

**H. B. 4012**

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

[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, §29C-1-107, §29C-2-201, §29C-2-202, §29C-2-203,  
§29C-2-204, §29C-2-205, §29C-2-206, §29C-2-207, §29C-2-208,  
§29C-2-301, §29C-3-101, §29C-3-102, §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,  
§29C-4-405, §29C-5-101, §29C-5-102, §29C-5-103, §29C-5-104,  
§29C-6-101, §29C-6-102, §29C-6-103, §29C-6-201, §29C-6-202,  
§29C-6-203, §29C-6-204, §29C-7-101, §29C-7-201, §29C-7-202,  
§29C-8-101 and §29C-9-101 of said code; to repeal §39-1A-1,  
§39-1A-2, §39-1A-3, §39-1A-4, §39-1A-5, §39-1A-6, §39-1A-7,

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

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

1 liability and criminal penalties; authorizing injunctive  
 2 relief; authorizing the Secretary of State to investigate  
 3 complaints; requiring the Secretary of State to maintain  
 4 certain records; establishing an application fee; providing  
 5 for the disposition of fees; repealing statutes regulating  
 6 notaries public and commissioners including the Uniform Notary  
 7 Act; repealing the Uniform Recognition of Acknowledgments Act;  
 8 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,  
 14 §29C-1-107, §29C-2-201, §29C-2-202, §29C-2-203, §29C-2-204,  
 15 §29C-2-205, §29C-2-206, §29C-2-207, §29C-2-208, §29C-2-301,  
 16 §29C-3-101, §29C-3-102, §29C-4-101, §29C-4-102, §29C-4-103,  
 17 §29C-4-104, §29C-4-201, §29C-4-202, §29C-4-203, §29C-4-301,  
 18 §29C-4-401, §29C-4-402, §29C-4-403, §29C-4-404, §29C-4-405,  
 19 §29C-5-101, §29C-5-102, §29C-5-103, §29C-5-104, §29C-6-101,  
 20 §29C-6-102, §29C-6-103, §29C-6-201, §29C-6-202, §29C-6-203,  
 21 §29C-6-204, §29C-7-101, §29C-7-201, §29C-7-202, §29C-8-101 and  
 22 §29C-9-101 of said code be repealed; that §39-1A-1, §39-1A-2,  
 23 §39-1A-3, §39-1A-4, §39-1A-5, §39-1A-6, §39-1A-7, §39-1A-8 and

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

13 **CHAPTER 39. RECORDS AND PAPERS.**

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

15 **§39-1-4. Form of certificate of acknowledgment.**

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

18 State (territory or district) of \_\_\_\_\_, county of  
19 \_\_\_\_\_, to wit:

20 I, \_\_\_\_\_, a commissioner, appointed by the  
21 Governor of the State of West Virginia, for the said State (or  
22 territory or district) of \_\_\_\_\_; or I, \_\_\_\_\_, a  
23 justice of the peace of the county aforesaid; or I, \_\_\_\_\_,

1 recorder of said ~~county~~ municipality; or I, \_\_\_\_\_, a  
2 notary public of said county; or I, \_\_\_\_\_, a  
3 ~~prothonotary (or clerk)~~ clerk of the \_\_\_\_\_ court of  
4 said county; (or other officer or person authorized to take  
5 acknowledgments by section three of this article, as the case may  
6 be), do certify that \_\_\_\_\_, whose name (or names)  
7 is (or are) signed to the writing above (or hereto annexed) bearing  
8 date on the \_\_\_\_\_ day of \_\_\_\_\_, ~~19~~ 20 \_\_\_\_\_, has (or  
9 have) this day acknowledged the same before me, in my said  
10 \_\_\_\_\_.

11 Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
12 ~~19~~ 20 \_\_\_\_\_.

