

Senate Bill No. 4

(By Senators Kirkendoll, Cookman, Blair,
Fitzsimmons, D. Hall, Nohe, Wells and McCabe)

[Introduced January 8, 2014; referred to the Committee on the
Judiciary.]



A BILL to repeal §29-4-3, §29-4-4, §29-4-5, §29-4-6, §29-4-7,
§29-4-8, §29-4-12, §29-4-13, §29-4-14, §29-4-15 and §29-4-16
of the Code of West Virginia, 1931, as amended; to repeal
§29C-1-101, §29C-1-102, §29C-1-103, §29C-1-104, §29C-1-105,
§29C-1-106 and §29C-1-107 of said code; to repeal §29C-2-201,
§29C-2-202, §29C-2-203, §29C-2-204, §29C-2-205, §29C-2-206,
§29C-2-207, §29C-2-208 and §29C-2-301 of said code; to repeal
§29C-3-101 and §29C-3-102 of said code; to repeal §29C-4-101,
§29C-4-102, §29C-4-103, §29C-4-104, §29C-4-201, §29C-4-202,
§29C-4-203, §29C-4-301, §29C-4-401, §29C-4-402, §29C-4-403,
§29C-4-404 and §29C-4-405 of said code; to repeal §29C-5-101,
§29C-5-102, §29C-5-103 and §29C-5-104 of said code; to repeal
§29C-6-101, §29C-6-102, §29C-6-103, §29C-6-201, §29C-6-202,
§29C-6-203 and §29C-6-204 of said code; to repeal §29C-7-101,

1 §29C-7-201 and §29C-7-202 of said code; to repeal §29C-8-101
2 of said code; to repeal §29C-9-101 of said code; to repeal
3 §39-1A-1, §39-1A-2, §39-1A-3, §39-1A-4, §39-1A-5, §39-1A-6,
4 §39-1A-7, §39-1A-8 and §39-1A-9 of said code; to amend and
5 reenact §39-1-4 and §39-1-5 of said code; to amend said code
6 by adding thereto a new article, designated §39-4-1, §39-4-2,
7 §39-4-3, §39-4-4, §39-4-5, §39-4-6, §39-4-7, §39-4-8, §39-4-9,
8 §39-4-10, §39-4-11, §39-4-12, §39-4-13, §39-4-14, §39-4-15,
9 §39-4-16, §39-4-17, §39-4-18, §39-4-19, §39-4-20, §39-4-21,
10 §39-4-22, §39-4-23, §39-4-24, §39-4-25, §39-4-26, §39-4-27,
11 §39-4-28, §39-4-29, §39-4-30, §39-4-31, §39-4-32, §39-4-33,
12 §39-4-34, §39-4-35, §39-4-36, §39-4-37 and §39-4-38; to amend
13 and reenact §57-4-2 of said code; to amend and reenact §57-5-9
14 of said code; and to amend and reenact §59-1-2 of said code,
15 all relating to Revised Uniform Law on Notarial Acts;
16 establishing effective date of article; establishing
17 operative date of enactment and effect on existing law;
18 establishing authority to perform notarial acts; establishing
19 requirements for certain notarial acts; requiring personal
20 appearance and identification of individual; authorizing
21 right to refuse to perform notarial act; establishing
22 instructions for obtaining signature if individual is unable
23 to sign; setting forth who may perform notarial act in this

1 state; establishing notarial reciprocity with other states,
2 any federally recognized Indian tribe, federal government and
3 foreign states; requiring certificate for notarial act;
4 authorizing short-form certificates; requiring official stamp
5 and maintenance and disposition of stamping device; requiring
6 notaries public to keep journal of notarial acts; authorizing
7 notaries public option of selecting technology for use in
8 notarial acts on electronic records; establishing minimum
9 qualifications and authorizing commissioning of notaries
10 public; requiring bond; requiring notaries public pass
11 examination after course of study offered by Secretary of
12 State; providing grounds to deny, refuse to renew, revoke,
13 suspend or condition commissions of notaries public; requiring
14 Secretary of State to maintain database of notaries public;
15 prohibiting certain acts; authorizing validity of notarial
16 acts; authorizing Secretary of State to promulgate rules;
17 authorizing continuation of commission in effect on effective
18 date of act; providing that any notarial act performed before
19 effective date of act is not invalidated by act; providing for
20 uniformity of application and construction of act; clarifying
21 relationship to Electronic Signatures in Global and National
22 Commerce Act; establishing maximum fees that may be charged by
23 notary public; commissioning notaries public for state and

1 local government; establishing civil liability and criminal
2 penalties; authorizing injunctive relief; authorizing
3 Secretary of State to investigate complaints; requiring
4 Secretary of State to maintain certain records; establishing
5 application fee; providing for disposition of fees; repealing
6 statutes regulating notaries public and commissioners
7 including Uniform Notary Act; repealing Uniform Recognition of
8 Acknowledgments Act; and removing obsolete references.

9 *Be it enacted by the Legislature of West Virginia:*

10 That §29-4-3, §29-4-4, §29-4-5, §29-4-6, §29-4-7, §29-4-8,
11 §29-4-12, §29-4-13, §29-4-14, §29-4-15 and §29-4-16 of the Code of
12 West Virginia, 1931, as amended, be repealed; that §29C-1-101,
13 §29C-1-102, §29C-1-103, §29C-1-104, §29C-1-105, §29C-1-106 and
14 §29C-1-107 of said code be repealed; that §29C-2-201, §29C-2-202,
15 §29C-2-203, §29C-2-204, §29C-2-205, §29C-2-206, §29C-2-207,
16 §29C-2-208 and §29C-2-301 of said code be repealed; that §29C-3-101
17 and §29C-3-102 of said code be repealed; that §29C-4-101,
18 §29C-4-102, §29C-4-103, §29C-4-104, §29C-4-201, §29C-4-202,
19 §29C-4-203, §29C-4-301, §29C-4-401, §29C-4-402, §29C-4-403,
20 §29C-4-404 and §29C-4-405 of said code be repealed; that
21 §29C-5-101, §29C-5-102, §29C-5-103 and §29C-5-104 of said code be
22 repealed; that §29C-6-101, §29C-6-102, §29C-6-103, §29C-6-201,
23 §29C-6-202, §29C-6-203 and §29C-6-204 of said code be repealed;

1 that §29C-7-101, §29C-7-201 and §29C-7-202 of said code be
2 repealed; that §29C-8-101 of said code be repealed; that §29C-9-101
3 of said code be repealed; that §39-1A-1, §39-1A-2, §39-1A-3,
4 §39-1A-4, §39-1A-5, §39-1A-6, §39-1A-7, §39-1A-8 and §39-1A-9 of
5 said code be repealed; that §39-1-4 and §39-1-5 of said code be
6 amended and reenacted; that said code be amended by adding thereto
7 a new article, designated §39-4-1, §39-4-2, §39-4-3, §39-4-4,
8 §39-4-5, §39-4-6, §39-4-7, §39-4-8, §39-4-9, §39-4-10, §39-4-11,
9 §39-4-12, §39-4-13, §39-4-14, §39-4-15, §39-4-16, §39-4-17,
10 §39-4-18, §39-4-19, §39-4-20, §39-4-21, §39-4-22, §39-4-23,
11 §39-4-24, §39-4-25, §39-4-26, §39-4-27, §39-4-28, §39-4-29,
12 §39-4-30, §39-4-31, §39-4-32, §39-4-33, §39-4-34, §39-4-35,
13 §39-4-36, §39-4-37 and §39-4-38; that §57-4-2 of said code be
14 amended and reenacted; that §57-5-9 of said code be amended and
15 reenacted and that §59-1-2 of said code be amended and reenacted,
16 all to read as follows:

17 **CHAPTER 39. RECORDS AND PAPERS.**

18 **ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.**

19 **§39-1-4. Form of certificate of acknowledgment.**

20 The certificate of acknowledgment mentioned in the preceding
21 section may be in form or effect as follows:

22 State (territory or district) of _____, county of
23 _____, to wit:

1 I, _____, a commissioner, appointed by the
 2 Governor of the State of West Virginia, for the said State (or
 3 territory or district) of _____; or I, _____, a
 4 justice of the peace of the county aforesaid; or I, _____,
 5 recorder of said county municipality; or I, _____, a
 6 notary public of said county; or I, _____, a
 7 ~~prothonotary (or clerk)~~ clerk of the _____ court of
 8 said county; (or other officer or person authorized to take
 9 acknowledgments by section three of this article, as the case may
 10 be), do certify that _____, whose name (or names)
 11 is (or are) signed to the writing above (or hereto annexed) bearing
 12 date on the _____ day of _____, ~~19~~ 20 _____, has (or
 13 have) this day acknowledged the same before me, in my said
 14 _____.

