WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
Committee Substitute for
SENATE BILL NO. 245

(By Mr. Tuccaro)

PASSED March 8, 1984
In Effect July 1, 1984
AN ACT to repeal sections two, two-a, two-b, nine, ten and eleven, article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter twenty-nine-c, relating to the uniform notaries act; general provisions; short title; purposes and rules of construction; prospective effect of act; construction against implicit repeal; notary public notarization defined; severability; repeal; time of taking effect; appointment provisions; appointment; jurisdiction and term; local or district offices; powers; limitations on powers; exception for attorneys and their employees; duties; forms and procedures; acknowledgment forms; affirmation; procedure; form; executing witness form; certified facsimiles of documents; procedure; form; liability; fines and imprisonment; liability of notary and sureties; liability of employer of notary; proximate cause; revocation of commission; action for injunction; certificate of authority.
Be it enacted by the Legislature of West Virginia:

That sections two, two-a, two-b, nine, ten and eleven, article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter twenty-nine-c, to read as follows:

CHAPTER 29C. UNIFORM NOTARY ACT.

ARTICLE 1. GENERAL PROVISIONS.


This article shall be known and may be cited as the "uniform notary act."

§29C-1-102. Purposes and rules of construction.

(a) This article shall be construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this article are:

(1) To simplify, clarify and modernize the law governing notaries public;

(2) To make uniform notary laws among the states enacting it; and

(3) To promote, serve and protect the public interest.

(c) In this article, unless the context otherwise requires:

(1) Words in the singular number include the plural, and words in the plural number include the singular;

(2) Words of the masculine gender include the feminine and the neuter; and

(3) Words of the neuter gender may refer to any gender when the sense so indicates.

§29C-1-103. Prospective effect of act.

This article applies prospectively. Nothing in this article shall be construed to revoke any notary public commission existing on the effective date of this article. All renewals of notarial commissions shall be obtained in accordance with this article.

§29C-1-104. Construction against implicit repeal.

This article is intended to provide comprehensive and unified coverage of the subject matter. Therefore, no part of
§29C-1-105. Notary public and notarization defined.
1 (a) The terms "notary public" or "notary" are used interchangeably to mean any individual appointed and commissioned to perform notarial acts.
2 (b) "Notarization" means the performance of a notarial act.

§29C-1-106. Effective date.
1 This article shall take effect the first day of July, one thousand nine hundred eighty-four.

ARTICLE 2. APPOINTMENT PROVISIONS.

PART I. OFFICE PROVISIONS.

1 (a) Upon application under this article, the governor may appoint and commission persons as a notary public in this state.
2 (b) The governor may not appoint and commission as a notary public any person who submits an application containing substantial and material misstatement or omission of fact.
3 (c) The secretary of state shall administer the article and may issue rules and regulations, in accordance with the provisions of chapter twenty-nine-a, to make the article effective.

§29C-2-102. Jurisdiction and term.
1 Notaries may perform notarial acts in any part of this state for a term of ten years, unless sooner removed.

PART II. QUALIFYING.

§29C-2-201. Application.
1 Every applicant for appointment and commission as a notary public shall complete an application to be filed with the secretary of state stating:
2 (a) That he is a citizen of the United States, or if he is not a citizen of the United States, that he is a citizen or national
of a country that permits American citizens to become
notaries public therein;
(b) If he is a citizen of the United States, that he is a
qualified elector of a state at the time of his application;
(c) That he is able to read and write English;
(d) The address of his business or residence in this state;
(e) His social security number, if he has one; and
(f) That during the past ten years his commission as a
notary public has not been revoked.

§29C-2-202. Qualifying fee.
Every applicant for appointment and commission as a
notary public shall pay to the secretary of state a fee of
fifty dollars.

§29C-2-203. Applicant's endorsers.
Every applicant for appointment and commission as a
notary public shall submit to the secretary of state
endorsements from three qualified electors of this state, in
the following form:
I, ........................................... (name of endorser), a
qualified elector of this state, believe to the best of my
knowledge, the applicant is a person of good moral
character and integrity and capable of performing notarial
acts.