13 **§39-1-5. Acknowledgment by husband and wife.**

14 When a husband and wife have signed a writing purporting to  
15 sell or convey real estate, the wife may acknowledge the same  
16 together with, or separately from her husband. Either the husband  
17 or the wife may sign and acknowledge the writing before the other  
18 has signed or acknowledged it. If both acknowledge the writing at  
19 the same time, the certificate of the acknowledgments may be in  
20 form or effect as follows:

21 State (territory or district) of ..... county of  
22 ....., to wit:

23 I, ....., ~~a commissioner appointed by the Governor of the~~

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

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

14       If the husband or wife acknowledge a deed or other writing  
 15 separately from the other, the certificate of acknowledgment after  
 16 the star in the foregoing form shall be in form or effect as  
 17 follows: do certify that ....., the wife of ....., (or  
 18 the husband of ....., as the case may be), whose name is  
 19 signed to the writing above (or hereto annexed) bearing date the  
 20 ..... day of ....., ~~19~~ 20 ....., has this day  
 21 acknowledged the same before me in my said .....

22       Given under my hand this ..... day of ....., ~~19~~ 20  
 23 .....

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

2 **§39-4-1. Short title.**

3 This article may be cited as the Revised Uniform Law on  
4 Notarial Acts.

5 **§39-4-2. Definitions.**

6 In this article:

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

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

16 (3) "Electronic signature" means an electronic symbol, sound,  
17 or process attached to or logically associated with a record and  
18 executed or adopted by an individual with the intent to sign the  
19 record.

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

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

23 (B) A public officer, personal representative, guardian, or



1 other representative, in the capacity stated in a record;

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

3 (D) An authorized representative of another in any other  
4 capacity.

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

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

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

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

19 (9) "Person" means an individual, corporation, business trust,  
20 statutory trust, estate, trust, partnership, limited liability  
21 company, association, joint venture, public corporation, government  
22 or governmental subdivision, agency, or instrumentality, or any  
23 other legal or commercial entity.

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

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

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

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

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

11       (13) "Stamping device" means:

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

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

16       (14) "State" means a state of the United States, the District  
17 of Columbia, Puerto Rico, the United States Virgin Islands, or any  
18 territory or insular possession subject to the jurisdiction of the  
19 United States.

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

23 **§39-4-3. Applicability; operative date of enactment; effect on**

1           existing law.

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

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

21 **§39-4-4. Authority to perform notarial act.**

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

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

6 **§39-4-5. Requirements for certain notarial acts.**

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

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

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

23       (d) A notarial officer who certifies or attests a copy of a

1 record or an item that was copied shall determine that the copy is  
2 a full, true, and accurate transcription or reproduction of the  
3 record or item.

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

8 **§39-4-6. Personal appearance required.**

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

15 **§39-4-7. Identification of individual.**

16 (a) A notarial officer has personal knowledge of the identity  
17 of an individual appearing before the officer if the individual is  
18 personally known to the officer through dealings sufficient to  
19 provide reasonable certainty that the individual has the identity  
20 claimed.

21 (b) A notarial officer has satisfactory evidence of the  
22 identity of an individual appearing before the officer if the  
23 officer can identify the individual:

1 (1) By means of:

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

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

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

16 (c) A notarial officer may require an individual to provide  
17 additional information or identification credentials necessary to  
18 assure the officer of the identity of the individual.

19 **§39-4-8. Authority to refuse to perform notarial act.**

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

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

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

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

5 **§39-4-9. Signature if individual is unable to sign.**

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

11 **§39-4-10. Notarial act in this state.**

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

13       (1) A notary public of this state;

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

15 or

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

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

22       (c) The signature and title of a notarial officer described in  
23 subdivision (1) or (2) of subsection (a), conclusively establish

1 the authority of the officer to perform the notarial act.

2 **§39-4-11. Notarial act in another state.**

3 (a) A notarial act performed in another state has the same  
4 effect under the law of this state as if performed by a notarial  
5 officer of this state, if the act performed in that state is  
6 performed by:

7 (1) A notary public of that state;

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

9 or

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

12 (b) The signature and title of an individual performing a  
13 notarial act in another state 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 **§39-4-12. Notarial act under authority of federally recognized**  
20 **Indian tribe.**

21 (a) A notarial act performed under the authority and in the  
22 jurisdiction of a federally recognized Indian tribe has the same  
23 effect as if performed by a notarial officer of this state, if the



1 act performed in the jurisdiction of the tribe is performed by:

2 (1) A notary public of the tribe;

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

4 or

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

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

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

15 **§39-4-13. Notarial act under federal authority.**

16 (a) A notarial act performed under federal law has the same  
17 effect under the law of this state as if performed by a notarial  
18 officer of this state, if the act performed under federal law is  
19 performed by:

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

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

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

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

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

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

13 **§39-4-14. Foreign notarial act.**

14       (a) In this section, "foreign state" means a government other  
15 than the United States, a state, or a federally recognized Indian  
16 tribe.

