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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2001*

**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 204**

**(By Senator Snyder, et al )**

**PASSED April 14, 2001**

**In Effect 90 days from Passage**

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 204**

(SENATORS SNYDER, FANNING, MCCABE, OLIVERIO, ROSS,  
DEEM AND MINARD, *original sponsors*)

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[Passed April 14, 2001; in effect ninety days from passage.]

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AN ACT to repeal article ~~thirty-nine~~<sup>five</sup>, chapter ~~five~~<sup>thirty-nine</sup> of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said code by adding thereto a new chapter, designated chapter thirty-nine-a; to amend chapter forty-six-a of said code by adding thereto a new article, designated article six-i; and to amend article eight, chapter fifty-five of said code by adding thereto a new section, designated section fifteen, all relating generally to electronic commerce and the uniform electronic transactions act; defining terms; adopting the uniform electronic transaction act; providing that the act applies to electronic records and electronic signatures relating to transactions covered by the act; creating exemptions; providing that the act does not create or alter substantive law; applying the act upon

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agreement of the parties to a transaction; providing that parties may vary the effect of the act by agreement; providing that the right not to conduct transactions by electronic means may not be waived; providing for the construction and application of the act; providing that records, signatures and contracts may not be denied legal effect or enforceability solely because they are in electronic form; providing that an electronic record satisfies the legal requirement that a record be in writing; providing that electronic signature satisfies the legal requirement for a signature; recognizing the legal effect of providing or sending information by electronic means; establishing the requirements for providing or sending information by electronic means; providing that when a law, other than this act, contains specific requirements for a record, an electronic record must meet those requirements; providing that an electronic record or signature is attributable to the person creating it; establishing requirements for showing an electronic record or signature was created by a specific person; providing protection for the conforming party against the nonconforming party in the event of a change or error; establishing a procedure for correcting errors; establishing when other law applies when a error or change has occurred; authorizing electronic notarization and acknowledgment; establishing requirements for retention of electronic records as originals; providing that a legal requirement to retain or present a record, including a check, in its original form may be satisfied by an electronic record; providing that an electronic record may satisfy the legal requirements for retaining records for evidentiary, audit or like purposes unless specifically prohibited by law; providing that an electronic record or signature may not be excluded from evidence solely because it is in electronic form; authorizing formation of contracts through automated transactions; providing that the terms of a contract formed by an automated transaction will be determined by applicable substantive law; establishing the conditions under which an electronic record is considered to have been sent; establishing the conditions under which an electronic record is considered to have been received; providing that an electronic record

will be deemed to have been sent from the sender's place of business; providing that an electronic record will be deemed to have been received at the receiver's place of business; providing that, where the sender or receiver 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; providing that if the sender or receiver does not have a place of business, the place of business of that person is his or her residence; providing that an electronic record is received even if no individual is aware of its receipt; providing that receipt of an electronic acknowledgment from an information processing system establishes that the record was sent but does not, by itself, establish that the content received is the same as what was sent; establishing the circumstances under which the legal effect of sending or receipt of an electronic record is controlled by other applicable law; providing that parts of this article may not be waived or varied by an agreement between the parties; defining transferrable records for purposes of using electronic means to transfer or maintain such records; establishing the requirements for using electronic means to transfer or maintain transferable records; providing for the applicability of the uniform commercial code to electronic transferable records; stating relationship with federal law; requiring information be given to consumer prior to obtaining consent; requiring consumer consent to electronic transactions; providing for withdrawal of consent; requiring consumer be informed when certain changes occur; providing that nothing in article affects content or timing of disclosure or other requirements under applicable substantive law; providing for effect of failure to obtain electronic consent or confirmation; providing that this article does not apply to consumer consent given or records provided prior to the enactment of this act; providing that oral communication or recording of an oral communication is not an electronic record; providing for retention, accuracy and accessibility of electronic records; providing that requirements for retaining originals and checks may be met by electronic means; providing that the legal effect, validity or enforceability of an electronic