15 Given under my hand this _____ day of _____,
 16 ~~19~~ 20 _____.

17 **§39-1-5. Acknowledgment by husband and wife.**

18 When a husband and wife have signed a writing purporting to
 19 sell or convey real estate, the wife may acknowledge the same
 20 together with, or separately from her husband. Either the husband
 21 or the wife may sign and acknowledge the writing before the other
 22 has signed or acknowledged it. If both acknowledge the writing at
 23 the same time, the certificate of the acknowledgments may be in

1 form or effect as follows:

2 State (territory or district) of county of
3, to wit:

4 I,, ~~a commissioner appointed by the Governor of the~~
5 ~~State of West Virginia for the said State of, (or~~
6 ~~territory or district of); or I,, a justice~~
7 ~~of the peace of the said county of; or I,, a~~
8 notary public of the said county of; or I,,
9 ~~prothonotary (or clerk)~~ clerk of the court or county of
10; (or other officer or person authorized to take
11 acknowledgments by section three of this article, as the case may
12 be),* do certify and, his or her wife whose
13 names are signed to the writing above (or hereto annexed) bearing
14 date the day of, ~~19~~ 20....., have this day
15 acknowledged the same before me in my said

16 Given under my hand this day of, ~~19~~
17 20.....

18 If the husband or wife acknowledge a deed or other writing
19 separately from the other, the certificate of acknowledgment after
20 the star in the foregoing form shall be in form or effect as
21 follows: do certify that, the wife of, (or
22 the husband of, as the case may be), whose name is
23 signed to the writing above (or hereto annexed) bearing date the

1 day of, ~~19~~ 20, has this day
2 acknowledged the same before me in my said

3 Given under my hand this day of, ~~19~~ 20
4

5 **ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.**

6 **§39-4-1. Short title.**

7 This article may be cited as the Revised Uniform Law on
8 Notarial Acts.

9 **§39-4-2. Definitions.**

10 In this article:

11 (1) "Acknowledgment" means a declaration by an individual
12 before a notarial officer that the individual has signed a record
13 for the purpose stated in the record and, if the record is signed
14 in a representative capacity, that the individual signed the record
15 with proper authority and signed it as the act of the individual or
16 entity identified in the record.

17 (2) "Electronic" means relating to technology having
18 electrical, digital, magnetic, wireless, optical, electromagnetic,
19 or similar capabilities.

20 (3) "Electronic signature" means an electronic symbol, sound,
21 or process attached to or logically associated with a record and
22 executed or adopted by an individual with the intent to sign the
23 record.

1 (4) "In a representative capacity" means acting as:

2 (A) An authorized officer, agent, partner, trustee, or other
3 representative for a person other than an individual;

4 (B) A public officer, personal representative, guardian, or
5 other representative, in the capacity stated in a record;

6 (C) An agent or attorney-in-fact for a principal; or

7 (D) An authorized representative of another in any other
8 capacity.

9 (5) "Notarial act" means an act, whether performed with
10 respect to a tangible or electronic record, that a notarial officer
11 may perform under the law of this state. The term includes taking
12 an acknowledgment, administering an oath or affirmation, taking a
13 verification on oath or affirmation, witnessing or attesting a
14 signature, certifying or attesting a copy, and noting a protest of
15 a negotiable instrument.

16 (6) "Notarial officer" means a notary public or other
17 individual authorized to perform a notarial act.

18 (7) "Notary public" means an individual commissioned to
19 perform a notarial act by the West Virginia Secretary of State.

20 (8) "Official stamp" means a physical image affixed to or
21 embossed on a tangible record or an electronic image attached to or
22 logically associated with an electronic record.

23 (9) "Person" means an individual, corporation, business trust,

1 statutory trust, estate, trust, partnership, limited liability
2 company, association, joint venture, public corporation, government
3 or governmental subdivision, agency, or instrumentality, or any
4 other legal or commercial entity.

5 (10) "Record" means information that is inscribed on a
6 tangible medium or that is stored in an electronic or other medium
7 and is retrievable in perceivable form.

8 (11) "Sign" means, with present intent to authenticate or
9 adopt a record:

10 (A) To execute or adopt a tangible symbol; or

11 (B) To attach to or logically associate with the record an
12 electronic symbol, sound or process.

13 (12) "Signature" means a tangible symbol or an electronic
14 signature that evidences the signing of a record.

15 (13) "Stamping device" means:

16 (A) A physical device capable of affixing to or embossing on
17 a tangible record an official stamp; or

18 (B) An electronic device or process capable of attaching to or
19 logically associating with an electronic record an official stamp.

20 (14) "State" means a state of the United States, the District
21 of Columbia, Puerto Rico, the United States Virgin Islands, or any
22 territory or insular possession subject to the jurisdiction of the
23 United States.

1 (15) "Verification on oath or affirmation" means a
2 declaration, made by an individual on oath or affirmation before a
3 notarial officer, that a statement in a record is true.

4 **§39-4-3. Applicability; operative date of enactment; effect on**
5 **existing law.**

6 (a) This article applies to a notarial act performed on or
7 after July 1, 2015.

8 (b) The repeal of chapter twenty-nine-c of this code and the
9 repeal of articles four, chapter twenty-nine and one-a, chapter
10 thirty-nine of this code and the amendment and reenactment of
11 section two, article one, chapter fifty-nine of this code, pursuant
12 to the provisions of Enrolled [Senate/House] Bill No. _____, as
13 enacted by the Legislature during the regular session, 2014, are
14 operative on June 30, 2015. The prior enactments of chapter
15 twenty-nine-c; articles four, chapter twenty-nine and one-a,
16 chapter thirty-nine; and section two, article one, chapter
17 fifty-nine of this code, whether amended and reenacted or repealed
18 by the passage of Enrolled [Senate/House] Bill No. _____, have
19 full force and effect until the provisions of Enrolled
20 [Senate/House] Bill No. _____, are operative on June 30, 2015,
21 unless after the effective date of Enrolled [Senate/House] Bill No.
22 _____, and prior to the operative date of June 30, 2015, the
23 provisions of Enrolled [Senate/House] Bill No. _____, are

1 otherwise repealed or amended and reenacted.

2 **§39-4-4. Authority to perform notarial act.**

3 (a) A notarial officer may perform a notarial act authorized
4 by this article or by law of this state other than this article.

5 (b) A notarial officer may not perform a notarial act with
6 respect to a record to which the officer or the officer's spouse is
7 a party, or in which either of them has a direct beneficial
8 interest, financial or otherwise. A notarial act performed in
9 violation of this subsection is voidable.

10 **§39-4-5. Requirements for certain notarial acts.**

11 (a) A notarial officer who takes an acknowledgment of a record
12 shall determine, from personal knowledge or satisfactory evidence
13 of the identity of the individual, that the individual appearing
14 before the officer and making the acknowledgment has the identity
15 claimed and that the signature on the record is the signature of
16 the individual.

17 (b) A notarial officer who takes a verification of a statement
18 on oath or affirmation shall determine, from personal knowledge or
19 satisfactory evidence of the identity of the individual, that the
20 individual appearing before the officer and making the verification
21 has the identity claimed and that the signature on the statement
22 verified is the signature of the individual.

23 (c) A notarial officer who witnesses or attests to a signature

1 shall determine, from personal knowledge or satisfactory evidence
2 of the identity of the individual, that the individual appearing
3 before the officer and signing the record has the identity claimed.

4 (d) A notarial officer who certifies or attests a copy of a
5 record or an item that was copied shall determine that the copy is
6 a full, true, and accurate transcription or reproduction of the
7 record or item.

8 (e) A notarial officer who makes or notes a protest of a
9 negotiable instrument shall determine the matters set forth in
10 subsection (b), section five hundred five, article three, chapter
11 forty-six of this code.

12 **§39-4-6. Personal appearance required.**

13 If a notarial act relates to a statement made in or a
14 signature executed on a record, the individual making the statement
15 or executing the signature shall appear personally before the
16 notarial officer. An individual making the statement or executing
17 the signature does not appear personally if the appearance is by
18 video or audio technology, even if the video is synchronous.

19 **§39-4-7. Identification of individual.**

20 (a) A notarial officer has personal knowledge of the identity
21 of an individual appearing before the officer if the individual is
22 personally known to the officer through dealings sufficient to
23 provide reasonable certainty that the individual has the identity

1 claimed.

