WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

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ENROLLED

House Bill No. 4293
(By Delegates Staton, Varner and Caputo)

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Passed March 14, 1998

In Effect from Passage
ENROLLED

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.
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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 construction of statutes, unless a different intent on the part of the Legislature be apparent from the context:

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

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

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

5 (d) The words "preceding," "succeeding" or "following" used in reference to any section or sections of a chapter or statute, mean next preceding, next succeeding
or next following that in which such reference is made, unless a different interpretation be required by the context;

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

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

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

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

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

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

(k) The word "will" embraces a testament, a codicil, an appointment by will or writing in the nature of a will in
exercise of a power, also any other testamentary disposition;

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

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

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

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

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

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

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

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

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

(u) The word "town" includes a city, village or town, and the word "council," any body or board, whether composed of one or more branches, who are authorized to make ordinances for the government of a city, town or village;
(v) When a council of a town, city or village, or any board, number of persons or corporations, are authorized to make ordinances, bylaws, rules, regulations or orders, it shall be understood that the same must be consistent with the laws of this state;

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

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

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

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

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

(bb) A statute is presumed to be prospective in its operation unless expressly made retrospective;
(cc) Unless there is a provision in a section, article or chapter of this code specifying that the provisions thereof shall not be severable, the provisions of every section, article or chapter of this code, whether enacted before or subsequent to the effective date of this subdivision, shall be severable so that if any provision of any such section, article or chapter is held to be unconstitutional or void, the remaining provisions of such section, article or chapter shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent: Provided, That if any such section, article or chapter of this code has its own severability clause, then such severability clause shall govern and control with respect to such section, article or chapter in lieu of the provisions of this subdivision. The provisions of this subdivision shall be fully applicable to all future amendments or additions to this code, with like effect as if the provisions of this subdivision were set forth in extenso in every such amendment or addition and were reenacted as a part thereof, unless such amendment or addition contains its own severability clause;

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

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

(ff) The words "board of regents," wherever they appear in the code, means the board of trustees created by section one, article one, chapter eighteen-b of this code and the board of directors created by section one, article one, chapter eighteen-b of this code unless the term is used in relation to activities conducted solely by an institution or institutions governed by article two, chapter
CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 5. ELECTRONIC SIGNATURES AUTHORIZATION ACT.

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

The Legislature finds that the rapid and secure conveyance of signed written transactions, messages and official documents is essential to effective and economical conduct of commercial, governmental and personal affairs; and that technology is available to allow instantaneous transmission of documents and to provide secure means of authorization through electronic signatures. Therefore, it is the purpose of this act to facilitate and promote electronic commerce and online government by clarifying the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law; to permit and encourage the continued expansion of electronic commerce and online government through the operation of free market forces rather than prescriptive legislation; to promote public confidence in the validity, integrity and reliability of electronic commerce and online government; and to promote the development of the legal and business infrastructure necessary to support and encourage electronic commerce and online government.


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

(a) “Certificate” means a computer-based record that:

(1) Identifies the certification authority issuing it;

(2) Names or identifies its subscriber;

(3) Contains the subscriber’s public key; and
(4) Is digitally signed by the certification authority issuing it.

(b) “Certification authority” means a person who issues a certificate.

c) “Electronic” means electrical, digital, magnetic, optical, electromagnetic, or any other technology that is similar to these technologies.

d) “Electronic record” means a record generated, communicated, received, or stored by electronic means.

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

(1) A “digitized signature” which consists of a handwritten signature entered on a recording device utilizing electronic recording software which simultaneously converts the image created to a digital record and attaches it to the electronic document to which it relates;

(2) A “digital mark” which 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

(3) A “digital signature” which 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

(38)
(B) Whether the initial message has been altered since
the message was transformed.

(f) “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.


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

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

(2) The original digitized signature, digital mark or
digital signature was affixed by the signer with the
intention of signing the message, or the facsimile digitized
signature was affixed by the signer’s designee with the
authority of the signer; and

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

(A) Breached a duty; or

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

(b) Nothing in this article:

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

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

(3) Precludes the recipient of an electronic signature
or an electronic message containing an electronic
signature from establishing the conditions under which the recipient will accept an electronic signature.

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

(a) The secretary of state and state auditor shall propose joint 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. These rules shall include minimum standards for secure transactions to assure confidence and efficiency in legally binding electronic document transactions. These rules may be amended from time to time to keep the rules current with new developments in technology and improvements in secured transaction processes. The Legislature also authorizes these rules to be initially promulgated as emergency rules pursuant to article three, chapter twenty-nine-a of this code.

(b) The secretary of state is also 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 reciprocity agreements with all state and federal governmental entities to promote the efficient governmental use of electronic transactions. The secretary of state may also propose legislative rules for issuing certificates that bind public keys to individuals, and other electronic transaction authentication devices as provided for in section three. The secretary of state is further authorized to contract with a private entity to serve as certification authority for the state of West Virginia. This private certification authority may contract with persons to provide certification service. Any contract entered into must assure the certification authority will meet the requirements of this act and any rules promulgated pursuant to this subsection.
(c) Nothing contained in this act shall 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 shall limit the secretary of state and state auditor in adopting by legislative rule, alternative technologies to authorize electronic signatures.

§39-5-5. 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 those rules promulgated thereunder. Any governmental entity not required to participate, but which elects to participate, may withdrawal 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 entities may adopt, in the manner provided by law, an ordinance, rule or official policy designating the documents on which electronic signatures 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 proposes to authorize the acceptance of electronic signatures on documents filed with that entity shall give public notice of the proposed adoption in an 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 shall do so by the same means and with the same notice as required in this section for adoption.

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

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

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

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

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

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

The secretary of state, serving as authority and repository for governmental entities for signature keys 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.

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

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the 15th day of April, 1998.

[Signature]
Governor