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
AN ACT to repeal article forty-ninth, chapter fifty-five 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
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 thirty-nine, chapter thirty-nine, 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:

CHAPTER 39A. ELECTRONIC COMMERCE.

ARTICLE 1. UNIFORM ELECTRONIC TRANSACTIONS ACT.


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


In this chapter:

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

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

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this article and other applicable law.

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

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

(6) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

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

(9) "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.

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

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.
7  [Enr. Com. Sub. for S. B. No. 204]

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

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

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

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


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

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

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

(2) The Uniform Commercial Code other than sections one hundred seven and two hundred six, article one, chapter forty-six of this code and articles two and two-a of said chapter.
(c) This article applies to an electronic record or electronic signature otherwise excluded from the application of this article under subsection (b) of this article to the extent it is governed by a law other than those specified in said subsection.

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

§39A-1-4. Prospective application.

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

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

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

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

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

(d) Except as otherwise provided in this article, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this article of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.
(e) Whether an electronic record or electronic signature has legal consequences is determined by this article and other applicable law.

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

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


1 (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
2 (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
3 (c) If a law requires a record to be in writing, an electronic record satisfies the law.
4 (d) If a law requires a signature, an electronic signature satisfies the law.


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

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

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

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

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

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

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

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

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

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

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

§39A-1-10. Effect of change or error.

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

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

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

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;
(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

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

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

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


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


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

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

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) of this section does not apply to any infor-
A person may satisfy subsection (a) of this section by using the services of another person if the requirements of said subsection are satisfied.

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

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a) of this section.

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

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


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


In an automated transaction, the following rules apply:

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

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


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

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

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

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

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

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and
(2) It is in a form capable of being processed by that system.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The authoritative copy identifies the person asserting control as:

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

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

3. The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

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

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

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

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

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.
§39A-1-17. Relationship with federal law.

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-

ARTICLE 2. CONSUMER PROTECTIONS AND RESPONSIBILITIES IN
ELECTRONIC TRANSACTIONS.


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

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

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

(3) The consumer:

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

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

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

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

(B) Again complies with subdivision (3).

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

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

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

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

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

§39A-2-4. Prospective effect.

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

§39A-2-5. Prior consent.

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


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

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

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

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

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

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

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


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

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

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


The provisions of article one of this chapter do not apply to:
(1) Court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) Any notice of:

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

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

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

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

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


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

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

§39A-3-1. Definitions.

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

(A) Identifies the certification authority issuing it;

(B) Names or identifies its subscriber;
(C) Contains the subscriber's public key; and

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

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

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

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

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

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


(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 withdraw at any time from the program 
upon notification of the secretary of state and all others 
who utilize that entity's digital signature program.

(c) Any governmental entity may adopt, in the manner 
provided by law, an ordinance, rule or official policy 
designating the documents on which electronic signatures 
are authorized and the type or types of electronic signa-
tures 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 a manner prescribed by law, an 
ordinance, rule or official policy, but in no case for less 
than thirty days before adoption.

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

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

(a) The secretary of state shall propose legislative rules 
for promulgation in accordance with the provisions of 
article three, chapter twenty-nine-a of this code to estab-
lish standards and processes to facilitate the use of elec-
tronic signatures in all governmental transactions by state 
agencies subject to chapter twenty-nine-a of this code. 
The rules shall include minimum standards for secure 
transactions to promote confidence and efficiency in 
legally binding electronic document transactions. The 
rules may be amended from time to time to keep the rules 
current with new developments in technology and im-
provements in secured transaction processes.
(b) The secretary of state is designated the certification authority and repository for all governmental agencies which are subject to chapter twenty-nine-a of this code and shall regulate transactions and digital signature verifications. The secretary may enter into reciprocal agreements with all state and federal governmental entities to promote the efficient governmental use of electronic transactions. The secretary of state may propose legislative rules for issuing certificates that bind public keys to individuals, and other electronic transaction authentication devices as provided for in this article. 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 require the certification authority to meet the requirements of this article and any rules promulgated by the secretary of state.

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

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

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

§39A-3-5. Severability.
If any provision of this article be found by a court of competent jurisdiction to be unenforceable under the constitution of this state or the laws and constitutions of the United States, the remaining provisions of this article shall be severable and shall continue in full force and effect.

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

ARTICLE 61. CONSUMER PROTECTIONS IN ELECTRONIC TRANSACTIONS.

§46A-6I-1. Definitions.

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

2 (b) "Consumer transaction" means a transaction involving an individual with respect to or primarily affecting personal, family, household or agricultural purposes.

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

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


1 Notwithstanding the provisions of article one, chapter thirty-nine-a of this code, in a consumer transaction, an electronic record is not sent to or received by a party if the sender has actual knowledge that such party did not actually receive the electronic record. In that case, the sender's sole obligation shall be to take reasonable steps to attempt redelivery using information in the sender's files. This redelivery requirement is satisfied if the sender sends the electronic record to a different electronic mail address or to a postal address the sender has on file.
§46A-6I-4. Electronic transferable records.

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

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

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

The requirements of this article are intended to supplement, not to modify, limit, or supersede, the requirements of the federal Electronic Signatures in Global and National Commerce Act, Public Law No. 106-229, 15 U.S.C. 7001 or article one of this chapter.

§46A-6I-6. Waiver.

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

§46A-6I-7. Severability.

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

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

ARTICLE 8. ACTIONS ON CONTRACTS.

§55-8-15. Choice of law for computer information agreements.
A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted uniform computer information transactions act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this state or has its principal place of business located in this state. For purposes of this section, a “computer information agreement” means as agreement that would be governed by the uniform computer transactions act or substantially similar law as enacted in the state specified in the choice of laws provision if that state’s laws were 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.

Chairman Senate Committee

Chairman House Committee

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved... this the... Day of... May... 2001.

Governor