

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4012**

4
5 (By Delegates P. Smith, R. Phillips, Ellington,
6 Ferro, Reynolds, Skinner and Storch)

7 (Originating in the Committee on the Judiciary.)

8 [February 20, 2014]

9
10 A BILL to repeal §29-4-3, §29-4-4, §29-4-5, §29-4-6, §29-4-7,
11 §29-4-8, §29-4-12, §29-4-13, §29-4-14, §29-4-15 and §29-4-16
12 of the Code of West Virginia, 1931, as amended; to repeal
13 §29C-1-101, §29C-1-102, §29C-1-103, §29C-1-104, §29C-1-105,
14 §29C-1-106, §29C-1-107, §29C-2-201, §29C-2-202, §29C-2-203,
15 §29C-2-204, §29C-2-205, §29C-2-206, §29C-2-207, §29C-2-208,
16 §29C-2-301, §29C-3-101, §29C-3-102, §29C-4-101, §29C-4-102,
17 §29C-4-103, §29C-4-104, §29C-4-201, §29C-4-202, §29C-4-203,
18 §29C-4-301, §29C-4-401, §29C-4-402, §29C-4-403, §29C-4-404,
19 §29C-4-405, §29C-5-101, §29C-5-102, §29C-5-103, §29C-5-104,
20 §29C-6-101, §29C-6-102, §29C-6-103, §29C-6-201, §29C-6-202,
21 §29C-6-203, §29C-6-204, §29C-7-101, §29C-7-201, §29C-7-202,
22 §29C-8-101 and §29C-9-101 of said code; to repeal §39-1A-1,
23 §39-1A-2, §39-1A-3, §39-1A-4, §39-1A-5, §39-1A-6, §39-1A-7,
24 §39-1A-8 and §39-1A-9, of said code; to amend and reenact
25 §39-1-4 and §39-1-5 of said code; to amend said code by adding

1 thereto a new article, designated §39-4-1, §39-4-2, §39-4-3,
2 §39-4-4, §39-4-5, §39-4-6, §39-4-7, §39-4-8, §39-4-9,
3 §39-4-10, §39-4-11, §39-4-12, §39-4-13, §39-4-14, §39-4-15,
4 §39-4-16, §39-4-17, §39-4-18, §39-4-19, §39-4-20, §39-4-21,
5 §39-4-22, §39-4-23, §39-4-24, §39-4-25, §39-4-26, §39-4-27,
6 §39-4-28, §39-4-29, §39-4-30, §39-4-31, §39-4-32, §39-4-33,
7 §39-4-34, §39-4-35 and §39-4-36; to amend and reenact §57-4-2
8 of said code; to amend and reenact §57-5-9 of said code; and
9 to amend and reenact §59-1-2 of said code, all relating to the
10 Revised Uniform Law on Notarial Acts; establishing the
11 effective date of the article; establishing an operative date
12 of enactment and the effect on existing law; establishing the
13 authority to perform notarial acts; establishing requirements
14 for certain notarial acts; requiring a personal appearance and
15 the identification of an individual; authorizing the right to
16 refuse to perform a notarial act; establishing instructions
17 for obtaining a signature if an individual is unable to sign;
18 setting forth who may perform a notarial act in this state;
19 establishing notarial reciprocity with other states, any
20 federally recognized Indian tribe, the federal government, and
21 foreign states; requiring a certificate for a notarial act;
22 authorizing short form certificates; requiring an official
23 stamp and the maintenance and disposition of a stamping
24 device; authorizing notaries public the option of selecting a

1 technology for use in notarial acts on electronic records;
2 establishing minimum qualifications and authorizing the
3 commissioning of notaries public; providing grounds to deny,
4 refuse to renew, revoke, suspend, or condition commissions of
5 notaries public; requiring Secretary of State to maintain a
6 database of notaries public; prohibiting certain acts;
7 authorizing the validity of notarial acts; authorizing the
8 Secretary of State to promulgate rules; authorizing the
9 continuation of a commission in effect on the effective date
10 of the act; providing that any notarial act performed before
11 the effective date of the act is not invalidated by the act;
12 providing for the uniformity of the application and
13 construction of the act; clarifying the relationship to the
14 Electronic Signatures in Global and National Commerce Act;
15 establishing maximum fees that may be charged by a notary
16 public; commissioning notaries public for state and local
17 government; establishing civil liability and criminal
18 penalties; authorizing injunctive relief; authorizing the
19 Secretary of State to investigate complaints; requiring the
20 Secretary of State to maintain certain records; establishing
21 an application fee; providing for the disposition of fees;
22 repealing statutes regulating notaries public and
23 commissioners including the Uniform Notary Act; repealing the
24 Uniform Recognition of Acknowledgments Act; and removing

1 obsolete references.

