
WEST VIRGINIA CODE CHAPTER 39A

WV Legislature

§39A-1-1. Short title.

This article may be cited as the uniform electronic transactions act.

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§39A-1-2. Definitions.

In this chapter:

- (1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.
- (2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.
- (3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
- (4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this article and other applicable law.
- (5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.
- (6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.
- (7) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.
- (8) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
- (9) "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.
- (10) "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.
- (11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.
- (12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(13) "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.

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption or callback or other acknowledgment procedures.

(15) "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. The term includes an Indian tribe or band or Alaskan native village which is recognized by federal law or formally acknowledged by a state.

(16) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.

§39A-1-3. Scope.

- (a) Except as otherwise provided in subsection (d) of this section, this article applies to electronic records and electronic signatures relating to a transaction.
- (b) This chapter does not apply to a transaction to the extent it is governed by:
- (1) A law governing the creation and execution of wills, codicils or testamentary trusts; and
 - (2) The Uniform Commercial Code other than sections one hundred seven and two hundred six, article one, chapter forty-six of this code and articles two and two-a of said chapter.
- (c) This article applies to an electronic record or electronic signature otherwise excluded from the application of this article under subsection (b) of this article to the extent it is governed by a law other than those specified in said subsection.
- (d) A transaction subject to this article is also subject to other applicable substantive law.

§39A-1-4. Prospective application.

This article applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of this article.

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§39A-1-5. Use of electronic records and electronic signatures; variation by agreement.

(a) This article does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) This article applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this article, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this article of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this article and other applicable law.

§39A-1-6. Construction and application.

This article must be construed and applied:

- (1) To facilitate electronic transactions consistent with other applicable law;
- (2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- (3) To effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

§39A-1-7. Legal recognition of electronic records, electronic signatures and electronic contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

§39A-1-8. Provision of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this article requires a record: (i) To be posted or displayed in a certain manner; (ii) to be sent, communicated or transmitted by a specified method; or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in subdivision (2), subsection (d) of this section, the record must be sent, communicated or transmitted by the method specified in the other law.

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) To the extent a law other than this article requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this article to send, communicate or transmit a record by first class mail, postage prepaid, regular United States mail, certified mail or registered mail, may be varied by agreement to the extent permitted by the other law.

§39A-1-9. Attribution and effect of electronic record and electronic signature.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) of this section is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

§39A-1-10. Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subdivision (1) nor subdivision (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Subdivisions (2) and (3) of this subsection may not be varied by agreement.

§39A-1-11. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

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§39A-1-12. Retention of electronic records; originals.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

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

(c) A person may satisfy subsection (a) of this section by using the services of another person if the requirements of said subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a) of this section.

(e) If a law requires 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 subsection (a) of this section.

(f) A record retained as an electronic record in accordance with subsection (a) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this article specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

§39A-1-13. Admissibility in evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

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§39A-1-14. Automated transaction.

In an automated transaction, the following rules apply:

- (1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.
- (2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.
- (3) The terms of the contract are determined by the substantive law applicable to it.

§39A-1-15. Time and place of sending and receipt.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d) of this section.

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction;

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) of this section establishes that a record was received but, by

itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a) of this section, or purportedly received under subsection (b) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

WV Legislature

§39A-1-16. Transferable records.

(a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under article three, chapter forty-six of this code or a document under article seven of said chapter if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section and a person is deemed to have control of a transferable record if the transferable record is created, stored and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable and, except as otherwise provided in subdivisions (4), (5) and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section two hundred one, article one, chapter forty-six of this code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under said chapter, including, if the applicable statutory requirements under section three hundred two, article three of said chapter, section five hundred one, article seven of said chapter or section three hundred eight, article nine of said chapter are

satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapter forty-six of this code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

§39A-1-17. Relationship with federal law.

The enactment of this article is an enactment of the Uniform Electronic Transactions Act (UETA) as approved for enactment in all of the states by the national conference of commissioners on uniform state laws in one thousand nine hundred ninety-nine and is an exception to preemption of state law as permitted by section one hundred two of the federal "Electronic Signatures in Global and National Commerce Act", Public Law No. 106-229, 15 U.S.C. 7001.

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.

WV Legislature

§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.

WV Legislature

§39A-3-1. Definitions.

