

ENGROSSED

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 204**

(By Senators Snyder, Fanning, McCabe, Oliverio, Ross, Deem and  
Minard)

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[Originating in the Committee on the Judiciary; reported March  
30, 2001.]

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A BILL to repeal article thirty-nine, chapter 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; and to amend chapter forty-six-a of said code by adding thereto a new article, designated article six-i, 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

1 transaction; providing that parties may vary the effect of  
2 the act by agreement; providing that the right not to  
3 conduct transactions by electronic means may not be waived;  
4 providing for the construction and application of the act;  
5 providing that records, signatures and contracts may not be  
6 denied legal effect or enforceability solely because they  
7 are in electronic form; providing that an electronic record  
8 satisfies the legal requirement that a record be in  
9 writing; providing that electronic signature satisfies the  
10 legal requirement for a signature; recognizing the legal  
11 effect of providing or sending information by electronic  
12 means; establishing the requirements for providing or  
13 sending information by electronic means; providing that  
14 when a law, other than this act, contains specific  
15 requirements for a record an electronic record must meet  
16 those requirements; providing that an electronic record or  
17 signature is attributable to the person creating it;  
18 establishing requirements for showing an electronic record  
19 or signature was created by a specific person; providing  
20 protection for the conforming party against the  
21 nonconforming party in the event of a change or error;  
22 establishing a procedure for correcting errors;  
23 establishing when other law applies when a error or change

1 has occurred; authorizing electronic notarization and  
2 acknowledgment; establishing requirements for retention of  
3 electronic records as originals; providing that a legal  
4 requirement to retain or present a record, including a  
5 check, in its original form may be satisfied by an  
6 electronic record; providing that an electronic record may  
7 satisfy the legal requirements for retaining records for  
8 evidentiary, audit or like purposes unless specifically  
9 prohibited by law; providing that an electronic record or  
10 signature may not be excluded from evidence solely because  
11 it is in electronic form; authorizing formation of  
12 contracts through automated transactions; providing that  
13 the terms of a contract formed by an automated transaction  
14 will be determined by applicable substantive law;  
15 establishing the conditions under which an electronic  
16 record is considered to have been sent; establishing the  
17 conditions under which an electronic record is considered  
18 to have been received; providing that an electronic record  
19 will be deemed to have been sent from the sender's place of  
20 business; providing that an electronic record will be  
21 deemed to have been received at the receiver's place of  
22 business; providing that, where the sender or receiver has  
23 more than one place of business, the place of business of

1 that person is the place having the closest relationship to  
2 the underlying transaction; providing that if the sender or  
3 receiver does not have a place of business, the place of  
4 business of that person is his or her residence; providing  
5 that an electronic record is received even if no individual  
6 is aware of its receipt; providing that receipt of an  
7 electronic acknowledgment from an information processing  
8 system establishes that the record was sent but does not,  
9 by itself, establish that the content received is the same  
10 as what was sent; establishing the circumstances under  
11 which the legal effect of sending or receipt of an  
12 electronic record is controlled by other applicable law;  
13 providing that parts of this article may not be waived or  
14 varied by an agreement between the parties; defining  
15 transferrable records for purposes of using electronic  
16 means to transfer or maintain such records; establishing  
17 the requirements for using electronic means to transfer or  
18 maintain transferable records; providing for the  
19 applicability of the uniform commercial code to electronic  
20 transferable records; providing for the applicability of  
21 the consumer protection portions of the federal electronic  
22 signatures in global and national commerce act; providing  
23 definitions; establishing the requirements for the

