

Senate Bill No. 220

(By Senators Jenkins, Snyder, Browning and Palumbo)

[Introduced January 20, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**Interim
Bill**

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

1 authorized by law to collect; authorizing county clerks to
2 agree with other jurisdictions on procedures or processes
3 necessary for electronic recording of documents; creating the
4 Real Property Electronic Recording Standards Council to
5 develop the standards necessary to electronically record real
6 property documents; authorizing a legislative rule; providing
7 for a report and recommendations to the Legislature; providing
8 that members of the Real Property Electronic Recording
9 Standards Council pay their own expenses; setting forth areas
10 for consideration when adopting or changing standards;
11 providing for uniformity of application and construction of
12 the act; and providing that this act modifies, limits and
13 supersedes certain parts of the federal Electronic Signatures
14 in Global and National Commerce Act.

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

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto a new article, designated §39A-4-1, §39A-4-2,
18 §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all to read as
19 follows:

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

21 **§39A-4-1. Short title.**

22 This article may be cited as the Uniform Real Property
23 Electronic Recording Act.

24 **§39A-4-2. Definitions.**

1 In this article:

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

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

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

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

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

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

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

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

1 United States.

2 **§39A-4-3. Validity of electronic documents.**

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

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

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

18 **§39A-4-4. Recording of documents.**

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

21 (b) A county clerk:

22 (1) Who implements any of the functions listed in this section
23 shall do so in compliance with standards established by the Real
24 Property Electronic Recording Standards Council pursuant to section
25 five of this article;

1 (2) May receive, index, store, archive and transmit electronic
2 documents;

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

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

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

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

12 (7) May accept electronically any fee or tax relating to
13 electronic recording of real property documents that the clerk is
14 authorized to collect; and

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

20 **§39A-4-5. Administration and standards.**

21 (a) The Real Property Electronic Recording Standards Council,
22 is hereby created. The council shall propose rules for legislative
23 approval in accordance with the provisions of article three, chapter
24 twenty-nine-a of this code containing the standards to implement
25 this article. The council shall, at a minimum, include

1 representatives of the Division of Highways, Secretary of State, the
2 County Clerks' Association, the County Commissioners' Association,
3 members of the West Virginia Bar Association who specialize in title
4 work, a specialist in GIS mapping, the State Auditor, Governor's
5 Office of Technology, Division of Culture and History, Community
6 Bankers of West Virginia, West Virginia Bankers Association, West
7 Virginia Housing Development Fund, Real Estate Division of the
8 Department of Administration, the property tax division of the
9 Department of Tax and Revenue, West Virginia Board of Professional
10 Surveyors, the West Virginia Real Estate Commission and any other
11 person or group that may offer pertinent information or assistance
12 in establishing the standards.

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

22 (1) Standards and practices of other jurisdictions;

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

25 (3) The views of interested persons and governmental officials

1 and entities;

2 (4) The needs of counties of varying size, population and
3 resources; and

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

7 (c) The Division of Highways shall serve as chair of the Real
8 Property Electronic Recording Standards Council, provide
9 administrative support and file the required legislative rule on
10 behalf of the council.

11 (d) Each person, agency, board and organization on the council
12 shall cover his or her own expenses necessitated by participation in
13 the council.

14 (e) The council shall submit a report to the Legislative
15 Manager on or before January 1 of each year until its tasks are
16 complete. The report shall include its efforts to adopt standards
17 in accordance with the requirements of this article and
18 recommendations for further legislative action necessary to
19 effectuate the purposes of this article.

20 **§39A-4-6. Uniformity of application and construction.**

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

25 **§39A-4-7. Relation to electronic signatures in global and national**

1 **commerce act.**

2 This article modifies, limits, and supersedes the federal
3 Electronic Signatures in Global and National Commerce Act (15 U.S.C.
4 §7001, et seq.) but does not modify, limit or supersede §101(c) of
5 that act (15 U.S.C. §7001(c)) or authorize electronic delivery of
6 any of the notices described in §103(b) of that act (15 U.S.C.
7 §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 article 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 Real Property Electronic Recording Standards Council 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 council will engage in a stakeholder type rule-making process to assure that all of the affected parties have the opportunity to participate in the process.

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

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Joint Standing Committee on the Judiciary.