

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

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

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

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

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

1 That article thirty-nine, chapter five of the code of West
2 Virginia, one thousand nine hundred thirty-one, as amended, be
3 repealed; and that said code be amended by adding thereto a new
4 chapter, designated chapter thirty-nine-a, to read as follows:

5 **CHAPTER 39A. ELECTRONIC COMMERCE.**

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

7 **§39A-1-1. Short title.**

8 This article may be cited as the Uniform Electronic
9 Transactions Act.

10 **§39A-1-2. Definitions.**

11 In this chapter:

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

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

1 (3) "Certificate" means a computer-based record that:
2 (A) Identifies the certification authority issuing it;
3 (B) Names or identifies its subscriber;
4 (C) Contains the subscriber's public key; and
5 (D) Is digitally signed by the certification authority
6 issuing it.

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

9 (5) "Computer program" means a set of statements or
10 instructions to be used directly or indirectly in an information
11 processing system in order to bring about a certain result.

12 (6) "Contract" means the total legal obligation resulting
13 from the parties' agreement as affected by this article and
14 other applicable law.

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

22 (8) "Digital signature" consists of a message transformed
23 using an asymmetric cryptosystem so that a person having the

1 initial message and the signer's public key can accurately
2 determine:

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

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

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

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

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

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

21 (13) "Governmental agency" means an executive, legislative,
22 or judicial agency, department, board, commission, authority,
23 institution, or instrumentality of the federal government or of

1 a state or of a county, municipality or other political
2 subdivision of a state.

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

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

8 (16) "Person" means an individual, corporation, business
9 trust, estate, trust, partnership, limited liability company,
10 association, joint venture, governmental agency, public
11 corporation, or any other legal or commercial entity.

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

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

23 (19) "State" means a state of the United States, the

1 District of Columbia, Puerto Rico, the United States Virgin
2 Islands or any territory or insular possession subject to the
3 jurisdiction of the United States. The term includes an Indian
4 tribe or band or Alaskan native village, which is recognized by
5 federal law or formally acknowledged by a state.

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

9 **§39A-1-3. Scope.**

10 (a) This article adopts the Uniform Electronic Transaction
11 Act (1999) adopted by the National Conference of Commissioners
12 on Uniform State Laws, and to the extent provided herein, is
13 intended to replace the provisions of the federal "Electronic
14 Signatures in Global and National Commerce Act" ___ U.S.C. §__.

15 (b) Except as otherwise provided in subsection (b), this
16 article applies to electronic records and electronic signatures
17 relating to a transaction.

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

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

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

1 (d) This article applies to an electronic record or
2 electronic signature otherwise excluded from the application of
3 this article under subsection (b) to the extent it is governed
4 by a law other than those specified in subsection (b).

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

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

23 (c) A party that agrees to conduct a transaction by
24 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 enforcability solely because it is in electronic form.

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

23 (b) If a law other than this article requires a record:
24 (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 subsection (d)(2), the
7 record must be sent, communicated, or transmitted by the method
8 specified in the other law.

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

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

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

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

22 (2) A requirement under a law other than this article to
23 send, communicate or transmit a record by first class mail,

1 postage prepaid, regular United States mail, certified mail or
2 registered mail, may be varied by agreement to the extent
3 permitted by the other law.

4 **§39A-1-9. Attribution and effect of electronic record and**
5 **electronic signature.**

6
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) is
15 determined from the context and surrounding circumstances at the
16 time of its creation, execution, or adoption, including the
17 parties' agreement, if any, and otherwise as provided by law.

18 **§39A-1-10. Effect of change or error.**

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

22 (1) If the parties have agreed to use a security procedure
23 to detect changes or errors and one party has conformed to the
24 procedure, but the other party has not, and the nonconforming

1 party would have detected the change or error had that party
2 also conformed, the conforming party may avoid the effect of the
3 changed
4 or erroneous electronic record.

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

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

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

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

22 (3) If neither paragraph (1) nor paragraph (2) applies, the
23 change or error has the effect provided by other law, including

1 the law of mistake, and the parties' contract, if any.

2 (4) Paragraphs (2) and (3) may not be varied by agreement.

3 **§39A-1-11. Notarization and acknowledgment.**

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

10 **§39A-1-12. Retention of electronic records; originals.**

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

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

17 (2) Remains accessible for later reference.

18 (b) A requirement to retain a record in accordance with
19 subsection (a) does not apply to any information the sole
20 purpose of which is to enable the record to be sent,
21 communicated or received.