1 acceptance of electronic signatures by governmental  
2 entities; requiring governmental entities choosing to use  
3 electronic signatures to participate in the secretary of  
4 state's registry and follow the secretary of state's rules;  
5 authorizing governmental entities to adopt an ordinance,  
6 rule or official policy relating to use of digital  
7 signatures; requiring public notice of a governmental  
8 entity's acceptance of electronic signatures; authorizing  
9 the secretary of state to propose legislative rules  
10 relating to the standards and processes for the use of  
11 electronic signatures by governmental entities; designating  
12 the secretary of state as the certification authority and  
13 repository for certain governmental agencies using  
14 electronic signatures; requiring the secretary of state to  
15 regulate electronic transactions and digital signature  
16 verifications; setting forth the powers and duties of the  
17 secretary of state with regard to governmental use of  
18 electronic transactions; providing that no specific form of  
19 technology, process or standard is required by this  
20 article; authorizing the secretary of state to revoke a  
21 signature key believed to be stolen, fraudulently used or  
22 otherwise compromised; providing that the secretary of  
23 state is not liable for any transaction compromised by an

1 illegal act or inappropriate use of an electronic  
2 signature; providing for electronic response to electronic  
3 notices; explaining when an electronic record is actually  
4 received; providing for electronic transferable records;  
5 explaining relationship to federal law; and providing for  
6 waiver.

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

8 That article thirty-nine, chapter five of the code of West  
9 Virginia, one thousand nine hundred thirty-one, as amended, be  
10 repealed; that said code be amended by adding thereto a new  
11 chapter, designated chapter thirty-nine-a; and that chapter  
12 forty-six-a of said code be amended by adding thereto a new  
13 article, designated article six-i, all to read as follows:

14 **CHAPTER 39A. ELECTRONIC COMMERCE.**

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

16 **§39A-1-1. Short title.**

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

19 **§39A-1-2. Definitions.**

20 In this chapter:

21 (1) "Agreement" means the bargain of the parties in fact,  
22 as found in their language or inferred from other circumstances  
23 and from rules, regulations and procedures given the effect of

1 agreements under laws otherwise applicable to a particular  
2 transaction.

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

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

11 (A) Identifies the certification authority issuing it;

12 (B) Names or identifies its subscriber;

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

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

16 (4) "Computer program" means a set of statements or  
17 instructions to be used directly or indirectly in an information  
18 processing system in order to bring about a certain result.

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

22 (6) "Electronic agent" means a computer program or an  
23 electronic or other automated means used independently to

1 initiate an action or respond to electronic records or  
2 performances, in whole or in part, without review or action by  
3 an individual.

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

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

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

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

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

20 (12) "Person" means an individual, corporation, business  
21 trust, estate, trust, partnership, limited liability company,  
22 association, joint venture, governmental agency, public  
23 corporation or any other legal or commercial entity.

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

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

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

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

21 **§39A-1-3. Scope.**

22           (a) This article adopts the uniform electronic transaction  
23 act (1999) adopted by the national conference of commissioners

1 on uniform state laws and, to the extent provided herein, is  
2 intended to replace the provisions of the federal "Electronic  
3 Signatures in Global and National Commerce Act", Public Law No.  
4 106-229, 15 U.S.C. 7001.

5 (b) Except as otherwise provided in subsection (c) of this  
6 article, this article applies to electronic records and  
7 electronic signatures relating to a transaction.

8 (c) This article does not apply to a transaction to the  
9 extent it is governed by:

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

12 (2) The Uniform Commercial Code other than sections 1\_107  
13 and 1\_206, article two and article two-a.

14 (d) This article applies to an electronic record or  
15 electronic signature otherwise excluded from the application of  
16 this article under subsection (c) of this article to the extent  
17 it is governed by a law other than those specified in subsection  
18 (c) of this article.

19 (e) This title does not:

20 (1) Limit, alter, or otherwise affect any requirement  
21 imposed by a statute, regulation, or rule of law relating to the  
22 rights and obligations of persons under such statute, regulation  
23 or rule of law other than a requirement that contracts or other

1 records be written, signed, or in nonelectronic form; or

2 (2) Require any person to agree to use or accept electronic  
3 records or electronic signatures, other than a governmental  
4 agency with respect to a record other than a contract to which  
5 it is a party.

