

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 204

(SENATORS SNYDER, FANNING, McCABE, OLIVERIO, ROSS, DEEM AND MINARD,

original sponsors)

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

AN ACT 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; 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

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

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

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

1 transactions; providing for withdrawal of consent;
2 requiring consumer be informed when certain changes occur;
3 providing that nothing in article affects content or timing
4 of disclosure or other requirements under applicable
5 substantive law; providing for effect of failure to obtain
6 electronic consent or confirmation; providing that this
7 article does not apply to consumer consent given or records
8 provided prior to the enactment of this act; providing that
9 oral communication or recording of an oral communication is
10 not an electronic record; providing for retention, accuracy
11 and accessibility of electronic records; providing that
12 requirements for retaining originals and checks may be met
13 by electronic means; providing that the legal effect,
14 validity or enforceability of an electronic record may be
15 denied if the electronic record is not in a form that can
16 be retained and accurately reproduced; providing for
17 certain notices that may not be sent in electronic form;
18 providing for severability; providing for the applicability
19 of the consumer protection portions of the federal
20 electronic signatures in global and national commerce act;
21 providing definitions; establishing the requirements for
22 the acceptance of electronic signatures by governmental
23 entities; requiring governmental entities choosing to use

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

1 providing for electronic response to electronic notices;
2 explaining when an electronic record is actually received;
3 providing for electronic transferable records; explaining
4 relationship to federal law; providing for waiver;
5 providing for severability; and establishing a choice of
6 law limitation providing that the laws of West Virginia are
7 applicable for any computer information agreements.

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

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

17 **CHAPTER 39A. ELECTRONIC COMMERCE.**

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

19 **§39A-1-1. Short title.**

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

22 **§39A-1-2. Definitions.**

23 In this chapter:

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

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

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

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

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) Except as otherwise provided in subsection (d) of this
23 section, this article applies to electronic records and

1 electronic signatures relating to a transaction.

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

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

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

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

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

16 **§39A-1-4. Prospective application.**

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

20 **§39A-1-5. Use of electronic records and electronic signatures;
21 variation by agreement.**

22 (a) This article does not require a record or signature to
23 be created, generated, sent, communicated, received, stored or

1 otherwise processed or used by electronic means or in electronic
2 form.

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

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

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

18 (e) Whether an electronic record or electronic signature
19 has legal consequences is determined by this article and other
20 applicable law.

21 **§39A-1-6. Construction and application.**

22 This article must be construed and applied:

23 (1) To facilitate electronic transactions consistent with

1 other applicable law;

2 (2) To be consistent with reasonable practices concerning
3 electronic transactions and with the continued expansion of
4 those practices; and

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

8 **§39A-1-7. Legal recognition of electronic records, electronic**
9 **signatures and electronic contracts.**

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

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

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

17 (d) If a law requires a signature, an electronic signature
18 satisfies the law.

19 **§39A-1-8. Provision of information in writing; presentation of**
20 **records.**

21 (a) If parties have agreed to conduct a transaction by
22 electronic means and a law requires a person to provide, send or
23 deliver information in writing to another person, the

1 requirement is satisfied if the information is provided, sent or
2 delivered, as the case may be, in an electronic record capable
3 of retention by the recipient at the time of receipt. An
4 electronic record is not capable of retention by the recipient
5 if the sender or its information processing system inhibits the
6 ability of the recipient to print or store the electronic
7 record.

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

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

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

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

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

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

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

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

14 **§39A-1-9. Attribution and effect of electronic record and**
15 **electronic signature.**

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

22 (b) The effect of an electronic record or electronic
23 signature attributed to a person under subsection (a) of this

1 section is determined from the context and surrounding
2 circumstances at the time of its creation, execution or
3 adoption, including the parties' agreement, if any, and
4 otherwise as provided by law.

5 **§39A-1-10. Effect of change or error.**

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

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

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

23 (A) Promptly notifies the other person of the error and

1 that the individual did not intend to be bound by the electronic
2 record received by the other person;

3 (B) Takes reasonable steps, including steps that conform to
4 the other person's reasonable instructions, to return to the
5 other person or, if instructed by the other person, to destroy
6 the consideration received, if any, as a result of the erroneous
7 electronic record; and

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

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

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

16 **§39A-1-11. Notarization and acknowledgment.**

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

23 **§39A-1-12. Retention of electronic records; originals.**

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

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

7 (2) Remains accessible for later reference.

8 (b) A requirement to retain a record in accordance with
9 subsection (a) of this section does not apply to any information
10 the sole purpose of which is to enable the record to be sent,
11 communicated or received.

