

1 SB359  
2 199666-1  
3 By Senator Scofield  
4 RFD: Judiciary  
5 First Read: 30-APR-19

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8 SYNOPSIS: Existing law provides 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 create the Online Notary  
16 Public Act.

17 This bill would provide for the Secretary of  
18 State to commission any notary public as an online  
19 notary public and adopt rules for the  
20 implementation of online notarization.

21 This bill would provide for electronic  
22 methods to carry on the same basic functions and  
23 powers of existing notaries public and provide for  
24 criminal penalties for any violation under the  
25 provisions of the act.

26 Also under existing law, it is the  
27 responsibility of the Secretary of State to attest

1 commissions and all other public documents and,  
2 when necessary, to affix the seal of the state.

3 This bill would authorize the Secretary of  
4 State to perform attestations and affixments in an  
5 electronic manner.

6 This bill would also revise the Alabama  
7 Uniform Real Property Electronic Recording Act, to  
8 provide further for the notarizing and recording of  
9 an electronic document relating to real property.

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

23 The purpose or effect of this bill would be  
24 to require a new or increased expenditure of local  
25 funds within the meaning of the amendment. However,  
26 the bill does not require approval of a local  
27 governmental entity or enactment by a 2/3 vote to

1           become effective because it comes within one of the  
2           specified exceptions contained in the amendment.

3  
4                           A BILL  
5                           TO BE ENTITLED  
6                           AN ACT

7  
8           Relating to notaries and attestations; to amend  
9   Section 36-20-73, Code of Alabama 1975; to provide for  
10   electronic acknowledgement; to add Article 5, commencing with  
11   Section 36-20-85, to Chapter 20 of Title 36, Code of Alabama  
12   1975; to create the Online Notary Public Act; to provide for  
13   online notaries public; to provide for online notarization; to  
14   provide that the Secretary of State shall establish rules to  
15   implement online notarization; to provide criminal penalties;  
16   to amend Section 36-14-1, Code of Alabama 1975, relating to  
17   the duties of the Secretary of State; to authorize the  
18   Secretary of State to perform certain attestations and  
19   affixments in an electronic manner; to add Section 35-4-128 to  
20   the Alabama Uniform Real Property Electronic Recording Act, to  
21   provide further for the notarizing and recording of an  
22   electronic document relating to real property; and in  
23   connection therewith would have as its purpose or effect the  
24   requirement of a new or increased expenditure of local funds  
25   within the meaning of Amendment 621 of the Constitution of  
26   Alabama of 1901, now appearing as Section 111.05 of the

1 Official Recompilation of the Constitution of Alabama of 1901,  
2 as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 36-20-73, Code of Alabama 1975,  
5 is amended to read as follows:

6 "§36-20-73.

7 "(a) Notaries public may do all of the following:

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

10 "(2) Take the acknowledgment or proof of instruments  
11 of writing relating to commerce or navigation and certify the  
12 same and all other of their official acts under their seal of  
13 office.

14 "(3) Demand acceptance and payment of bills of  
15 exchange, promissory notes, and all other writings which are  
16 governed by the commercial law as to days of grace, demand,  
17 and notice of nonpayment and protest the same for  
18 nonacceptance or nonpayment and to give notice thereof as  
19 required by law.

20 "(4) Exercise such other powers, according to  
21 commercial usage or the laws of this state, as may belong to  
22 notaries public.

23 "(b) Unless otherwise provided by law, the powers  
24 and functions of notaries public require an individual's  
25 original signature.

1           "(c) For purposes of this section, an individual's  
2 original signature includes an electronic signature as defined  
3 in Section 36-20-86.

4           "(d) For purposes of this article and subject to  
5 subsection (e), an individual may personally appear before the  
6 acknowledging notary by either of the following:

7           "(1) Physically appearing before the notary.

8           "(2) Appearing by an interactive two-way audio and  
9 video communication that meets the online notarization  
10 requirements under rules established by the Secretary of State  
11 pursuant to the Online Notary Public Act in Article 5 of this  
12 chapter, to provide for the orderly administration of this  
13 chapter.

