
WEST VIRGINIA CODE CHAPTER 39A
ARTICLE 2

WV Legislature

§39A-2-1. Consent to electronic records.

Notwithstanding the provisions of article one of this chapter, if a statute, regulation or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available such information satisfies the requirement that such information be in writing if:

(1) The consumer has affirmatively consented to such use and has not withdrawn such consent;

(2) The consumer, prior to consenting, is provided with a clear and conspicuous statement;

(A) Informing the consumer of: (i) Any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form; and (ii) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences, which may include termination of the parties' relationship, or fees in the event of such withdrawal;

(B) Informing the consumer of whether the consent applies: (i) Only to the particular transaction which gave rise to the obligation to provide the record; or (ii) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(C) Describing the procedures the consumer must use to withdraw consent as provided in paragraph (A) of this section and to update information needed to contact the consumer electronically; and

(D) Informing the consumer: (i) How, after consent, the consumer may, upon request, obtain a paper copy of an electronic record; and (ii) whether any fee will be charged for such copy;

(3) The consumer:

(A) Prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(B) Consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(4) After the consent of a consumer in accordance with subdivision (1) of this section, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record:

(A) Provides the consumer with a statement of: (i) The revised hardware and software requirements for access to and retention of the electronic records; and (ii) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (ii), paragraph (A), subdivision (2) of this subsection; and

(B) Again complies with subdivision (3).

§39A-2-2. Preservation of consumer protection; verification or acknowledgment.

(a) Nothing in this article affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, rule, regulation or other rule of law.

(b) If a law that was enacted prior to this article expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt.

§39A-2-3. Effect of failure to obtain electronic consent or confirmation.

The legal effectiveness, validity or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (B), subdivision (3), section one of this article.

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§39A-2-4. Prospective effect.

Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity or enforceability of electronic records provided or made available to that consumer in accordance with section one of this article prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with subdivision (4), section one of this article may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this subsection.

§39A-2-5. Prior consent.

This section does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation or other rule of law.

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§39A-2-6. Oral communications.

An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this article except as otherwise provided under applicable law.

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§39A-2-7. Retention; accuracy and accessibility.

(a) If a statute, rule, regulation or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that:

- (1) Accurately reflects the information set forth in the contract or other record; and
- (2) Remains accessible to all persons who are entitled to access by statute, regulations or rule of law, for the period required by such statute, regulation or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing or otherwise.

(b) A requirement to retain a contract or other record in accordance with subsection (a) of this section does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated or received.

§39A-2-8. Retention; originals.

If a statute, regulation or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available or retained in its original form, or provides consequences if the contract or other record is not provided, available or retained in its original form, that statute, rule, regulation or rule of law is satisfied by an electronic record that complies with section seven of this article.

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§39A-2-9. Retention; checks.

If a statute, rule, regulation or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with section seven of this article.

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§39A-2-10. Accuracy and ability to retain contracts and other records.

If a statute, rule, regulation or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

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§39A-2-11. Exceptions.

The provisions of article one of this chapter do not apply to:

(1) Court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) Any notice of:

(A) The cancellation or termination of utility services (including water, heat and power);

(B) Default, acceleration, repossession, foreclosure, eviction or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

(C) The cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) Recall of a product, or material failure of a product, that risks endangering health or safety; or

(3) Any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.

§39A-2-12. Severability.

If any provision of this article be found by a court of competent jurisdiction to be unenforceable under the Constitution of this state or the laws and Constitutions of the United States, the remaining provisions of this article shall be severable and shall continue in full force and effect.

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