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

3 That §29-4-3, §29-4-4, §29-4-5, §29-4-6, §29-4-7, §29-4-8,
4 §29-4-12, §29-4-13, §29-4-14, §29-4-15 and §29-4-16 of the Code of
5 West Virginia, 1931, as amended, be repealed; that §29C-1-101,
6 §29C-1-102, §29C-1-103, §29C-1-104, §29C-1-105, §29C-1-106,
7 §29C-1-107, §29C-2-201, §29C-2-202, §29C-2-203, §29C-2-204,
8 §29C-2-205, §29C-2-206, §29C-2-207, §29C-2-208, §29C-2-301,
9 §29C-3-101, §29C-3-102, §29C-4-101, §29C-4-102, §29C-4-103,
10 §29C-4-104, §29C-4-201, §29C-4-202, §29C-4-203, §29C-4-301,
11 §29C-4-401, §29C-4-402, §29C-4-403, §29C-4-404, §29C-4-405,
12 §29C-5-101, §29C-5-102, §29C-5-103, §29C-5-104, §29C-6-101,
13 §29C-6-102, §29C-6-103, §29C-6-201, §29C-6-202, §29C-6-203,
14 §29C-6-204, §29C-7-101, §29C-7-201, §29C-7-202, §29C-8-101 and
15 §29C-9-101 of said code be repealed; that §39-1A-1, §39-1A-2,
16 §39-1A-3, §39-1A-4, §39-1A-5, §39-1A-6, §39-1A-7, §39-1A-8 and
17 §39-1A-9 of said code be repealed; that §39-1-4 and §39-1-5 of said
18 code be amended and reenacted; that said code be amended by adding
19 thereto a new article, designated §39-4-1, §39-4-2, §39-4-3,
20 §39-4-4, §39-4-5, §39-4-6, §39-4-7, §39-4-8, §39-4-9, §39-4-10,
21 §39-4-11, §39-4-12, §39-4-13, §39-4-14, §39-4-15, §39-4-16,
22 §39-4-17, §39-4-18, §39-4-19, §39-4-20, §39-4-21, §39-4-22,
23 §39-4-23, §39-4-24, §39-4-25, §39-4-26, §39-4-27, §39-4-28,
24 §39-4-29, §39-4-30, §39-4-31, §39-4-32, §39-4-33, §39-4-34,

1 §39-4-35 and §39-4-36; that §57-4-2 of said code be amended and
2 reenacted; that §57-5-9 of said code be amended and reenacted and
3 that §59-1-2 of said code be amended and reenacted, all to read as
4 follows:

5 **CHAPTER 39. RECORDS AND PAPERS.**

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

7 **§39-1-4. Form of certificate of acknowledgment.**

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

10 State (territory or district) of _____, county of
11 _____, to wit:

12 I, _____, a commissioner, appointed by the
13 Governor of the State of West Virginia, for the said State (or
14 territory or district) of _____; or I, _____, a
15 justice of the peace of the county aforesaid; or I, _____,
16 recorder of said county municipality; or I, _____, a
17 notary public of said county; or I, _____, a
18 ~~prothonotary (or clerk)~~ clerk of the _____ court of
19 said county; (or other officer or person authorized to take
20 acknowledgments by section three of this article, as the case may
21 be), do certify that _____, whose name (or names)
22 is (or are) signed to the writing above (or hereto annexed) bearing
23 date on the _____ day of _____, 19 20 _____, has (or
24 have) this day acknowledged the same before me, in my said

1 _____.

2 Given under my hand this _____ day of _____,
3 19 20_____.

4 **§39-1-5. Acknowledgment by husband and wife.**

5 When a husband and wife have signed a writing purporting to
6 sell or convey real estate, the wife may acknowledge the same
7 together with, or separately from her husband. Either the husband
8 or the wife may sign and acknowledge the writing before the other
9 has signed or acknowledged it. If both acknowledge the writing at
10 the same time, the certificate of the acknowledgments may be in
11 form or effect as follows:

12 State (territory or district) of county of
13, to wit:

14 I,, ~~a commissioner appointed by the Governor of the~~
15 ~~State of West Virginia for the said State of, (or~~
16 ~~territory or district of); or I,, a justice~~
17 ~~of the peace of the said county of; or I,, a~~
18 notary public of the said county of; or I,,
19 ~~prothonotary (or clerk)~~ clerk of the court or county of
20; (or other officer or person authorized to take
21 acknowledgments by section three of this article, as the case may
22 be),* do certify and, his or her wife whose
23 names are signed to the writing above (or hereto annexed) bearing
24 date the day of, 19 20....., have this day

1 acknowledged the same before me in my said

2 Given under my hand this day of, 19
3 20.....

4 If the husband or wife acknowledge a deed or other writing
5 separately from the other, the certificate of acknowledgment after
6 the star in the foregoing form shall be in form or effect as
7 follows: do certify that, the wife of, (or
8 the husband of, as the case may be), whose name is
9 signed to the writing above (or hereto annexed) bearing date the
10 day of, 19 20, has this day
11 acknowledged the same before me in my said

12 Given under my hand this day of, 19 20
13

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

15 **§39-4-1. Short title.**

16 This article may be cited as the Revised Uniform Law on
17 Notarial Acts.

18 **§39-4-2. Definitions.**

19 In this article:

20 (1) "Acknowledgment" means a declaration by an individual
21 before a notarial officer that the individual has signed a record
22 for the purpose stated in the record and, if the record is signed
23 in a representative capacity, that the individual signed the record
24 with proper authority and signed it as the act of the individual or

1 entity identified in the record.