14           "(e) The acknowledging notary shall designate in the  
15 acknowledgment form whether the principal or any witness  
16 personally appeared or appeared by an interactive two-way  
17 audio and video communication. If the individual appears by an  
18 interactive two-way audio and video communication, the  
19 appearance shall be deemed compliant with this chapter if the  
20 acknowledging notary affixes his or her seal as set forth in  
21 Section 36-20-72, to read "remotely appeared" or "remotely  
22 appeared before me" rather than "personally appeared" or  
23 "appeared before me"."

24           Section 2. Article 5, commencing with Section  
25 36-20-85, is added to Chapter 20, of Title 36, of the Code of  
26 Alabama 1975, to read as follows:

27           Article 5. Online Notary Public Act.

1 §36-20-85.

2 This article shall be known and may be cited as the  
3 Online Notary Public Act.

4 §36-20-86.

5 (a) As used in this article, the following terms  
6 shall have the following meanings:

7 (1) APPEAR or APPEARANCE. Either physical appearance  
8 or online appearance.

9 (2) CREDENTIAL ANALYSIS. A process or service  
10 operating as outlined in rules adopted by the Secretary of  
11 State, through which a third individual affirms the validity  
12 of a government-issued identification credential through  
13 review of public and proprietary data sources.

14 (3) ELECTRONIC. Relating to technology having  
15 electrical, digital, magnetic, wireless, optical,  
16 electromagnetic, or similar capabilities.

17 (4) ELECTRONIC DOCUMENT. Information that is  
18 created, generated, sent, communicated, received, or stored by  
19 electronic means.

20 (5) ELECTRONIC NOTARIAL CERTIFICATE. The portion of  
21 a notarized electronic document that is completed by an online  
22 notary public and contains all of the following:

23 a. The online notary public's electronic signature,  
24 electronic seal, title, and commission expiration date.

25 b. Other information required by the Secretary of  
26 State by rule concerning the date and place of the online  
27 notarization.

1           c. The facts attested to or certified by the online  
2 notary public in the particular notarization.

3           (6) ELECTRONIC SEAL. Information within a notarized  
4 electronic document that confirms the online notary public's  
5 name, jurisdiction, identifying number, and commission  
6 expiration date and generally corresponds to information in  
7 notary seals used on paper documents.

8           (7) ELECTRONIC SIGNATURE. An electronic sound,  
9 symbol, or process attached to or logically associated with an  
10 electronic document and executed or adopted by an individual  
11 with the intent to sign the electronic document.

12           (8) IDENTITY PROOFING. A process or service  
13 operating according to criteria as outlined in rules adopted  
14 by the Secretary of State, through which a third individual  
15 affirms the identity of an individual through review of  
16 personal information in public and proprietary data sources.

17           (9) NOTARIAL ACT. The performance by an online  
18 notary public of a function authorized under Section 36-20-73.

19           (10) ONLINE NOTARIZATION. A notarial act performed  
20 by means of two-way video and audio conference technology that  
21 meets the standards adopted under this article.

22           (11) ONLINE NOTARY PUBLIC. A notary public who has  
23 been commissioned to perform online notarizations as provided  
24 in this article.

25           (12) PRINCIPAL. An individual whose electronic  
26 signature is notarized in an online notarization or an oath or



1 affirmation from the online notary public but not in the  
2 capacity of a witness for the online notarization.

3 (13) REMOTE PRESENTATION. Transmission to the online  
4 notary public through communication technology of an image of  
5 a government-issued identification credential that is of  
6 sufficient quality to enable the online notary public to  
7 identify the individual seeking the online notary public's  
8 services and perform credential analysis.

9 §36-20-87.

10 The Secretary of State shall adopt rules necessary  
11 to implement this article, including rules to facilitate  
12 online notarizations. Rules must be adopted in accordance with  
13 the Alabama Administrative Procedure Act.

14 §36-20-88.

15 (a) The Secretary of State shall adopt by rule  
16 standards for online notarization in accordance with this  
17 article, including standards for credential analysis and  
18 identity proofing.