2 (b) A notarial officer has satisfactory evidence of the
3 identity of an individual appearing before the officer if the
4 officer can identify the individual:

5 (1) By means of:

6 (A) A passport, driver's license, or government issued
7 nondriver identification card, which is current or expired not more
8 than three years before performance of the notarial act; or

9 (B) Another form of government identification issued to an
10 individual, which is current or expired not more than three years
11 before performance of the notarial act, contains the signature or
12 a photograph of the individual, and is satisfactory to the officer;
13 or

14 (2) By a verification on oath or affirmation of a credible
15 witness personally appearing before the officer and known to the
16 officer or whom the officer can identify on the basis of a
17 passport, driver's license, or government issued nondriver
18 identification card, which is current or expired not more than
19 three years before performance of the notarial act.

20 (c) A notarial officer may require an individual to provide
21 additional information or identification credentials necessary to
22 assure the officer of the identity of the individual.

23 **§39-4-8. Authority to refuse to perform notarial act.**

1 (a) A notarial officer may refuse to perform a notarial act if
2 the officer is not satisfied that:

3 (1) The individual executing the record is competent or has
4 the capacity to execute the record; or

5 (2) The individual's signature is knowingly and voluntarily
6 made.

7 (b) A notarial officer may refuse to perform a notarial act
8 unless refusal is prohibited by law other than this article.

9 **§39-4-9. Signature if individual is unable to sign.**

10 If an individual is physically unable to sign a record, the
11 individual may direct an individual other than the notarial officer
12 to sign the individual's name on the record. The notarial officer
13 shall insert "Signature affixed by (name of other individual) at
14 the direction of (name of individual)" or words of similar import.

15 **§39-4-10. Notarial act in this state.**

16 (a) A notarial act may be performed in this state by:

17 (1) A notary public of this state;

18 (2) A judge, clerk, or deputy clerk of a court of this state;

19 or

20 (3) Any other individual authorized to perform the specific
21 act by the law of this state.

22 (b) The signature and title of an individual performing a
23 notarial act in this state are prima facie evidence that the

1 signature is genuine and that the individual holds the designated
2 title.

3 (c) The signature and title of a notarial officer described in
4 subdivision (1) or (2) of subsection (a), conclusively establish
5 the authority of the officer to perform the notarial act.

6 **§39-4-11. Notarial act in another state.**

7 (a) A notarial act performed in another state has the same
8 effect under the law of this state as if performed by a notarial
9 officer of this state, if the act performed in that state is
10 performed by:

11 (1) A notary public of that state;

12 (2) A judge, clerk, or deputy clerk of a court of that state;

13 or

14 (3) Any other individual authorized by the law of that state
15 to perform the notarial act.

16 (b) The signature and title of an individual performing a
17 notarial act in another state are prima facie evidence that the
18 signature is genuine and that the individual holds the designated
19 title.

20 (c) The signature and title of a notarial officer described in
21 subdivision (1) or (2) of subsection (a), conclusively establish
22 the authority of the officer to perform the notarial act.

23 **§39-4-12. Notarial act under authority of federally recognized**

1 **Indian tribe.**

2 (a) A notarial act performed under the authority and in the
3 jurisdiction of a federally recognized Indian tribe has the same
4 effect as if performed by a notarial officer of this state, if the
5 act performed in the jurisdiction of the tribe is performed by:

6 (1) A notary public of the tribe;

7 (2) A judge, clerk, or deputy clerk of a court of the tribe;

8 or

9 (3) Any other individual authorized by the law of the tribe to
10 perform the notarial act.

11 (b) The signature and title of an individual performing a
12 notarial act under the authority of and in the jurisdiction of a
13 federally recognized Indian tribe are prima facie evidence that the
14 signature is genuine and that the individual holds the designated
15 title.

16 (c) The signature and title of a notarial officer described in
17 subdivision (1) or (2) of subsection (a), conclusively establish
18 the authority of the officer to perform the notarial act.

19 **§39-4-13. Notarial act under federal authority.**

20 (a) A notarial act performed under federal law has the same
21 effect under the law of this state as if performed by a notarial
22 officer of this state, if the act performed under federal law is
23 performed by:

1 (1) A judge, clerk, or deputy clerk of a court;

2 (2) An individual in military service or performing duties
3 under the authority of military service who is authorized to
4 perform notarial acts under federal law;

5 (3) An individual designated a notarizing officer by the
6 United States Department of State for performing notarial acts
7 overseas; or

8 (4) Any other individual authorized by federal law to perform
9 the notarial act.

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

14 (c) The signature and title of an officer described in
15 subdivision (1), (2) or (3) of subsection (a), conclusively
16 establish the authority of the officer to perform the notarial act.

17 **§39-4-14. Foreign notarial act.**

18 (a) In this section, "foreign state" means a government other
19 than the United States, a state, or a federally recognized Indian
20 tribe.

21 (b) If a notarial act is performed under authority and in the
22 jurisdiction of a foreign state or constituent unit of the foreign
23 state or is performed under the authority of a multinational or

1 international governmental organization, the act has the same
2 effect under the law of this state as if performed by a notarial
3 officer of this state.

4 (c) If the title of office and indication of authority to
5 perform notarial acts in a foreign state appears in a digest of
6 foreign law or in a list customarily used as a source for that
7 information, the authority of an officer with that title to perform
8 notarial acts is conclusively established.

9 (d) The signature and official stamp of an individual holding
10 an office described in subsection (c) are prima facie evidence that
11 the signature is genuine and the individual holds the designated
12 title.

13 (e) An apostille in the form prescribed by the Hague
14 Convention of October 5, 1961, and issued by a foreign state party
15 to the Convention conclusively establishes that the signature of
16 the notarial officer is genuine and that the officer holds the
17 indicated office.

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

1 **§39-4-15. Certificate of notarial act.**

2 (a) A notarial act must be evidenced by a certificate. The
3 certificate must:

4 (1) Be executed contemporaneously with the performance of the
5 notarial act;

6 (2) Be signed and dated by the notarial officer and, if the
7 notarial officer is a notary public, be signed in the same manner
8 as on file with the Secretary of State;

9 (3) Identify the jurisdiction in which the notarial act is
10 performed;

11 (4) Contain the title of office of the notarial officer; and

12 (5) If the notarial officer is a notary public, indicate the
13 date of expiration, if any, of the officer's commission.

14 (b) If a notarial act regarding a tangible record is performed
15 by a notary public, an official stamp must be affixed to the
16 certificate. If a notarial act is performed regarding a tangible
17 record by a notarial officer other than a notary public and the
18 certificate contains the information specified in subdivisions (2),
19 (3), and (4) of subsection (a), an official stamp may be affixed to
20 the certificate. If a notarial act regarding an electronic record
21 is performed by a notarial officer and the certificate contains the
22 information specified in subdivisions (2), (3), and (4) of
23 subsection (a), an official stamp may be attached to or logically

1 associated with the certificate.

2 (c) A certificate of a notarial act is sufficient if it meets
3 the requirements of subsections (a) and (b) and:

4 (1) Is in a short form set forth in section sixteen of this
5 article;

6 (2) Is in a form otherwise permitted by the law of this state;

7 (3) Is in a form permitted by the law applicable in the
8 jurisdiction in which the notarial act was performed; or

9 (4) Sets forth the actions of the notarial officer and the
10 actions are sufficient to meet the requirements of the notarial act
11 as provided in sections five, six and seven of this article or law
12 of this state other than this article.

13 (d) By executing a certificate of a notarial act, a notarial
14 officer certifies that the officer has complied with the
15 requirements and made the determinations specified in sections
16 four, five and six of this article.

17 (e) A notarial officer may not affix the officer's signature
18 to, or logically associate it with, a certificate until the
19 notarial act has been performed.

20 (f) If a notarial act is performed regarding a tangible
21 record, a certificate must be part of, or securely attached to, the
22 record. If a notarial act is performed regarding an electronic
23 record, the certificate must be affixed to, or logically associated

1 with, the electronic record. If the Secretary of State has
2 established standards pursuant to section twenty-seven of this
3 article, for attaching, affixing, or logically associating the
4 certificate, the process must conform to the standards.

5 **§39-4-16. Short form certificates.**

6 The following short form certificates of notarial acts are
7 sufficient for the purposes indicated, if completed with the
8 information required by subsections (a) and (b) of section fifteen
9 of this article:

10 (1) For an acknowledgment in an individual capacity:

11 State of _____

12 County of _____

13 This record was acknowledged before me on _____ by

14 _____ Date Name (s)

15 of individual(s)

16 _____

17 Signature of notarial officer

18 Stamp

19 _____

20 Title of office

21 My commission expires: _____

22 (2) For an acknowledgment in a representative capacity:

23 State of _____

1 County of _____

2 This record was acknowledged before me on _____ by

3 _____ Date Name (s) of

4 individual(s)

5 as (type of authority, such as officer or trustee) of (name of

6 party on behalf of whom record was executed).