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

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

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

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

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

10 **§39A-1-13. Admissibility in evidence.**

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

13 **§39A-1-14. Automated transaction.**

14 In an automated transaction, the following rules apply:

15 (1) A contract may be formed by the interaction of
16 electronic agents of the parties, even if no individual was
17 aware of or reviewed the electronic agents' actions or the
18 resulting terms and agreements.

19 (2) A contract may be formed by the interaction of an
20 electronic agent and an individual, acting on the individual's
21 own behalf or for another person, including by an interaction in
22 which the individual performs actions that the individual is
23 free to refuse to perform and which the individual knows or has

1 reason to know will cause the electronic agent to complete the
2 transaction or performance.

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

5 **§39A-1-15. Time and place of sending and receipt.**

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

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

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

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

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

22 (1) It enters an information processing system that the
23 recipient has designated or uses for the purpose of receiving

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

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

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

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

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

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

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

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

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

13 **§39A-1-16. Transferable records.**

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

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

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

21 (b) A person has control of a transferable record if a
22 system employed for evidencing the transfer of interests in the
23 transferable record reliably establishes that person as the

1 person to which the transferable record was issued or
2 transferred.

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

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

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

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

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

18 (3) The authoritative copy is communicated to and
19 maintained by the person asserting control or its designated
20 custodian;

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

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

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

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

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

1 (f) If requested by a person against which enforcement is
2 sought, the person seeking to enforce the transferable record
3 shall provide reasonable proof that the person is in control of
4 the transferable record. Proof may include access to the
5 authoritative copy of the transferable record and related
6 business records sufficient to review the terms of the
7 transferable record and to establish the identity of the person
8 having control of the transferable record.

9 **§39A-1-17. Relationship with federal law.**

10 The enactment of this article is an enactment of the
11 Uniform Electronic Transactions Act (UETA) as approved for
12 enactment in all of the states by the national conference of
13 commissioners on uniform state laws in one thousand nine hundred
14 ninety-nine and is an exception to preemption of state law as
15 permitted by section one hundred two of the federal "Electronic
16 Signatures in Global and National Commerce Act", Public Law No.
17 106-229, 15 U.S.C. 7001.

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

20 **§39A-2-1. Consent to electronic records.**

21 Notwithstanding the provisions of article one of this
22 chapter, if a statute, regulation or other rule of law requires
23 that information relating to a transaction or transactions in or

1 affecting interstate or foreign commerce be provided or made
2 available to a consumer in writing, the use of an electronic
3 record to provide or make available such information satisfies
4 the requirement that such information be in writing if:

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

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

9 (A) Informing the consumer of: (i) Any right or option of
10 the consumer to have the record provided or made available on
11 paper or in nonelectronic form; and (ii) the right of the
12 consumer to withdraw the consent to have the record provided or
13 made available in an electronic form and of any conditions,
14 consequences, which may include termination of the parties'
15 relationship, or fees in the event of such withdrawal;

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

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

1 electronically; and

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

5 (3) The consumer:

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

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

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

21 (A) Provides the consumer with a statement of: (i) The
22 revised hardware and software requirements for access to and
23 retention of the electronic records; and (ii) the right to

1 withdraw consent without the imposition of any fees for such
2 withdrawal and without the imposition of any condition or
3 consequence that was not disclosed under subparagraph (ii),
4 paragraph (A), subdivision two of this subsection; and

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

6 **§39A-2-2. Preservation of consumer protection; verification or**
7 **acknowledgment.**

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

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

18 **§39A-2-3. Effect of failure to obtain electronic consent or**
19 **confirmation.**

20 (a) The legal effectiveness, validity or enforceability of
21 any contract executed by a consumer shall not be denied solely
22 because of the failure to obtain electronic consent or
23 confirmation of consent by that consumer in accordance with

1 paragraph (B), subdivision three, section one of this article.

2 **§39A-2-4. Prospective effect.**

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

14 **§39A-2-5. Prior consent.**

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

20 **§39A-2-6. Oral communications.**

21 An oral communication or a recording of an oral
22 communication shall not qualify as an electronic record for
23 purposes of this article except as otherwise provided under

1 applicable law.

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

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

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

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

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

19 **§39A-2-8. Retention; originals.**

20 If a statute, regulation or other rule of law requires a
21 contract or other record relating to a transaction in or
22 affecting interstate or foreign commerce to be provided,
23 available or retained in its original form, or provides

1 consequences if the contract or other record is not provided,
2 available or retained in its original form, that statute, rule,
3 regulation or rule of law is satisfied by an electronic record
4 that complies with section seven of this article.

