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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998

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House Bill No. 4293

(By Delegates Staton, Varner and Caputo)

— • —
Passed March 14, 1998

In Effect from Passage

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COMMITTEE SUBSTITUTE
FOR

H. B. 4293

(BY DELEGATES STATON, VARNER AND CAPUTO)

[Passed March 14, 1998; in effect from passage.]

AN ACT to amend and reenact section ten, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty-nine of said code by adding thereto a new article, designated article five, all relating generally to the authorization of electronic signatures where written signatures are currently required; establishing legislative findings; providing definitions; allowing for the acceptance of certain electronic signatures where a rule of law requires a signature; authorizing the secretary of state and the state auditor to propose legislative and emergency rules authorizing governmental electronic signatures; authorizing the secretary of state to be the digital key depository and authority and authorizing the secretary of state to contract with a private entity to serve as the digital key depository and authority; allowing all governmental entities to participate in the electronic and digital signature program with certain conditions and limitations; authorizing public use of electronic signatures with certain requirements; limitation of liability for the secretary of state; and providing for admissibility of electronic signatures and other electronic records legal proceeding as evidence.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter thirty-nine of said code be amended by adding thereto a new article, designated article five, all to read as follows:

CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS, DEFINITIONS, AND LEGAL CAPACITY.

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-10. Rules for construction of statutes.

1 The following rules shall be observed in the
2 construction of statutes, unless a different intent on the
3 part of the Legislature be apparent from the context:

4 (a) A word importing the singular number only may
5 be applied to several persons or things, as well as to one
6 person or thing; a word importing the plural number only
7 may be applied to one person or thing as well as to
8 several; and a word importing the masculine gender only
9 may be applied to females as well as males;

10 (b) Words purporting to give a joint authority to three
11 or more persons confer such authority upon a majority of
12 them, and not upon any less number;

13 (c) The words "written" or "in writing" include any
14 representation of words, letters or figures, whether by
15 printing, engraving, writing or otherwise. But when the
16 signature of any person is required, it must be in his or her
17 own proper handwriting, or his or her mark, attested,
18 proved or acknowledged: *Provided*, That unless a
19 provision of this code specifically provides otherwise, an
20 electronic signature satisfies this signature requirement if
21 the electronic signature meets the requirements of
22 subsection (a), section three, article five, chapter thirty nine
23 of this code;

24 (d) The words "preceding," "succeeding" or
25 "following" used in reference to any section or sections of
26 a chapter or statute, mean next preceding, next succeeding

27 or next following that in which such reference is made,
28 unless a different interpretation be required by the
29 context;

30 (e) An officer shall be deemed to have qualified when
31 he or she has done all that is required by law to be done
32 before proceeding to exercise the authority and discharge
33 the duties of his or her office;

34 (f) The words "the governor" are equivalent to "the
35 executive of the state" or "the person having the executive
36 power";

37 (g) "Justice" or "justices" as used in article one, chapter
38 fifty-one of this code and in other references to a member
39 or members of the supreme court of appeals shall mean
40 and apply to a judge or the judges of said court as
41 provided for in the constitution of the state. The word
42 "justice" in any other context is equivalent to the words
43 "justice of the peace," and the word "notary" is equivalent
44 to "notary public";

45 (h) The word "state," when applied to a part of the
46 United States and not restricted by the context, includes
47 the District of Columbia and the several territories, and the
48 words "United States" also include the said district and
49 territories;

50 (i) The word "person" or "whoever" shall include
51 corporations, societies, associations and partnerships, if not
52 restricted by the context;

53 (j) The words "personal representative" include the
54 executor of a will, the administrator of the estate of a
55 deceased person, the administrator of such estate with the
56 will annexed, the administrator de bonis non of such
57 estate, whether there be a will or not, the sheriff or other
58 officer lawfully charged with the administration of the
59 estate of a deceased person, and every other curator or
60 committee of a decedent's estate for or against whom suits
61 may be brought for causes of action which accrued to or
62 against such decedent;

63 (k) The word "will" embraces a testament, a codicil, an
64 appointment by will or writing in the nature of a will in

65 exercise of a power, also any other testamentary
66 disposition;

67 (l) The word "judgment" includes decrees and orders
68 for the payment of money or the conveyance or delivery
69 of land or personal property, or some interest therein, or
70 any undertaking, bond or recognizance which has the
71 legal effect of a judgment;

72 (m) The words "under disability" include persons
73 under the age of eighteen years, insane persons, and
74 convicts while confined in the penitentiary;

75 (n) The words "insane person" include everyone who
76 has mental illness as defined in section two, article one,
77 chapter twenty-seven of this code;

78 (o) The word "convict" means a person confined in the
79 penitentiary of this or any other state, or of the United
80 States;