7 _____

8 Signature of notarial officer

9 Stamp

10 _____

11 Title of office

12 My commission expires: _____

13 (3) For a verification on oath or affirmation:

14 State of _____

15 County of _____

16 Signed and sworn to (or affirmed) before me on _____ by

17 _____ Date Name (s)

18 of individual(s) making statement

19 _____

20 Signature of notarial officer

21 Stamp

22 _____

23 Title of office

1 My commission expires: _____

2 (4) For witnessing or attesting a signature:

3 State of _____

4 County of _____

5 Signed or attested before me on _____ by _____

6 Date

7 Name(s) of individual(s)

8 _____

9 Signature of notarial officer

10 Stamp

11 _____

12 Title of office

13 My commission expires: _____

14 (5) For certifying a copy of a record:

15 State of _____

16 County of _____

17 I certify that this is a true and correct copy of a record in the

18 possession of _____.

19 Dated _____

20 _____

21 Signature of notarial officer

22 Stamp

23 _____

1 Title of office

2 My commission expires: _____

3 **§39-4-17. Official stamp.**

4 The official stamp of a notary public must:

5 (1) Include the notary public's name, address, jurisdiction,
6 commission expiration date, and other information required by the
7 Secretary of State; and

8 (2) Be capable of being copied together with the record to
9 which it is affixed or attached or with which it is logically
10 associated.

11 **§39-4-18. Stamping device.**

12 (a) A notary public is responsible for the security of the
13 notary public's stamping device and may not allow another
14 individual to use the device to perform a notarial act. On
15 resignation from, or the revocation or expiration of, the notary
16 public's commission, or on the expiration of the date set forth in
17 the stamping device, the notary public shall disable the stamping
18 device by destroying, defacing, damaging, erasing, or securing it
19 against use in a manner that renders it unusable. On the death or
20 adjudication of incompetency of a notary public, the notary
21 public's personal representative or guardian or any other person
22 knowingly in possession of the stamping device shall render it
23 unusable by destroying, defacing, damaging, erasing, or securing it

1 against use in a manner that renders it unusable.

2 (b) If a notary public's stamping device is lost or stolen,
3 the notary public or the notary public's personal representative or
4 guardian shall notify promptly the Secretary of State on
5 discovering that the device is lost or stolen.

6 **§39-4-19. Journal.**

7 (a) A notary public shall maintain a journal in which the
8 notary public chronicles all notarial acts that the notary public
9 performs. The notary public shall retain the journal for ten years
10 after the performance of the last notarial act chronicled in the
11 journal.

12 (b) A journal may be created on a tangible medium or in an
13 electronic format. A notary public shall maintain only one journal
14 at a time to chronicle all notarial acts, whether those notarial
15 acts are performed regarding tangible or electronic records. If
16 the journal is maintained on a tangible medium, it must be a
17 permanent, bound register with numbered pages. If the journal is
18 maintained in an electronic format, it must be in a permanent,
19 tamper-evident electronic format complying with the rules
20 promulgated by the Secretary of State.

21 (c) An entry in a journal must be made contemporaneously with
22 performance of the notarial act and contain the following
23 information:

- 1 (1) The date and time of the notarial act;
- 2 (2) A description of the record, if any, and type of notarial
3 act;
- 4 (3) The full name and address of each individual for whom the
5 notarial act is performed;
- 6 (4) If identity of the individual is based on personal
7 knowledge, a statement to that effect;
- 8 (5) If identity of the individual is based on satisfactory
9 evidence, a brief description of the method of identification and
10 the identification credential presented, if any, including the date
11 of issuance and expiration of any identification credential; and
- 12 (6) The fee, if any, charged by the notary public.
- 13 (d) If a notary public's journal is lost or stolen, the notary
14 public promptly shall notify the Secretary of State on discovering
15 that the journal is lost or stolen.
- 16 (e) On resignation from, or the revocation or suspension of,
17 a notary public's commission, the notary public shall retain the
18 notary public's journal in accordance with subsection (a) and
19 inform the Secretary of State where the journal is located.
- 20 (f) Instead of retaining a journal as provided in subsections
21 (a) and (e), a current or former notary public may transmit the
22 journal to the Secretary of State or a repository approved by the
23 Secretary of State.

1 (g) On the death or adjudication of incompetency of a current
2 or former notary public, the notary public's personal
3 representative or guardian or any other person knowingly in
4 possession of the journal shall transmit it to the Secretary of
5 State or a repository approved by the Secretary of State.

6 **§39-4-20. Notification regarding performance of notarial act on**
7 **electronic record, selection of technology.**

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

13 (b) Before a notary public performs the notary public's
14 initial notarial act with respect to an electronic record, a notary
15 public shall notify the Secretary of State that the notary public
16 will be performing notarial acts with respect to electronic records
17 and identify the technology the notary public intends to use. If
18 the Secretary of State has established standards for approval of
19 technology pursuant to section twenty-seven of this article, the
20 technology must conform to the standards. If the technology
21 conforms to the standards, the Secretary of State shall approve the
22 use of the technology.

23 **§39-4-21. Commission as notary public; qualifications; no immunity**

1 **or benefit; disposition of fees.**

2 (a) An individual qualified under subsection (b) may apply to
3 the Secretary of State for a commission as a notary public. The
4 applicant shall comply with and provide the information required by
5 rules promulgated by the Secretary of State and pay any application
6 fee.

7 (b) An applicant for a commission as a notary public must:

8 (1) Be at least 18 years of age;

9 (2) Be a citizen or permanent legal resident of the United
10 States;

11 (3) Be a resident of or have a place of employment or practice
12 in this state;

13 (4) Be able to read and write English;

14 (5) Not be disqualified to receive a commission under section
15 twenty-three of this article; and

16 (6) Have passed the examination required under section
17 twenty-two of this article.

18 (c) Before issuance of a commission as a notary public, an
19 applicant for the commission shall execute an oath of office and
20 submit it to the Secretary of State.

21 (d) Before issuance of a commission as a notary public, the
22 applicant for a commission shall submit to the Secretary of State
23 an assurance in the form of a surety bond or its functional

1 equivalent in the amount of \$10,000. The assurance must be issued
2 by a surety or other entity licensed or authorized to do business
3 in this state. The assurance must cover acts performed during the
4 term of the notary public's commission and must be in the form
5 prescribed by the Secretary of State. If a notary public violates
6 law with respect to notaries public in this state, the surety or
7 issuing entity is liable under the assurance. The surety or
8 issuing entity shall give thirty days' notice to the Secretary of
9 State before canceling the assurance. The surety or issuing entity
10 shall notify the Secretary of State not later than thirty days
11 after making a payment to a claimant under the assurance. A notary
12 public may perform notarial acts in this state only during the
13 period that a valid assurance is on file with the Secretary of
14 State.

15 (e) On compliance with this section, the Secretary of State
16 shall issue a commission as a notary public to an applicant for a
17 term of four years.

18 (f) A commission to act as a notary public authorizes the
19 notary public to perform notarial acts. The commission does not
20 provide the notary public any immunity or benefit conferred by law
21 of this state on public officials or employees.

22 **§39-4-22. Examination of notary public.**

23 (a) An applicant for a commission as a notary public must pass

1 an examination administered by the Secretary of State or an entity
2 approved by the Secretary of State. The examination must be based
3 on the course of study described in subsection (b).

4 (b) The Secretary of State or an entity approved by the
5 Secretary of State shall offer regularly a course of study to
6 applicants for commissions as notaries public or government
7 notaries public in this state. The course must cover the laws,
8 rules, procedures, and ethics relevant to notarial acts.

9 **§39-4-23. Grounds to deny, refuse to renew, revoke, suspend, or**
10 **condition commission of notary public.**

11 (a) The Secretary of State may deny, refuse to renew, revoke,
12 suspend, or impose a condition on a commission as notary public for
13 any act or omission that demonstrates the individual lacks the
14 honesty, integrity, competence, or reliability to act as a notary
15 public, including:

16 (1) Failure to comply with this article;

17 (2) A fraudulent, dishonest, or deceitful misstatement or
18 omission in the application for a commission as a notary public
19 submitted to the Secretary of State;

20 (3) A conviction of the applicant or notary public of any
21 felony or a crime involving fraud, dishonesty, or deceit;

22 (4) A finding against, or admission of liability by, the
23 applicant or notary public in any legal proceeding or disciplinary

1 action based on the applicant's or notary public's fraud,
2 dishonesty, or deceit;

3 (5) Failure by the notary public to discharge any duty
4 required of a notary public, whether by this article, rules
5 promulgated by the Secretary of State, or any federal or state law;

6 (6) Use of false or misleading advertising or representation
7 by the notary public representing that the notary has a duty,
8 right, or privilege that the notary does not have;

9 (7) Violation by the notary public of a rule of the Secretary
10 of State regarding a notary public;

11 (8) Denial, refusal to renew, revocation, suspension, or
12 conditioning of a notary public commission in another state;

13 (9) Failure of the notary public to maintain an assurance as
14 provided in subsection (d), section twenty-one of this article;

15 (10) Charging more than the maximum fees specified in section
16 thirty-two of this article;

17 (11) Failure to notify the Secretary of State of an address or
18 name change pursuant to subsection (b), section twenty-four of this
19 article.