§29C-2-204. Applicant's oath.
Every applicant for appointment and commission as a
notary public shall take the following oath in the presence
of a person qualified to administer an oath in this state:
I, ........................................... (name of applicant),
solemnly swear or affirm, under the penalty of perjury, that
the answers to all questions in this application are true,
complete and correct; that I have carefully read the notaries
public law of this State; and, if appointed and
commissioned as a notary public, I will perform faithfully,
to the best of my ability, all notarial acts in accordance with
the law.

(Signature of applicant)
Subscribed and sworn or affirmed before me this .......
day of .........., 19..... The undersigned notary public
further certifies that ................................ (name of
applicant), is known to me to be the applicant and elector
who executed the within application for appointment and
commission as a notary public and acknowledged to me that
he or she executed the same for the purposes therein stated.

(Official signature and official seal of notary)

§29C-2-205. Bond.

Every applicant for appointment and commission as a
notary public shall submit to the secretary of state an
executed bond commencing at least thirty days after the
date the applicant mails his application to the secretary of
state with a term of ten years, in the sum of five hundred
dollars, with, as surety thereon, a company qualified to
write surety bonds in this state, or upon a personal surety,
such surety bond shall be signed in the office of the county
clerk of the county in which the notary or his surety resides:
Provided, That the county clerk shall certify that the surety
owns real property in that county of an assessed value of
more than double the amount of the bond: Provided,
however, That where the surety is not assessed with
sufficient property in the county in which bond is being
executed, justification of surety shall be required by the
clerk. The bond shall be conditioned upon the faithful
performance of all notarial acts in accordance with this
article.

§29C-2-206. Confidential application.

Information in the application for appointment, except
for the applicant's name and address, is confidential and
may not be disclosed by an official or employee having
access to it to any person other than the applicant, his
authorized representative, or an employee or officer of the
federal government, the state government or a local agency,
acting in his official capacity. Such information shall be
used by the governor and secretary of state for the sole
purpose of performing his duties under this article.

§29C-2-207. Specimen official signature.

Every applicant for appointment and commission as a
notary public shall mail or deliver to the secretary of state a handwritten specimen of his official signature which contains his surname and at least the initial of his first name. The fee payable to the secretary of state for recording a specimen of the official signature is two dollars.

§29C-2-208. Application by persons holding existing commissions.

Persons holding notary commissions on the effective date of this article and having been appointed pursuant to former section two, article four, chapter twenty-nine of this code, shall continue upon their bonds as previously posted until the expiration of their respective notarial commissions.

PART III. GOVERNMENT NOTARIES.

§29C-2-301. State and local government employees.

(a) The governor may appoint and commission such number of state and local government employees as notaries public, to act for and in behalf of their respective state and local government offices, as he deems proper. An appointee commissioned as a notary public under this section may act only for and in behalf of the government office or offices in which he is employed.

(b) An appointee under this section shall meet the requirements for qualification and appointment prescribed in article two, of this article except that the head of the state or local government office where the applicant is employed may execute a certificate that the application is made for the purposes of the office and in the public interest and submit it to the governor together with the application for appointment as a notary public, in which case the fee for appointment specified in article two, section two hundred two, is waived.

(c) Premium on the bond and costs of all other notary supplies for a commissioned state or local government employee shall be paid for funds available to the office in which he is employed.

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

(e) A notary public who is an employee of a state or local
government office in this state must comply with all
provisions of this article.

ARTICLE 3. POWERS.


Every notary public is empowered to:

(1) Take acknowledgments;
(2) Administer oaths and affirmations;
(3) Certify that a copy of a document is a true copy of
another document; and
(4) Perform any other act permitted by law.

§29C-3-102. Limitations on powers.

