

FILED

2005 MAY -4 A 11: 07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

SENATE BILL NO. 639

(By Senator FANNING, ET AL)

PASSED APRIL 8, 2005

In Effect FROM Passage

FILED

2005 MAY -4 A 11: 07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 639

(BY SENATORS FANNING, HARRISON AND MINARD)

[Passed April 8, 2005; in effect from passage.]

AN ACT to amend and reenact §39A-3-1, §39A-3-2 and §39A-3-3 of the Code of West Virginia, 1931, as amended, all relating to digital signatures generally; defining certain terms; providing for use of an electronic postmark; authorizing promulgation of an emergency rule; and authorizing use of a federal certificate authority and repository program.

Be it enacted by the Legislature of West Virginia:

That §39A-3-1, §39A-3-2 and §39A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§39A-3-1. Definitions.

- 1 (1) "Certificate" means a computer-based record that:
- 2 (A) Identifies the certification authority issuing it;

3 (B) Names or identifies its subscriber;

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

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

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

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

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

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

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

25 (5) "Electronic postmark" means an electronic service
26 provided by the United States Postal Service that provides
27 evidentiary proof that an electronic document existed in a
28 certain form at a certain time and that an electronic
29 document was opened or the contents of the electronic
30 document were displayed at a time and date documented
31 by the United States Post Office.

32 (6) "Federal certificate authority and repository pro-
33 gram" means an official program established by an agency
34 of the United States government for the issuance and
35 authentication of digital signature certificates or other

36 secure electronic authorizations to individuals for use in
37 electronic transactions.

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

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

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

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

30 (d) Any governmental entity which intends to extend,
31 modify or revoke the authority to accept electronic

32 signatures or postmarks shall do so by the same means and
33 with the same notice as required in this section for adop-
34 tion.

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

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

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

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

39 (d) Nothing contained in this article may be construed to
40 authorize the use of electronic signatures, electronic
41 postmarks or both to effect service of a summons and
42 complaint.

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

Clancy L. White
.....
Chairman Senate Committee

W. Reed Berry
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell G. Glavin
.....
Clerk of the Senate

James M. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert J. D.
.....
Speaker House of Delegates

The within *is approved* this the *4th*
Day of *May*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 20 2005

Time 2:55