5 **§39A-2-9. Retention; checks.**

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

11 **§39A-2-10. Accuracy and ability to retain contracts and other**
12 **records.**

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

22 **§39A-2-11. Exceptions.**

23 The provisions of article one of this chapter do not apply

1 to:

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

5 (2) Any notice of:

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

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

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

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

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

19 **§39A-2-12. Severability.**

20 If any provision of this article be found by a court of
21 competent jurisdiction to be unenforceable under the
22 constitution of this state or the laws and constitutions of the
23 United States, the remaining provisions of this article shall be

1 severable and shall continue in full force and effect.

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

4 **§39A-3-1. Definitions.**

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

6 (A) Identifies the certification authority issuing it;

7 (B) Names or identifies its subscriber;

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

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

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

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

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

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

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

5 **§39A-3-2. Acceptance of electronic signature by governmental**
6 **entities in satisfaction of signature requirement.**

7 (a) Any governmental entity may, by appropriate official
8 action, authorize the acceptance of electronic signatures in
9 lieu of original signatures on messages or filings requiring one
10 or more original signatures, subject to the requirements and
11 limitations of section three of this article.

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

23 (c) Any governmental entity may adopt, in the manner

1 provided by law, an ordinance, rule or official policy
2 designating the documents on which electronic signatures are
3 authorized and the type or types of electronic signatures which
4 may be accepted for each type of document. Those governmental
5 entities not subject to the provisions of chapter twenty-nine-a
6 of this code which proposes to authorize the acceptance of
7 electronic signatures on documents filed with that entity shall
8 give public notice of the proposed adoption in a manner
9 prescribed by law, an ordinance, rule or official policy, but in
10 no case for less than thirty days before adoption.

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

15 **§39A-3-3. Duties of the secretary of state; state agencies use**
16 **of**
17 **electronic signatures.**

18 (a) The secretary of state shall propose legislative rules
19 for promulgation in accordance with the provisions of article
20 three, chapter twenty-nine-a of this code to establish standards
21 and processes to facilitate the use of electronic signatures in
22 all governmental transactions by state agencies subject to
23 chapter twenty-nine-a of this code. The rules shall include

1 minimum standards for secure transactions to promote confidence
2 and efficiency in legally binding electronic document
3 transactions. The rules may be amended from time to time to
4 keep the rules current with new developments in technology and
5 improvements in secured transaction processes.

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

23 (c) Nothing contained in this article may be construed to

1 mandate any specific form of technology, process or standard to
2 be the only technology, process or standard which may be
3 utilized by state entities. Nor may anything contained in this
4 article be construed to limit the secretary of state in adopting
5 by legislative rule, alternative technologies to authorize
6 electronic signatures.

7 **§39A-3-4. Secretary of state; liability.**

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

16 **§39A-3-5. Severability.**

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

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

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

1 **§46A-6I-1. Definitions.**

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

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

8 **§46A-6I-2. Electronic response to electronic notices.**

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

14 **§46A-6I-3. Receipt of electronic record.**

15 Notwithstanding the provisions of article one, chapter
16 thirty-nine-a of this code, in a consumer transaction, an
17 electronic record is not sent to or received by a party if the
18 sender has actual knowledge that such party did not actually
19 receive the electronic record. In that case, the sender's sole
20 obligation shall be to take reasonable steps to attempt
21 redelivery using information in the sender's files. This
22 redelivery requirement is satisfied if the sender sends the
23 electronic record to a different electronic mail address or to a

1 postal address the sender has on file.

2 **§46A-6I-4. Electronic transferable records.**

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

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

12 **§46A-6I-5. Relationship with federal and state law.**

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

18 **§46A-6I-6. Waiver.**

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

22 **§46A-6I-7. Severability.**

23 If any provision of this article be found by a court of

1 competent jurisdiction to be unenforceable under the
2 constitution of this state or the laws and constitutions of the
3 United States, the remaining provisions of this article shall be
4 severable and shall continue in full force and effect.

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

6 **ARTICLE 8. ACTIONS ON CONTRACTS.**

7 **55-8-15. Choice of law for computer information agreements.**

8 A choice of law provision in a computer information
9 agreement which provides that the contract is to be interpreted
10 pursuant to the laws of a state that has enacted uniform
11 computer information transactions act, as proposed by the
12 national conference of commissioners on uniform state laws, or
13 any substantially similar law, is voidable and the agreement
14 shall be interpreted pursuant to the laws of this state if the
15 party against whom enforcement of the choice of law provision is
16 sought is a resident of this state or has its principal place of
17 business located in this state. For purposes of this section, a
18 "computer information agreement" means an agreement that would
19 be governed by the uniform computer transactions act or
20 substantially similar law as enacted in the state specified in
21 the choice of law provision if that state's laws were applied to
22 the agreement.