6 (f) If a statute, regulation or other rule of law requires  
7 that information relating to a transaction or transactions in or  
8 affecting interstate or foreign commerce be provided or made  
9 available to a consumer in writing, the use of an electronic  
10 record to provide or make available (whichever is required) such  
11 information satisfies the requirement that such information be  
12 in writing if:

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

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

17 (A) Informing the consumer of: (i) Any right or option of  
18 the consumer to have the record provided or made available on  
19 paper or in nonelectronic form; and (ii) the right of the  
20 consumer to withdraw the consent to have the record provided or  
21 made available in an electronic form and of any conditions,  
22 consequences (which may include termination of the parties'  
23 relationship) or fees in the event of such withdrawal;

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

6 (C) Describing the procedures the consumer must use to  
7 withdraw consent as provided in paragraph (A), subdivision (2)  
8 of this subsection and to update information needed to contact  
9 the consumer electronically; and

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

13 (3) The consumer:

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

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

22 (4) After the consent of a consumer in accordance with  
23 subdivision (1) of this subsection, if a change in the hardware

1 or software requirements needed to access or retain electronic  
2 records creates a material risk that the consumer will not be  
3 able to access or retain a subsequent electronic record that was  
4 the subject of the consent, the person providing the electronic  
5 record:

6 (A) Provides the consumer with a statement of: (i) The  
7 revised hardware and software requirements for access to and  
8 retention of the electronic records; and (ii) the right to  
9 withdraw consent without the imposition of any fees for such  
10 withdrawal and without the imposition of any condition or  
11 consequence that was not disclosed under subparagraph (ii),  
12 paragraph (A), subdivision (2) of this subsection; and

13 (B) again complies with subdivision (3).

14 (g) Other rights of preservation of consumer protection and  
15 verification or acknowledgment provide that:

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

20 (2) If a law that was enacted prior to this article  
21 expressly requires a record to be provided or made available by  
22 a specified method that requires verification or acknowledgment  
23 of receipt, the record may be provided or made available

1 electronically only if the method used provides verification or  
2 acknowledgment of receipt (whichever is required).

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

8 (i) Withdrawal of consent by a consumer shall not affect  
9 the legal effectiveness, validity or enforceability of  
10 electronic records provided or made available to that consumer  
11 in accordance with subsection (f) of this section prior to  
12 implementation of the consumer's withdrawal of consent. A  
13 consumer's withdrawal of consent shall be effective within a  
14 reasonable period of time after receipt of the withdrawal by the  
15 provider of the record. Failure to comply with subdivision (4),  
16 subsection (f) of this section may, at the election of the  
17 consumer, be treated as a withdrawal of consent for purposes of  
18 this subsection.

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

1 (k) An oral communication or a recording of an oral  
2 communication shall not qualify as an electronic record for  
3 purposes of this subsection except as otherwise provided under  
4 applicable law.

5 (l) A transaction subject to this article is also subject  
6 to other applicable substantive law.

7 **§39A-1-4. Prospective application.**

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

11 **§39A-1-5. Use of electronic records and electronic signatures;  
12 variation by agreement.**

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

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

22 (c) A party that agrees to conduct a transaction by  
23 electronic means may refuse to conduct other transactions by

1 electronic means. The right granted by this subsection may not  
2 be waived by agreement.

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

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

12 **§39A-1-6. Construction and application.**

13 This article must be construed and applied:

14 (1) To facilitate electronic transactions consistent with  
15 other applicable law;

16 (2) To be consistent with reasonable practices concerning  
17 electronic transactions and with the continued expansion of  
18 those practices; and

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

22 **§39A-1-7. Legal recognition of electronic records, electronic**  
23 **signatures and electronic contracts.**

1 (a) A record or signature may not be denied legal effect or  
2 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 in  
5 its formation.

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

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

10 **§39A-1-8. Provision of information in writing; presentation of**  
11 **records.**

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

22 (b) If a law other than this article requires a record:

23 (i) To be posted or displayed in a certain manner; (ii) to be

1 sent, communicated or transmitted by a specified method; or  
2 (iii) to contain information that is formatted in a certain  
3 manner, the following rules apply:

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

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

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

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

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

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

23 (2) A requirement under a law other than this article to

1 send, communicate or transmit a record by first class mail,  
2 postage prepaid, regular United States mail, certified mail or  
3 registered mail, may be varied by agreement to the extent  
4 permitted by the other law.

