WEST VIRGINIA CODE CHAPTER 39 ARTICLE 4

WV Legislature

§39-4-1. Short title.

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

WV Legislature

§39-4-2. Definitions.

In this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

commercial entity.

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

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

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

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

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

(13) "Stamping device" means:

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

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

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

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

WV Legislature

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

(a) This article applies to a notarial act performed on or after July 1, 2014.

(b) The repeal of chapter twenty-nine-c of this code and the repeal of articles four, chapter twenty-nine and one-a, chapter thirty-nine of this code and the amendment and reenactment of section two, article one, chapter fifty-nine of this code, pursuant to the provisions of Enrolled House Bill No. 4012, as enacted by the Legislature during the regular session, 2014, are operative on June 30, 2014. The prior enactments of chapter twenty-nine-c; articles four, chapter twenty-nine and one-a, chapter thirty-nine; and section two, article one, chapter fifty-nine of this code, whether amended and reenacted or repealed by the passage of Enrolled House Bill No. 4012, have full force and effect until the provisions of Enrolled House Bill No. 4012, are operative on June 30, 2014, unless after the effective date of Enrolled House Bill No. 4012, and prior to the operative date of June 30, 2014, the provisions of Enrolled House Bill No. 4012, are otherwise repealed or amended and reenacted.

WV Legislature

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

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

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

WV Legislature

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

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

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

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

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

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

WV Legislature

§39-4-6. Personal appearance required.

(a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer, unless the individual making the statement or executing the signature appears personally by communication technology, as provided in §39-4-37 or §39-4-38 of this code.

(b) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code establishing specific requirements for the performance of a notarial act on behalf of an individual appearing before a notary public by means of communication technology.

WV Legislature

§39-4-6a. Remote acknowledgements and notarizations under COVID-19 Executive Order deemed valid.

Acknowledgements and notarizations performed by means of remote communication technology, pursuant to section 6 of the Governor's Executive Order 11-20 effective March 25, 2020, by which the Governor suspended the provisions of §39-4-6 of the code applicable to court reporters and other notaries, are deemed to be valid and cured of any defect from failure to comply with §39-4-6 of this code if the acknowledgements and notarizations were performed in accordance with the emergency rules promulgated by the West Virginia Secretary of State, which are found at the Code of State Rules §153-45 *et. seq*.

WV Legislature

§39-4-7. Identification of individual.

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

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

(1) By means of:

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

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

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

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

WV Legislature

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

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

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

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

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

WV Legislature

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

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

WV Legislature

§39-4-10. Notarial act in this state.

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

(1) A notary public of this state;

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

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

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

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

WV Legislature

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

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

(1) A notary public of that state;

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

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

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

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

WV Legislature

§39-4-12. Notarial act under authority of federally recognized Indian tribe.

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

(1) A notary public of the tribe;

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

WV Legislature

§39-4-14. Foreign notarial act.

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subdivisions (2), (3) and (4), subsection (a) of this section, an official stamp may be affixed to the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in said subdivisions, an official stamp may be attached to or logically associated with the certificate.

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

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

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

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

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

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

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

(f) If a notarial act is performed regarding a tangible record, a certificate must be part of, or

WV Legislature

securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to or logically associated with, the electronic record. If the Secretary of State has established standards pursuant to section twenty-five of this article, for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

WV Legislature

§39-4-16. Short form certificates.

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

(1) For an acknowledgment in an individual capacity:

State of .....

County of .....

This record was acknowledged before me on ..... [Date] by ..... [Name(s) of individual(s)].....

Signature of notarial officer

Stamp

Title of office .....

My commission expires: .....

(2) For an acknowledgment in a representative capacity:

State of .....

County of .....

This record was acknowledged before me on ..... [Date] by ..... [Name(s) of individual(s)] as ..... [Type of authority, such as officer or trustee] of ..... [Name of party on behalf of whom record was executed].

.....

Signature of notarial officer

Stamp

Title of office.....

My commission expires: .....

(3) For a verification on oath or affirmation:

State of .....

WV Legislature

County of .....

Signed and sworn to (or affirmed) before me on ..... (Date) by ..... [Name(s) of individual(s) making statement]

.....

Signature of notarial officer

Stamp

Title of office .....

My commission expires: .....

(4) For witnessing or attesting a signature:

State of .....

County of .....

Signed or attested before me on ..... [Date] by ..... [Name(s) of individual(s) making statement]

.....

Signature of notarial officer

Stamp

Title of office .....

My commission expires: .....

(5) For certifying a copy of a record:

State of .....

County of .....