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

23       (c) If the title of office and indication of authority to

1 perform notarial acts in a foreign state appears in a digest of  
2 foreign law or in a list customarily used as a source for that  
3 information, the authority of an officer with that title to perform  
4 notarial acts is conclusively established.

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

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

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

20 **§39-4-15. Certificate of notarial act.**

21 (a) A notarial act must be evidenced by a certificate. The  
22 certificate must:

23 (1) Be executed contemporaneously with the performance of the

1 notarial act;

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

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

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

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

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

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

23 (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-seven of this  
22 article, for attaching, affixing, or logically associating the  
23 certificate, the process must conform to the standards.

1 **§39-4-16. Short form certificates.**

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

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

7 State of \_\_\_\_\_

8 County of \_\_\_\_\_

9 This record was acknowledged before me on \_\_\_\_\_ by

10 \_\_\_\_\_ Date Name (s)

11 of individual(s)

12 \_\_\_\_\_

13 Signature of notarial officer

14 Stamp

15 \_\_\_\_\_

16 Title of office

17 My commission expires: \_\_\_\_\_

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

19 State of \_\_\_\_\_

20 County of \_\_\_\_\_

21 This record was acknowledged before me on \_\_\_\_\_ by

22 \_\_\_\_\_ Date Name (s) of

23 individual(s)

1 as (type of authority, such as officer or trustee) of (name of  
2 party on behalf of whom record was executed).

3 \_\_\_\_\_

4 Signature of notarial officer

5 Stamp

6 \_\_\_\_\_

7 Title of office

8 My commission expires: \_\_\_\_\_

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

10 State of \_\_\_\_\_

11 County of \_\_\_\_\_

12 Signed and sworn to (or affirmed) before me on \_\_\_\_\_ by

13 \_\_\_\_\_ Date \_\_\_\_\_ Name (s)

14 of individual(s) making statement

15 \_\_\_\_\_

16 Signature of notarial officer

17 Stamp

18 \_\_\_\_\_

19 Title of office

20 My commission expires: \_\_\_\_\_

21 (4) For witnessing or attesting a signature:

22 State of \_\_\_\_\_

23 County of \_\_\_\_\_

1 Signed or attested before me on \_\_\_\_\_ by \_\_\_\_\_

2 \_\_\_\_\_ Date

3 Name(s) of individual(s)

4 \_\_\_\_\_

5 Signature of notarial officer

6 Stamp

7 \_\_\_\_\_

8 Title of office

9 My commission expires: \_\_\_\_\_

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

11 State of \_\_\_\_\_

12 County of \_\_\_\_\_

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

14 possession of \_\_\_\_\_.

15 Dated \_\_\_\_\_

16 \_\_\_\_\_

17 Signature of notarial officer

18 Stamp

19 \_\_\_\_\_

20 Title of office

21 My commission expires: \_\_\_\_\_

22 **§39-4-17. Official stamp.**

23 The official stamp of a notary public must:



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

4       (2) Be capable of being copied together with the record to  
5 which it is affixed or attached or with which it is logically  
6 associated.

7 **§39-4-18. Stamping device.**

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

21       (b) If a notary public's stamping device is lost or stolen,  
22 the notary public or the notary public's personal representative or  
23 guardian shall notify promptly the Secretary of State on

1 discovering that the device is lost or stolen.

2 **§39-4-19. Journal.**

3 (a) A notary public shall maintain a journal in which the  
4 notary public chronicles all notarial acts that the notary public  
5 performs. The notary public shall retain the journal for ten years  
6 after the performance of the last notarial act chronicled in the  
7 journal.