record may be denied if the electronic record is not in a form that can be retained and accurately reproduced; providing for certain notices that may not be sent in electronic form; providing for severability; providing for the applicability of the consumer protection portions of the federal electronic signatures in global and national commerce act; providing definitions; establishing the requirements for the acceptance of electronic signatures by governmental entities; requiring governmental entities choosing to use electronic signatures to participate in the secretary of state's registry and follow the secretary of state's rules; authorizing governmental entities to adopt an ordinance, rule or official policy relating to use of digital signatures; requiring public notice of a governmental entity's acceptance of electronic signatures; authorizing the secretary of state to propose legislative rules relating to the standards and processes for the use of electronic signatures by governmental entities; designating the secretary of state as the certification authority and repository for certain governmental agencies using electronic signatures; requiring the secretary of state to regulate electronic transactions and digital signature verifications; setting forth the powers and duties of the secretary of state with regard to governmental use of electronic transactions; providing that no specific form of technology, process or standard is required by this article; authorizing the secretary of state to revoke a signature key believed to be stolen, fraudulently used or otherwise compromised; providing that the secretary of state is not liable for any transaction compromised by an illegal act or inappropriate use of an electronic signature; providing for severability; defining terms; providing for electronic response to electronic notices; explaining when an electronic record is actually received; providing for electronic transferable records; explaining relationship to federal law; providing for waiver; providing for severability; and establishing a choice of law limitation providing that the laws of West Virginia are applicable for any computer information agreements.

*Be it enacted by the Legislature of West Virginia:*

That article <sup>five</sup>~~thirty-nine~~, chapter <sup>thirty-nine</sup>~~five~~ of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said code be amended by adding thereto a new chapter, designated chapter thirty-nine-a; that chapter forty-six-a of said code be amended by adding thereto a new article, designated article six-i; and that article eight, chapter fifty five of said code be amended by adding thereto a new section, designated section fifteen, all to read as follows:

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**CHAPTER 39A. ELECTRONIC COMMERCE.**

**ARTICLE 1. UNIFORM ELECTRONIC TRANSACTIONS ACT.**

**§39A-1-1. Short title.**

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

**§39A-1-2. Definitions.**

1 In this chapter:

2 (1) "Agreement" means the bargain of the parties in  
3 fact, as found in their language or inferred from other  
4 circumstances and from rules, regulations and procedures  
5 given the effect of agreements under laws otherwise  
6 applicable to a particular transaction.

7 (2) "Automated transaction" means a transaction  
8 conducted or performed, in whole or in part, by electronic  
9 means or electronic records in which the acts or records of  
10 one or both parties are not reviewed by an individual in  
11 the ordinary course in forming a contract, performing  
12 under an existing contract or fulfilling an obligation  
13 required by the transaction.

14 (3) "Computer program" means a set of statements or  
15 instructions to be used directly or indirectly in an informa-  
16 tion processing system in order to bring about a certain  
17 result.

18 (4) "Contract" means the total legal obligation resulting  
19 from the parties' agreement as affected by this article and  
20 other applicable law.

21 (5) "Electronic" means relating to technology having  
22 electrical, digital, magnetic, wireless, optical, electromag-  
23 netic or similar capabilities.

24 (6) "Electronic agent" means a computer program or an  
25 electronic or other automated means used independently  
26 to initiate an action or respond to electronic records or  
27 performances, in whole or in part, without review or  
28 action by an individual.

29 (6) "Electronic record" means a record created, gener-  
30 ated, sent, communicated, received or stored by electronic  
31 means.

32 (7) "Electronic signature" means an electronic sound,  
33 symbol or process attached to or logically associated with  
34 a record and executed or adopted by a person with the  
35 intent to sign the record.

36 (9) "Governmental agency" means an executive, legisla-  
37 tive or judicial agency, department, board, commission,  
38 authority, institution or instrumentality of the federal  
39 government or of a state or of a county, municipality or  
40 other political subdivision of a state.

41 (10) "Information" means data, text, images, sounds,  
42 codes, computer programs, software, databases or the like.