(a) A notary public who has a disqualifying interest, as
hereinafter defined, in a transaction may not legally
perform any notarial act in connection with the transaction.
(b) For the purposes of this article, a notary public has a
disqualifying interest in a transaction in connection with
which notarial services are requested if he:

(1) May receive directly, and as a proximate result of the
notarization, any advantage, right, title, interest, cash or
property, exceeding in value the sum of any fee properly
received in accordance with section four hundred one,
article four of this chapter; Provided, That the restriction
contained in this subsection shall not apply to any attorney
at law licensed to practice law in this state or to any of his
employees when performing professional services; or
(2) Is named, individually, as a party to the transaction.

ARTICLE 4. DUTIES.

PART I. SEAL AND SIGNATURE.

§29C-4-101. Official signature.

At the time of notarization a notary public shall sign his
official signature on every notarial certificate.

§29C-4-102. Rubber stamp seal.

Under or near his official signature on every notarial
certificate, a notary public shall rubber stamp clearly and
legibly, so that it is capable of photographic reproduction:
(a) The words "Official Seal";
(b) His name exactly as he writes his official signature;
(c) The words "Notary Public," "State of West Virginia" and "My Commission expires (commission expiration date)";
(d) The address of his business or residence in this state; and
(e) A serrated or milled edge border in a rectangular form not more than one inch in width by two and one-half inches in length surrounding the information.

§29C-4-103. Seal embosser.

(a) Every notary public may provide, keep and use a seal embosser engraved to show the words "Notary Seal," his name, "Notary Public," and "State of West Virginia."
(b) The indentations made by the seal embosser shall not be applied on the notarial certificate or document to be notarized in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing.

§29C-4-104. Illegibility.

The illegibility of any of the information required by sections one hundred one through two hundred three, article four, does not affect the validity of a transaction.

PART II. RECORD CHANGES.

§29C-4-201. Change of address.

Every notary public shall mail or deliver notice to the secretary of state within thirty days after he changes the address of his business or residence in this state. The fee payable to the secretary of state for recording notice of change of address is two dollars.

§29C-4-202. Change of notary's name.

Every notary public shall mail or deliver notice to the secretary of state within thirty days after he changes his name, including with the notification a specimen of his handwritten official signature which contains his surname and at least the initial of his first name. The fee payable to the secretary of state for recording notice of change of notary's name is two dollars.
§29C-4-203. Lost official seal.

1 Every notary public shall mail or deliver notice to the 
2 secretary of state within thirty days after he loses or 
3 misplaces his official seal. The fee payable to the secretary 
4 of state for recording notice of a lost seal is two dollars.

PART III. FEES.

§29C-4-301. Maximum fees.

1 The maximum fee in this state for notarization of each 
2 signature and the proper recordation thereof in the journal 
3 of notarial acts is two dollars for each signature notarized.
4 (a) The maximum fee in this state for certification of a 
5 facsimile of a document, retaining a facsimile in the 
6 notary's file, and the proper recordation thereof in the 
7 journal of notarial acts is two dollars for each eight and 
8 one-half by eleven inch page retained in the notary's file.
9 (b) The maximum fee in this state is two dollars for any 
10 other notarial act performed.
11 (c) A notary public who charges more than the 
12 maximum fees specified is guilty of official misconduct.

PART IV. TERMINATION OF COMMISSION.

§29C-4-401. Death.

1 If a notary public dies during the term of his appointment, 
2 his heirs or personal representative, as soon as reasonably 
3 possible after the notary's death, shall send by certified 
4 mail or deliver to the secretary of state the deceased 
5 notary's papers and copies relating to his notarial acts. His 
6 heirs or personal representative shall destroy forthwith his 
7 official seal.

§29C-4-402. Resignation or removal.

1 If a notary public no longer desires to be a notary public 
2 or has ceased to have a business or residence address in this 
3 state, he shall send forthwith by certified mail or deliver to 
4 the secretary of state a letter of resignation and all papers 
5 and copies relating to his notarial acts. He shall destroy 
6 forthwith his official seal. His commission shall thereupon 
7 cease to be in effect.

§29C-4-403. Revocation of commission.

1 Immediately after receiving notice from the secretary of
state that his commission has been revoked, the person
whose commission is revoked shall forthwith send by
certified mail or deliver to the secretary of state all papers
and copies relating to his notarial acts. He shall destroy
forthwith his official seal.