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

Dated .....

.....

WV Legislature

Signature of notarial officer

Stam

Title of office .....

My commission expires: .....

WV Legislature

§39-4-17. Official stamp.

The official stamp of a notary public must:

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

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

WV Legislature

§39-4-18. Stamping device.

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

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

WV Legislature

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

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

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

WV Legislature

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

(a) An individual qualified under subsection (b) of this section may apply to the Secretary of State for a commission as a notary public through the Secretary of State's online notary system. The applicant shall comply with and provide the information required by rules promulgated by the Secretary of State and pay any application fee.

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

(1) Be at least 18 years of age;

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

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

(4) Be able to read and write English;

(5) For any applicant that has not been commissioned as a notary prior to January 1, 2018, have a high school diploma or its equivalent; and

(6) Not be disqualified to receive a commission under §39-4-23 of this code.

(c) Before issuance of a commission as a notary public, an applicant shall provide a statement on the notary application that they solemnly swear or affirm, under penalty of perjury, that the answers to all questions in this application are true, complete, and correct; that he or she has carefully read the notaries public law of West Virginia; and, if appointed and commissioned as a notary public, he or she will perform faithfully, to the best of his or her ability all notarial acts in accordance with the law.

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

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

WV Legislature

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

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

(1) Failure to comply with this article;

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

WV Legislature

§39-4-23. Prohibited acts.

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

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

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

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

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

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

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

(d) A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law.

(e) If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in writing, the notary public shall provide a clear disclaimer that the notary is not authorized to practice law under the following conditions:

(1) If the form of advertisement or representation is not broadcast media, print media or the internet and does not permit inclusion of a disclaimer as required by subsection (e) because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(2) If the form of advertisement is made through broadcast media, print media or the Internet, the following statement, or an alternate statement authorized or required by the Secretary of State, shall be prominently included in each advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not permitted to draft legal records, give advice on legal matters, including but not limited to, immigration, or charge a fee for those activities".

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

WV Legislature

§39-4-24. Validity of notarial acts.

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

WV Legislature

§39-4-25. Rules.

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

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

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

(a) A commission as a notary public in effect on June 30, 2014, continues until its date of expiration. A notary public who applies for a commission as a notary public on or after July 1, 2014, is subject to and shall comply with this article. A notary public, in performing notarial acts on or after July 1, 2014, shall comply with this article.

(b) An appointment as commissioner under the repealed provisions of article four, chapter twenty-nine of this code, in effect on June 30, 2014, continues until its date of expiration. A commissioner, in performing notarial acts on or after July 1, 2014, shall comply with this article: Provided, That a person holding a commission pursuant to the provisions of article four, chapter twenty-nine of this code, on June 30, 2014, is not required to obtain or use a stamp required by section seventeen of this article, prior to the expiration of that commission.

WV Legislature

§39-4-27. Savings clause.

This article does not affect the validity or effect of a notarial act performed before July 1, 2014.

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

§39-4-30. Maximum fees.

(a) The maximum fee in this state for notarization of each signature and the proper recordation thereof in the journal of notarial acts is $10.00 for each signature notarized.

(b) The maximum fee in this state for certification of a facsimile of a document, retaining a facsimile in the notary's file, and the proper recordation thereof in the journal of notarial acts is $10.00 for each eight and one-half by eleven inch page retained in the notary's file.

(c) The maximum fee in this state is $10.00 for any other notarial act performed.

WV Legislature

§39-4-31. Government notaries public.

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

WV Legislature

§39-4-33. Criminal penalties.

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

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

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

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

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

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

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

WV Legislature

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

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

WV Legislature

§39-4-35. Administrative complaints and investigations.

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

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

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

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

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

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

WV Legislature

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

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

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

WV Legislature

§39-4-37. Remote online notarial act performed for remotely located individual.

(a) In this section:

(1) "Communication technology" means an electronic device or process that:

(A) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(3) "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(4) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(5) "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (c) of this section.

(b) A remotely located individual may comply with the provisions of this section by using communication technology to appear before a notary public.

(c) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(1) The notary public:

(A) Has personal knowledge of the identity of the individual;

(B) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under §39-4-1 *et seq*. of this code; or

(C) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) The notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

WV Legislature

(3) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and

(4) For a remotely located individual located outside the United States:

(A) The notary public is commissioned as an Out-of-State Commissioner pursuant to §39-4A-1 *et seq*. of this code; and

(B) The record:

(i) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of West Virginia; or

(ii) Involves property located in or a transaction substantially connected with West Virginia.