43 (11) "Information processing system" means an elec-  
44 tronic system for creating, generating, sending, receiving,  
45 storing, displaying or processing information.

46 (12) "Person" means an individual, corporation, business  
47 trust, estate, trust, partnership, limited liability company,  
48 association, joint venture, governmental agency, public  
49 corporation or any other legal or commercial entity.

50 (13) "Record" means information that is inscribed on a  
51 tangible medium or that is stored in an electronic or other  
52 medium and is retrievable in perceivable form.

53 (14) "Security procedure" means a procedure employed  
54 for the purpose of verifying that an electronic signature,  
55 record or performance is that of a specific person or for  
56 detecting changes or errors in the information in an  
57 electronic record. The term includes a procedure that  
58 requires the use of algorithms or other codes, identifying  
59 words or numbers, encryption or callback or other ac-  
60 knowledgment procedures.

61 (15) "State" means a state of the United States, the  
62 District of Columbia, Puerto Rico, the United States  
63 Virgin Islands or any territory or insular possession  
64 subject to the jurisdiction of the United States. The term  
65 includes an Indian tribe or band or Alaskan native village  
66 which is recognized by federal law or formally acknowl-  
67 edged by a state.

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

**§39A-1-3. Scope.**

1 (a) Except as otherwise provided in subsection (d) of this  
2 section, this article applies to electronic records and  
3 electronic signatures relating to a transaction.

4 (b) This chapter does not apply to a transaction to the  
5 extent it is governed by:

6 (1) A law governing the creation and execution of wills,  
7 codicils or testamentary trusts; and

8 (2) The Uniform Commercial Code other than sections  
9 one hundred seven and two hundred six, article one,  
10 chapter forty-six of this code and articles two and two-a  
11 of said chapter.



12 (c) This article applies to an electronic record or elec-  
13 tronic signature otherwise excluded from the application  
14 of this article under subsection (b) of this article to the  
15 extent it is governed by a law other than those specified in  
16 said subsection.

17 (d) A transaction subject to this article is also subject to  
18 other applicable substantive law.

**§39A-1-4. Prospective application.**

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

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

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

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

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

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

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

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

1 This article must be construed and applied:

2 (1) To facilitate electronic transactions consistent with  
3 other applicable law;

4 (2) To be consistent with reasonable practices concern-  
5 ing electronic transactions and with the continued expan-  
6 sion of those practices; and

7 (3) To effectuate its general purpose to make uniform  
8 the law with respect to the subject of this article among  
9 states enacting it.

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

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

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

6 (c) If a law requires a record to be in writing, an elec-  
7 tronic record satisfies the law.

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

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

1 (a) If parties have agreed to conduct a transaction by  
2 electronic means and a law requires a person to provide,  
3 send or deliver information in writing to another person,  
4 the requirement is satisfied if the information is provided,  
5 sent or delivered, as the case may be, in an electronic

6 record capable of retention by the recipient at the time of  
7 receipt. An electronic record is not capable of retention by  
8 the recipient if the sender or its information processing  
9 system inhibits the ability of the recipient to print or store  
10 the electronic record.

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

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

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

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

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

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

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

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

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

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

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

**§39A-1-10. Effect of change or error.**

1 If a change or error in an electronic record occurs in a  
2 transmission between parties to a transaction, the follow-  
3 ing rules apply:

4 (1) If the parties have agreed to use a security procedure  
5 to detect changes or errors and one party has conformed to  
6 the procedure, but the other party has not and the  
7 nonconforming party would have detected the change or  
8 error had that party also conformed, the conforming party  
9 may avoid the effect of the changed or erroneous elec-  
10 tronic record.

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

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

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

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

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

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

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

1 If a law requires a signature or record to be notarized,  
2 acknowledged, verified or made under oath, the require-  
3 ment is satisfied if the electronic signature of the person  
4 authorized to perform those acts, together with all other  
5 information required to be included by other applicable  
6 law, is attached to or logically associated with the signa-  
7 ture or record.

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

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

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

7 (2) Remains accessible for later reference.