19 (b) The Secretary of State may confer with other  
20 appropriate agencies on matters relating to equipment,  
21 security, and technological aspects of the online notarization  
22 standards.

23 §36-20-89.

24 (a) An individual who has been commissioned as a  
25 notary public may apply to the Secretary of State to be  
26 commissioned as an online notary public in the manner provided  
27 by this section.

1 (b) An individual qualifies to be commissioned as an  
2 online notary public by doing all of the following:

3 (1) Satisfying the qualification requirements for  
4 appointment as a notary public under Section 36-20-70.

5 (2) Submitting to the Secretary of State an  
6 application in the form prescribed by the Secretary of State  
7 that satisfies the Secretary of State that the applicant is  
8 qualified.

9 (c) The application required by subsection (b) shall  
10 include all of the following:

11 (1) The applicant's legal name as listed in the  
12 records of the county where the applicant is commissioned as a  
13 notary.

14 (2) The applicant's physical address in this state,  
15 which includes the street address, city, state, and zip code.  
16 However, the applicant may provide a post office box number  
17 for purposes of receiving mail from the Secretary of State.

18 (3) A valid email address for the applicant.

19 (4) A valid telephone number of the applicant.

20 (5) The county in this state where the notary was  
21 commissioned as well as the date the notary was commissioned  
22 and the date the notary commission expires.

23 (6) Any other information deemed necessary by the  
24 Secretary of State for the purpose of determining whether the  
25 applicant qualifies to become an online notary.

1           (7) A certification that the applicant will comply  
2 with the Secretary of State's standards adopted pursuant to  
3 Section 36-20-88.

4           (d) The Secretary of State may charge a fee for an  
5 application submitted under this section not to exceed an  
6 amount necessary to administer this article.

7           §36-20-90.

8           An online notary public:

9           (1) Is a notary public for purposes of this chapter  
10 and is subject to this article to the same extent as a notary  
11 public appointed and commissioned under Article 4 of this  
12 chapter.

13           (2) May perform notarial acts as provided in Article  
14 4 of this chapter.

15           (3) May perform an online notarization, without  
16 regard to the physical location of the principal, if the  
17 notary is physically located in this state.

18           §36-20-91.

19           (a) An online notary public shall maintain one or  
20 more electronic records in a tamper-evident electronic format  
21 in which the online notary public chronicles all online  
22 notarial acts that the online notary public performs. An entry  
23 in an electronic record shall be made contemporaneously with  
24 the performance of the online notarial act and contain all of  
25 the following:

26           (1) The date and time of the notarization.

27           (2) The type of notarial act.

1           (3) The type, the title, or a description of the  
2 electronic document or proceeding.

3           (4) The printed name and address of each principal  
4 involved in the transaction or proceeding.

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

8           a. A statement that the individual is personally  
9 known to the online notary public.

10           b. A notation of the type of identification document  
11 provided to the online notary public.

12           c. If identity of the individual is based on  
13 credential analysis and identity proofing, a brief description  
14 of the results of the identity verification process including  
15 the date of issuance and expiration of the identification  
16 credential.

17           d. The printed name and address of each credible  
18 witness swearing to or affirming the individual's identity and  
19 for each credible witness not personally known to the online  
20 notary public, a description of the type of identification  
21 documents provided to the online notary public.

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

23           (b) An online notary public, or an individual acting  
24 on behalf of the online notary public, shall create an  
25 audio-video recording of the performance of each online  
26 notarial act.

1 (c) The online notary public shall take reasonable  
2 steps to do all of the following:

3 (1) Ensure the integrity, security, and authenticity  
4 of online notarizations.

5 (2) Maintain a backup for the electronic record  
6 required by subsection (a).

7 (3) Protect the backup record from unauthorized use.

8 (d) The electronic record required by subsection (a)  
9 shall be maintained for at least 10 years after the date of  
10 the transaction or proceeding requiring notarization. The  
11 online notary public or a guardian or personal representative  
12 of an incapacitated or deceased online notary, may by  
13 agreement use a repository acting in accordance with any rules  
14 established under this chapter to maintain such records.

