

**H. B. 2790**

(By Delegates Doyle, Ferro, Frazier and Walters)  
[Introduced January 24, 2011; referred to the  
Committee on the Judiciary then Finance.]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §39A-4-1, §39A-4-2,  
12 §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all  
13 relating to creating the Uniform Real Property Electronic  
14 Recording Act; providing short title; defining certain terms;  
15 clarifying validity of electronic documents and electronic  
16 signatures; providing for recording of electronic documents;  
17 requiring any county clerk implementing the provisions of the  
18 Act to comply with established standards; authorizing county  
19 clerks to receive, index, store, archive and transmit  
20 electronic documents; authorizing county clerks to allow  
21 public access, search and retrieval of electronic documents;  
22 allowing county clerks to convert paper documents accepted for  
23 recording into electronic documents; authorizing county clerks  
24 to collect electronically any tax or fee they are authorized

1 by law to collect; authorizing county clerks to agree with  
 2 other jurisdictions on procedures or processes necessary for  
 3 electronic recording of documents; authorizing the Governor's  
 4 Office of Technology to work with various interest groups to  
 5 develop the standards necessary to electronically record real  
 6 property documents; setting forth areas for consideration when  
 7 adopting or changing standards; providing for uniformity of  
 8 application and construction of the act; and providing that  
 9 this act modifies, limits and supersedes certain parts of the  
 10 federal electronic signatures in Global and National Commerce  
 11 Act.

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

13 That the Code of West Virginia, 1931, as amended, be amended  
 14 by adding thereto a new article, designated §39A-4-1, §39A-4-2,  
 15 §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all to read as  
 16 follows:

17 **ARTICLE 4. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.**

18 **§39A-4-1. Short title.**

19 This act may be cited as the Uniform Real Property Electronic  
 20 Recording Act.

21 **§39A-4-2. Definitions.**

22 In this article:

23 (a) "Document" means information that is:

1       (1) Inscribed on a tangible medium or that is stored in an  
2 electronic or other medium and is retrievable in perceivable form;  
3 and

4       (2) Eligible to be recorded in the land records maintained by  
5 the clerk of the county commission, herein after "county clerk" or  
6 "clerk".

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

10       (c) "Electronic document" means a document that is received by  
11 the county clerk in an electronic form.

12       (d) "Electronic signature" means an electronic sound, symbol,  
13 or process attached to or logically associated with a document and  
14 executed or adopted by a person with the intent to sign the  
15 document.

16       (e) "Person" means an individual, corporation, business trust,  
17 estate, trust, partnership, limited liability company, association,  
18 joint venture, public corporation, government or governmental  
19 subdivision, agency, instrumentality or any other legal or  
20 commercial entity.

21       (f) "State" means a state of the United States, the District  
22 of Columbia, Puerto Rico, the United States Virgin Islands or any  
23 territory or insular possession subject to the jurisdiction of the  
24 United States.

1 **§39A-4-3. Validity of electronic documents.**

2 (a) If a law requires, as a condition for recording, that a  
3 document be an original, be on paper or another tangible medium or  
4 be in writing, the requirement is satisfied by an electronic  
5 document satisfying the requirements of this article.

6 (b) If a law requires, as a condition for recording, that a  
7 document be signed, the requirement is satisfied by an electronic  
8 signature.

9 (c) A requirement that a document or a signature associated  
10 with a document be notarized, acknowledged, verified, witnessed or  
11 made under oath is satisfied if the electronic signature of the  
12 person authorized to perform that act, and all other information  
13 required to be included, is attached to or logically associated  
14 with the document or signature. A physical or electronic image of  
15 a stamp, impression or seal need not accompany an electronic  
16 signature.

17 **§39A-4-4. Recording of documents.**

18 (a) In this section, "paper document" means a document that is  
19 received by the county clerk in a form that is not electronic.