81 (p) The word "land" or "lands" and the words "real
82 estate" or "real property" include lands, tenements and
83 hereditaments, all rights thereto and interests therein
84 except chattel interests;

85 (q) The words "personal estate" or "personal property"
86 include goods, chattels, real and personal, money, credits,
87 investments and the evidences thereof;

88 (r) The word "property" or "estate" embraces both real
89 and personal estate;

90 (s) The word "offense" includes every act or omission
91 for which a fine, forfeiture or punishment is imposed by
92 law;

93 (t) The expression "laws of the state" includes the
94 constitution of the state and the constitution of the United
95 States, and treaties and laws made in pursuance thereof;

96 (u) The word "town" includes a city, village or town,
97 and the word "council," any body or board, whether
98 composed of one or more branches, who are authorized to
99 make ordinances for the government of a city, town or
100 village;

101 (v) When a council of a town, city or village, or any
102 board, number of persons or corporations, are authorized
103 to make ordinances, bylaws, rules, regulations or orders, it
104 shall be understood that the same must be consistent with
105 the laws of this state;

106 (w) The words "county court" include any existing
107 tribunal created in lieu of a county court; the words
108 "commissioner of the county court" and "county
109 commissioner" mean, and have reference to, the
110 commissioners, or one of them, composing the county
111 court, in pursuance of section twenty-two, article eight of
112 the constitution, as amended, or any existing tribunal
113 created in lieu of a county court;

114 (x) The word "horse" embraces a stallion, a mare and a
115 gelding;

116 (y) The words "railroad" and "railway" shall be
117 construed by the courts of this state to mean the same
118 thing in law; and, in any proceeding wherein a railroad
119 company or a railway company is a party, it shall not be
120 deemed error to call a railroad company a railway
121 company or vice versa; nor shall any demurrer, plea or
122 any other defense be set up to a motion, pleading or
123 indictment in consequence of such misdescription;

124 (z) The sectional headings or headlines of the several
125 sections of this code printed in black-faced type are
126 intended as mere catchwords to indicate the contents of
127 the section and shall not be deemed or taken to be titles of
128 such sections, or as any part of the statute; and, unless
129 expressly so provided, they shall not be so deemed when
130 any of such sections, including the headlines, are amended
131 or reenacted;

132 (aa) The words "infant" and "minor" mean persons
133 under the age of eighteen years as such words are used in
134 this code or in rules and regulations promulgated by the
135 supreme court of appeals;

136 (bb) A statute is presumed to be prospective in its
137 operation unless expressly made retrospective;

138 (cc) Unless there is a provision in a section, article or
139 chapter of this code specifying that the provisions thereof
140 shall not be severable, the provisions of every section,
141 article or chapter of this code, whether enacted before or
142 subsequent to the effective date of this subdivision, shall
143 be severable so that if any provision of any such section,
144 article or chapter is held to be unconstitutional or void, the
145 remaining provisions of such section, article or chapter
146 shall remain valid, unless the court finds the valid
147 provisions are so essentially and inseparably connected
148 with, and so dependent upon, the unconstitutional or void
149 provision that the court cannot presume the Legislature
150 would have enacted the remaining valid provisions without
151 the unconstitutional or void one, or unless the court finds
152 the remaining valid provisions, standing alone, are
153 incomplete and are incapable of being executed in
154 accordance with the legislative intent: *Provided*, That if
155 any such section, article or chapter of this code has its own
156 severability clause, then such severability clause shall
157 govern and control with respect to such section, article or
158 chapter in lieu of the provisions of this subdivision. The
159 provisions of this subdivision shall be fully applicable to
160 all future amendments or additions to this code, with like
161 effect as if the provisions of this subdivision were set forth
162 in extenso in every such amendment or addition and were
163 reenacted as a part thereof, unless such amendment or
164 addition contains its own severability clause;

165 (dd) A reference to any section, article or chapter of
166 this code applies to all reenactments, revisions or
167 amendments thereof;

168 (ee) If a statute refers to a series of numbers or letters,
169 the first and the last numbers or letters in the series are
170 deemed to be included;

171 (ff) The words "board of regents," wherever they
172 appear in the code, means the board of trustees created by
173 section one, article one, chapter eighteen-b of this code
174 and the board of directors created by section one, article
175 one, chapter eighteen-b of this code unless the term is
176 used in relation to activities conducted solely by an
177 institution or institutions governed by article two, chapter

178 eighteen-b of this code in which case it only means the
179 board of trustees, or where the term is used in relation to
180 activities conducted solely by an institution or institutions
181 governed by article three, chapter eighteen-b of the code
182 in which case it only means the board of directors.

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 5. ELECTRONIC SIGNATURES AUTHORIZATION ACT.

§39-5-1. Legislative findings; statement of purpose.

