

SENATE BILL 1946

By Bailey

AN ACT to amend Tennessee Code Annotated, Title 8,  
Chapter 16 and Title 23, relative to notaries public.

WHEREAS, there has been an increase in the filing of fraudulent instruments in Tennessee that have been improperly prepared and authenticated; and

WHEREAS, it is necessary to modernize and strengthen the requirements to become a notary public; and

WHEREAS, the legislature finds that this practice can be significantly impacted by restricting the authentication of documents to those trained in the proper authentication of documents; and

WHEREAS, the legislature finds that this practice can best be done by individuals authorized by this State, after the training and testing mandates prescribed herein; and

WHEREAS, the legislature finds this act highlights a trend toward more comprehensive training and testing, aiming to ensure higher standards and combat fraud; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-16-101, is amended by deleting the section and substituting:

(a) A qualified person may be appointed and reappointed by the secretary of state as a notary public in accordance with this section upon:

(1) The approval of an application submitted in accordance with subsection (b);

(2) Unless exempt under subdivision (d)(7), the successful completion of a notary public basic education course that provides a minimum of six (6) hours

of instruction that is approved by the secretary of state in accordance with subsection (c);

(3) Unless exempt under subdivision (d)(7), the successful completion of an examination in accordance with subsection (d);

(4) Satisfying any other requirements as specified by law or the secretary of state; and

(5) Approval by the governor pursuant to § 8-16-102.

(b)

(1) Each application for appointment or reappointment must be submitted to the secretary of state and include:

(A) Unless exempt under subdivision (b)(7), a certificate of completion from an approved notary public basic education course provider indicating that the applicant successfully completed a notary public basic education course within the six-month period immediately preceding the filing of the application;

(B) A statement setting forth the applicant's age, county, and address of residence;

(C) The fee prescribed pursuant to subdivision (b)(4); and

(D) Any other information required by the secretary of state.

(2) An application submitted to the secretary of state must be transmitted to the clerk of the county for which the appointment or reappointment is sought for review and approval by the county commission. If the applicant is found competent as to character and fitness to serve as a notary public by the county commission, then the chair of the county commission shall issue to the secretary of state a certificate of competency and fitness for the applicant signed by the

chair. The application prescribed by the secretary of state must not be approved until the secretary of state receives the certificate of competency from the chair of the county commission.

(3) The application must include a sworn statement of the applicant declaring under penalty of perjury that the information provided in the application is true and correct.

(4) The secretary of state shall prescribe and charge a reasonable fee for filing and processing an application for appointment or reappointment as a notary public. The fee must cover all reasonable administrative costs, including the costs of the coursework and testing required by this section.

(c) A notary public basic education course must be approved by the secretary of state and include instruction on the following:

(1) State law governing notaries public and governing attorneys under title 23, including the unauthorized practice of law;

(2) Obligations and procedures for individuals prior to witnessing documents and acceptable forms of identification, including government-issued and non-government-issued documents;

(3) Methods and procedures for verifying the authenticity of acceptable identification documents;

(4) The proper language for and usage of the statutory forms of acknowledgements;

(5) The proper language for and use of jurats;

(6) Certification of marriages conducted by a notary public;

(7) The proper language for the signature of an individual signing in a representative capacity;

(8) Requirements for, and usage of, alternative deed forms as it pertains to affidavits and the authentication of documents, including what must be included and excluded in various types of deeds;

(9) Requirements for various common affidavits regarding wills, affidavits of heirship, and other testamentary instruments;

(10) Intestate heirship and succession in this state as it pertains to affidavits and the authentication of documents;

(11) Notarization of immigration documents;

(12) Necessity and use of an apostille and the method of obtaining an apostille;

(13) Recordkeeping requirements;

(14) Ethical conduct and potential liability for failure to comply with obligations under this chapter or applicable state law;

(15) Requirements for legal descriptions in notarized instruments;

(16) Identifying competency and duress of those witnessed; and

(17) The accurate completion of a notarial certificate with a seal and signature.

(d)

(1) Each applicant for appointment and reappointment shall successfully complete a written examination administered by the secretary of state covering the topics described in subsection (c).

(2) The examination may be administered in person or digitally at the discretion of the secretary of state.

(3) The examination must be offered no less than six (6) times per year on dates prescribed by the secretary of state.

(4) Prior to sitting for an examination, an applicant must satisfy all other requirements to be commissioned as a notary public.

(5) After reviewing an application, the secretary of state shall notify an applicant that the applicant is approved and qualified to take the examination required by this subsection (d). Upon approval, the applicant may register for and complete an examination administered by the secretary of state within one (1) year after the date of approval.

(6) The applicant is responsible for the payment to the secretary of state of any fee for the examination as prescribed by the secretary of state.

(7) An applicant who has been duly admitted to practice law in this state or who holds a valid notarial commission in this state is not required to take the examination required by this subsection (d) or the notary public basic education course required under subdivision (a)(2).

(e) The secretary of state shall publish and regularly update an official study guide for the notary public examination designated "The Fundamentals of Tennessee Notarial Law and Practice." The guide must be available to applicants at a cost to be determined by the secretary of state. The guide may be made available by the secretary of state either in print or digital format, or both, at the discretion of the secretary of state.

