

Senate Bill No. 363

(By Senators Klempa, Browning, Palumbo, Wells, Nohe, Sypolt,
Beach, Foster and Jenkins)

[Introduced January 20, 2012; referred to the Committee on
Interstate Cooperation; and then to the Committee on the
Judiciary.]

**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 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

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

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new article, designated §39A-4-1, §39A-4-2,
20 §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all to read as
21 follows:

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

23 **§39A-4-1. Short title.**

24 This article may be cited as the Uniform Real Property

1 Electronic Recording Act.

2 **§39A-4-2. Definitions.**

3 In this article:

4 "Document" means information that is:

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

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

11 "Electronic" means relating to technology having electrical,
12 digital, magnetic, wireless, optical, electromagnetic or similar
13 capabilities.

14 "Electronic document" means a document that is received by the
15 county clerk in an electronic form.

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

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

1 "State" means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands or any
3 territory or insular possession subject to the jurisdiction of the
4 United States.

5 **§39A-4-3. Validity of electronic documents.**

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

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

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

21 **§39A-4-4. Recording of documents.**

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

24 (b) A county clerk:

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

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

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

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

12 (5) May convert paper documents accepted for recording into
13 electronic form;

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

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

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

24 **§39A-4-5. Administration and standards.**

1 (a) The Real Property Electronic Recording Standards Council,
2 is hereby created. The council shall propose rules for legislative
3 approval in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code containing the standards to
5 implement this article. The council shall include representatives
6 of the Division of Highways, Secretary of State, the County Clerks'
7 Association, the County Commissioners' Association, members of the
8 West Virginia Bar Association who specialize in title work, a
9 specialist in GIS mapping, the State Auditor, Governor's Office of
10 Technology, Division of Culture and History, Community Bankers of
11 West Virginia, West Virginia Bankers Association, West Virginia
12 Housing Development Fund, Real Estate Division of the Department of
13 Administration, the Property Tax Division of the Department of Tax
14 and Revenue, West Virginia Board of Professional Surveyors and the
15 West Virginia Real Estate Commission.

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

1 (1) Standards and practices of other jurisdictions;

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

5 (3) The views of interested persons and governmental officials
6 and entities;

7 (4) The needs of counties of varying size, population and
8 resources; and

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

12 (c) The Division of Highways shall serve as chair of the Real
13 Property Electronic Recording Standards Council, provide
14 administrative support and file the required legislative rule on
15 behalf of the council.

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

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

1 **§39A-4-6. Uniformity of application and construction.**

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

6 **§39A-4-7. Relation to electronic signatures in global and national
7 commerce act.**

8 This article modifies, limits, and supersedes the federal
9 Electronic Signatures in Global and National Commerce Act (15
10 U.S.C. §7001, et seq.) but does not modify, limit or supersede
11 §101(c) of that act (15 U.S.C. §7001(c)) or authorize electronic
12 delivery of any of the notices described in §103(b) of that act (15
13 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 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 is recommended for passage in the 2012 Regular Session by the Joint Commission on Interstate Cooperation.