15 §36-20-92.

16 (a) An online notary public shall take reasonable  
17 steps to secure the online notary public's electronic record,  
18 electronic signature, and electronic seal. Reasonable steps  
19 shall include the exercise of control by means of password  
20 protection. No individual other than the online notary public  
21 may use an online notary public's electronic record,  
22 electronic signature, or electronic seal without the online  
23 notary public's authorization.

24 (b) An online notary public shall attach his or her  
25 electronic signature and electronic seal to the electronic  
26 notarial certificate of an electronic document in a manner  
27 that is capable of independent verification and renders any

1 subsequent change or modification to the electronic document  
2 evident.

3 (c) An online notary public shall immediately notify  
4 an appropriate law enforcement agency and the Secretary of  
5 State of the theft or vandalism of the online notary public's  
6 electronic record, electronic signature, or electronic seal.  
7 An online notary public shall immediately notify the Secretary  
8 of State of the loss or use by another individual of the  
9 online notary public's electronic record, electronic  
10 signature, or electronic seal.

11 §36-20-93.

12 (a) In performing an online notarization, an online  
13 notary public shall verify the identity of an individual  
14 creating an electronic signature at the time that the  
15 signature is taken by using two-way video and audio conference  
16 technology that meets the requirements of this article and  
17 rules adopted pursuant to this article. Identity may be  
18 verified by the online notary public's personal knowledge of  
19 the individual creating the electronic signature or by all of  
20 the following:

21 (1) Remote presentation by the individual creating  
22 the electronic signature of a government-issued identification  
23 credential, including a valid passport or driver's license,  
24 that contains the signature and a photograph of the  
25 individual.

26 (2) Credential analysis of the credential described  
27 in subdivision (1).

1           (3) Identity proofing of the individual described in  
2 subdivision (1).

3           (b) The online notary public shall take reasonable  
4 steps to ensure that the two-way video and audio communication  
5 used in an online notarization is secure from unauthorized  
6 interception.

7           (c) The electronic notarial certificate for an  
8 online notarization shall include a notation that the  
9 notarization is an online notarization.

10          (d) The validity of an online notarization shall be  
11 determined by applying the laws of this state, regardless of  
12 the physical location of the principal location of the  
13 principal or any witness at the time of the online  
14 notarization.

15          (e) An online notarization meeting the requirements  
16 of this article satisfies the requirement of this state  
17 relating to a notarial act that requires a principal to appear  
18 or personally appear before a notary public or that the  
19 notarial act be performed in the presence of a notary public.

20           §36-20-94.

21          An online notary public or the online notary  
22 public's employer may charge a fee in an amount not to exceed  
23 twenty-five dollars (\$25) each for performing an online  
24 notarization in addition to any other fees authorized under  
25 this chapter.

26           §36-20-95.

1 (a) The Secretary of State shall terminate the  
2 commission of an online notary public if the online notary  
3 fails to comply with this chapter.

4 (b) Except as provided in subsection (c), an online  
5 notary public whose commission terminates shall destroy the  
6 coding, disk, certificate, card, software, or password that  
7 enables electronic affixation of the online notary public's  
8 official electronic signature or seal. The online notary  
9 public shall certify compliance with this subsection to the  
10 Secretary of State as provided by rule.

11 (c) A former online notary public whose commission  
12 terminated for a reason other than revocation or a denial of  
13 renewal is not required to destroy the items described in  
14 subsection (b) if the former online notary public is  
15 recommissioned as an online notary public with the same  
16 electronic signature and seal within three months after the  
17 former commission terminated.

18 §36-20-96.

19 (a) It is an offense for an individual who, without  
20 authorization, knowingly obtains, conceals, damages, or  
21 destroys the certificate, disk, coding, card, program,  
22 software, or hardware enabling an online notary public to  
23 affix an official electronic signature or electronic seal.

24 (b) A violation of this section is a Class D felony.

25 Section 3. Section 36-14-1 of the Code of Alabama  
26 1975, is amended to read as follows:

27 "§36-14-1.