§29C-4-404. Failure to be reappointed.

A notary public who is not reappointed to act as a notary
public within thirty days after the expiration of his
commission shall send forthwith by certified mail or deliver
to the secretary of state all papers and copies relating to his
notarial acts. He shall destroy forthwith his official seal.

§29C-4-405. Reappointment.

(a) No person may be automatically reappointed as a
notary public.
(b) Every notary public who is an applicant for
reappointment as a notary public shall recomply with the
provisions of article two of this chapter.

ARTICLE 5. FORMS AND PROCEDURES.

§29C-5-101. Acknowledgment forms.

(a) The forms of acknowledgment set forth in section
six, article one-a, chapter thirty-nine of this code, and
known as “statutory short forms of acknowledgment” may
be used and are sufficient for their respective purposes
under any law of this state, whether the acknowledgment
was taken within or without this state.
(b) Certificates of acknowledgment for the following
purposes may be substantially in the following respective
forms:

(1) By a United States citizen who is outside of the
United States .................. (description or
location of place where acknowledgment is taken),
On this ...... day of ..........., in the year ....,
before me .................. (name and title of person
acting as a notary and refer to law or authority granting
power to act as a notary), personally appear ............
............... (name of citizen) known to me to be the
person who executed the within ..................
(type of document) and acknowledged to me that .......
(he) executed the same for the purposes therein stated.

(Official signature and official seal of person acting as a notary and refer to law or authority granting power to act as a notary)

(2) By an individual who cannot write his name,

State of .............., County of ..............

On this ...... day of .............., in the year .......

before me ................................ (name of notary), a notary public in and for said state, personally appeared ................................ (name of individual), known to me to be the person who, being unable to write his name, made his mark in my presence. I signed his name at his request and in his presence on the within .............. (type of document) and he acknowledged to me and the two witnesses who have signed and printed their names and addresses hereto, that he made his mark on the same for the purposes therein stated.

(Official signature and official seal of notary)

(Signatures of two witnesses and their addresses)

§29C-5-102. Oath; procedure; form.

(a) If the oath to be administered by the notary public is in writing and the person who took the oath has signed his name thereto, the notary public shall write or print under the text of the oath the following:

“Subscribed and sworn before me this .......... day of ........................., 19....”

(Official signature and official seal of notary)

(b) If the oath to be administered by the notary public is not in writing, the notary public shall address the affirmant substantially as follows:

You do solemnly swear, under the penalty of perjury, that the testimony you shall give in the matter in issue, pending between .............. and .............., shall be the truth; the whole truth, and nothing but the truth, so help you God?”
§29C-5-103. Executing witness form.

1. (a) "Executing witness" as used in this section means an individual who acts in the place of a notary.
2. (b) An executing witness may not be related by blood or marriage or have a disqualifying interest as defined in subsection (b), section one hundred two, article three of this chapter.
3. (c) The affidavit of executing witness for acknowledgment by an individual who does not appear before a notary shall be substantially in the following form:
4. I, .................... (name of executing witness),
5. do solemnly swear under the penalty of perjury, that
6. .................. (name of person who does not appear before a notary), personally known to me, has executed the within ............. (type of document) in my presence, and has acknowledged to me that ........ (he) executed the same for the purposes therein stated and requested that I sign my name on the within document as an executing witness.

(Signature of executing witness)

Subscribed and sworn before me this ........ day of .................................., 19 ....

(Official signature and official seal of notary)

§29C-5-104. Certified facsimiles of documents; procedure; form.

1. (a) A notary public may certify a facsimile of a document if he receives a signed written request stating that:
2. (1) A certified copy or facsimile of the document cannot be obtained from the office of any recorder of public documents or custodian of documents in this state; and
3. (2) The production of a facsimile, preparation of a copy or certification of a copy of the document does not violate any state or federal law.
4. (b) Every notary public shall retain a facsimile of each document he has certified as a facsimile of another document, together with other papers or copies relating to his notarial acts.
(c) The certification of a facsimile shall be substantially in the following form:

State of ............, County of .................