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

5 (3) "Electronic signature" means an electronic symbol, sound,
6 or process attached to or logically associated with a record and
7 executed or adopted by an individual with the intent to sign the
8 record.

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

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

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

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

15 (D) An authorized representative of another in any other
16 capacity.

17 (5) "Notarial act" means an act, whether performed with
18 respect to a tangible or electronic record, that a notarial officer
19 may perform under the law of this state. The term includes taking
20 an acknowledgment, administering an oath or affirmation, taking a
21 verification on oath or affirmation, witnessing or attesting a
22 signature, certifying or attesting a copy, and noting a protest of
23 a negotiable instrument.

24 (6) "Notarial officer" means a notary public or other

1 individual authorized to perform a notarial act.

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

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

7 (9) "Person" means an individual, corporation, business trust,
8 statutory trust, estate, trust, partnership, limited liability
9 company, association, joint venture, public corporation, government
10 or governmental subdivision, agency, or instrumentality, or any
11 other legal or commercial entity.

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

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

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

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

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

22 (13) "Stamping device" means:

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

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

3 (14) "State" means a state of the United States, the District
4 of Columbia, Puerto Rico, the United States Virgin Islands, or any
5 territory or insular possession subject to the jurisdiction of the
6 United States.

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

10 **§39-4-3. Applicability; operative date of enactment; effect on**
11 **existing law.**

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

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

1 full force and effect until the provisions of Enrolled
2 [Senate/House] Bill No. _____, are operative on June 30, 2015,
3 unless after the effective date of Enrolled [Senate/House] Bill No.
4 _____, and prior to the operative date of June 30, 2015, the
5 provisions of Enrolled [Senate/House] Bill No. _____, are
6 otherwise repealed or amended and reenacted.

7 **§39-4-4. Authority to perform notarial act.**

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

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

15 **§39-4-5. Requirements for certain notarial acts.**

16 (a) A notarial officer who takes an acknowledgment of a record
17 shall determine, from personal knowledge or satisfactory evidence
18 of the identity of the individual, that the individual appearing
19 before the officer and making the acknowledgment has the identity
20 claimed and that the signature on the record is the signature of
21 the individual.

22 (b) A notarial officer who takes a verification of a statement
23 on oath or affirmation shall determine, from personal knowledge or
24 satisfactory evidence of the identity of the individual, that the

1 individual appearing before the officer and making the verification
2 has the identity claimed and that the signature on the statement
3 verified is the signature of the individual.

4 (c) A notarial officer who witnesses or attests to a signature
5 shall determine, from personal knowledge or satisfactory evidence
6 of the identity of the individual, that the individual appearing
7 before the officer and signing the record has the identity claimed.

8 (d) A notarial officer who certifies or attests a copy of a
9 record or an item that was copied shall determine that the copy is
10 a full, true, and accurate transcription or reproduction of the
11 record or item.

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

16 **§39-4-6. Personal appearance required.**

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

23 **§39-4-7. Identification of individual.**

24 (a) A notarial officer has personal knowledge of the identity

1 of an individual appearing before the officer if the individual is
2 personally known to the officer through dealings sufficient to
3 provide reasonable certainty that the individual has the identity
4 claimed.

5 (b) A notarial officer has satisfactory evidence of the
6 identity of an individual appearing before the officer if the
7 officer can identify the individual:

8 (1) By means of:

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

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

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

23 (c) A notarial officer may require an individual to provide
24 additional information or identification credentials necessary to

1 assure the officer of the identity of the individual.

2 **§39-4-8. Authority to refuse to perform notarial act.**

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

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

7 (2) The individual's signature is knowingly and voluntarily
8 made.

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

11 **§39-4-9. Signature if individual is unable to sign.**

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

17 **§39-4-10. Notarial act in this state.**

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

19 (1) A notary public of this state;

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

21 or

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

24 (b) The signature and title of an individual performing a

1 notarial act in this state are prima facie evidence that the
2 signature is genuine and that the individual holds the designated
3 title.

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

7 **§39-4-11. Notarial act in another state.**

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

12 (1) A notary public of that state;

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

14 or

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

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

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

24 **§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:

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

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

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

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

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

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

16 **§39-4-14. Foreign notarial act.**

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

20 (b) If a notarial act is performed under authority and in the
21 jurisdiction of a foreign state or constituent unit of the foreign
22 state or is performed under the authority of a multinational or
23 international governmental organization, the act has the same
24 effect under the law of this state as if performed by a notarial

1 officer of this state.

