

H. B. 2971

(By Delegates Ferro, Reynolds,
Storch and Walters)

[Introduced March 19, 2013; referred to the
Committee on the Judiciary then Finance.]

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
to collect electronically any tax or fee relating to

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

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

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

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

22 **§39A-4-1. Short title.**

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

1 **§39A-4-2. Definitions.**

2 In this article:

3 (1) "Commissioner" means the Commissioner of the Division of
4 Highways.

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

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

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

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

15 (4) "Electronic document" means a document that is received by
16 the county clerk in an electronic form.

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

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

1 commercial entity.

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

6 **§39A-4-3. Validity of electronic documents.**

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

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

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

22 **§39A-4-4. Recording of documents.**

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

1 (b) A county clerk:

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

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

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

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

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

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

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

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

1 **§39A-4-5. Administration and standards.**

2 (a) For the purpose of keeping the standards and practices of
3 county clerks in this state in harmony with the standards and
4 practices of recording offices in other jurisdictions that enact
5 substantially the Uniform Real Property Electronic Recording Act
6 and to keep the technology used by clerks in this state compatible
7 with technology used by recording offices in other jurisdictions
8 that enact substantially this act, the Commissioner of the Division
9 of Highways shall establish the Real Property Electronic Recording
10 Standards Advisory Committee, to, so far as is consistent with the
11 purposes, policies, and provisions of this article, assist in the
12 adoption, amendment and repeal of standards and practices.

13 (b) The Commissioner, shall appoint at least sixteen persons
14 to serve on the committee. In selecting persons to serve on the
15 committee, the Commissioner shall appoint:

16 (1) At least one person who is an attorney who specializes in
17 title work;

18 (2) At least one person who is a specialist in geographic
19 information system (GIS) mapping;

20 (3) A representative of the Secretary of State;

21 (4) A representative of the County Clerks' Association;

22 (5) A representative of the county commissioners' Association;

23 (6) A representative of the State Auditor;

24 (7) A representative of the Governor's Office of Technology;

1 (8) A representative of the Division of Culture and History;

2 (9) A representative of the Community Bankers of West
3 Virginia;

4 (10) A representative of the West Virginia Bankers
5 Association;

6 (11) A representative of the West Virginia Housing Development
7 Fund;

8 (12) A representative of the Real Estate Division of the
9 Department of Administration;

10 (13) A representative of the Property Tax Division of the
11 Department of Tax and Revenue;

12 (14) A representative of the West Virginia Board of
13 Professional Surveyors;

14 (15) A representative of the West Virginia Real Estate
15 Commission; and

16 (16) At least one representative representing the mineral
17 extraction industry.

18 (c) In establishing, amending and repealing standards and
19 practices for the recording documents in electronic form, storing
20 electronic records, and setting up systems for searching for and
21 retrieving these land records, the committee shall consider:

22 (1) Standards and practices of other jurisdictions;

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

1 Association;

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

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

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

9 (d) The Commissioner of the Division of Highways, or his or
10 her designee, shall serve as chair of the Real Property Electronic
11 Recording Standards Advisory Committee.

12 (e) The Commissioner shall:

13 (1) Provide administrative support to the committee; and

14 (2) Propose rules for legislative approval in accordance with
15 the provisions of article three, chapter twenty-nine-a of this code
16 that contain the standards to implement this article.

17 (f) Each person, agency, board and organization on the
18 committee shall cover his or her own expenses necessitated by
19 participation on the committee.

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

1 effectuate the purposes of this article.

2 **§39A-4-6. Uniformity of application and construction.**

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

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

9 This article modifies, limits, and supersedes the federal
10 Electronic Signatures in Global and National Commerce Act (15
11 U.S.C. §7001, et seq.) but does not modify, limit or supersede
12 §101(c) of that act (15 U.S.C. §7001(c)) or authorize electronic
13 delivery of any of the notices described in §103(b) of that act (15
14 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 2013 Regular Session by the Joint Commission on Interstate Cooperation.