1 "It is the duty of the Secretary of State:

2 "(1) To keep the state seal, the original statutes  
3 and public records of the state, and the records and papers  
4 belonging to the Legislature, keeping the papers of each house  
5 separate.

6 "(2) To attest commissions and all other public  
7 documents from the executive of the state and, when necessary,  
8 to affix the seal of the state thereto and to certify the same  
9 in his or her official capacity. Attestations or affixments  
10 may be performed in an electronic manner according to  
11 procedures adopted by the Secretary of State.

12 "(3) To record, in books proper for that purpose,  
13 all grants and patents issued by the state.

14 "(4) To keep all books, maps, and other papers  
15 appertaining to the survey of lands belonging to the state and  
16 the books and papers belonging to the land office.

17 "(5) To keep in his office the books, maps, and  
18 field notes of the late surveyor general of the United States  
19 for this state which are public archives of the state and,  
20 upon application, to give certified copies of the same, which  
21 shall be received in evidence in any of the courts of this  
22 state.

23 "(6) To certify, on application and the payment of  
24 lawful fees, copies of all records, grants, papers, and laws  
25 of the several states or of the United States.

26 "(7) To make annually, by September 30, a verified  
27 and itemized account of all money and fees received in his or

1 her office and of all payments and disbursements made by him  
2 or her, which ~~must~~ shall be reported to and filed with the  
3 Governor, and by him ~~must~~ or her shall be transmitted to the  
4 next succeeding Legislature.

5 "(8) To give notice to the district attorneys of the  
6 respective circuits or counties of all officers who fail to  
7 file their bonds in his or her office, or make returns of  
8 elections within the time prescribed.

9 "(9) To procure the acts and resolutions of the  
10 Legislature, of which distribution is directed, to be half  
11 bound and lettered.

12 "(10) To receive from the state printer 10  
13 additional copies of all bills, joint resolutions, and  
14 memorials printed by order of either house of the Legislature  
15 and, on the adjournment of each session of the Legislature, to  
16 have one of each of such copies bound together in a cheap form  
17 and file them and the copies not bound in his office.

18 "(11) On entering into the contract provided for in  
19 Section 11-3-25, to furnish to the county commissions, from  
20 the records now in his or her office, exact copies of the  
21 field notes of the original surveys of all the lands in their  
22 respective counties, which shall be books of proper size to be  
23 supplied by ~~such~~ the courts, at the close of which he or she  
24 shall append his or her certificate as to the correctness  
25 thereof under the Great Seal of the State.

26 "(12) To procure from the general land office in  
27 Washington, D.C., complete lists of the entries of public

1 lands in Alabama, so as to be enabled to complete the Alabama  
2 state tract books in his or her office to date, the expense  
3 attending the procurement of which to be paid upon his or her  
4 certificate to the Comptroller, or who shall draw a warrant on  
5 the Treasurer.

6 "(13) To procure lists of entries of public lands in  
7 this state annually, ~~so as to comply with the following~~  
8 subdivision (14) ~~of this section~~, the expense to be paid as  
9 provided in ~~the preceding~~ subdivision (12).

10 "(14) To enter on the tract books, by October 1 of  
11 each year, a list of all the lands (not already so entered)  
12 sold by the United States, and to make out and furnish each  
13 ~~probate~~ judge of probate, by January 1 of each year, a  
14 register or statement showing all the lands so sold in the  
15 county of ~~such~~ the judge and not embraced in any register or  
16 statement previously furnished.

17 "(15) To file all deeds or leases heretofore given  
18 or which may be hereafter given conveying real property to the  
19 State of Alabama, or any of its departments, agencies,  
20 commissions, boards, institutions, or public corporations  
21 brought into existence by act of the Legislature, except tax  
22 sales deeds, in the office of the Secretary of State. The  
23 Secretary of State shall promptly record the deeds so filed in  
24 his office by writing, typewriting, or by photostat, and shall  
25 preserve the deeds as recorded in a well-bound book. The  
26 Secretary of State shall ~~be required to~~ furnish a certified  
27 copy of all deeds filed for record in his or her office to any

1 department, agency, commission, board, institution, or public  
2 corporation created by act of the Legislature, when any ~~such~~  
3 department, agency, commission, board, institution, or public  
4 corporation formed or created by act of the Legislature  
5 desires a certified copy of ~~such~~ a deed.