20 (b) If the Secretary of State denies, refuses to renew,
21 revokes, suspends, or imposes conditions on a commission as a
22 notary public, the applicant or notary public is entitled to timely
23 notice and hearing in accordance with article five, chapter

1 twenty-nine-a of this code.

2 (c) The authority of the Secretary of State to deny, refuse to
3 renew, suspend, revoke, or impose conditions on a commission as a
4 notary public does not prevent a person from seeking and obtaining
5 other criminal or civil remedies provided by law.

6 **§39-4-24. Database of notaries public.**

7 (a) The Secretary of State shall maintain an electronic
8 database of notaries public:

9 (1) Through which a person may verify the authority of a
10 notary public to perform notarial acts; and

11 (2) Which indicates whether a notary public has notified the
12 Secretary of State that the notary public will be performing
13 notarial acts on electronic records.

14 (b) Not later than thirty days after a notary public either:

15 (1) Changes the address of his or her business or residence;
16 or

17 (2) Changes his or her name, the notary public shall notify
18 the Secretary of State of the address or name change.

19 **§39-4-25. Prohibited acts.**

20 (a) A commission as a notary public does not authorize an
21 individual to:

22 (1) Assist persons in drafting legal records, give legal
23 advice, or otherwise practice law;

1 (2) Act as an immigration consultant or an expert on
2 immigration matters;

3 (3) Represent a person in a judicial or administrative
4 proceeding relating to immigration to the United States, United
5 States citizenship, or related matters; or

6 (4) Receive compensation for performing any of the activities
7 listed in this subsection.

8 (b) A notary public may not engage in false or deceptive
9 advertising.

10 (c) A notary public, other than an attorney licensed to
11 practice law in this state, may not use the term "notario" or
12 "notario publico".

13 (d) A notary public, other than an attorney licensed to
14 practice law in this state, may not advertise or represent that the
15 notary public may assist persons in drafting legal records, give
16 legal advice, or otherwise practice law. If a notary public who is
17 not an attorney licensed to practice law in this state in any
18 manner advertises or represents that the notary public offers
19 notarial services, whether orally or in a record, including
20 broadcast media, print media, and the Internet, the notary public
21 shall include the following statement, or an alternate statement
22 authorized or required by the Secretary of State, in the
23 advertisement or representation, prominently and in each language

1 used in the advertisement or representation: "I am not an attorney
2 licensed to practice law in this state. I am not allowed to draft
3 legal records, give advice on legal matters, including immigration,
4 or charge a fee for those activities". If the form of
5 advertisement or representation is not broadcast media, print
6 media, or the Internet and does not permit inclusion of the
7 statement required by this subsection because of size, it must be
8 displayed prominently or provided at the place of performance of
9 the notarial act before the notarial act is performed.

10 (e) Except as otherwise allowed by law, a notary public may
11 not withhold access to or possession of an original record provided
12 by a person that seeks performance of a notarial act by the notary
13 public.

14 **§39-4-26. Validity of notarial acts.**

15 Except as otherwise provided in subsection (b), section four
16 of this article, the failure of a notarial officer to perform a
17 duty or meet a requirement specified in this article does not
18 invalidate a notarial act performed by the notarial officer. The
19 validity of a notarial act under this article does not prevent an
20 aggrieved person from seeking to invalidate the record or
21 transaction that is the subject of the notarial act or from seeking
22 other remedies based on law of this state other than this article
23 or law of the United States. This section does not validate a

1 purported notarial act performed by an individual who does not have
2 the authority to perform notarial acts.

3 **§39-4-27. Rules.**

4 (a) The Secretary of State may promulgate rules, in accordance
5 with the provisions of chapter twenty-nine-a of this code, to
6 implement this article. Rules promulgated regarding the performance
7 of notarial acts with respect to electronic records may not
8 require, or accord greater legal status or effect to, the
9 implementation or application of a specific technology or technical
10 specification. The rules may:

11 (1) Prescribe the manner of performing notarial acts regarding
12 tangible and electronic records;

13 (2) Include provisions to ensure that any change to or
14 tampering with a record bearing a certificate of a notarial act is
15 self-evident;

16 (3) Include provisions to ensure integrity in the creation,
17 transmittal, storage, or authentication of electronic records or
18 signatures;

19 (4) Prescribe the process of granting, renewing, conditioning,
20 denying, suspending, or revoking a notary public commission and
21 assuring the trustworthiness of an individual holding a commission
22 as notary public;

23 (5) Include provisions to prevent fraud or mistake in the

1 performance of notarial acts;

2 (6) Establish the process for approving and accepting surety
3 bonds and other forms of assurance under subsection (d), section
4 twenty-one of this article;

5 (7) Provide for the administration of the examination under
6 subsection (a), section twenty-two of this article, and the course
7 of study under subsection (b), section twenty-two of this article;
8 and

9 (8) Establish fees, with legislative approval in accordance
10 with the provisions of article three, chapter twenty-nine-a of this
11 code. Fees collected by the Secretary of State pursuant to
12 subdivision shall be deposited by the Secretary of State as
13 follows: One-half shall be deposited in the state general revenue
14 fund and one-half shall be deposited in the service fees and
15 collections account established by section two, article one,
16 chapter fifty-nine of this code for the operation of the office of
17 the Secretary of State. The Secretary of State shall dedicate
18 sufficient resources from that fund or other funds to provide the
19 services required by the provisions of article four, chapter
20 thirty-nine of this code.

21 (b) In promulgating, amending, or repealing rules about
22 notarial acts with respect to electronic records, the Secretary of
23 State shall consider, so far as is consistent with this article:

1 (1) The most recent standards regarding electronic records
2 promulgated by national bodies, such as the National Association of
3 Secretaries of State;

4 (2) Standards, practices, and customs of other jurisdictions
5 that substantially enact this article; and

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

8 **§39-4-28. Notary public commission and commissioner appointment in**
9 **effect.**

10 (a) A commission as a notary public in effect on June 30,
11 2015, continues until its date of expiration. A notary public who
12 applies for a commission as a notary public on or after July 1,
13 2015, is subject to and shall comply with this article. A notary
14 public, in performing notarial acts on or after July 1, 2015, shall
15 comply with this article.

16 (b) An appointment as commissioner under the repealed
17 provisions of article four, chapter twenty-nine of this code, in
18 effect on June 30, 2015, continues until its date of expiration. A
19 commissioner, in performing notarial acts on or after July 1, 2015,
20 shall comply with this article: *Provided*, That a person holding a
21 commission pursuant to the provisions of article four, chapter
22 twenty-nine of this code, on June 30, 2015, is not required to
23 obtain or use a stamp required by section seventeen of this

1 article, prior to the expiration of that commission.

2 **§39-4-29. Savings clause.**

3 This article does not affect the validity or effect of a
4 notarial act performed before July 1, 2015.

5 **§39-4-30. Uniformity of application and construction.**

6 In applying and construing this uniform act, consideration
7 must be given to the need to promote uniformity of the law with
8 respect to its subject matter among states that enact it.

9 **§39-4-31. Relation to Electronic Signatures in Global and National**
10 **Commerce Act.**

11 This article modifies, limits, and supersedes the Electronic
12 Signatures in Global and National Commerce Act, 15 U.S.C. Section
13 7001 et seq., but does not modify, limit, or supersede Section
14 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
15 electronic delivery of any of the notices described in Section
16 103(b) of that act, 15 U.S.C. Section 7003(b).

17 **§39-4-32. Maximum fees.**

18 (a) The maximum fee in this state for notarization of each
19 signature and the proper recordation thereof in the journal of
20 notarial acts is \$5.00 for each signature notarized.

21 (b) The maximum fee in this state for certification of a
22 facsimile of a document, retaining a facsimile in the notary's

1 file, and the proper recordation thereof in the journal of notarial
2 acts is \$5.00 for each eight and one-half by eleven inch page
3 retained in the notary's file.

4 (c) The maximum fee in this state is \$5.00 for any other
5 notarial act performed.

6 **§39-4-33. Government notaries public.**

7 (a) State and local government employees may be commissioned
8 as government notaries public to act for and in behalf of their
9 respective state and local government offices.