1 The Legislature finds that the rapid and secure
2 conveyance of signed written transactions, messages and
3 official documents is essential to effective and economical
4 conduct of commercial, governmental and personal
5 affairs; and that technology is available to allow
6 instantaneous transmission of documents and to provide
7 secure means of authorization through electronic
8 signatures. Therefore, it is the purpose of this act to
9 facilitate and promote electronic commerce and online
10 government by clarifying the legal status of electronic
11 records and electronic signatures in the context of writing
12 and signing requirements imposed by law; to permit and
13 encourage the continued expansion of electronic
14 commerce and online government through the operation
15 of free market forces rather than proscriptive legislation;
16 to promote public confidence in the validity, integrity and
17 reliability of electronic commerce and online government;
18 and to promote the development of the legal and business
19 infrastructure necessary to support and encourage
20 electronic commerce and online government.

§39-5-2. Definitions.

1 As used in this article, the following words shall have
2 the following meanings:

- 3 (a) "Certificate" means a computer-based record that:
 - 4 (1) Identifies the certification authority issuing it;
 - 5 (2) Names or identifies its subscriber;
 - 6 (3) Contains the subscriber's public key; and

7 (4) Is digitally signed by the certification authority
8 issuing it.

9 (b) "Certification authority" means a person who
10 issues a certificate.

11 (c) "Electronic" means electrical, digital, magnetic,
12 optical, electromagnetic, or any other technology that is
13 similar to these technologies.

14 (d) "Electronic record" means a record generated,
15 communicated, received, or stored by electronic means.

16 (e) "Electronic signature" means any identifier or
17 authentication technique attached to or logically
18 associated with an electronic record that is intended by the
19 person using it to have the same force and effect as a
20 manual signature. Electronic signatures include, but are
21 not limited to the following:

22 (1) A "digitized signature" which consists of a
23 handwritten signature entered on a recording device
24 utilizing electronic recording software which
25 simultaneously converts the image created to a digital
26 record and attaches it to the electronic document to which
27 it relates;

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

35 (3) A "digital signature" which consists of a message
36 transformed using an asymmetric cryptosystem so that a
37 person having the initial message and the signer's public
38 key can accurately determine:

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

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

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

§39-5-3. Acceptance of electronic signatures generally.

1 (a) Where a rule of law requires a signature, or
2 provides for certain consequences in the absence of a
3 signature, that rule may be satisfied by an electronic
4 signature, if:

5 (1) The type of electronic signature provided is
6 authorized according to the provisions of this article by
7 the person or governmental entity receiving the message;

8 (2) The original digitized signature, digital mark or
9 digital signature was affixed by the signer with the
10 intention of signing the message, or the facsimile digitized
11 signature was affixed by the signer's designee with the
12 authority of the signer; and

13 (3) The recipient has no knowledge or notice that the
14 signer either:

15 (A) Breached a duty; or

16 (B) Does not rightfully hold the access code used to
17 affix the digital mark or the private key used to affix the
18 digital signature.

19 (b) Nothing in this article:

20 (1) Precludes an electronic signature from being valid
21 as a signature under other applicable law;

22 (2) May be construed to obligate a recipient or any
23 other person asked to rely on an electronic signature to
24 accept an electronic signature or to respond to an
25 electronic message containing an electronic signature; or

26 (3) Precludes the recipient of an electronic signature
27 or an electronic message containing an electronic

28 signature from establishing the conditions under which the
29 recipient will accept an electronic signature.

§39-5-4. Duties of the secretary of state and state auditor; state agencies use of electronic signatures.

1 (a) The secretary of state and state auditor shall
2 propose joint legislative rules for promulgation in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code to establish standards and
5 processes to facilitate the use of electronic signatures in all
6 governmental transactions by state agencies subject to
7 chapter twenty-nine-a of this code. These rules shall
8 include minimum standards for secure transactions to
9 assure confidence and efficiency in legally binding
10 electronic document transactions. These rules may be
11 amended from time to time to keep the rules current with
12 new developments in technology and improvements in
13 secured transaction processes. The Legislature also
14 authorizes these rules to be initially promulgated as
15 emergency rules pursuant to article three, chapter twenty-
16 nine-a of this code.

17 (b) The secretary of state is also designated the
18 certification authority and repository for all governmental
19 agencies which are subject to chapter twenty-nine-a of this
20 code, and shall regulate transactions and digital signature
21 verifications. The secretary may enter into reciprocity
22 agreements with all state and federal governmental entities
23 to promote the efficient governmental use of electronic
24 transactions. The secretary of state may also propose
25 legislative rules for issuing certificates that bind public
26 keys to individuals, and other electronic transaction
27 authentication devices as provided for in section three.
28 The secretary of state is further authorized to contract with
29 a private entity to serve as certification authority for the
30 state of West Virginia. This private certification authority
31 may contract with persons to provide certification service.
32 Any contract entered into must assure the certification
33 authority will meet the requirements of this act and any
34 rules promulgated pursuant to this subsection.