5 **§39A-1-9. Attribution and effect of electronic record and**  
6 **electronic signature.**

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

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

19 **§39A-1-10. Effect of change or error.**

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

23 (1) If the parties have agreed to use a security procedure

1 to detect changes or errors and one party has conformed to the  
2 procedure, but the other party has not and the nonconforming  
3 party would have detected the change or error had that party  
4 also conformed, the conforming party may avoid the effect of the  
5 changed  
6 or erroneous electronic record.

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

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

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

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

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

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

7 **§39A-1-11. Notarization and acknowledgment.**

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

14 **§39A-1-12. Retention of electronic records; originals.**

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

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

21 (2) Remains accessible for later reference.

22 (b) A requirement to retain a record in accordance with  
23 subsection (a) of this section does not apply to any information

1 the sole purpose of which is to enable the record to be sent,  
2 communicated or received.

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

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

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

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

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

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

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

4     **§39A-1-14. Automated transaction.**

5             In an automated transaction, the following rules apply:

6             (1) A contract may be formed by the interaction of  
7 electronic agents of the parties, even if no individual was  
8 aware of or reviewed the electronic agents' actions or the  
9 resulting terms and agreements.

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

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

19     **§39A-1-15. Time and place of sending and receipt.**

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

22            (1) Is addressed properly or otherwise directed properly to  
23 an information processing system that the recipient has

1 designated or uses for the purpose of receiving electronic  
2 records or information of the type sent and from which the  
3 recipient is able to retrieve the electronic record;

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

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

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

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

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

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

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

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

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

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

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

20 (g) If a person is aware that an electronic record  
21 purportedly sent under subsection (a) of this section, or  
22 purportedly received under subsection (b) of this section, was  
23 not actually sent or received, the legal effect of the sending

1 or receipt is determined by other applicable law. Except to the  
2 extent permitted by the other law, the requirements of this  
3 subsection may not be varied by agreement.

4 **§39A-1-16. Transferable records.**

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

7 (1) Would be a note under article three of the Uniform  
8 Commercial Code or a document under article seven of the Uniform  
9 Commercial Code if the electronic record were in writing; and

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

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

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

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

1 unalterable;

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

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

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

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

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

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

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

20 (d) Except as otherwise agreed, a person having control of  
21 a transferable record is the holder, as defined in section  
22 1\_201(20) of the Uniform Commercial Code, of the transferable  
23 record and has the same rights and defenses as a holder of an

1 equivalent record or writing under the Uniform Commercial Code,  
2 including, if the applicable statutory requirements under  
3 section 3\_302(a), 7\_501, or 9\_308 of the Uniform Commercial Code  
4 are satisfied, the rights and defenses of a holder in due  
5 course, a holder to which a negotiable document of title has  
6 been duly negotiated, or a purchaser, respectively. Delivery,  
7 possession and indorsement are not required to obtain or  
8 exercise any of the rights under this subsection.

9 (e) Except as otherwise agreed, an obligor under a  
10 transferable record has the same rights and defenses as an  
11 equivalent obligor under equivalent records or writings under  
12 the Uniform Commercial Code.

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

21 **ARTICLE 2. DIGITAL SIGNATURES; STATE ELECTRONIC RECORDS AND**  
22 **TRANSACTIONS**

23 **§39A-2-1. Definitions.**

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

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

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

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

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

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

21 **§39A-2-2. Acceptance of electronic signature by governmental**  
22 **entities in satisfaction of signature requirement.**

23 (a) Any governmental entity may, by appropriate official

1 action, authorize the acceptance of electronic signatures in  
2 lieu of original signatures on messages or filings requiring one  
3 or more original signatures, subject to the requirements and  
4 limitations of section three of this article.

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

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

1 give public notice of the proposed adoption in a manner  
2 prescribed by law, an ordinance, rule or official policy, but in  
3 no case for less than thirty days before adoption.