10 (b) A state or local government employee commissioned under
11 this section shall meet the requirements for qualification and
12 appointment prescribed in this article except that the head of the
13 state or local government office where the applicant is employed,
14 or his or her designee, shall execute a certificate that the
15 application is made for the purposes of the office and in the
16 public interest and submit it to the Secretary of State together
17 with the application for appointment as a notary public.
18 Applicants for commission as a notary public under this section are
19 exempt from fulfilling the surety requirements of subsection (d),
20 section twenty-one of this article.

21 (c) The costs of application and all notary supplies for a
22 commissioned state or local government employee shall be paid from
23 funds available to the office in which he or she is employed.

1 (d) All fees received for notarial services by a government
2 notary public appointed for and in behalf of a state or local
3 government office shall be remitted by him or her to the state or
4 local government office in which he or she is employed.

5 (e) A government notary public must comply with all provisions
6 of this article in the performance of notarial acts.

7 (f) A government notary public may acknowledge any document
8 required to be acknowledged by a notary public; *Provided*, That a
9 government notary public may not operate privately.

10 **§39-4-34. Liability of notary and of an employer of notary.**

11 (a) A notary public is liable to the persons involved for all
12 damages proximately caused by the notary's official misconduct.

13 (b) The employer of a notary public is also liable to the
14 persons involved for all damages proximately caused by the notary's
15 official misconduct, if:

16 (1) The notary public was acting within the scope of his or
17 her employment at the time he or she engaged in the official
18 misconduct; and

19 (2) The employer consented to the notary public's official
20 misconduct.

21 (c) It is not essential to a recovery of damages that a
22 notary's official misconduct be the only proximate cause of the
23 damages.

1 (d) For the purposes of this section, the term "official
2 misconduct" means any act or conduct that:

3 (1) May result in the denial, refusal to renew, revocation,
4 suspension or condition commission of a notary public pursuant to
5 section twenty-three of this article; or

6 (2) Is prohibited by section twenty-five of this article.

7 **§39-4-35. Criminal penalties.**

8 (a) A notary public who knowingly and willfully commits any
9 official misconduct is guilty of a misdemeanor and, upon
10 conviction, shall be fined not more than \$5,000 or confined in jail
11 not more than one year, or both fined and confined.

12 (b) A notary public who recklessly or negligently commits any
13 official misconduct is guilty of a misdemeanor and, upon
14 conviction, shall be fined not more than \$1,000.

15 (c) Any person who acts as, or otherwise willfully
16 impersonates, a notary public while not lawfully appointed and
17 commissioned to perform notarial acts is guilty of a misdemeanor
18 and, upon conviction, shall be fined not more than \$5,000 or
19 confined in jail not more than one year, or both fined and
20 confined.

21 (d) Any person who unlawfully possesses a notary's official
22 seal or any papers or copies relating to notarial acts, is guilty
23 of a misdemeanor and, upon conviction, shall be fined not more than

1 \$1,000.

2 (e) For the purposes of this section, the term "official
3 misconduct" means any act or conduct that:

4 (1) May result in the denial, refusal to renew, revocation,
5 suspension or condition commission of a notary public pursuant to
6 section twenty-three of this article; or

7 (2) Is prohibited by section twenty-five of this article.

8 **§39-4-36. Action for injunction; unauthorized practice of law.**

9 Upon his or her own information or upon complaint of any
10 person, the Attorney General, or his or her designee, may maintain
11 an action for injunctive relief in circuit court against any notary
12 public who renders, offers to render or holds himself or herself
13 out as rendering any service constituting the unauthorized practice
14 of the law. Any organized bar association in this state may
15 intervene in the action, at any stage of the proceeding, for good
16 cause shown. The action may also be maintained by an organized bar
17 association in this state or by the Secretary of State.

18 **§39-4-37. Administrative Complaints and Investigations.**

19 (a) In addition to the powers and duties contained in this
20 article, the Secretary of State may:

21 (1) Investigate, upon complaint or on his or her own
22 initiative, any alleged violations or irregularities of this
23 article.

1 (2) Administer oaths and affirmations, issue subpoenas for the
2 attendance of witnesses, issue subpoenas duces tecum to compel the
3 production of books, papers, records and all other evidence
4 necessary to any investigation.

5 (3) Involve the aid of any circuit court in the execution of
6 its subpoena power.

7 (4) Report any alleged violations of this article to the
8 appropriate prosecuting attorney having jurisdiction, which
9 prosecuting attorney shall present to the grand jury the alleged
10 violations, together with all evidence relating thereto, no later
11 than the next term of court after receiving the report.

12 (b) The Attorney General shall, when requested, provide legal
13 and investigative assistance to the Secretary of State.

14 **§39-4-38. Secretary of State record retention.**

15 (a) The provisions of subsection (c), section three, article
16 two, chapter five of this code notwithstanding, the Secretary of
17 State may destroy original records of appointment under this
18 article after expiration of the term of a notary public: *Provided*,
19 that the Secretary of State maintains an electronic copy of the
20 appointment for a minimum of ten years after the expiration of the
21 term of the notary public.

22 (b) The Secretary of State may destroy any original journals
23 of notarial acts in his or her possession; *Provided*, That an

1 electronic copy is maintained in accordance with the retention
2 rules of the Department of Administration.

3 **CHAPTER 57. EVIDENCE AND WITNESSES.**

4 **ARTICLE 4. DEPOSITIONS AND PERPETUATION OF TESTIMONY.**

5 **§57-4-2. Taking and certification of depositions -- Out of state**
6 **and in foreign countries.**

7 On affidavit that a witness resides out of this state, or is
8 out of it in the service thereof, or of the United States, or is
9 out of this state and for justifiable reasons will probably be out
10 of this state until after the trial of the case in which his or her
11 testimony is needed, his or her deposition may be taken by or
12 before ~~any commissioner appointed by the Governor of this state, or~~
13 any justice, notary public or other officer authorized to take
14 depositions in the state wherein the witness may be, or, if the
15 deposition is to be taken in a foreign country, by or before such
16 commissioner or commissioners as may be agreed upon by the parties
17 or appointed by the court, or, if there be none such, by or before
18 any American minister, plenipotentiary, charge d'affaires, consul
19 general, consul, vice consul, consular agent, vice deputy consular
20 agent, commercial agent or vice commercial agent, appointed by the
21 government of the United States, or by or before the mayor or other
22 chief magistrate of any city, town or corporation in ~~such~~ the
23 country or any notary public therein. Any person or persons taking

1 ~~such~~ the deposition may administer an oath to the witness and take
 2 and certify the deposition with his or her official seal annexed,
 3 and if he or she have none, the genuineness of his or her signature
 4 shall be authenticated by some officer of the same state or
 5 country, under his or her official seal.

6 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

7 **§57-5-9. Administration of oaths or taking of**
 8 **affidavits; authentication of affidavit made in**
 9 **another state or country; oaths and affidavits of**
 10 **persons in military service.**

11 Any judge of this state may administer any oath that is or may
 12 be lawful for any person to take, including oaths of office, and
 13 also may swear any person to an affidavit, and administer an oath
 14 to any person in any proceeding.

15 Any oath or affidavit required by law, which is not of such a
 16 nature that it must be made otherwise or elsewhere may, unless
 17 otherwise provided, be administered by, or made before, a county
 18 commissioner, notary public, ~~or a commissioner appointed by the~~
 19 ~~Governor,~~ or by the clerk of any court, or, in case of a survey
 20 directed by a court in a case therein pending, by or before the
 21 surveyor directed to execute said order of survey.

22 An affidavit may also be made before any officer of another

1 state or country authorized by its laws to administer an oath, and
2 shall be deemed duly authenticated if it be subscribed by ~~such~~ the
3 officer, with his or her official seal annexed, and if he or she
4 have none, the genuineness of his or her signature, and his or her
5 authority to administer an oath, shall be authenticated by some
6 officer of the same state or country under his or her official
7 seal.

8 Any oath or affidavit required of a person in the military
9 service of the United States (including the Women's Army Corps,
10 Women's Appointed Volunteers for Emergency Service, Army Nurse
11 Corps, Spars, Women's Reserve, or similar women's auxiliary unit
12 officially connected with ~~such~~ the military service of the United
13 States), may be administered by or made before any commissioned
14 officer of any branch of the military service of the United States,
15 or any auxiliary unit officially connected with ~~such~~ the military
16 service. Such oath may be taken or affidavit made at any place
17 either within or outside the United States of America, or any
18 territory, possession or dependency thereof. The jurat to ~~such~~ the
19 oath and certificate to ~~such~~ the affidavit need not state the place
20 where the same is taken and shall require no seal to be affixed
21 thereto. The certificate of the officer before whom ~~such~~ the oath
22 is taken or affidavit is made must state his or her rank, branch of
23 military service, and identification number, and ~~such~~ the

1 certificate may be substantially in form and effect as follows:

2 IN THE MILITARY SERVICE OF THE UNITED STATES:

3 I,, being duly sworn on oath (affirmation), do
4 swear (affirm) that I am a member of the military service of the
5 United States (or of, an auxiliary to the military
6 forces of the United States); that ***, etc.