(f) Notwithstanding another law, a member of a county legislative body may be commissioned as a notary public if the member complies with the requirements of this part.

(g) In addition to any other eligibility requirements or qualifications set forth in this part, each person applying for appointment or reappointment as a notary public pursuant to this section shall certify under penalty of perjury that such person:

(1) Is a citizen of the United States or a legal permanent resident thereof;

(2) Has never been removed from the office of notary public for official misconduct;

(3) Has never had a notarial commission or appointment revoked or suspended by this or any other state;

(4) Has never been found by a court of this state or any other state to have engaged in the unauthorized practice of law;

(5) Is older than eighteen (18) years of age;

(6) Reads, writes, speaks, and is sufficiently fluent in English;

(7) Has obtained a high school diploma or its equivalent in educational training as recognized by the Tennessee state board of education, or has received a diploma for completion of a home study program approved by the Tennessee state board of education;

(8) Is not under interdiction or incapable of serving as a notary public because of mental infirmity; and

(9) Has not been convicted of a felony, or if convicted of a felony, has been pardoned.

SECTION 2. Tennessee Code Annotated, Section 8-16-104, is amended by deleting the language "ten thousand dollars (\$10,000)" and substituting "fifty thousand dollars (\$50,000)".

SECTION 3. Tennessee Code Annotated, Section 8-16-106, is amended by deleting the section and substituting:

The secretary of state shall, upon approval of a notary public under § 8-16-102, forward such commission to the county clerk of the county in which the notary public resides, and the county clerk shall notify the person to whom such commission is issued that the same has been received in the clerk's office. The county clerk is entitled to a fee of seven dollars (\$7.00) from the commissioned notary public for the services performed

according to this section, due not later than ten (10) days following receipt of notice of the commission.

SECTION 4. Tennessee Code Annotated, Section 8-16-112, is amended by adding the following new subsection (c):

(c) This section applies to notarizations where the notary public is in the actual physical presence of the signatory appearing before the notary public. Remote electronic and online notarization is subject exclusively to part 3 of this chapter.

SECTION 5. Tennessee Code Annotated, Title 8, Chapter 16, Part 1, is amended by adding the following as new sections:

**8-16-118. Record of notarizations.**

(a) A notary public shall keep a record of all documents notarized, affirmed, or for which an oath was given by the notary public. The record may be kept in one (1) or more electronic journals or recorded in a book or journal maintained for that purpose.

(b) The record must contain the following for each notarization:

- (1) The date and time of the notarization;
- (2) The type of notarial act;
- (3) The type, the title, or a description of the document or proceeding;
- (4) The printed name and address of each principal involved in the

transaction or proceeding;

(5) Evidence of the identity of each principal involved in the transaction or proceeding in the form of:

(A) A statement that the person is personally known to the notary public;

(B) A notation of the type of identification document provided to the notary public;

- (C) A record of the identity-verification method, if applicable; or
- (D)

- (i) The printed name and address of each credible witness swearing to or affirming the person's identity; and

- (ii) For each credible witness not personally known to the notary public, a description of the type of identification documents provided to the notary public; and

- (6) The fee, if any, charged for the notarization.

(c) The record must be maintained for at least five (5) years after the date of the transaction or proceeding requiring notarization. The notary public or a guardian or personal representative of an incapacitated or deceased notary public may, by agreement, use a repository to maintain the records in accordance with any applicable rules promulgated under this chapter.

**8-16-119. Identification of individual.**

(a) A notary public has personal knowledge of the identity of an individual appearing before the notary public if the individual is personally known to the notary public through dealings sufficient to provide reasonable certainty as to the identity of the individual.

(b) A notary public has satisfactory proof of the identity of an individual appearing before the notary public if the notary public can identify the individual by means of:

- (1) A passport, driver license, or other government-issued photo identification card that is current or not more than three (3) years expired, and that is otherwise satisfactory to the notary public; or

(2) Verification on oath or affirmation of a credible witness personally appearing before the notary public and known to the notary public, or whom the notary public can identify from an identification document described in subdivision (b)(1).

(c) A notary public may require an individual to provide additional information or identification credentials, including identity proofing, necessary to assure the notary public of the identity of the individual. This subsection (c) does not establish a duty or standard of care or impose liability on a notary public for the failure to require additional information, identification credentials, or identity proofing. The notary public may charge the individual an additional fee for identity proofing with the individual's advance consent.

**8-16-122. Authority to refuse to perform notarial act.**

Unless otherwise required by law, a notary public may refuse to perform a notarial act if:

(1) The notary public is not satisfied that the individual executing the document:

(A) Is competent or has the capacity to execute the document; or

(B) Has knowingly and voluntarily affixed the individual's signature to the document;

(2) The notary public cannot sufficiently identify the individual in accordance with § 8-16-119; or

(3) An individual does not consent to pay any fee for notarization and, if applicable, identity proofing.

**8-16-123. Rules.**

The secretary of state shall promulgate rules necessary to implement this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 6. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 7.

(a) For purposes of promulgating rules and carrying out administrative duties necessary to effectuate this act, this act takes effect upon becoming a law, the public welfare requiring it.

(b) For all other purposes, this act takes effect January 1, 2027, the public welfare requiring it.