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

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

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

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

22 **§39-4-15. Certificate of notarial act.**

23 (a) A notarial act must be evidenced by a certificate. The
24 certificate must:

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

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

6 (3) Identify the jurisdiction in which the notarial act is
7 performed;

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

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

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

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

24 (1) Is in a short form set forth in section sixteen of this

1 article;

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

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

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

9 (d) By executing a certificate of a notarial act, a notarial
10 officer certifies that the officer has complied with the
11 requirements and made the determinations specified in sections
12 four, five and six of this article.

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

16 (f) If a notarial act is performed regarding a tangible
17 record, a certificate must be part of, or securely attached to, the
18 record. If a notarial act is performed regarding an electronic
19 record, the certificate must be affixed to, or logically associated
20 with, the electronic record. If the Secretary of State has
21 established standards pursuant to section twenty-five of this
22 article, for attaching, affixing, or logically associating the
23 certificate, the process must conform to the standards.

24 **§39-4-16. Short form certificates.**

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

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

6 State of _____

7 County of _____

8 This record was acknowledged before me on _____ by

9 _____ Date _____ Name (s)

10 of individual(s)

11 _____

12 Signature of notarial officer

13 Stamp

14 _____

15 Title of office

16 My commission expires: _____

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

18 State of _____

19 County of _____

20 This record was acknowledged before me on _____ by

21 _____ Date _____ Name (s) of

22 individual(s)

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

24 party on behalf of whom record was executed).

1 _____
2 Signature of notarial officer
3 Stamp
4 _____
5 Title of office
6 My commission expires: _____
7 (3) For a verification on oath or affirmation:
8 State of _____
9 County of _____
10 Signed and sworn to (or affirmed) before me on _____ by
11 _____ Date _____ Name (s)
12 of individual(s) making statement
13 _____
14 Signature of notarial officer
15 Stamp
16 _____
17 Title of office
18 My commission expires: _____
19 (4) For witnessing or attesting a signature:
20 State of _____
21 County of _____
22 Signed or attested before me on _____ by _____
23 _____ Date
24 Name(s) of individual(s)

1 _____

2 Signature of notarial officer

3 Stamp

4 _____

5 Title of office

6 My commission expires: _____

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

8 State of _____

9 County of _____

10 I certify that this is a true and correct copy of a record in the
11 possession of _____.

12 Dated _____

13 _____

14 Signature of notarial officer

15 Stamp

16 _____

17 Title of office

18 My commission expires: _____

19 **§39-4-17. Official stamp.**

20 The official stamp of a notary public must:

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

24 (2) Be capable of being copied together with the record to

1 which it is affixed or attached or with which it is logically
2 associated.

3 **§39-4-18. Stamping device.**

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

17 (b) If a notary public's stamping device is lost or stolen,
18 the notary public or the notary public's personal representative or
19 guardian shall notify promptly the Secretary of State on
20 discovering that the device is lost or stolen.

21 **§39-4-19. Notification regarding performance of notarial act on**
22 **electronic record, selection of technology.**

23 (a) A notary public may select one or more tamper-evident
24 technologies to perform notarial acts with respect to electronic

1 records. A person may not require a notary public to perform a
2 notarial act with respect to an electronic record with a technology
3 that the notary public has not selected.

4 (b) Before a notary public performs the notary public's
5 initial notarial act with respect to an electronic record, a notary
6 public shall notify the Secretary of State that the notary public
7 will be performing notarial acts with respect to electronic records
8 and identify the technology the notary public intends to use. If
9 the Secretary of State has established standards for approval of
10 technology pursuant to section twenty-five of this article, the
11 technology must conform to the standards. If the technology
12 conforms to the standards, the Secretary of State shall approve the
13 use of the technology.

14 **§39-4-20. Commission as notary public; qualifications; no immunity**
15 **or benefit; disposition of fees.**

16 (a) An individual qualified under subsection (b) may apply to
17 the Secretary of State for a commission as a notary public. The
18 applicant shall comply with and provide the information required by
19 rules promulgated by the Secretary of State and pay any application
20 fee.

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

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

23 (2) Be a citizen or permanent legal resident of the United
24 States;

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

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

4 (5) Have a high school diploma or its equivalent; and

5 (6) Not be disqualified to receive a commission under section
6 twenty-three of this article.

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

10 (d) Before issuance of a commission as a notary public, the
11 applicant for a commission shall submit to the Secretary of State
12 an assurance in the form of: (1) a surety bond or its functional
13 equivalent in the amount of \$1,000; or (2) certification that the
14 applicant is covered under a (A) professional liability insurance
15 policy; (B) an errors and omission insurance policy, (C) a
16 commercial general liability insurance policy; or (D) their
17 equivalent, in the amount of \$1,000. The assurance must be issued
18 by a surety or other entity licensed or authorized to do business
19 in this state. The assurance must cover acts performed during the
20 term of the notary public's commission and must be in the form
21 prescribed by the Secretary of State. If a notary public violates
22 law with respect to notaries public in this state, the surety or
23 issuing entity is liable under the assurance. The notary public
24 shall give thirty days' notice to the Secretary of State before

1 canceling any assurance or loss of insurance coverage. The surety
2 or issuing entity shall notify the Secretary of State not later
3 than thirty days after making a payment to a claimant under the
4 assurance. A notary public may perform notarial acts in this state
5 only during the period that a valid assurance is on file with the
6 Secretary of State.