(1) "Certificate" means a computer-based record that:

(A) Identifies the certification authority issuing it;

(B) Names or identifies its subscriber;

(C) Contains the subscriber's public key; and

(D) Is digitally signed by the certification authority issuing it.

(2) "Certification authority" means a person who issues a certificate.

(3) "Digital mark" consists of an electronic code indicating approval or confirmation which is entered into a protected digital record following access protocols which identify the user and require a password, personal identification number, encrypted card or other security device which restricts access to one or more authorized individuals; and

(4) "Digital signature" consists of a message transformed using an asymmetric cryptosystem so that a person having the initial message and the signer's public key can accurately determine:

(A) Whether the transformed message was created using the private key that corresponds to the signer's public key; and

(B) Whether the initial message has been altered since the message was transformed.

(5) "Electronic postmark" means an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document existed in a certain form at a certain time and that an electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Post Office.

(6) "Federal certificate authority and repository program" means an official program established by an agency of the United States government for the issuance and authentication of digital signature certificates or other secure electronic authorizations to individuals for use in electronic transactions.

§39A-3-2. Acceptance of electronic signature by governmental entities in satisfaction of signature requirement.

(a) Any governmental entity may, by appropriate official action, authorize the acceptance of electronic signatures in lieu of original signatures on messages or filings requiring one or more original signatures, subject to the requirements and limitations of section three of this article.

(b) Any governmental entity may elect to participate and utilize the Secretary of State's digital signature authority and registry. Upon acceptance of and registration with the Secretary of State's digital signature authority and registry, the governmental entity's electronic transactions are bound to the regulation of the authority and registry and the rules promulgated thereunder. Any governmental entity not required to participate, but which elects to participate, may withdraw at any time from the program upon notification of the Secretary of State and all others who utilize that entity's digital signature program.

(c) Any governmental entity may adopt, in the manner provided by law, an ordinance, rule or official policy designating the documents on which electronic signatures, electronic postmarks or both are authorized and the type or types of electronic signatures which may be accepted for each type of document. Those governmental entities not subject to the provisions of chapter twenty-nine-a of this code which propose to authorize the acceptance of electronic signatures, electronic postmarks or both on documents filed with that entity shall give public notice of the proposed adoption in a manner prescribed by law, an ordinance, rule or official policy, but in no case for less than thirty days before adoption.

(d) Any governmental entity which intends to extend, modify or revoke the authority to accept electronic signatures or postmarks shall do so by the same means and with the same notice as required in this section for adoption.

§39A-3-3. Duties of the Secretary of State; state agencies use of electronic signatures.

(a) The Secretary of State shall propose emergency and legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish standards and processes to facilitate the use of electronic signatures in all governmental transactions by state agencies subject to chapter twenty-nine-a of this code. The rules shall include minimum standards for secure transactions to promote confidence and efficiency in legally binding electronic document transactions. The rules may be amended from time to time to keep the rules current with new developments in technology and improvements in secured transaction processes.

(b) The Secretary of State is designated the certification authority and repository for all governmental agencies which are subject to chapter twenty-nine-a of this code and shall regulate transactions and digital signature verifications. The Secretary may enter into reciprocal agreements with all state and federal governmental entities to promote the efficient governmental use of electronic transactions. The Secretary of State may propose legislative rules for issuing certificates that bind public keys to individuals, and other electronic transaction authentication devices as provided in this article. The Secretary of State is further authorized to contract with a public or private entity to serve as certification authority for the State of West Virginia. The certification authority may contract with persons to provide certification services. Any contract entered into must require the certification authority to meet the requirements of this article and any rules promulgated by the Secretary of State.

(c) Nothing contained in this article may be construed to mandate any specific form of technology, process or standard to be the only technology, process or standard which may be utilized by state entities. Nor may anything contained in this article be construed to limit the Secretary of State in adopting by legislative rule, alternative technologies to authorize electronic signatures and electronic postmarks.

(d) Nothing contained in this article may be construed to authorize the use of electronic signatures, electronic postmarks, or both, to effect service of a summons and complaint.

§39A-3-4. Secretary of state; liability.

The Secretary of State, serving as authority and repository of signature keys for governmental entities shall revoke any signature key when the secretary has reason to believe that the digital signature key has been stolen, fraudulently used or otherwise compromised. This article creates no liability upon the Secretary of State for any transaction compromised by any illegal act or inappropriate uses associated with electronic signatures.