8 (b) A requirement to retain a record in accordance with  
9 subsection (a) of this section does not apply to any infor-

10 mation the sole purpose of which is to enable the record to  
11 be sent, communicated or received.

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

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

20 (e) If a law requires retention of a check, that require-  
21 ment is satisfied by retention of an electronic record of the  
22 information on the front and back of the check in accor-  
23 dance with subsection (a) of this section.

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

30 (g) This section does not preclude a governmental agency  
31 of this state from specifying additional requirements for  
32 the retention of a record subject to the agency's jurisdic-  
33 tion.

**§39A-1-13. Admissibility in evidence.**

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

**§39A-1-14. Automated transaction.**

1 In an automated transaction, the following rules apply:

2 (1) A contract may be formed by the interaction of  
3 electronic agents of the parties, even if no individual was  
4 aware of or reviewed the electronic agents' actions or the  
5 resulting terms and agreements.

6 (2) A contract may be formed by the interaction of an  
7 electronic agent and an individual, acting on the individ-  
8 ual's own behalf or for another person, including by an  
9 interaction in which the individual performs actions that  
10 the individual is free to refuse to perform and which the  
11 individual knows or has reason to know will cause the  
12 electronic agent to complete the transaction or perfor-  
13 mance.

14 (3) The terms of the contract are determined by the  
15 substantive law applicable to it.

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

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

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

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

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

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

17 (1) It enters an information processing system that the  
18 recipient has designated or uses for the purpose of receiv-  
19 ing electronic records or information of the type sent and  
20 from which the recipient is able to retrieve the electronic  
21 record; and

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

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

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

34 (1) If the sender or recipient has more than one place of  
35 business, the place of business of that person is the place  
36 having the closest relationship to the underlying transac-  
37 tion;

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

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

43 (f) Receipt of an electronic acknowledgment from an  
44 information processing system described in subsection (b)  
45 of this section establishes that a record was received but,  
46 by itself, does not establish that the content sent corre-  
47 sponds to the content received.

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



**§39A-1-16. Transferable records.**

1 (a) In this section, “transferable record” means an  
2 electronic record that:

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

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

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

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

17 (1) A single authoritative copy of the transferable record  
18 exists which is unique, identifiable and, except as other-  
19 wise provided in subdivisions (4), (5) and (6) of this  
20 subsection, unalterable;

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

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

25 (B) If the authoritative copy indicates that the transfer-  
26 able record has been transferred, the person to which the  
27 transferable record was most recently transferred;

28 (3) The authoritative copy is communicated to and  
29 maintained by the person asserting control or its desig-  
30 nated custodian;

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

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

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

39 (d) Except as otherwise agreed, a person having control  
40 of a transferable record is the holder, as defined in section  
41 two hundred one, article one, chapter forty-six of this  
42 code, of the transferable record and has the same rights  
43 and defenses as a holder of an equivalent record or writing  
44 under said chapter, including, if the applicable statutory  
45 requirements under section three hundred two, article  
46 three of said chapter, section five hundred one, article  
47 seven of said chapter or section three hundred eight,  
48 article nine of said chapter are satisfied, the rights and  
49 defenses of a holder in due course, a holder to which a  
50 negotiable document of title has been duly negotiated or a  
51 purchaser, respectively. Delivery, possession and indorse-  
52 ment are not required to obtain or exercise any of the  
53 rights under this subsection.

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

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

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

1 The enactment of this article is an enactment of the  
2 uniform electronic transactions act (UETA) as approved  
3 for enactment in all of the states by the national confer-  
4 ence of commissioners on uniform state laws in one  
5 thousand nine hundred ninety-nine and is an exception to  
6 preemption of state law as permitted by section one  
7 hundred two of the federal "Electronic Signatures in  
8 Global and National Commerce Act", Public Law No. 106-  
9 229, 15 U.S.C. 7001.

