

No: 469



WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED

Committee Substitute for

SENATE BILL NO. 469

(By Mr. *Phillips & Mr. Palumbo*)



PASSED April 11 1985

In Effect from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 469

(MR. WHITLOW AND MR. PALUMBO, *original sponsors*)

(Originating in the Committee on the Judiciary.)

[Passed April 10, 1985; in effect from passage.]

AN ACT to repeal section two hundred five, article two, chapter twenty-nine-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred three, article one, section three hundred one, article two, section one hundred two, article three, section one hundred two, article four and section one hundred one, article six, all of said chapter; and to further amend said chapter by adding thereto a new article, designated article nine, all relating to notary publics; prospective effect of chapter; exceptions; removing required bond; clarifying disqualifying interest; application to notaries public commissioned prior to the effective date of the uniform notary act; optional use of rubber stamp seals by notaries appointed under prior law; requiring such notaries not commissioned on a statewide basis to include the county on the seal; uniform application of chapter; validation of good faith notarial acts; and nonliability for such good faith acts.

Be it enacted by the Legislature of West Virginia:

That section two hundred five, article two, chapter twenty-

nine-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one hundred three, article one, section three hundred one, article two, section one hundred two, article three, section one hundred two, article four and section one hundred one, article six, all of said chapter, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article nine, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§29C-1-103. Prospective effect of chapter; exceptions.

1 Except as otherwise provided herein, this chapter ap-
2 plies prospectively and shall be applicable to all notaries
3 public whether commissioned before, on or after the
4 effective date of this chapter: *Provided*, That the follow-
5 ing sections in article two of this chapter shall apply only
6 to those notaries public commissioned on or after the
7 effective date of this chapter: Subsections (a) and (b) of
8 section one hundred one, sections two hundred one, two
9 hundred two, two hundred three, two hundred four, two
10 two hundred six, two hundred seven and three hundred
11 one, relating to the appointment and qualifications of
12 notaries, and section one hundred two, relating to juris-
13 diction and terms of notaries public.

ARTICLE 2. APPOINTMENT PROVISIONS.

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

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

8 (b) An appointee under this section shall meet the re-
9 quirements for qualification and appointment prescribed
10 in article two of this chapter except that the head of the
11 state or local government office where the applicant is
12 employed may execute a certificate that the application is

13 made for the purposes of the office and in the public in-
14 terest and submit it to the governor together with the
15 application for appointment as a notary public, in which
16 case the fee for appointment specified in article two,
17 section two hundred two, is waived.

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

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

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

ARTICLE 3. POWERS.

§29C-3-102. Limitations ^{on} ~~of~~ powers.

1 (a) A notary public who has a disqualifying interest,
2 as hereinafter defined, in a transaction may not legally
3 perform any notarial act in connection with the trans-
4 action.

5 (b) For the purposes of this chapter, a notary public
6 has a disqualifying interest in a transaction in connection
7 with which notarial services are requested if he:

8 (1) May receive directly, and as a proximate result
9 of the notarization, any advantage, right, title, interest,
10 cash or property, exceeding in value the sum of any fee
11 properly received in accordance with section three hun-
12 dred one, article four of this chapter, or exceeding his
13 regular compensation and benefits as an employee whose
14 duties include performing notarial acts for and in behalf
15 of his employer; or

16 (2) Is named, individually, as a party to the transaction.

ARTICLE 4. DUTIES.

§29C-4-102. Rubber stamp seal.

1 Under or near his official signature on every notarial

2 certificate, a notary public shall rubber stamp clearly and
3 legibly, so that it is capable of photographic reproduction:

4 (a) The words "Official Seal";

5 (b) His name exactly as he writes his official signa-
6 ture;

7 (c) The words "Notary Public," "State of West Vir-
8 ginia" and "My Commission expires (commission expira-
9 tion date)";

10 (d) The address of his business or residence in this
11 state; and

12 (e) A serrated or milled edge border in a rectangular
13 form not more than one inch in width by two and one-
14 half inches in length surrounding the information.

15 No person holding a notary commission pursuant to
16 former section two, article four, chapter twenty-nine on
17 the effective date of this chapter may be required to
18 obtain or use a rubber stamp seal prior to the expiration
19 of that commission. However, such a notary who was
20 appointed for one or more counties of the state may
21 obtain and use the rubber stamp seal prior to the expira-
22 tion of that commission if the name of the county in
23 which the notarial act is performed is on the seal used
24 for that act.

ARTICLE 6. LIABILITY, FINES AND IMPRISONMENT.

§29C-6-101. Liability of notary.

1 A notary public is liable to the persons involved for all
2 damages proximately caused by the notary's official
3 misconduct.

ARTICLE 9. CURATIVE PROVISIONS.

§29C-9-101. Uniform application of chapter; validation of good faith notarial acts; nonliability for good faith notarial acts.

1 This article is to prevent or redress problems which
2 might be caused by notaries public who in good faith
3 performed notarial acts in substantial compliance with

4: the laws which were replaced by the uniform notary act,
5 chapter twenty-nine-c of this code, during a forgiveness
6 period which begins with the effective date of that act
7 and ends with the effective date of this section.

8 With respect to notarial acts performed in good faith
9 and in substantial compliance with prior law during the
10 forgiveness period:

11 (a) Instruments so notarized shall be conclusively
12 presumed to have been validly notarized;

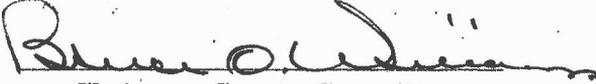
13 (b) Notaries public and all parties to such notarial
14 acts shall be immune from civil and criminal liability for
15 such acts or the consequences of such acts. The rebuttable
16 presumption created by section nine, article seven, chap-
17 ter fifty-five of this code, that any violation of a statute
18 which proximately causes injury constitutes negligence,
19 does not apply; and

20 (c) The retrospective application of this section
21 applies to all litigation which has not been fully adjudi-
22 cated, including cases pending on appeal. This section
23 does not apply to notarial acts performed prior to or
24 subsequent to the forgiveness period.

25 The purposes of this article are remedial and shall be
26 construed liberally to accomplish the purposes set forth
27 herein.

[Handwritten signatures and text, including the name "W. A. ..."]

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Chairman House Committee

Originated in the Senate.

In effect from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within  this the 1st
day of May, 1985.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/17/85

Time 4:07 p.m.

RECEIVED

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OFFICE OF THE SECRETARY OF STATE