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§39A-3-5. 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.

WV Legislature

§39A-4-1. Short title.

This article may be cited as the Uniform Real Property Electronic Recording Act.

WV Legislature

§39A-4-2. Definitions.

For purposes of this article, the following terms shall have the meanings stated below:

(1) "Document" means information that is:

(A) Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) Eligible to be recorded in the land records maintained by the clerk of the county commission, herein after "county clerk" or "clerk".

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

(3) "Electronic document" means a document that is received by the county clerk in an electronic form.

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

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

(6) "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.

§39A-4-3. Validity of electronic documents.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document satisfying the requirements of this article.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature on a document that complies with the electronic notarization procedure under §39-4-19 of this code and §153 CSR 45.

§39A-4-4. Recording of documents.

(a) In this section, "paper document" means a document that is received by the county clerk in a form that is not electronic.

(b) A county clerk:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards established by the Real Property Electronic Recording Standards Advisory Committee pursuant to §39A-4-5 of this code;

(2) May receive, index, store, archive, and transmit electronic documents;

(3) May provide for access to, and search and retrieval of, documents and information by electronic means;

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index;

(5) May convert paper documents accepted for recording into electronic form;

(6) May convert information recorded before the clerk began to record electronic documents into electronic form;

(7) May accept electronically any fee or tax relating to electronic recording of real property documents that the clerk is authorized to collect; and

(8) May agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

§39A-4-5. Administration and standards.

(a) For the purpose of keeping the standards and practices of county clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially the Uniform Real Property Electronic Recording Act, and to keep the technology used by clerks in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this act, the Secretary of State shall establish the Real Property Electronic Recording Standards Advisory Committee, developed pursuant to this article, to assist in the adoption, amendment, and repeal of standards and practices.

(b) The Secretary of State shall appoint at least 18 persons to serve on the committee. In selecting persons to serve on the committee, the Secretary of State shall appoint:

- (1) At least one person who is an attorney who specializes in title work;
- (2) At least one person who is a specialist in geographic information system (GIS) mapping;
- (3) A representative of the Division of Highways;
- (4) A representative of the County Clerks' Association;
- (5) A representative of the County Commissioners' Association;
- (6) A representative of the State Auditor;
- (7) A representative of the Governor's Office of Technology;
- (8) A representative of the Division of Culture and History;
- (9) A representative of the Community Bankers of West Virginia;
- (10) A representative of the West Virginia Bankers' Association;
- (11) A representative of the West Virginia Housing Development Fund;
- (12) A representative of the Real Estate Division of the Department of Administration;
- (13) A representative of the Property Tax Division of the Department of Tax and Revenue;
- (14) A representative of the West Virginia Board of Professional Surveyors;
- (15) A representative of the West Virginia Real Estate Commission;
- (16) At least one representative representing the mineral extraction industry;
- (17) A representative of the West Virginia University College of Law with experience in real property law; and

(18) A representative of the Real Estate Lawyers Division of the West Virginia State Bar Association.

(c) In establishing, amending, and repealing standards and practices for the recording of documents in electronic form, storing electronic records, and setting up systems for searching for and retrieving these land records, the committee shall consider:

(1) Standards and practices of other jurisdictions;

(2) The most recent standards promulgated by national standard-setting bodies such as the Property Records Industry Association;

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

(4) The needs of counties of varying size, population, and resources; and

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

(d) The Secretary of State, or his or her designee, shall serve as chair of the Real Property Electronic Recording Standards Advisory Committee.

(e) The Secretary of State shall:

(1) Provide administrative support to the committee; and

(2) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that contain the standards to implement this article.

(f) Each person, agency, board, and organization on the committee shall cover his or her own expenses necessitated by participation on the committee.

(g) The Secretary of State shall submit a report to the Joint Committee on Government and Finance on or before January 1 of each year until its tasks are complete. The report shall include its efforts to adopt standards in accordance with the requirements of this article and recommendations for further legislative action necessary to effectuate the purposes of this article.

§39A-4-6. Uniformity of application and construction.

In applying and construing the Uniform Real Property Electronic Recording 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

§39A-4-7. Relation to electronic signatures in global and national commerce act.

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

WV Legislature