7 (e) On compliance with this section, the Secretary of State
8 shall issue a commission as a notary public to an applicant for a
9 term of five years.

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

14 **§39-4-21. Grounds to deny, refuse to renew, revoke, suspend, or**
15 **condition commission of notary public.**

16 (a) The Secretary of State may deny, refuse to renew, revoke,
17 suspend, or impose a condition on a commission as notary public for
18 any act or omission that demonstrates the individual lacks the
19 honesty, integrity, competence, or reliability to act as a notary
20 public, including:

21 (1) Failure to comply with this article;

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

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

3 (4) A finding against, or admission of liability by, the
4 applicant or notary public in any legal proceeding or disciplinary
5 action based on the applicant's or notary public's fraud,
6 dishonesty, or deceit;

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

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

13 (7) Violation by the notary public of a rule of the Secretary
14 of State regarding a notary public;

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

17 (9) Failure of the notary public to maintain an assurance as
18 provided in subsection (d), section twenty of this article;

19 (10) Charging more than the maximum fees specified in section
20 thirty of this article; and

21 (11) Failure to notify the Secretary of State of an address or
22 name change pursuant to subsection (b), section twenty-two of this
23 article.

24 (b) If the Secretary of State denies, refuses to renew,

1 revokes, suspends, or imposes conditions on a commission as a
2 notary public, the applicant or notary public is entitled to timely
3 notice and hearing in accordance with article five, chapter
4 twenty-nine-a of this code.

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

9 **§39-4-22. Database of notaries public.**

10 (a) The Secretary of State shall maintain an electronic
11 database of notaries public:

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

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

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

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

19 or

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

22 **§39-4-23. Prohibited acts.**

23 (a) A commission as a notary public does not authorize an
24 individual to:

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

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

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

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

10 (b) A notary public may not engage in false or deceptive
11 advertising.

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

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

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

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

15 **§39-4-24. Validity of notarial acts.**

16 Except as otherwise provided in subsection (b), section four
17 of this article, the failure of a notarial officer to perform a
18 duty or meet a requirement specified in this article does not
19 invalidate a notarial act performed by the notarial officer. The
20 validity of a notarial act under this article does not prevent an
21 aggrieved person from seeking to invalidate the record or
22 transaction that is the subject of the notarial act or from seeking
23 other remedies based on law of this state other than this article
24 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 **§39-4-25. 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
24 performance of notarial acts; and

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

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

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

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

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

24 (3) The views of governmental officials and entities and other

1 interested persons.

2 **§39-4-26. Notary public commission and commissioner appointment in**
3 **effect.**

4 (a) A commission as a notary public in effect on June 30,
5 2015, continues until its date of expiration. A notary public who
6 applies for a commission as a notary public on or after July 1,
7 2015, is subject to and shall comply with this article. A notary
8 public, in performing notarial acts on or after July 1, 2015, shall
9 comply with this article.

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

19 **§39-4-27. Savings clause.**

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

22 **§39-4-28. Uniformity of application and construction.**

23 In applying and construing this uniform act, consideration
24 must be given to the need to promote uniformity of the law with

1 respect to its subject matter among states that enact it.

2 **§39-4-29. Relation to Electronic Signatures in Global and National**
3 **Commerce Act.**

4 This article modifies, limits, and supersedes the Electronic
5 Signatures in Global and National Commerce Act, 15 U.S.C. Section
6 7001 et seq., but does not modify, limit, or supersede Section
7 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
8 electronic delivery of any of the notices described in Section
9 103(b) of that act, 15 U.S.C. Section 7003(b).

10 **§39-4-30. Maximum fees.**

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

14 (b) The maximum fee in this state for certification of a
15 facsimile of a document, retaining a facsimile in the notary's
16 file, and the proper recordation thereof in the journal of notarial
17 acts is \$5.00 for each eight and one-half by eleven inch page
18 retained in the notary's file.

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

21 **§39-4-31. Government notaries public.**

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

1 (b) A state or local government employee commissioned under
2 this section shall meet the requirements for qualification and
3 appointment prescribed in this article except that the head of the
4 state or local government office where the applicant is employed,
5 or his or her designee, shall execute a certificate that the
6 application is made for the purposes of the office and in the
7 public interest and submit it to the Secretary of State together
8 with the application for appointment as a notary public.