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

17 (c) An entry in a journal must be made contemporaneously with  
18 performance of the notarial act and contain the following  
19 information:

20 (1) The date and time of the notarial act;

21 (2) A description of the record, if any, and type of notarial  
22 act;

23 (3) The full name and address of each individual for whom the

1 notarial act is performed;

2 (4) If identity of the individual is based on personal  
3 knowledge, a statement to that effect;

4 (5) If identity of the individual is based on satisfactory  
5 evidence, a brief description of the method of identification and  
6 the identification credential presented, if any, including the date  
7 of issuance and expiration of any identification credential; and

8 (6) The fee, if any, charged by the notary public.

9 (d) If a notary public's journal is lost or stolen, the notary  
10 public promptly shall notify the Secretary of State on discovering  
11 that the journal is lost or stolen.

12 (e) On resignation from, or the revocation or suspension of,  
13 a notary public's commission, the notary public shall retain the  
14 notary public's journal in accordance with subsection (a) and  
15 inform the Secretary of State where the journal is located.

16 (f) Instead of retaining a journal as provided in subsections  
17 (a) and (e), a current or former notary public may transmit the  
18 journal to the Secretary of State or a repository approved by the  
19 Secretary of State.

20 (g) On the death or adjudication of incompetency of a current  
21 or former notary public, the notary public's personal  
22 representative or guardian or any other person knowingly in  
23 possession of the journal shall transmit it to the Secretary of

1 State or a repository approved by the Secretary of State.

2 **§39-4-20. Notification regarding performance of notarial act on**  
3 **electronic record, selection of technology.**

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

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

19 **§39-4-21. Commission as notary public; qualifications; no immunity**  
20 **or benefit; disposition of fees.**

21 (a) An individual qualified under subsection (b) may apply to  
22 the Secretary of State for a commission as a notary public. The

1 applicant shall comply with and provide the information required by  
2 rules promulgated by the Secretary of State and pay any application  
3 fee.

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

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

6 (2) Be a citizen or permanent legal resident of the United  
7 States;

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

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

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

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

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

18 (d) Before issuance of a commission as a notary public, the  
19 applicant for a commission shall submit to the Secretary of State  
20 an assurance in the form of a surety bond or its functional  
21 equivalent in the amount of \$10,000. The assurance must be issued  
22 by a surety or other entity licensed or authorized to do business  
23 in this state. The assurance must cover acts performed during the

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

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

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

19 **§39-4-22. Examination of notary public.**

20 (a) An applicant for a commission as a notary public must pass  
21 an examination administered by the Secretary of State or an entity  
22 approved by the Secretary of State. The examination must be based  
23 on the course of study described in subsection (b).

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

6 **§39-4-23. Grounds to deny, refuse to renew, revoke, suspend, or**  
7                   **condition commission of notary public.**

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

13       (1) Failure to comply with this article;

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

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

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

23       (5) Failure by the notary public to discharge any duty

1 required of a notary public, whether by this article, rules  
2 promulgated by the Secretary of State, or any federal or state law;

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

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

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

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

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

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

17 (b) If the Secretary of State denies, refuses to renew,  
18 revokes, suspends, or imposes conditions on a commission as a  
19 notary public, the applicant or notary public is entitled to timely  
20 notice and hearing in accordance with article five, chapter  
21 twenty-nine-a of this code.

22 (c) The authority of the Secretary of State to deny, refuse to  
23 renew, suspend, revoke, or impose conditions on a commission as a



1 notary public does not prevent a person from seeking and obtaining  
2 other criminal or civil remedies provided by law.

3 **§39-4-24. Database of notaries public.**

4 (a) The Secretary of State shall maintain an electronic  
5 database of notaries public:

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

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

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

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

13 or

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

16 **§39-4-25. Prohibited acts.**

17 (a) A commission as a notary public does not authorize an  
18 individual to:

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

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

23 (3) Represent a person in a judicial or administrative

1 proceeding relating to immigration to the United States, United  
2 States citizenship, or related matters; or

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

5 (b) A notary public may not engage in false or deceptive  
6 advertising.