**ARTICLE 2. CONSUMER PROTECTIONS AND RESPONSIBILITIES IN  
ELECTRONIC TRANSACTIONS.**

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

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

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

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

13 (A) Informing the consumer of: (i) Any right or option of  
14 the consumer to have the record provided or made avail-  
15 able on paper or in nonelectronic form; and (ii) the right of  
16 the consumer to withdraw the consent to have the record  
17 provided or made available in an electronic form and of  
18 any conditions, consequences, which may include termina-  
19 tion of the parties' relationship, or fees in the event of such  
20 withdrawal;

21 (B) Informing the consumer of whether the consent  
22 applies: (i) Only to the particular transaction which gave  
23 rise to the obligation to provide the record; or (ii) to  
24 identified categories of records that may be provided or  
25 made available during the course of the parties' relation-  
26 ship;

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

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

35 (3) The consumer:

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

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

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

51 (A) Provides the consumer with a statement of: (i) The  
52 revised hardware and software requirements for access to  
53 and retention of the electronic records; and (ii) the right to  
54 withdraw consent without the imposition of any fees for

55 such withdrawal and without the imposition of any  
56 condition or consequence that was not disclosed under  
57 subparagraph (ii), paragraph (A), subdivision two of this  
58 subsection; and

59 (B) Again complies with subdivision (3).

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

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

5 (b) If a law that was enacted prior to this article ex-  
6 pressly requires a record to be provided or made available  
7 by a specified method that requires verification or ac-  
8 knowledgment of receipt, the record may be provided or  
9 made available electronically only if the method used  
10 provides verification or acknowledgment of receipt.

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

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

**§39A-2-4. Prospective effect.**

1 Withdrawal of consent by a consumer shall not affect  
2 the legal effectiveness, validity or enforceability of elec-  
3 tronic records provided or made available to that con-  
4 sumer in accordance with section one of this article prior  
5 to implementation of the consumer's withdrawal of  
6 consent. A consumer's withdrawal of consent shall be  
7 effective within a reasonable period of time after receipt  
8 of the withdrawal by the provider of the record. Failure to

9 comply with subdivision (4), section one of this article  
10 may, at the election of the consumer, be treated as a  
11 withdrawal of consent for purposes of this subsection.

**§39A-2-5. Prior consent.**

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

**§39A-2-6. Oral communications.**

1 An oral communication or a recording of an oral com-  
2 munication shall not qualify as an electronic record for  
3 purposes of this article except as otherwise provided under  
4 applicable law.

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

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

7 (1) Accurately reflects the information set forth in the  
8 contract or other record; and

9 (2) Remains accessible to all persons who are entitled to  
10 access by statute, regulations or rule of law, for the period  
11 required by such statute, regulation or rule of law, in a  
12 form that is capable of being accurately reproduced for  
13 later reference, whether by transmission, printing or  
14 otherwise.

15 (b) A requirement to retain a contract or other record in  
16 accordance with subsection (a) of this section does not  
17 apply to any information whose sole purpose is to enable

18 the contract or other record to be sent, communicated or  
19 received.

**§39A-2-8. Retention; originals.**

1 If a statute, regulation or other rule of law requires a  
2 contract or other record relating to a transaction in or  
3 affecting interstate or foreign commerce to be provided,  
4 available or retained in its original form, or provides  
5 consequences if the contract or other record is not pro-  
6 vided, available or retained in its original form, that  
7 statute, rule, regulation or rule of law is satisfied by an  
8 electronic record that complies with section seven of this  
9 article.

**§39A-2-9. Retention; checks.**

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

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

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

**§39A-2-11. Exceptions.**

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

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

6 (2) Any notice of:

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

9 (B) Default, acceleration, repossession, foreclosure, evic-  
10 tion or the right to cure, under a credit agreement secured  
11 by, or a rental agreement for, a primary residence of an  
12 individual;

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

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

18 (3) Any document required to accompany any transpor-  
19 tation or handling of hazardous materials, pesticides or  
20 other toxic or dangerous materials.

**§39A-2-12. Severability.**

1 If any provision of this article be found by a court of  
2 competent jurisdiction to be unenforceable under the  
3 constitution of this state or the laws and constitutions of  
4 the United States, the remaining provisions of this article  
5 shall be severable and shall continue in full force and  
6 effect.