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

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

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

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

21 **§39-4-32. Liability of notary and of an employer of notary.**

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

24 (b) The employer of a notary public is also liable to the

1 persons involved for all damages proximately caused by the notary's
2 official misconduct, if:

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

6 (2) The employer consented to the notary public's official
7 misconduct.

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

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

13 (1) May result in the denial, refusal to renew, revocation,
14 suspension or condition commission of a notary public pursuant to
15 section twenty-one of this article; or

16 (2) Is prohibited by section twenty-three of this article.

17 **§39-4-33. Criminal penalties.**

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

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

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

7 (d) Any person who unlawfully possesses a notary's official
8 seal or any papers or copies relating to notarial acts, is guilty
9 of a misdemeanor and, upon conviction, shall be fined not more than
10 \$1,000.

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

13 (1) May result in the denial, refusal to renew, revocation,
14 suspension or condition commission of a notary public pursuant to
15 section twenty-one of this article; or

16 (2) Is prohibited by section twenty-three of this article.

17 **§39-4-34. Action for injunction; unauthorized practice of law.**

18 Upon his or her own information or upon complaint of any
19 person, the Attorney General, or his or her designee, may maintain
20 an action for injunctive relief in circuit court against any notary
21 public who renders, offers to render or holds himself or herself
22 out as rendering any service constituting the unauthorized practice
23 of the law. Any organized bar association in this state may
24 intervene in the action, at any stage of the proceeding, for good

1 cause shown. The action may also be maintained by an organized bar
2 association in this state or by the Secretary of State.

3 **§39-4-35. Administrative Complaints and Investigations.**

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

6 (1) Investigate, upon complaint or on his or her own
7 initiative, any alleged violations or irregularities of this
8 article.

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

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

15 (4) Report any alleged violations of this article to the
16 appropriate prosecuting attorney having jurisdiction, which
17 prosecuting attorney shall present to the grand jury the alleged
18 violations, together with all evidence relating thereto, no later
19 than the next term of court after receiving the report.

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

22 **§39-4-36. Secretary of State record retention.**

23 (a) The provisions of subsection (c), section three, article
24 two, chapter five of this code notwithstanding, the Secretary of

1 State may destroy original records of appointment under this
2 article after expiration of the term of a notary public: *Provided,*
3 that the Secretary of State maintains an electronic copy of the
4 appointment for a minimum of ten years after the expiration of the
5 term of the notary public.

6 (b) The Secretary of State may destroy any original journals
7 of notarial acts in his or her possession; *Provided,* That an
8 electronic copy is maintained in accordance with the retention
9 rules of the Department of Administration.

10 **CHAPTER 57. EVIDENCE AND WITNESSES.**

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

12 **§57-4-2. Taking and certification of depositions -- Out-of state**
13 **and in foreign countries.**

14 On affidavit that a witness resides out of this state, or is
15 out of it in the service thereof, or of the United States, or is
16 out of this state and for justifiable reasons will probably be out
17 of this state until after the trial of the case in which his or her
18 testimony is needed, his or her deposition may be taken by or
19 ~~before any commissioner appointed by the Governor of this state, or~~
20 any justice, notary public or other officer authorized to take
21 depositions in the state wherein the witness may be, or, if the
22 deposition is to be taken in a foreign country, by or before such
23 commissioner or commissioners as may be agreed upon by the parties
24 or appointed by the court, or, if there be none such, by or before

1 any American minister, plenipotentiary, charge d'affaires, consul
2 general, consul, vice consul, consular agent, vice deputy consular
3 agent, commercial agent or vice commercial agent, appointed by the
4 government of the United States, or by or before the mayor or other
5 chief magistrate of any city, town or corporation in ~~such~~ the
6 country or any notary public therein. Any person or persons taking
7 ~~such~~ the deposition may administer an oath to the witness and take
8 and certify the deposition with his or her official seal annexed,
9 and if he or she have none, the genuineness of his or her signature
10 shall be authenticated by some officer of the same state or
11 country, under his or her official seal.

12 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

13 **§57-5-9. Administration of oaths or taking of**
14 **affidavits; authentication of affidavit made in**
15 **another state or country; oaths and affidavits of**
16 **persons in military service.**

17 Any judge of this state may administer any oath that is or may
18 be lawful for any person to take, including oaths of office, and
19 also may swear any person to an affidavit, and administer an oath
20 to any person in any proceeding.

21 Any oath or affidavit required by law, which is not of such a
22 nature that it must be made otherwise or elsewhere may, unless
23 otherwise provided, be administered by, or made before, a county
24 commissioner, notary public, ~~or a commissioner appointed by the~~

1 ~~Governor,~~ or by the clerk of any court, or, in case of a survey
2 directed by a court in a case therein pending, by or before the
3 surveyor directed to execute said order of survey.

4 An affidavit may also be made before any officer of another
5 state or country authorized by its laws to administer an oath, and
6 shall be deemed duly authenticated if it be subscribed by ~~such~~ the
7 officer, with his or her official seal annexed, and if he or she
8 have none, the genuineness of his or her signature, and his or her
9 authority to administer an oath, shall be authenticated by some
10 officer of the same state or country under his or her official
11 seal.