(d) If a notarial act is performed under this section, the certificate of notarial act required by §39-4-15 of this code and the short-form certificate provided in §39-4-16 of this code must indicate that the notarial act was performed using communication technology.

(e) A short-form certificate provided in §39-4-16 of this code for a notarial act subject to this section is sufficient if it:

(1) Complies with rules adopted under subdivision (1), subsection (h) of this section; or

(2) Is in the form provided in §39-4-16 of this code and contains a statement substantially as follows: "This notarial act involved the use of communication technology".

(f) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audio-visual recording created under subdivision (3), subsection (c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision (4), subsection (h) of this section, the recording must be retained for a period of at least five years after the recording is made.

(g) Before a notary public performs the notary public's initial notarial act under this section, the notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the Secretary of State has established standards under subsection (h) of this section for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

(h) The Secretary of State may adopt legislative rules under the provisions of this section regarding performance of a notarial act. The rules may:

(1) Prescribe the means of performing a notarial act involving a remotely located individual

WV Legislature

using communication technology;

(2) Establish standards for communication technology and identity proofing;

(3) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(4) Establish standards and a period for the retention of an audio-visual recording created under the provisions of this section.

(i) Before adopting, amending, or repealing a legislative rule governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

(2) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

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

(j) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording created under this section, the Secretary of State shall be the provider of the communication technology, identity proofing, or storage as the provider’s agent for service of process in any civil action in this state related to the notarial act.

WV Legislature

§39-4-38. Remote ink notarial act performed for remotely located individual.

(a) A document may be notarized for an individual who is not in the physical presence of the notary public at the time of the notarization if the following requirements are met:

(1) The individual and the notary can communicate simultaneously, in real time, by sight and sound using communication technology defined in §39-4-37 of this code;

(2) In performing a remote notarization pursuant to the provisions of this section, the notary reasonably identifies the individual at the time of notarization by one or more of the following methods:

(A) Personal knowledge of the individual;

(B) The individual presents a government-issued, unexpired identification document or record which includes the individual's photograph, name, and signature. Common acceptable forms of identification documents include, but are not limited to, a driver's license, government-issued identification card, or passport;

(C) At least two different types of processes or services by which a third person provides a means to verify the identity of the individual through a review of public or private data sources; or

(D) Oath or affirmation by a credible witness who:

(i) Is in the physical presence of either the notary or the individual; or

(ii) Is able to communicate in real time with the notary and the individual by sight and sound through an electronic device or process at the time of the notarization, if the credible witness has personal knowledge of the individual and has been reasonably identified by the notary by a method provided in this section.

(b) The notary, either directly or through an agent, shall satisfy the following requirements for generating and retaining a record of a notarization performed pursuant to this section:

(1) At the time of the performance of the notarization, the notary or notary's agent shall create an audio and visual recording of the signing and notarization; and

(2) The notary or notary's agent shall retain the recording as a notarial record for five years unless otherwise provided by law.

(c) When an individual who is physically located outside of the state of West Virginia seeks a remote notarization pursuant to this section, the following additional requirements shall also be met:

(1) The notary must be commissioned as an Out-of-State Commissioner pursuant to §39-4A-1

WV Legislature

et seq. of this code; and

(2) The record being notarized must:

(A) Be intended for filing or presentation in a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of West Virginia;

(B) Involve property located in the territorial jurisdiction of West Virginia or a transaction substantially connected to the state of West Virginia; or

(C) Otherwise not be prohibited, by West Virginia law to be notarized outside the state of West Virginia.

(d) Once signed by the individual according to the procedures set forth in this section, the individual shall mail or otherwise cause to be delivered the signed original copy of the documents to the notary public for certification and execution with the notary's commission signature and official stamp or seal.

(e) The date and time of the notarization shall be the date and time when the notary witnessed the signature being performed via communication technology.

(f) Nothing in this section affects the authority of a notary public to refuse to perform a notarial act or requires a notary to perform a notarization remotely:

(1) With respect to an electronic record;

(2) For an individual not in the physical presence of the notary; or

(3) Using a technology that the notary has not selected.

(g) The Secretary of State may adopt rules under this section regarding performance of a notarial act. The rules may:

(1) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(2) Establish standards for communication technology and identity proofing;

(3) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(4) Establish standards and a period for the retention of an audio-visual recording created under this section.

(h) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

WV Legislature

(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

(2) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

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

(i) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording created under this section, the Secretary of State shall be the provider of the communication technology, identity proofing, or storage as the provider’s agent for service of process in any civil action in this state related to the notarial act.

WV Legislature