20 (b) A county clerk:

21 (1) Who implements any of the functions listed in this section  
22 shall do so in compliance with standards established by the  
23 Secretary of State;

24 (2) May receive, index, store, archive and transmit electronic

1 documents;

2 (3) May provide for access to, and for search and retrieval  
3 of, documents and information by electronic means;

4 (4) Who accepts electronic documents for recording shall  
5 continue to accept paper documents as authorized by state law and  
6 shall place entries for both types of documents in the same index;

7 (5) May convert paper documents accepted for recording into  
8 electronic form;

9 (6) May convert information recorded before the clerk began to  
10 record electronic documents into electronic form;

11 (7) May accept electronically any fee or tax that the clerk is  
12 authorized to collect; and

13 (8) May agree with other officials of a state or a political  
14 subdivision thereof, or of the United States, on procedures or  
15 processes to facilitate the electronic satisfaction of prior  
16 approvals and conditions precedent to recording and the electronic  
17 payment of fees and taxes.

18 **§39A-4-5. Administration and standards.**

19 (a) The Office of Technology, created in section three,  
20 article six, chapter five-a of this code, shall propose rules for  
21 legislative approval in accordance with the provisions of article  
22 three, chapter twenty-nine-a of this code containing the standards  
23 to implement this article. The Office of Technology shall  
24 establish a working group to develop the standards required by this

1 article. The working group shall, at a minimum, include  
2 representatives of the County Clerks' Association, the County  
3 Commissioners' Association, members of the West Virginia Bar  
4 Association who specialize in title work, mortgage lenders, the  
5 Division of Banking or both mortgage lenders and the Division of  
6 Banking and any other person or group that may offer pertinent  
7 information or assistance in establishing the standards.

8 (b) To keep the standards and practices of county clerks in  
9 this state in harmony with the standards and practices of recording  
10 offices in other jurisdictions that enact substantially the Uniform  
11 Real Property Electronic Recording Act and to keep the technology  
12 used by clerks in this state compatible with technology used by  
13 recording offices in other jurisdictions that enact substantially  
14 this act, the Office of Technology so far as is consistent with the  
15 purposes, policies, and provisions of this article, in adopting,  
16 amending and repealing standards shall consider:

17 (1) Standards and practices of other jurisdictions;

18 (2) The most recent standards promulgated by national  
19 standard-setting bodies such as the Property Records Industry  
20 Association;

21 (3) The views of interested persons and governmental officials  
22 and entities;

23 (4) The needs of counties of varying size, population and  
24 resources; and

1       (5) Standards requiring adequate information security  
2 protection to ensure that electronic documents are accurate,  
3 authentic, adequately preserved and resistant to tampering.

4 **§39A-4-6. Uniformity of application and construction.**

5       In applying and construing this Uniform Real Property  
6 Electronic Recording Act, consideration must be given to the need  
7 to promote uniformity of the law with respect to its subject matter  
8 among states that enact it.

9 **§39A-4-7. Relation to electronic signatures in global and national**  
10                   **commerce act.**

11       This article modifies, limits, and supersedes the federal  
12 Electronic Signatures in Global and National Commerce Act (15  
13 U.S.C. §7001, et seq.) but does not modify, limit or supersede  
14 §101(c) of that act (15 U.S.C. §7001(c)) or authorize electronic  
15 delivery of any of the notices described in §103(b) of that act (15  
16 U.S.C. §7003(b)).

NOTE: The purpose of this bill is to adopt the Uniform Real Property Electronic Recording Act. Under the proposed bill, any requirement of state law describing or requiring that a land record document be an original, on paper, or in writing are satisfied by a document in electronic form. In addition, any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or acknowledgment. The bill authorizes the clerk to accept electronic documents for recording and to index and store those documents. The act does not provide a means of funding the establishment or operation of an electronic recording system. No single approach is recommended and in fact, the commissioners recognized that the best approach for a state may involve multiple systems. The bill requires the Secretary of State to develop a

legislative rule containing standards for electronic recording to be used by each county. The standards are to be developed with a vision toward fostering intra- and interstate harmony and uniformity in the electronic recording process. The SOS or Office of Technology, whichever is chosen to develop the standards required by the rule, will engage in a stakeholder rulemaking process to assure that all of the affected parties have the opportunity to participate in the process.

§39A-4-1 through §39A 4-7 are new; therefore, it has been completely underscored.