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

1 thereto. The certificate of the officer before whom ~~such~~ the oath
2 is taken or affidavit is made must state his or her rank, branch of
3 military service, and identification number, and ~~such~~ the
4 certificate may be substantially in form and effect as follows:

5 IN THE MILITARY SERVICE OF THE UNITED STATES:

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

10

11 Taken, subscribed and sworn to before me,, a
12 commissioned officer in the service of the United
13 States, by, a member of the military service of the
14 United States (or of, an auxiliary to the military
15 forces of the United States), this the day of
16, ~~19~~ 20.....

17

18 (Signature of officer)

19

20 (Rank) (Identification Number)

21 Any oath or affidavit heretofore taken or made by any person
22 in the military service in substantial compliance with this section
23 shall be valid.

24 **CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL**

1 **ADVERTISEMENTS.**

2 **ARTICLE 1. FEES AND ALLOWANCES.**

3 **§59-1-2. Fees to be charged by Secretary of State.**

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

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

14 (A) Articles of incorporation of for-profit
15 corporation.. . . . \$50.00

16 (B) Articles of incorporation of nonprofit
17 corporation.. . . . 25.00

18 (C) Articles of organization of limited liability
19 company.. . . . 100.00

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

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

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

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

24 (H) Amendment or correction of articles of incorporation,

1 including change of name or increase of capital stock, in addition
2 to any applicable license tax.. 25.00

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

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

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

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

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

22 (N) Statement of conversion, when permitted, from one business
23 entity into another business entity, in addition to the cost of
24 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

24 (D) Certificate of exemption from certificate of

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

1 companies or professional limited liability companies, voluntary
2 associations or business trusts.. 25.00

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

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

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

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

21 (3) For receiving, filing and recording a change of the
22 principal or designated office, change of the agent of process
23 and/or change of officers, directors, partners, members or
24 managers, as the case may be, of a corporation, limited

1 partnership, limited liability partnership, limited liability
2 company or other business entity as provided by law.. . . \$15.00

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

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

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

12 (B) Certificate of existence of a domestic limited liability
13 company, and certificate of authorization foreign limited liability
14 company.. . . . 10.00

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

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

19 (E) Plus, for each additional amendment, restatement or other
20 additional document.. . . . 5.00

21 (F) Certificate of registration of the name of a foreign
22 corporation, limited liability company, limited partnership or
23 limited liability partnership.. . . . 25.00

24 (G) And for the annual renewal of the name registration

1 10.00

2 (H) Any other certificate not specified in this subdivision

3 10.00

4 (6) For issuing a certificate other than those relating to

5 business entities, as provided in this subsection, as follows:

6 (A) Certificate or apostille relating to the authority of

7 certain public officers, including the membership of boards and

8 commissions.. . . . \$10.00

9 (B) Plus, for each additional certificate pertaining to the

10 same transaction. 5.00

11 (C) Any other certificate not specified in this

12 subdivision.. . . . 10.00

13 (D) For acceptance, indexing and recordation of service of

14 process any corporation, limited partnership, limited liability

15 partnership, limited liability company, voluntary association,

16 business trust, insurance company, person or other entity as

17 permitted by law. 15.00

18 (E) For shipping and handling expenses for execution of

19 service of process by certified mail upon any defendant within the

20 United States, which fee is to be deposited to the special revenue

21 account established in this section for the operation of the office

22 of the Secretary of State.. . . . 5.00

23 (F) For shipping and handling expenses for execution of

24 service of process upon any defendant outside the United States by

1 registered mail, which fee is to be deposited to the special
2 revenue account established in this section for the operation of
3 the office of the Secretary of State... 15.00

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

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

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

14 (C) For any search of records maintained on site for the
15 purpose of obtaining copies of documents or printouts of data
16 5.00

17 (D) For any search of records maintained in electronic format
18 which requires special programming to be performed by the state
19 information services agency or other vendor any actual cost, but
20 not less than.. . . . 25.00

21 (E) The cost of the search is in addition to the cost of any
22 copies or printouts prepared or any certificate issued pursuant to
23 or based on the search.

24 (F) For recording any paper for which no specific fee is

1 prescribed. 5.00

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

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

6 (B) For each sheet after the first50

7 (C) For sending the copies or lists by fax
8 transmission. 5.00

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

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

18 (b) The Secretary of State may propose legislative rules for
19 promulgation for charges for on-line electronic access to database
20 information or other information maintained by the Secretary of
21 State.

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

1 (d) The records maintained by the Secretary of State are
2 prepared and indexed at the expense of the state and those records
3 shall not be obtained for commercial resale without the written
4 agreement of the state to a contract including reimbursement to the
5 state for each instance of resale.