7

8 Taken, subscribed and sworn to before me,, a
9 commissioned officer in the service of the United
10 States, by, a member of the military service of the
11 United States (or of, an auxiliary to the military
12 forces of the United States), this the day of
13, ~~19~~ 20.....

14

15 (Signature of officer)

16

17 (Rank) (Identification Number)

18 Any oath or affidavit heretofore taken or made by any person
19 in the military service in substantial compliance with this section
20 shall be valid.

21 **CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL**
22 **ADVERTISEMENTS.**

23 **ARTICLE 1. FEES AND ALLOWANCES.**

1 **§59-1-2. Fees to be charged by Secretary of State.**

2 (a) Except as may be otherwise provided in this code, the
3 Secretary of State shall charge for services rendered in his or her
4 office the following fees to be paid by the person to whom the
5 service is rendered at the time it is done:

6 (1) For filing, recording, indexing, preserving a record of
7 and issuing a certificate relating to the formation, amendment,
8 change of name, registration of trade name, merger, consolidation,
9 conversion, renewal, dissolution, termination, cancellation,
10 withdrawal revocation and reinstatement of business entities
11 organized within the state, as follows:

12 (A) Articles of incorporation of for-profit
13 corporation.. . . . \$50.00

14 (B) Articles of incorporation of nonprofit
15 corporation.. . . . 25.00

16 (C) Articles of organization of limited liability
17 company.. . . . 100.00

18 (D) Agreement of a general partnership.. . . . 50.00

19 (E) Certificate of a limited partnership.. . . . 100.00

20 (F) Agreement of a voluntary association.. . . . 50.00

21 (G) Articles of organization of a business trust.. . 50.00

22 (H) Amendment or correction of articles of incorporation,
23 including change of name or increase of capital stock, in addition

1 to any applicable license tax.. 25.00

2 (I) Amendment or correction, including change of name, of
3 articles of organization of business trust, limited liability
4 partnership, limited liability company or professional limited
5 liability company or of certificate of limited partnership or
6 agreement of voluntary association. 25.00

7 (J) Amendment and restatement of articles of incorporation,
8 certificate of limited partnership, agreement of voluntary
9 association or articles of organization of limited liability
10 partnership, limited liability company or professional limited
11 liability company or business trust.. 25.00

12 (K) Registration of trade name, otherwise designated as a true
13 name, fictitious name or D.B.A. (doing business as) name for any
14 domestic business entity as permitted by law. 25.00

15 (L) Articles of merger of two corporations, limited
16 partnerships, limited liability partnerships, limited liability
17 companies or professional limited liability companies, voluntary
18 associations or business trusts.. 25.00

19 (M) Plus for each additional party to the merger in excess of
20 two.. 15.00

21 (N) Statement of conversion, when permitted, from one business
22 entity into another business entity, in addition to the cost of
23 filing the appropriate documents to organize the surviving entity

1 25.00

2 (O) Articles of dissolution of a corporation, voluntary
3 association or business trust, or statement of dissolution of a
4 general partnership.. . . . 25.00

5 (P) Revocation of voluntary dissolution of a corporation,
6 voluntary association or business trust.. . . . 15.00

7 (Q) Articles of termination of a limited liability company,
8 cancellation of a limited partnership or statement of withdrawal of
9 limited liability partnership.. . . . 25.00

10 (R) Reinstatement of a limited liability company or
11 professional limited liability company after administrative
12 dissolution.. . . . 25.00

13 (2) For filing, recording, indexing, preserving a record of
14 and issuing a certificate relating to the registration, amendment,
15 change of name, merger, consolidation, conversion, renewal,
16 withdrawal or termination within this state of business entities
17 organized in other states or countries, as follows:

18 (A) Certificate of authority of for-profit corporation
19 \$100.00

20 (B) Certificate of authority of nonprofit corporation
21 50.00

22 (C) Certificate of authority of foreign limited liability
23 companies.. . . . 150.00

1	(D) Certificate of exemption from certificate of	
2	authority	25.00
3	(E) Registration of a general partnership.	50.00
4	(F) Registration of a limited partnership.	150.00
5	(G) Registration of a limited liability partnership for	
6	two-year term.. . . .	500.00
7	(H) Registration of a voluntary association.	50.00
8	(I) Registration of a trust or business trust.	50.00
9	(J) Amendment or correction of certificate of authority of a	
10	foreign corporation, including change of name or increase of	
11	capital stock, in addition to any applicable license tax.	25.00
12	(K) Amendment or correction of certificate of limited	
13	partnership, limited liability partnership, limited liability	
14	company or professional limited liability company, voluntary	
15	association or business trust.. . . .	25.00
16	(L) Registration of trade name, otherwise designated as a true	
17	name, fictitious name or D.B.A. (doing business as) name for any	
18	foreign business entity as permitted by law.. . . .	25.00
19	(M) Amendment and restatement of certificate of authority or	
20	of registration of a corporation, limited partnership, limited	
21	liability partnership, limited liability company or professional	
22	limited liability company, voluntary association or business trust	
23	25.00

1 (N) Articles of merger of two corporations, limited
2 partnerships, limited liability partnerships, limited liability
3 companies or professional limited liability companies, voluntary
4 associations or business trusts.. 25.00

5 (O) Plus for each additional party to the merger in excess
6 of two. 5.00

7 (P) Statement of conversion, when permitted, from one business
8 entity into another business entity, in addition to the cost of
9 filing the appropriate articles or certificate to organize the
10 surviving entity. 25.00

11 (Q) Certificate of withdrawal or cancellation of a
12 corporation, limited partnership, limited liability partnership,
13 limited liability company, voluntary association or business trust
14 25.00

15 Notwithstanding any other provision of this section to the
16 contrary, after the thirtieth day of June, two thousand eight, the
17 fees described in this subdivision that are collected for the
18 issuance of a certificate relating to the initial registration of
19 a corporation, limited partnership, domestic limited liability
20 company or foreign limited liability company shall be deposited in
21 the general administrative fees account established by this
22 section.

23 (3) For receiving, filing and recording a change of the

1 principal or designated office, change of the agent of process
2 and/or change of officers, directors, partners, members or
3 managers, as the case may be, of a corporation, limited
4 partnership, limited liability partnership, limited liability
5 company or other business entity as provided by law.. . . \$15.00

6 (4) For receiving, filing and preserving a reservation of a
7 name for each one hundred twenty days or for any other period in
8 excess of seven days prescribed by law for a corporation, limited
9 partnership, limited liability partnership or limited liability
10 company.. . . . \$15.00

11 (5) For issuing a certificate relating to a corporation or
12 other business entity, as follows:

13 (A) Certificate of good standing of a domestic or foreign
14 corporation.. . . . \$10.00

15 (B) Certificate of existence of a domestic limited liability
16 company, and certificate of authorization foreign limited liability
17 company.. . . . 10.00

18 (C) Certificate of existence of any business entity, trademark
19 or service mark registered with the Secretary of State .. 10.00

20 (D) Certified copy of corporate charter or comparable
21 organizing documents for other business entities. 15.00

22 (E) Plus, for each additional amendment, restatement or other
23 additional document.. . . . 5.00

1 (F) Certificate of registration of the name of a foreign
2 corporation, limited liability company, limited partnership or
3 limited liability partnership.. 25.00

4 (G) And for the annual renewal of the name registration
5 10.00

6 (H) Any other certificate not specified in this subdivision
7 10.00

8 (6) For issuing a certificate other than those relating to
9 business entities, as provided in this subsection, as follows:

10 (A) Certificate or apostille relating to the authority of
11 certain public officers, including the membership of boards and
12 commissions.. \$10.00

13 (B) Plus, for each additional certificate pertaining to the
14 same transaction. 5.00

15 (C) Any other certificate not specified in this
16 subdivision.. 10.00

17 (D) For acceptance, indexing and recordation of service of
18 process any corporation, limited partnership, limited liability
19 partnership, limited liability company, voluntary association,
20 business trust, insurance company, person or other entity as
21 permitted by law. 15.00

22 (E) For shipping and handling expenses for execution of
23 service of process by certified mail upon any defendant within the

1 United States, which fee is to be deposited to the special revenue
2 account established in this section for the operation of the office
3 of the Secretary of State.. . . . 5.00

4 (F) For shipping and handling expenses for execution of
5 service of process upon any defendant outside the United States by
6 registered mail, which fee is to be deposited to the special
7 revenue account established in this section for the operation of
8 the office of the Secretary of State... 15.00

9 (7) For a search of records of the office conducted by
10 employees of or at the expense of the Secretary of State upon
11 request, as follows:

12 (A) For any search of archival records maintained at sites
13 other than the office of the Secretary of State
14 no less than. \$10.00

15 (B) For searches of archival records maintained at sites other
16 than the office of the Secretary of State which require more than
17 one hour, for each hour or fraction of an hour consumed in making
18 ~~such~~ a search.. . . . 10.00

19 (C) For any search of records maintained on site for the
20 purpose of obtaining copies of documents or printouts of data
21 5.00

22 (D) For any search of records maintained in electronic format
23 which requires special programming to be performed by the state

1 information services agency or other vendor any actual cost, but
2 not less than... 25.00

3 (E) The cost of the search is in addition to the cost of any
4 copies or printouts prepared or any certificate issued pursuant to
5 or based on the search.