6 "(16) To perform ~~such~~ other duties as he or she is  
7 or may be required by law to perform.

8 "(17) To implement a central filing system that  
9 complies with regulations promulgated by the Secretary of the  
10 United States Department of Agriculture pertaining to central  
11 filing of liens on farm products.

12 Section 4. Section 35-4-128 is added to the Code of  
13 Alabama 1975, to read as follows:

14 (a) Any provision of Section 35-4-128 to the  
15 contrary notwithstanding, for purposes of this section, the  
16 term electronic document shall mean a document created,  
17 generated, sent, communicated, received, or stored by  
18 electronic means.

19 (b) A paper or tangible copy of an electronic  
20 document that a notary public has certified to be a true and  
21 correct copy under subsection (c) satisfies any requirement of  
22 law that, as a condition for recording, the document:

23 (1) Be an original or be in writing.

24 (2) Be signed or contain an original signature, if  
25 the document contains an electronic signature of the  
26 individual required to sign the document.

1           (3) Be notarized, acknowledged, verified, witnessed,  
2 or made under oath, if the document contains an electronic  
3 signature of the individual authorized to perform that act,  
4 and all other information required to be included.

5           (c) A notary public duly appointed and commissioned  
6 under Section 36-20-70 may certify that a paper or tangible  
7 copy of an electronic document is a true and correct copy of  
8 the electronic document if the notary public has:

9           (1) Reasonably confirmed that the electronic  
10 document is in tamper-evident format.

11           (2) Detected no changes or errors in any electronic  
12 signature or other information in the electronic document.

13           (3) Personally printed or supervised the printing of  
14 the electronic document onto paper or other tangible medium.

15           (4) Not made any changes or modifications to the  
16 electronic document or to the paper or tangible copy thereof  
17 other than the certification described in this subsection.

18           (d) A county recorder shall accept for recording a  
19 paper or tangible copy of a document that has been certified  
20 by a notary public to be a true and correct copy of an  
21 electronic document under subsection (c) as evidenced by a  
22 notarial certificate.

23           (e) A notarial certificate in substantially the  
24 following form is sufficient for the purposes of this section:

25           "State of \_\_\_\_\_

26           "County of \_\_\_\_\_

1           "On this \_\_\_\_\_ (date), I certify that the  
2           foregoing and annexed document [entitled \_\_\_\_\_,]  
3           [dated \_\_\_\_\_,] [and] containing \_\_\_\_\_ pages is  
4           a true and correct copy of an electronic document printed by  
5           me or under my supervision. I further certify that, at the  
6           time of printing, no security features present on the  
7           electronic document indicated any changes or errors in an  
8           electronic signature or other information in the electronic  
9           document since its creation or execution.

10           " \_\_\_\_\_

11           "(Signature of Notary Public)

12  
13  
14           "(Seal)"

15           (f) If a notarial certificate is attached to or made  
16           a part of a paper or tangible document, the certificate is  
17           prima facie evidence that the requirements of subsection (c)  
18           have been satisfied with respect to the document.

19           (g) A paper or tangible copy of a deed, mortgage, or  
20           other document shall be deemed, from the time of being filed  
21           for record, notice to subsequent purchasers and creditors,  
22           though not certified in accordance with this section.

23           Section 5. Although this bill would have as its  
24           purpose or effect the requirement of a new or increased  
25           expenditure of local funds, the bill is excluded from further  
26           requirements and application under Amendment 621, now  
27           appearing as Section 111.05 of the Official Recompilation of

1 the Constitution of Alabama of 1901, as amended, because the  
2 bill defines a new crime or amends the definition of an  
3 existing crime.

4 Section 6. This act shall become effective on the  
5 first day of the third month following its passage and  
6 approval by the Governor, or its otherwise becoming law.