35 (c) Nothing contained in this act shall be construed to
36 mandate any specific form of technology, process or
37 standard to be the only technology, process or standard
38 which may be utilized by state entities, nor shall limit the
39 secretary of state and state auditor in adopting by
40 legislative rule, alternative technologies to authorize
41 electronic signatures.

§39-5-5. Acceptance of electronic signature by governmental entities in satisfaction of signature requirement.

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

7 (b) Any governmental entity may elect to participate
8 and utilize the secretary of state's digital signature
9 authority and registry. Upon acceptance of and
10 registration with the secretary of state's digital signature
11 authority and registry, the governmental entity's
12 electronic transactions are bound to the regulation of the
13 authority and registry and those rules promulgated
14 thereunder. Any governmental entity not required to
15 participate, but which elects to participate, may withdrawal
16 at any time from the program, upon notification of the
17 secretary of state and all others who utilize that entity's
18 digital signature program.

19 (c) Any governmental entities may adopt, in the
20 manner provided by law, an ordinance, rule or official
21 policy designating the documents on which electronic
22 signatures are authorized, and the type or types of
23 electronic signatures which may be accepted for each type
24 of document. Those governmental entities not subject to
25 the provisions of chapter twenty-nine-a of this code, which
26 proposes to authorize the acceptance of electronic
27 signatures on documents filed with that entity shall give
28 public notice of the proposed adoption in an manner

29 prescribed by law, an ordinance, rule or official policy, but
30 in no case for less than thirty days before adoption.

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

**§39-5-6. Acceptance of electronic signatures by persons other
than governmental entities.**

1 (a) Where a commercial or other transaction between
2 persons other than governmental entities consists in part of
3 a message which requires the signature of one or more
4 parties to the transaction, an electronic signature shall be a
5 valid signature if authorized and accepted by the receiving
6 party and made in good faith by the signing party or
7 parties.

8 (b) The receiving party may determine the type or
9 types of electronic signatures which will be accepted for
10 particular types of messages or transactions.

11 (1) The receiving party shall give notice to the
12 prospective signing party of the type or types of electronic
13 signatures which will be accepted for the particular type of
14 message or transaction; and

15 (2) The receiving party may confirm to the signer the
16 receipt and acceptance of an electronic message
17 containing an electronic signature.

§39-5-7. Secretary of state; liability.

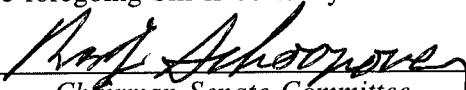
1 The secretary of state, serving as authority and
2 repository for governmental entities for signature keys
3 shall revoke any signature key when the secretary has
4 reason to believe that the digital signature key has been
5 stolen, fraudulently used or otherwise compromised. This
6 article creates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

§39-5-8. Admissibility into evidence.

1 In any legal proceeding, nothing in the application or
2 the rules of evidence shall apply so as to deny the
3 admissibility of an electronic record or electronic
4 signature into evidence solely on the ground that it is an
5 electronic record or electronic signature, or, on the
6 grounds that it is not in its original form or is not an
7 original.

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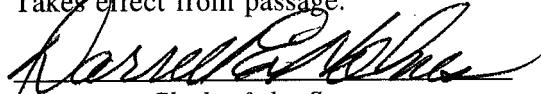
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

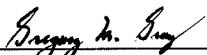

Bert Schoonover
Chairman Senate Committee

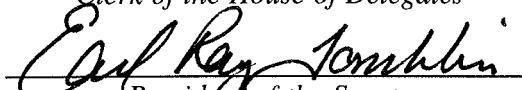

Dick Gantner
Chairman House Committee

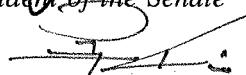
Originating in the House.

Takes effect from passage.

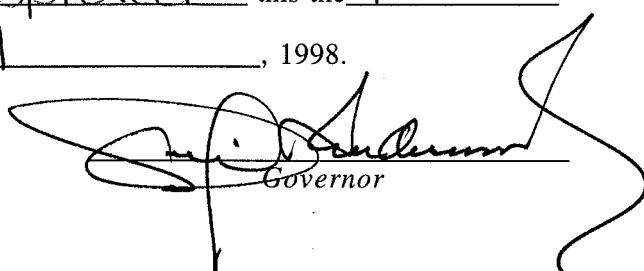

Darrell E. Blase
Clerk of the Senate


Gregory D. Gray
Clerk of the House of Delegates


Earl Ray Tomblin
President of the Senate


J. W. T.
Speaker of the House of Delegates

The within Approved this the 1st
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 11:15 am