22 (c) A person may satisfy subsection (a) by using the
23 services of another person if the requirements of that

1 subsection are satisfied.

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

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

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

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

20 **§39A-1-13. Admissibility in evidence.**

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

23 **§39A-1-14. Automated transaction.**

1 In an automated transaction, the following rules apply:

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

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

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

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

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

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

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

1 and

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

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

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

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

16 (c) Subsection (b) applies even if the place the
17 information processing system is located is different from the
18 place the electronic record is deemed to be received under
19 subsection (d).

20 (d) Unless otherwise expressly provided in the electronic
21 record or agreed between the sender and the recipient, an
22 electronic record is deemed to be sent from the sender's place
23 of business and to be received at the recipient's place of

1 business. For purposes of this subsection, the following rules
2 apply:

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

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

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

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

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

23 **§39A-1-16. Transferable records.**

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

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

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

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

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

17 (1) A single authoritative copy of the transferable record
18 exists which is unique, identifiable, and, except as otherwise
19 provided in paragraphs (4), (5) and (6), unalterable;

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

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

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

4 (3) The authoritative copy is communicated to and
5 maintained by the person asserting control or its designated
6 custodian;

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

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

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

15 (d) Except as otherwise agreed, a person having control of
16 a transferable record is the holder, as defined in section
17 1_201(20) of the Uniform Commercial Code, of the transferable
18 record and has the same rights and defenses as a holder of an
19 equivalent record or writing under the Uniform Commercial Code,
20 including, if the applicable statutory requirements under
21 section 3_302(a), 7_501, or 9_308 of the Uniform Commercial Code
22 are satisfied, the rights and defenses of a holder in due
23 course, a holder to which a negotiable document of title has

1 been duly negotiated, or a purchaser, respectively. Delivery,
2 possession and indorsement are not required to obtain or
3 exercise any of the rights under this subsection.

4 (e) Except as otherwise agreed, an obligor under a
5 transferable record has the same rights and defenses as an
6 equivalent obligor under equivalent records or writings under
7 the Uniform Commercial Code.

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

16 **§39A-1-17. Applicability of the federal electronic signatures**
17 **in global and national commerce act.**

18
19 This article is not intended to modify, limit or supersede
20 the requirements of section one hundred one (c), (d) or (e), nor
21 to authorize the electronic delivery of any notice of the type
22 described in section one hundred three (b) of the federal
23 "Electronic Signatures in Global and National Commerce Act"
24 ___U.S.C. §____.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ARTICLE 2. DIGITAL SIGNATURES; STATE ELECTRONIC RECORDS AND TRANSACTIONS

§39A-2-1. Acceptance of electronic signature by governmental entities in satisfaction of signature requirement.

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

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

(c) Any governmental entity may adopt, in the manner provided by law, an ordinance, rule or official policy designating the documents on which electronic signatures are

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

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

13 **§39A-2-2. Duties of the secretary of state; state agencies use**
14 **of electronic signatures.**

15 (a) The secretary of state shall propose legislative rules
16 for promulgation in accordance with the provisions of article
17 three, chapter twenty-nine-a of this code to establish standards
18 and processes to facilitate the use of electronic signatures in
19 all governmental transactions by state agencies subject to
20 chapter twenty-nine-a of this code. The rules shall include
21 minimum standards for secure transactions to promote confidence
22 and efficiency in legally binding electronic document
23 transactions. The rules may be amended from time to time to
24

1 keep the rules current with new developments in technology and
2 improvements in secured transaction processes.

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

20 (c) Nothing contained in this article may be construed to
21 mandate any specific form of technology, process or standard to
22 be the only technology, process or standard which may be
23 utilized by state entities. Nor may anything contained in this

1 article be construed to limit the secretary of state in adopting
2 by legislative rule, alternative technologies to authorize
3 electronic signatures.

4 **§39A-2-3. Secretary of state; liability.**

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

13
14
15 Note: The purpose of this bill is to create a specific
16 chapter of the West Virginia Code to accommodate future statutes
17 dealing with electronic commerce; adopt the Uniform Electronic
18 Transactions Act; and incorporate West Virginia's Electronic
19 Signatures Act into UETA. The UETA was approved by the National
20 conference of Commissioners on Uniform State Laws in July, 1999
21 and recommended for enactment in all states.

22
23 This article is new; therefore, strike-throughs and
24 underscoring have been omitted.

25
26 This bill was recommended for passage by the Joint
27 Standing Committee on the Judiciary.