6 (e) The Secretary of State may provide printed or electronic
7 information free of charge as he or she considers necessary and
8 efficient for the purpose of informing the general public or the
9 news media.

10 (f) There is hereby continued in the State Treasury a special
11 revenue account to be known as the "service fees and collections"
12 account. Expenditures from the account shall be used for the
13 operation of the office of the Secretary of State and are not
14 authorized from collections, but are to be made only in accordance
15 with appropriation by the Legislature and in accordance with the
16 provisions of article three, chapter twelve of this code and upon
17 the fulfillment of the provisions set forth in article two, chapter
18 five-a of this code. Notwithstanding any other provision of this
19 code to the contrary, except as provided in subsection (h) of this
20 section and section two-a of this article, one half of all the fees
21 and service charges established in the following sections and for
22 the following purposes shall be deposited by the Secretary of State
23 or other collecting agency to that special revenue account and used
24 for the operation of the office of the Secretary of State:

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

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

7 (3) The registration fees, late fees and legal settlements
8 charged for registration and enforcement of the charitable
9 organizations and professional solicitations established in
10 sections five, nine and fifteen-b, article nineteen, chapter
11 twenty-nine of this code;

12 (4) The annual attorney-in-fact fee for limited liability
13 companies as designated in section one hundred eight, article one,
14 chapter thirty-one-b of this code and established in section two
15 hundred eleven, article two of said chapter: *Provided*, That after
16 the thirtieth day of June, two thousand eight, the annual report
17 fees designated in section one hundred eight, article one, chapter
18 thirty-one-b of this code shall upon collection be deposited in the
19 general administrative fees account described in subsection (h) of
20 this section;

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

24 (6) The annual attorney-in-fact fee for licensed insurers

1 established in section twelve, article four, chapter thirty-three
2 of this code;

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

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

10 ~~(9)~~ (8) The fees for registering credit service organizations
11 as established by section five, article six-c, chapter forty-six-a
12 of this code;

13 ~~(10)~~ (9) The fees for registering and renewing a West Virginia
14 limited liability partnership as established by section one,
15 article ten, chapter forty-seven-b of this code;

16 ~~(11)~~ (10) The filing fees for the registration and renewal of
17 trademarks and service marks established in section seventeen,
18 article two, chapter forty-seven of this code;

19 ~~(12)~~ (11) All fees for services, the sale of photocopies and
20 data maintained at the expense of the Secretary of State as
21 provided in this section; and

22 ~~(13)~~ (12) All registration, license and other fees collected
23 by the Secretary of State not specified in this section.

24 (g) Any balance in the service fees and collections account

1 established by this section which exceeds five hundred thousand
2 dollars as of the thirtieth day of June, two thousand three, and
3 each year thereafter, shall be expired to the state fund, General
4 Revenue Fund.

5 (h) (1) Effective the first day of July, two thousand eight,
6 there is hereby created in the State Treasury a special revenue
7 account to be known as the general administrative fees account.
8 Expenditures from the account shall be used for the operation of
9 the office of the Secretary of State and are not authorized from
10 collections, but are to be made only in accordance with
11 appropriation by the Legislature and in accordance with the
12 provisions of article three, chapter twelve of this code and upon
13 the fulfillment of the provisions set forth in article two, chapter
14 eleven-b of this code: *Provided*, That for the fiscal year ending
15 the thirtieth day of June, two thousand nine, expenditures are
16 authorized from collections rather than pursuant to an
17 appropriation by the Legislature. Any balance in the account at the
18 end of each fiscal year shall not revert to the General Revenue
19 Fund but shall remain in the fund and be expended as provided by
20 this subsection.

21 (2) After the thirtieth day of June, two thousand eight, all
22 the fees and service charges established in section two-a of this
23 article for the following purposes shall be collected and deposited
24 by the Secretary of State or other collecting agency in the general
25 administrative fees account and used for the operation of the

1 office of the Secretary of State:

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

5 (B) The fees for the issuance of a certificate relating to the
6 initial registration of a corporation, limited partnership,
7 domestic limited liability company or foreign limited liability
8 company described in subdivision (2), subsection (a) of this
9 section; and

10 (C) The fees for the purchase of date and updates related to
11 the State's Business Organizations Database described in section
12 two-a of this article.

13 (i) There is continued in the office of the Secretary of State
14 a noninterest-bearing, escrow account to be known as the "prepaid
15 fees and services account". This account shall be for the purpose
16 of allowing customers of the Secretary of State to prepay for
17 services, with payment to be held in escrow until services are
18 rendered. Payments deposited in the account shall remain in the
19 account until services are rendered by the Secretary of State and
20 at that time the fees will be reallocated to the appropriate
21 general or special revenue accounts. There shall be no fee charged
22 by the secretary of state to the customer for the use of this
23 account and the customer may request the return of any moneys
24 maintained in the account at any time without penalty. The assets
25 of the prepaid fees and services account do not constitute public

1 funds of the state and are available solely for carrying out the
2 purposes of this section.