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

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

1 or charge a fee for those activities". If the form of  
2 advertisement or representation is not broadcast media, print  
3 media, or the Internet and does not permit inclusion of the  
4 statement required by this subsection because of size, it must be  
5 displayed prominently or provided at the place of performance of  
6 the notarial act before the notarial act is performed.

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

11 **§39-4-26. Validity of notarial acts.**

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

23 **§39-4-27. Rules.**

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

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

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

13       (3) Include provisions to ensure integrity in the creation,  
14 transmittal, storage, or authentication of electronic records or  
15 signatures;

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

20       (5) Include provisions to prevent fraud or mistake in the  
21 performance of notarial acts;

22       (6) Establish the process for approving and accepting surety  
23 bonds and other forms of assurance under subsection (d), section

1 twenty-one of this article;

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

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

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

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

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

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

5 **§39-4-28. Notary public commission and commissioner appointment in**  
6                   **effect.**

7       (a) A commission as a notary public in effect on June 30,  
8 2015, continues until its date of expiration. A notary public who  
9 applies for a commission as a notary public on or after July 1,  
10 2015, is subject to and shall comply with this article. A notary  
11 public, in performing notarial acts on or after July 1, 2015, shall  
12 comply with this article.

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

22 **§39-4-29. Savings clause.**

23       This article does not affect the validity or effect of a

1 notarial act performed before July 1, 2015.

2 **§39-4-30. Uniformity of application and construction.**

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

6 **§39-4-31. Relation to Electronic Signatures in Global and National**  
7 **Commerce Act.**

8 This article modifies, limits, and supersedes the Electronic  
9 Signatures in Global and National Commerce Act, 15 U.S.C. Section  
10 7001 et seq., but does not modify, limit, or supersede Section  
11 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
12 electronic delivery of any of the notices described in Section  
13 103(b) of that act, 15 U.S.C. Section 7003(b).

14 **§39-4-32. Maximum fees.**

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

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

23 (c) The maximum fee in this state is \$5.00 for any other

1 notarial act performed.

2 **§39-4-33. Government notaries public.**

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

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

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

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



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

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

6 **§39-4-34. Liability of notary and of an employer of notary.**

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

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

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

15 (2) The employer consented to the notary public's official  
16 misconduct.

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

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

22 (1) May result in the denial, refusal to renew, revocation,  
23 suspension or condition commission of a notary public pursuant to

1 section twenty-three of this article; or

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

3 **§39-4-35. Criminal penalties.**

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

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

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

17 (d) Any person who unlawfully possesses a notary's official  
18 seal or any papers or copies relating to notarial acts, is guilty  
19 of a misdemeanor and, upon conviction, shall be fined not more than  
20 \$1,000.

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

23 (1) May result in the denial, refusal to renew, revocation,

1 suspension or condition commission of a notary public pursuant to  
2 section twenty-three of this article; or

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

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

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

14 **§39-4-37. Administrative Complaints and Investigations.**

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

17 (1) Investigate, upon complaint or on his or her own  
18 initiative, any alleged violations or irregularities of this  
19 article.

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

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

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

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

10 **§39-4-38. Secretary of State record retention.**

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

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

22                   **CHAPTER 57. EVIDENCE AND WITNESSES.**

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

1 **§57-4-2. Taking and certification of depositions -- Out-of state**  
2 **and in foreign countries.**

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

1 country, under his or her official seal.

2 **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

3 **§57-5-9. Administration of oaths or taking of**  
4 **affidavits; authentication of affidavit made in**  
5 **another state or country; oaths and affidavits of**  
6 **persons in military service.**

7 Any judge of this state may administer any oath that is or may  
8 be lawful for any person to take, including oaths of office, and  
9 also may swear any person to an affidavit, and administer an oath  
10 to any person in any proceeding.

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

18 An affidavit may also be made before any officer of another  
19 state or country authorized by its laws to administer an oath, and  
20 shall be deemed duly authenticated if it be subscribed by ~~such~~ the  
21 officer, with his or her official seal annexed, and if he or she  
22 have none, the genuineness of his or her signature, and his or her

1 authority to administer an oath, shall be authenticated by some  
2 officer of the same state or country under his or her official  
3 seal.