I, .................. (name of notary), a notary public in and for said state, do certify that on ........ (date) I carefully compared the attached facsimile of ........ (type of document) and the facsimile I now hold in my possession. They are complete, full, true and exact facsimiles of the document they support to reproduce.

(Official signature and official seal of notary)

ARTICLE 6. LIABILITY, FINES AND IMPRISONMENT.

PART I. LIABILITY.

§29C-6-101. Liability of notary and sureties.

1 A notary public and the surety or sureties on his bond are liable to the persons involved for all damages proximately caused by the notary's official misconduct.

§29C-6-102. Liability of employer of notary.

1 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:

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

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

§29C-6-103. Proximate cause.

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

PART II. MISCONDUCT.

§29C-6-201. Official misconduct defined.

1 The term "official misconduct" means the wrongful exercise of a power or the wrongful performance of a duty. The term "wrongful" as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless or injurious.

(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 five thousand dollars or imprisoned in the county jail not more than one year or both fined and imprisoned.

(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 one thousand dollars.

§29C-6-203. Willful impersonation.

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 five thousand dollars or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§29C-6-204. Wrongful possession.

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 one thousand dollars.

ARTICLE 7. REVOCATION OF COMMISSION, ACTION FOR INJUNCTION, UNAUTHORIZED PRACTICE OF LAW.

PART I. REVOCATION.

§29C-7-101. Revocation of commission.

The governor or secretary of state may revoke the commission of any notary public who during the current term of appointment:

(a) Submits an application for commission and appointments as a notary public which contains substantial and material misstatement or omission of fact;

(b) Is convicted of any felony or official misconduct under this article;

(c) Fails to exercise the powers or perform the duties of a notary public in accordance with this article;

(d) Is adjudged liable in any suit grounded in fraud,
misrepresentation, impersonation or violation of the state regulatory laws of this state, if his liability is not solely by virtue of his agency or employment relationship with another who engaged in the act for which the suit was brought;

(e) Represents or implies from unauthorized use of his title of notary public that he has qualifications, powers, duties, rights or privileges that by law he does not possess;

(f) Allows or permits his name or his title of notary public to be used deceptively, fraudulently or in false or misleading advertising;

(g) Engages in the unauthorized practice of law;

(h) Ceases to be a citizen of the United States or a national of a country which permits American citizens to become notaries public therein;

(i) Ceases to be a qualified elector of a state;

(j) Ceases to have a business or residence address in this state; or

(k) Becomes incapable of reading and writing the English language.

A notary's commission may be revoked under the provisions of this article only if action is taken subject to the rights of the notary public to notice, hearing, adjudication and appeal.

PART II. INJUNCTIONS.

§29C-7-201. Action for injunction; unauthorized practice of law.

Upon his own information or upon complaint of any person, the attorney general, or his designee, may maintain an action for injunctive relief in circuit court against any notary public who renders, offers to render or holds himself 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.

§29C-7-202. Remedies additional to those now existing.

The remedies provided in article seven, are in addition to, and not in substitution for, other available remedies.
ARTICLE 8. CERTIFICATE OF AUTHORITY.


Upon the receipt of a written request, the notarized document and a fee of two dollars payable to the secretary of state; the office of the secretary of state shall provide a certificate of authority in substantially the following form:

I, ........................................ (secretary of state of the State of West Virginia, which office is an office of record having a seal) certify that .....................

(notary's name), by whom the foregoing or annexed document was notarized, was, at the time of the notarization of the same, a notary public authorized by the laws of this state to act in this state and to notarize the within ...................... (type of document), and I further certify that the notary's signature on the document is genuine to the best of my knowledge, information and belief and that such notarization was executed in accordance with the laws of this state.

In testimony whereof, I have affixed my signature and the seal of the State of West Virginia this ............

day of ................................., 19......

..................................................

(Certifying officer's signature, title, jurisdiction, address and the seal affixed near the signature)
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect July 1, 1984.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within ................. this the ................. day of .........., 1984.

[Signature]
Governor

[Signature]