Alabama Probate Judges Association and the  
48 Alabama Law Institute, and shall deny an application for notary  
49 public commission on any of the following grounds:

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

51 (2) The applicant makes the application to a judge who  
52 is not the judge of probate of the county of the applicant's  
53 residence.

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

56 (4) The applicant is currently a debtor in a bankruptcy



57 proceeding.

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

60 (6) The applicant provides false information on the  
61 application.

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

67 (d) A notary public is not an insurer but is under a  
68 duty to act honestly, skillfully, and with reasonable  
69 diligence. A notary public shall not perform an acknowledgment  
70 in any transaction where he or she has a pecuniary interest.

71 (e) Before being commissioned, an applicant for a  
72 notary public commission shall successfully complete a  
73 training program prepared by the Alabama Probate Judges  
74 Association and the Alabama Law Institute that reinforces and  
75 updates the applicants knowledge of all matters relevant to  
76 the appointment, authority, duties, and legal and ethical  
77 responsibilities of a notary public. An attorney who is  
78 commissioned as a notary public under this article is not  
79 required to complete the training requirement. A notary public  
80 who is commissioned as of the effective date of this act shall  
81 be required to complete the training requirement upon  
82 submitting an application for the renewal of his or her  
83 expired commission.

84 "§36-20-71



**SB322 Enrolled**

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

96 (b) All existing notaries public functioning on January  
97 1, ~~2012~~ 2023, shall continue to function pursuant to their  
98 existing bond for the remainder of their existing commission."

99 "§36-20-72

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

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

110 "§36-20-73.1

111 (a) Except as otherwise provided in this section, any  
112 signature acknowledged by a notary public shall be executed



## SB322 Enrolled

113 within this state and shall be executed in the physical  
114 presence of the notary public at the time of the  
115 acknowledgment, only after the notary public has positively  
116 identified the prospective signatory via personal knowledge of  
117 the affiant or the examination of photo identification issued  
118 by a governmental entity or agency.

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

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

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

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

129 ~~(e)~~ (d) For purposes of this article, and subject to  
130 subsections ~~(d) to (f)~~ (e) to (g), inclusive, an individual  
131 may personally appear before an acknowledging notary by either  
132 of the following:

133 (1) Physically appearing before the notary as provided  
134 in subsection (a).

135 (2) Appearing through the use of two-way audio-video  
136 communication technology that allows a notary public and a  
137 remotely located signatory to communicate with each other  
138 simultaneously by sight and sound, provided that the notary  
139 public is physically located in this state and the two-way  
140 audio-video communication is recorded and maintained for a



**SB322 Enrolled**

141 period of seven years by the notary public.

142 ~~(d)~~ (e) If appearing through the use of two-way  
143 audio-video communication, the identity of the signatory shall  
144 be verified by the notary public using either of the following  
145 methods:

146 (1) The personal knowledge of the notary public of the  
147 identity of the signatory.

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

151 b. A process by which the notary public verifies the  
152 identity of the signatory through a review of public or  
153 private data sources.

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

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

157 (2) A description of the documents to which the remote  
158 notarial act relates.

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

161 (4) A description of how the identification of the  
162 signatory was verified.

163 (5) A clear image of any government issued  
164 identification, if applicable.

165 (6) A clear image of the act of signing observed by the  
166 notary public.

167 ~~(f)~~ (g) The official date and time of the notarization  
168 is the date and time the notary public witnessed the



## SB322 Enrolled

169 signature, including the date and time the signature was  
170 witnessed via two-way audio-video communication technology.  
171 All documents used during the two-way audio-video  
172 communication, shall be provided to the notary for his or her  
173 authentication and original signature.

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

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

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

183 "§36-20-74

184 ~~Notaries public are entitled to the sum of five dollar~~  
185 ~~(\$5) for carrying out any of the enumerated powers in Section~~  
186 ~~36-20-73.~~ A notary public commissioned pursuant to this article  
187 is permitted a reasonable fee, not to exceed ten dollars  
188 (\$10), for each notarial act performed. No fee may be charged  
189 by a state, county, or municipal employee for a notarial act  
190 performed during, and as a part of, his or her public service,  
191 unless otherwise provided by law."

192 "§36-20-75

193 ~~Any person who, having been a notary, willfully~~  
194 ~~performs or assumes the authority to perform a notarial act~~  
195 ~~after his or her commission expires, with knowledge that his~~  
196 ~~or her commission has expired, or any person who without a~~





197 ~~notary's commission assumes the authority and performs a~~  
198 ~~notarial act shall be guilty of a Class C misdemeanor.~~

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

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

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

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

213 (3) Performing a notarial act before taking an oath of  
214 office.

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

217 (5) Taking an acknowledgment or administering an oath  
218 or affirmation without the principal appearing in person  
219 before the notary or following the procedures for remote  
220 notarization set out in this article.

221 (6) Taking an acknowledgment or administering an oath  
222 or affirmation without personal knowledge or satisfactory  
223 evidence of the identity of the principal.

224 (7) Taking a verification or proof without personal



225 knowledge or satisfactory evidence of the identity of the  
226 subscribing witness.

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

230 (1) Takes an acknowledgment, or a verification or  
231 proof, or administers an oath or affirmation he or she knows  
232 or reasonably believes to be false.

233 (2) Takes an acknowledgment or administers an oath or  
234 affirmation without the principal appearing in person before  
235 the notary, or without following the procedures for remote  
236 notarization set out in this article.

237 (3) Takes a verification or proof without the  
238 subscribing witness appearing in person before the notary, or  
239 without following the procedures for remote notarization set  
240 out in this article.

241 (4) Performs notarial acts in this state with the  
242 knowledge that he or she is not properly commissioned under  
243 this chapter.

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

246 (1) Any party to a transaction requiring a notarial  
247 certificate for verification and any attorney licensed in this  
248 state who is involved in such a transaction in any capacity,  
249 may execute an affidavit and file it with either the Secretary  
250 of State or the judge of probate who issued the commission to  
251 the notary public, setting forth the actions which the affiant  
252 alleges are violations. Upon receipt of an affidavit, the



## SB322 Enrolled

253 Secretary of State or judge of probate shall forward the  
254 affidavit to the Alabama State Law Enforcement Agency. Upon  
255 receipt of the affidavit, the Alabama State Law Enforcement  
256 Agency shall initiate and carry out, on their own or in  
257 coordination with local law enforcement agencies,  
258 investigations of violations. Founded investigations shall be  
259 referred to the appropriate district attorney for prosecution.

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

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

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

275 Section 2. Although this bill would have as its purpose  
276 or effect the requirement of a new or increased expenditure of  
277 local funds, the bill is excluded from further requirements  
278 and application under Section 111.05 of the Constitution of  
279 Alabama of 2022, because the bill defines a new crime or  
280 amends the definition of an existing crime.



## SB322 Enrolled

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



**SB322 Enrolled**

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB322

Senate 06-Jun-23

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,  
Secretary.

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House of Representatives  
Amended and passed: 06-Jun-23

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Senate concurred in House amendment 06-Jun-23

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By: Senator Givhan