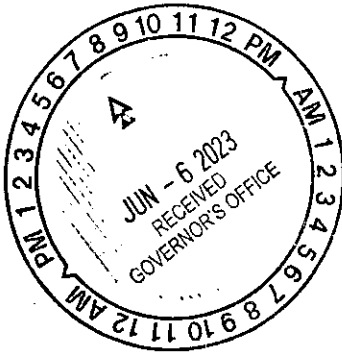




ACT #2023 - 548

- 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.



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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+ 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



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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



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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



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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



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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~~



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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



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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



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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.




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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.



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President and Presiding Officer of the Senate



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.

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

Senate concurred in House amendment 06-Jun-23

By: Senator Givhan

APPROVED 6-14-2023
TIME 9:30 am



GOVERNOR

Alabama Secretary Of State

Act Num....: 2023-548
Bill Num....: S-322

Recv'd 06/15/23 10:06amSLF

ISOR

Divhan

SPONSORS

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I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 322.

years 25 nays 4 abstain 0

PATRICK HARRIS,
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB _____ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,
Secretary

CONFERENCE COMMITTEE

Senate Conferees _____

DATE:

5.25 2023

RD 1 RFD

Judy

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on _____ acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed, w/amend(s) _____ w/sub _____

This 31 day of May, 2023.
[Signature], Chairperson

DATE:

5.31 2023

RF

RD 2 CAL

DATE:

20__

RE-REFERRED

RE-COMMITTED

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB _____

YEAS _____ NAYS _____

JOHN TREADWELL,
Clerk

FURTHER HOUSE ACTION (OVER)