6 (F) For recording any paper for which no specific fee is
7 prescribed. 5.00

8 (8) For producing and providing photocopies or printouts of
9 electronic data of specific records upon request, as follows:

10 (A) For a copy of any paper or printout of electronic data, if
11 one sheet.. . . . \$1.00

12 (B) For each sheet after the first50

13 (C) For sending the copies or lists by fax
14 transmission. 5.00

15 (D) For producing and providing photocopies of lists, reports,
16 guidelines and other documents produced in multiple copies for
17 general public use, a publication price to be established by the
18 Secretary of State at a rate approximating 2.00 plus .10 per page
19 and rounded to the nearest dollar.

20 (E) For electronic copies of records obtained in data format
21 on disk, the cost of the record in the least expensive available
22 printed format, plus, for each required disk, which shall be
23 provided by the Secretary of State. 5.00

1 (b) The Secretary of State may propose legislative rules for
2 promulgation for charges for on-line electronic access to database
3 information or other information maintained by the Secretary of
4 State.

5 (c) For any other work or service not enumerated in this
6 subsection, the fee prescribed elsewhere in this code or a rule
7 promulgated under the authority of this code.

8 (d) The records maintained by the Secretary of State are
9 prepared and indexed at the expense of the state and those records
10 shall not be obtained for commercial resale without the written
11 agreement of the state to a contract including reimbursement to the
12 state for each instance of resale.

13 (e) The Secretary of State may provide printed or electronic
14 information free of charge as he or she considers necessary and
15 efficient for the purpose of informing the general public or the
16 news media.

17 (f) There is hereby continued in the State Treasury a special
18 revenue account to be known as the "service fees and collections"
19 account. Expenditures from the account shall be used for the
20 operation of the office of the Secretary of State and are not
21 authorized from collections, but are to be made only in accordance
22 with appropriation by the Legislature and in accordance with the
23 provisions of article three, chapter twelve of this code and upon

1 the fulfillment of the provisions set forth in article two, chapter
2 five-a of this code. Notwithstanding any other provision of this
3 code to the contrary, except as provided in subsection (h) of this
4 section and section two-a of this article, one half of all the fees
5 and service charges established in the following sections and for
6 the following purposes shall be deposited by the Secretary of State
7 or other collecting agency to that special revenue account and used
8 for the operation of the office of the Secretary of State:

9 (1) The annual attorney-in-fact fee for corporations and
10 limited partnerships established in section five, article twelve-c,
11 chapter eleven of this code;

12 (2) The fees received for the sale of the State Register, code
13 of state rules and other copies established by rule and authorized
14 by section seven, article two, chapter twenty-nine-a of this code;

15 (3) The registration fees, late fees and legal settlements
16 charged for registration and enforcement of the charitable
17 organizations and professional solicitations established in
18 sections five, nine and fifteen-b, article nineteen, chapter
19 twenty-nine of this code;

20 (4) The annual attorney-in-fact fee for limited liability
21 companies as designated in section one hundred eight, article one,
22 chapter thirty-one-b of this code and established in section two
23 hundred eleven, article two of said chapter: *Provided*, That after

1 the thirtieth day of June, two thousand eight, the annual report
2 fees designated in section one hundred eight, article one, chapter
3 thirty-one-b of this code shall upon collection be deposited in the
4 general administrative fees account described in subsection (h) of
5 this section;

6 (5) The filing fees and search and copying fees for uniform
7 commercial code transactions established by section five hundred
8 twenty-five, article nine, chapter forty-six of this code;

9 (6) The annual attorney-in-fact fee for licensed insurers
10 established in section twelve, article four, chapter thirty-three
11 of this code;

12 (7) The fees for the application and record maintenance of all
13 notaries public established by ~~section one hundred seven, article~~
14 ~~one, chapter twenty-nine c~~ section twenty-one, article four,
15 chapter thirty-nine of this code.

16 ~~(8) The fees for the application and record maintenance of~~
17 ~~commissioners for West Virginia as established by section twelve,~~
18 ~~article four, chapter twenty-nine of this code;~~

19 ~~(9)~~ (8) The fees for registering credit service organizations
20 as established by section five, article six-c, chapter forty-six-a
21 of this code;

22 ~~(10)~~ (9) The fees for registering and renewing a West Virginia
23 limited liability partnership as established by section one,

1 article ten, chapter forty-seven-b of this code;

2 (~~11~~) (10) The filing fees for the registration and renewal of
3 trademarks and service marks established in section seventeen,
4 article two, chapter forty-seven of this code;

5 (~~12~~) (11) All fees for services, the sale of photocopies and
6 data maintained at the expense of the Secretary of State as
7 provided in this section; and

8 (~~13~~) (12) All registration, license and other fees collected
9 by the Secretary of State not specified in this section.

10 (g) Any balance in the service fees and collections account
11 established by this section which exceeds five hundred thousand
12 dollars as of the thirtieth day of June, two thousand three, and
13 each year thereafter, shall be expired to the state fund, General
14 Revenue Fund.

15 (h) (1) Effective the first day of July, two thousand eight,
16 there is hereby created in the State Treasury a special revenue
17 account to be known as the general administrative fees account.
18 Expenditures from the account shall be used for the operation of
19 the office of the Secretary of State and are not authorized from
20 collections, but are to be made only in accordance with
21 appropriation by the Legislature and in accordance with the
22 provisions of article three, chapter twelve of this code and upon
23 the fulfillment of the provisions set forth in article two, chapter

1 eleven-b of this code: *Provided*, That for the fiscal year ending
2 the thirtieth day of June, two thousand nine, expenditures are
3 authorized from collections rather than pursuant to an
4 appropriation by the Legislature. Any balance in the account at the
5 end of each fiscal year shall not revert to the General Revenue
6 Fund but shall remain in the fund and be expended as provided by
7 this subsection.

8 (2) After the thirtieth day of June, two thousand eight, all
9 the fees and service charges established in section two-a of this
10 article for the following purposes shall be collected and deposited
11 by the Secretary of State or other collecting agency in the general
12 administrative fees account and used for the operation of the
13 office of the Secretary of State:

14 (A) The annual report fees paid to the Secretary of State by
15 corporations, limited partnerships, domestic limited liability
16 companies and foreign limited liability companies;

17 (B) The fees for the issuance of a certificate relating to the
18 initial registration of a corporation, limited partnership,
19 domestic limited liability company or foreign limited liability
20 company described in subdivision (2), subsection (a) of this
21 section; and

22 (C) The fees for the purchase of date and updates related to
23 the State's Business Organizations Database described in section

1 two-a of this article.

2 (i) There is continued in the office of the Secretary of State
3 a noninterest-bearing, escrow account to be known as the "prepaid
4 fees and services account". This account shall be for the purpose
5 of allowing customers of the Secretary of State to prepay for
6 services, with payment to be held in escrow until services are
7 rendered. Payments deposited in the account shall remain in the
8 account until services are rendered by the Secretary of State and
9 at that time the fees will be reallocated to the appropriate
10 general or special revenue accounts. There shall be no fee charged
11 by the secretary of state to the customer for the use of this
12 account and the customer may request the return of any moneys
13 maintained in the account at any time without penalty. The assets
14 of the prepaid fees and services account do not constitute public
15 funds of the state and are available solely for carrying out the
16 purposes of this section.

NOTE: The purpose of this bill is to adopt the Revised Uniform Law on Notarial Acts (Uniform Law Commission, 2010) to replace both the current Uniform Notary Act (1984) and the Uniform Recognition of Acknowledgments Act (1971). The bill was recommended for introduction and passage during the Regular Session of the Legislature by the Commission on Interstate Cooperation.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

All remaining provisions of §29-4 are repealed. The provisions of §29C-1-1, *et seq.* and §39-1A-1, *et seq.*, are

repealed.

Article 4 of chapter 39 is new; therefore, strike-throughs and underscoring have been omitted.