**ARTICLE 3. DIGITAL SIGNATURES; STATE ELECTRONIC RECORDS AND  
TRANSACTIONS.**

**§39A-3-1. Definitions.**

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

2 (A) Identifies the certification authority issuing it;

3 (B) Names or identifies its subscriber;



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

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

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

9 (3) "Digital mark" consists of an electronic code indicat-  
10 ing approval or confirmation which is entered into a  
11 protected digital record following access protocols which  
12 identify the user and require a password, personal identifi-  
13 cation number, encrypted card or other security device  
14 which restricts access to one or more authorized individu-  
15 als; and

16 (4) "Digital signature" consists of a message trans-  
17 formed using an asymmetric cryptosystem so that a person  
18 having the initial message and the signer's public key can  
19 accurately determine:

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

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

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

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

6 (b) Any governmental entity may elect to participate and  
7 utilize the secretary of state's digital signature authority  
8 and registry. Upon acceptance of and registration with the  
9 secretary of state's digital signature authority and registry,  
10 the governmental entity's electronic transactions are

11 bound to the regulation of the authority and registry and  
12 those rules promulgated thereunder. Any governmental  
13 entity not required to participate, but which elects to  
14 participate, may withdraw at any time from the program  
15 upon notification of the secretary of state and all others  
16 who utilize that entity's digital signature program.

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

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

**§39A-3-3. Duties of the secretary of state; state agencies use of  
electronic signatures.**

1 (a) The secretary of state shall propose legislative rules  
2 for promulgation in accordance with the provisions of  
3 article three, chapter twenty-nine-a of this code to estab-  
4 lish standards and processes to facilitate the use of elec-  
5 tronic signatures in all governmental transactions by state  
6 agencies subject to chapter twenty-nine-a of this code.  
7 The rules shall include minimum standards for secure  
8 transactions to promote confidence and efficiency in  
9 legally binding electronic document transactions. The  
10 rules may be amended from time to time to keep the rules  
11 current with new developments in technology and im-  
12 provements in secured transaction processes.

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

31 (c) Nothing contained in this article may be construed  
32 to mandate any specific form of technology, process or  
33 standard to be the only technology, process or standard  
34 which may be utilized by state entities. Nor may anything  
35 contained in this article be construed to limit the secretary  
36 of state in adopting by legislative rule, alternative technol-  
37 ogies to authorize electronic signatures.

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

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

**§39A-3-5. Severability.**

1 If any provision of this article be found by a court of  
2 competent jurisdiction to be unenforceable under the  
3 constitution of this state or the laws and constitutions of  
4 the United States, the remaining provisions of this article  
5 shall be severable and shall continue in full force and  
6 effect.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT  
AND PROTECTION ACT.**

**ARTICLE 6I. CONSUMER PROTECTIONS IN ELECTRONIC TRANSACTIONS.**

**§46A-6I-1. Definitions.**

1 (a) For purposes of this article, the terms herein have the  
2 meaning ascribed in section two, article one, chapter  
3 thirty-nine-a of this code.

4 (b) "Consumer transaction" means a transaction involv-  
5 ing an individual with respect to or primarily affecting  
6 personal, family, household or agricultural purposes.

**§46A-6I-2. Electronic response to electronic notices.**

1 In a consumer transaction, when a consumer is required  
2 to provide notice to exercise or preserve the consumer's  
3 rights under any law, the consumer may exercise or  
4 preserve that right using the same method by which the  
5 consumer was provided with notice of that right.

**§46A-6I-3. Receipt of electronic record.**

1 Notwithstanding the provisions of article one, chapter  
2 thirty-nine-a of this code, in a consumer transaction, an  
3 electronic record is not sent to or received by a party if the  
4 sender has actual knowledge that such party did not  
5 actually receive the electronic record. In that case, the  
6 sender's sole obligation shall be to take reasonable steps to  
7 attempt redelivery using information in the sender's files.  
8 This redelivery requirement is satisfied if the sender sends  
9 the electronic record to a different electronic mail address  
10 or to a postal address the sender has on file.