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

21 IN THE MILITARY SERVICE OF THE UNITED STATES:

22 I, ....., being duly sworn on oath (affirmation), do  
23 swear (affirm) that I am a member of the military service of the

1 United States (or of ....., an auxiliary to the military  
2 forces of the United States); that \*\*\*, etc.

3 .....

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

10 .....

11 (Signature of officer)

12 .....

13 (Rank) (Identification Number)

14 Any oath or affidavit heretofore taken or made by any person  
15 in the military service in substantial compliance with this section  
16 shall be valid.

17 **CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL**  
18 **ADVERTISEMENTS.**

19 **ARTICLE 1. FEES AND ALLOWANCES.**

20 **§59-1-2. Fees to be charged by Secretary of State.**

21 (a) Except as may be otherwise provided in this code, the  
22 Secretary of State shall charge for services rendered in his or her



1 office the following fees to be paid by the person to whom the  
2 service is rendered at the time it is done:

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

9 (A) Articles of incorporation of for-profit  
10 corporation.. . . . \$50.00

11 (B) Articles of incorporation of nonprofit  
12 corporation.. . . . 25.00

13 (C) Articles of organization of limited liability  
14 company.. . . . 100.00

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

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

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

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

19 (H) Amendment or correction of articles of incorporation,  
20 including change of name or increase of capital stock, in addition  
21 to any applicable license tax.. . . . 25.00

22 (I) Amendment or correction, including change of name, of  
23 articles of organization of business trust, limited liability

1 partnership, limited liability company or professional limited  
2 liability company or of certificate of limited partnership or  
3 agreement of voluntary association. . . . . 25.00

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

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

12 (L) Articles of merger of two corporations, limited  
13 partnerships, limited liability partnerships, limited liability  
14 companies or professional limited liability companies, voluntary  
15 associations or business trusts.. . . . 25.00

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

18 (N) Statement of conversion, when permitted, from one business  
19 entity into another business entity, in addition to the cost of  
20 filing the appropriate documents to organize the surviving entity  
21 . . . . . 25.00

22 (O) Articles of dissolution of a corporation, voluntary  
23 association or business trust, or statement of dissolution of a

1 general partnership.. . . . . 25.00

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

4 (Q) Articles of termination of a limited liability company,  
5 cancellation of a limited partnership or statement of withdrawal of  
6 limited liability partnership.. . . . . 25.00

7 (R) Reinstatement of a limited liability company or  
8 professional limited liability company after administrative  
9 dissolution.. . . . . 25.00

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

15 (A) Certificate of authority of for-profit corporation  
16 . . . . . \$100.00

17 (B) Certificate of authority of nonprofit corporation  
18 . . . . . 50.00

19 (C) Certificate of authority of foreign limited liability  
20 companies.. . . . . 150.00

21 (D) Certificate of exemption from certificate of  
22 authority .. . . . . 25.00

23 (E) Registration of a general partnership. . . . . 50.00

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

1 associations or business trusts.. . . . . 25.00

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

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

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

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

20 (3) For receiving, filing and recording a change of the  
21 principal or designated office, change of the agent of process  
22 and/or change of officers, directors, partners, members or  
23 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

1 (G) And for the annual renewal of the name registration  
2 . . . . . 10.00

3 (H) Any other certificate not specified in this subdivision  
4 . . . . . 10.00

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

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

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

12 (C) Any other certificate not specified in this  
13 subdivision.. . . . 10.00

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

19 (E) For shipping and handling expenses for execution of  
20 service of process by certified mail upon any defendant within the  
21 United States, which fee is to be deposited to the special revenue  
22 account established in this section for the operation of the office  
23 of the Secretary of State.. . . . 5.00

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

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

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

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

16 (C) For any search of records maintained on site for the  
17 purpose of obtaining copies of documents or printouts of data  
18 . . . . . 5.00

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

23 (E) The cost of the search is in addition to the cost of any



1 copies or printouts prepared or any certificate issued pursuant to  
2 or based on the search.