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

8 **§39A-2-3. Duties of the secretary of state; state agencies use**  
9 **of**  
10 **electronic signatures.**

11  
12 (a) The secretary of state shall propose legislative rules  
13 for promulgation in accordance with the provisions of article  
14 three, chapter twenty-nine-a of this code to establish standards  
15 and processes to facilitate the use of electronic signatures in  
16 all governmental transactions by state agencies subject to  
17 chapter twenty-nine-a of this code. The rules shall include  
18 minimum standards for secure transactions to promote confidence  
19 and efficiency in legally binding electronic document  
20 transactions. The rules may be amended from time to time to  
21 keep the rules current with new developments in technology and  
22 improvements in secured transaction processes.

23 (b) The secretary of state is designated the certification

1 authority and repository for all governmental agencies which are  
2 subject to chapter twenty-nine-a of this code and shall regulate  
3 transactions and digital signature verifications. The secretary  
4 may enter into reciprocal agreements with all state and federal  
5 governmental entities to promote the efficient governmental use  
6 of electronic transactions. The secretary of state may propose  
7 legislative rules for issuing certificates that bind public keys  
8 to individuals, and other electronic transaction authentication  
9 devices as provided for in this article. The secretary of state  
10 is further authorized to contract with a private entity to serve  
11 as certification authority for the state of West Virginia. This  
12 private certification authority may contract with persons to  
13 provide certification service. Any contract entered into must  
14 require the certification authority to meet the requirements of  
15 this article and any rules promulgated by the secretary of  
16 state.

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

1     **§39A-2-4. Secretary of state; liability.**

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

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

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

12     **§46A-6I-1. Electronic response to electronic notices.**

13             When a consumer is required to provide notice to exercise  
14 or preserve the consumer's rights under any law, the consumer  
15 may exercise or preserve that right in the same manner in which  
16 the consumer was provided with notice of that right.

17     **§46A-6I-2. Receipt of electronic record.**

18             Notwithstanding the provisions of article one, chapter  
19 thirty-nine-a of this code, in a consumer transaction, an  
20 electronic record is not sent to or received by the consumer if  
21 the sender is aware that the consumer did not actually receive  
22 the electronic record or did not actually receive the electronic  
23 record in a manner allowing the record to be opened and read by

1 the consumer.

2 **§46A-6I-3. Electronic transferable records.**

3 Notwithstanding the provisions of article one, chapter  
4 thirty-nine-a of this code, the following rules apply to  
5 transferable records of transactions involving consumers:

6 (1) If payment is made to a person that the system  
7 indicates is in control of a transferable record, the obligor is  
8 discharged to the extent of the payment;

9 (2) A transferable record remains subject to the defenses  
10 of alteration and unauthorized signature whether or not those  
11 defenses are apparent on the face of the record;

12 (3) A record does not qualify as a transferable record if a  
13 system is unable to reliably establish the person entitled to  
14 enforce the record or the system permits the creation of  
15 multiple copies that appear to be authoritative copies;

16 (4) A consumer is entitled, on request and without charge,  
17 to a printed or printable copy of a transferable record at any  
18 time.

19 **§46A-6I-4. Relationship with federal law.**

20 The requirements of this article are designed to  
21 supplement, not to modify, limit, or supersede, the requirements  
22 of the federal Electronic Signatures in Global and National  
23 Commerce Act.

1     **§46A-6I-5. Waiver.**

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

5

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(NOTE: The purpose of this bill is to create a specific chapter of the West Virginia code to accommodate future statutes dealing with electronic commerce; adopt the uniform electronic Transactions Act; and incorporate West Virginia's electronic signatures act into UETA. The UETA was approved by the national conference of commissioners on uniform state laws in July, 1999, and recommended for enactment in all states. The federal electronic signatures consumer provisions and some additional consumer protections have been included in the committee substitute. This bill as introduced was recommended for passage by the joint committee on the judiciary.

These provisions are new; therefore, strike-throughs and underscoring have been omitted.)