**§46A-6I-4. Electronic transferable records.**

1 (a) In addition to the provisions of article one, chapter  
2 thirty-nine-a of this code, this section applies to transfer-  
3 able records in a consumer transaction.

4 (b) If payment is made to a person indicated to be in  
5 control of a transferable record, as described in section  
6 sixteen, article one of this chapter, by a system employed  
7 for evidencing the transfer of interest in the transferable  
8 records, then the obligor is discharged to the extent of the  
9 payment as permitted by article three, chapter forty-six of  
10 this code.

**§46A-6I-5. Relationship with federal and state law.**

1 The requirements of this article are intended to supple-  
2 ment, not to modify, limit, or supersede, the requirements  
3 of the federal Electronic Signatures in Global and Na-  
4 tional Commerce Act, Public Law No. 106-229, 15 U.S.C.  
5 7001 or article one of this chapter.

**§46A-6I-6. Waiver.**

1 In consumer transactions, the rules and requirements set  
2 out in this article may not be changed by agreement of the  
3 parties.

**§46A-6I-7. Severability.**

1 If any provision of this article be found by a court of  
2 competent jurisdiction to be unenforceable under the  
3 constitution of this state or the laws and constitutions of  
4 the United States, the remaining provisions of this article  
5 shall be severable and shall continue in full force and  
6 effect.

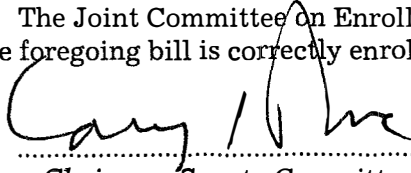
**CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;  
JUDICIAL SALE.**

**ARTICLE 8. ACTIONS ON CONTRACTS.**

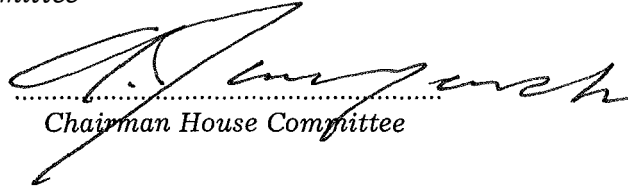
**§55-8-15. Choice of law for computer information agreements.**

1 A choice of law provision in a computer information  
2 agreement which provides that the contract is to be  
3 interpreted pursuant to the laws of a state that has enacted  
4 uniform computer information transactions act, as pro-  
5 posed by the national conference of commissioners on  
6 uniform state laws, or any substantially similar law, is  
7 voidable and the agreement shall be interpreted pursuant  
8 to the laws of this state if the party against whom enforce-  
9 ment of the choice of law provision is sought is a resident  
10 of this state or has its principal place of business located  
11 in this state. For purposes of this section, a "computer  
12 information agreement" means an agreement that would  
13 be governed by the uniform computer transactions act or  
14 substantially similar law as enacted in the state specified  
15 in the choice of laws provision if that state's laws were  
16 applied to the agreement.

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



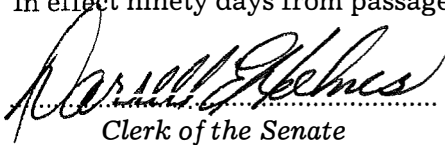
Chairman Senate Committee



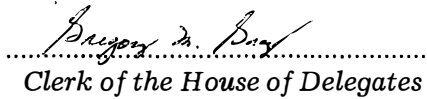
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

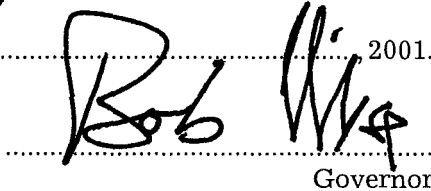


President of the Senate



Speaker House of Delegates

The within.....*is approved*..... this the...*2ND*...  
Day of.....*May*..... 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time 2:20 pm