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

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

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

9 (B) For each sheet after the first . . . . . .50

10 (C) For sending the copies or lists by fax  
11 transmission. . . . . 5.00

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

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

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

1 State.

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

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

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

14 (f) There is hereby continued in the State Treasury a special  
15 revenue account to be known as the "service fees and collections"  
16 account. Expenditures from the account shall be used for the  
17 operation of the office of the Secretary of State and are not  
18 authorized from collections, but are to be made only in accordance  
19 with appropriation by the Legislature and in accordance with the  
20 provisions of article three, chapter twelve of this code and upon  
21 the fulfillment of the provisions set forth in article two, chapter  
22 five-a of this code. Notwithstanding any other provision of this  
23 code to the contrary, except as provided in subsection (h) of this

1 section and section two-a of this article, one half of all the fees  
2 and service charges established in the following sections and for  
3 the following purposes shall be deposited by the Secretary of State  
4 or other collecting agency to that special revenue account and used  
5 for the operation of the office of the Secretary of State:

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

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

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

17 (4) The annual attorney-in-fact fee for limited liability  
18 companies as designated in section one hundred eight, article one,  
19 chapter thirty-one-b of this code and established in section two  
20 hundred eleven, article two of said chapter: *Provided*, That after  
21 the thirtieth day of June, two thousand eight, the annual report  
22 fees designated in section one hundred eight, article one, chapter  
23 thirty-one-b of this code shall upon collection be deposited in the

1 general administrative fees account described in subsection (h) of  
2 this section;

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

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

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

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

16 ~~(9)~~ (8) The fees for registering credit service organizations  
17 as established by section five, article six-c, chapter forty-six-a  
18 of this code;

19 ~~(10)~~ (9) The fees for registering and renewing a West Virginia  
20 limited liability partnership as established by section one,  
21 article ten, chapter forty-seven-b of this code;

22 ~~(11)~~ (10) The filing fees for the registration and renewal of  
23 trademarks and service marks established in section seventeen,

1 article two, chapter forty-seven of this code;

2       ~~(12)~~ (11) All fees for services, the sale of photocopies and  
3 data maintained at the expense of the Secretary of State as  
4 provided in this section; and

5       ~~(13)~~ (12) All registration, license and other fees collected  
6 by the Secretary of State not specified in this section.

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

12       (h) (1) Effective the first day of July, two thousand eight,  
13 there is hereby created in the State Treasury a special revenue  
14 account to be known as the general administrative fees account.  
15 Expenditures from the account shall be used for the operation of  
16 the office of the Secretary of State and are not authorized from  
17 collections, but are to be made only in accordance with  
18 appropriation by the Legislature and in accordance with the  
19 provisions of article three, chapter twelve of this code and upon  
20 the fulfillment of the provisions set forth in article two, chapter  
21 eleven-b of this code: *Provided*, That for the fiscal year ending  
22 the thirtieth day of June, two thousand nine, expenditures are  
23 authorized from collections rather than pursuant to an

1 appropriation by the Legislature. Any balance in the account at the  
2 end of each fiscal year shall not revert to the General Revenue  
3 Fund but shall remain in the fund and be expended as provided by  
4 this subsection.

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

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

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

19 (C) The fees for the purchase of data and updates related to  
20 the State's Business Organizations Database described in section  
21 two-a of this article.

22 (i) There is continued in the office of the Secretary of State  
23 a noninterest-bearing, escrow account to be known as the "prepaid

1 fees and services account". This account shall be for the purpose  
2 of allowing customers of the Secretary of State to prepay for  
3 services, with payment to be held in escrow until services are  
4 rendered. Payments deposited in the account shall remain in the  
5 account until services are rendered by the Secretary of State and  
6 at that time the fees will be reallocated to the appropriate  
7 general or special revenue accounts. There shall be no fee charged  
8 by the secretary of state to the customer for the use of this  
9 account and the customer may request the return of any moneys  
10 maintained in the account at any time without penalty. The assets  
11 of the prepaid fees and services account do not constitute public  
12 funds of the state and are available solely for carrying out the  
13 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, it has been completely underscored.