

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Originating

Senate Bill 669

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AND TRUMP

[Originating in the Committee on the Judiciary;

Reported on February 22, 2019]

1 A BILL to amend the Code of West Virginia, 1931, by adding thereto a new article, designated
2 §39-4A-1, §39-4A-2, §39-4A-3, §39-4A-4, and §39-4A-5, all relating to the appointment of
3 commissioners to acknowledge signatures by persons residing in or out of the State of
4 West Virginia covering deeds, leases, and other writings pertaining to West Virginia
5 property for recordation in the State of West Virginia; qualifications; authority of Secretary
6 of State to appoint a commissioner; authority of Secretary of State to deny, refuse to
7 renew, revoke, suspend, or impose a condition on a commission; fees; powers of
8 commissioners; prohibited acts; rule-making authority; application of Revised Uniform Law
9 on Notarial Acts; and inclusion of commissioners in online database.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. OUT-OF-STATE COMMISSIONERS.

§39-4A-1. Commissioners out of state; qualifications; application fee.

1 (a) The Secretary of State may appoint a qualified person residing within or without this
2 state and within the United States, its territories, or possessions as a commissioner to
3 acknowledge signatures performed in or out of this state by persons residing in or out of the State
4 of West Virginia covering deeds, leases, and other writings pertaining to West Virginia property
5 for recordation in the State of West Virginia.

6 (b) To be qualified for an appointment pursuant to subsection (a) of this section, a person
7 must be commissioned as a notary public pursuant to §39-4-20 of this code.

8 (c) An individual qualified under subsection (b) of this section may apply to the Secretary
9 of State for a commission and shall comply with and provide the information required by
10 subsection (d) of this section and pay the requisite fee.

11 (d) Applications for appointment as a commissioner must be made in the form and manner
12 as prescribed by the Secretary of State. The application must include the following information:

13 (1) Full name;

14 (2) Date of birth;

15 (3) Legal residential address;

16 (4) Employer, if any;

17 (5) Daytime phone number;

18 (6) Email address;

19 (7) Applicant's signature; and

20 (8) Any other information deemed necessary by the Secretary of State.

21 (e) The Secretary of State may deny, refuse to renew, revoke, suspend, or impose a
22 condition on a commission for any act or omission that demonstrates the individual lacks the
23 honesty, integrity, competence, or reliability to act as a commissioner, including:

24 (1) Failure to comply with this article;

25 (2) A fraudulent, dishonest, or deceitful misstatement or omission in the application for a
26 commission submitted to the Secretary of State;

27 (3) A conviction of the applicant or commissioner for any felony or for a crime involving
28 fraud, dishonesty, or deceit;

29 (4) A finding against, or admission of liability by, the applicant or commissioner in any legal
30 proceeding or disciplinary action based on the applicant's or commissioner's fraud, dishonesty,
31 or deceit;

32 (5) Failure by the commissioner to discharge any duty required of a commissioner,
33 whether by this article, rules promulgated by the Secretary of State, or any federal or state law;

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

36 (7) Revocation, suspension, or refusal or failure to renew the commissioner's commission
37 as a notary public pursuant to §39-4-1 et seq. of this code;

38 (8) Violation by the commissioner of a rule of the Secretary of State regarding a
39 commissioner; and

40 (9) Denial, refusal to renew, revocation, suspension, or conditioning of a commission in

41 another state.

42 (f) Before issuance of a commission, an applicant shall provide at the time of application
43 a statement that he or she solemnly swears or affirms, under penalty of perjury, that the answers
44 to all questions in this application are true, complete, and correct; and, if appointed and
45 commissioned, he or she will perform faithfully, to the best of his or her ability, all acts in
46 accordance with the law.

47 (g) A nonrefundable fee of \$500 for each commission issued shall be paid to the Secretary
48 of State: *Provided*, That the Secretary of State shall have the authority to refund some or all of
49 the application fee for denials resulting from good-faith mistakes made by applicants.

50 (h) All fees and moneys collected by the Secretary of State pursuant to the provisions of
51 this section shall be deposited by the Secretary of State as follows:

52 (1) One-half shall be deposited in the state General Revenue Fund; and

53 (2) One-half shall be deposited in the service fees and collections account established by
54 §59-1-2 of this code for the operation of the Office of the Secretary of State.

§39-4A-2. Powers of commissioners; official seals.

1 (a) Upon approval of a successful application, commissioners shall hold office for 10
2 years, unless removed by the Secretary of State under the grounds set forth in §39-4A-1(e) of
3 this code.

4 (b) When any oath may lawfully be administered, or affidavit or deposition taken, within
5 the state, territory, or district for which any such commissioner is appointed, to be used in this
6 state, it may be done by the commissioner.

7 (c) Each commissioner shall have an official seal, which shall be a rubber stamp and shall
8 contain:

9 (1) The words "Official Seal";

10 (2) The words "Commissioner for West Virginia";

11 (3) The commissioner's name exactly as it is written as an official signature;

12 (4) The city and state of residence of the commissioner; and

13 (5) The words "My Commission Expires" and the date of expiration of the commission.

14 (d) A stamped imprint of the seal, together with the official signature, shall be filed in the
15 office of the Secretary of State.

16 (e) Commissioners may take, within or any place out of the State of West Virginia, the
17 acknowledgements of deeds and other writings to be admitted to the record in the State of West
18 Virginia, but each acknowledgement shall reflect where the acknowledgement was taken,
19 including, but not limited to, the state and county or territory.

20 (f) Every certificate of the commissioner shall be authenticated by his or her signature and
21 official seal.

§39-4A-3. Prohibited acts.

1 Commissioners shall refrain from the following prohibited activities:

2 (1) Assisting persons in drafting legal records, giving legal advice, or otherwise practicing
3 law;

4 (2) Acting as an immigration consultant or an expert on immigration matters; or

5 (3) Representing a person in a judicial or administrative proceeding relating to immigration
6 to the United States, United States citizenship, or related matters.

§39-4A-4. Rulemaking.

1 The Secretary of State may propose rules for legislative approval to implement this article,
2 in accordance with the provisions of §29A-3-1 et seq. of this code.

§39-4A-5. Incorporation of Revised Uniform Law on Notarial Acts; online database.

1 (a) All requirements, duties, prohibitions, penalties, and procedures set forth in §39-4-1 et
2 seq. of this code that are consistent with the foregoing provisions of this article shall apply to
3 commissioners.

4 (b) The Secretary of State shall include all active commissioners in its database of notaries
5 public set forth in §39-4-22 of this code, which database shall clearly distinguish commissioners

6 from notary publics.

NOTE: The purpose of this bill is to allow the appointment of commissioners to acknowledge signatures performed in or out of the State of West Virginia by persons residing in or out of the State covering deeds, leases, and other writings pertaining to West Virginia property for recordation in the State.

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