

Senate Bill No. 5

(By Senators Kirkendoll, Cookman, Blair,
Fitzsimmons, D. Hall, Nohe, Wells and McCabe)

[Introduced January 8, 2014; referred to the Committee on the
Judiciary.]



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 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 provisions of 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

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

1 Electronic Recording Act.

2 **§39A-4-2. Definitions.**

3 In this article:

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

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

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

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

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

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

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

22 (6) "Person" means an individual, corporation, business trust,
23 estate, trust, partnership, limited liability company, association,

1 joint venture, public corporation, government or governmental
2 subdivision, agency, instrumentality or any other legal or
3 commercial entity.

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

8 **§39A-4-3. Validity of electronic documents.**

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

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

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

1 **§39A-4-4. Recording of documents.**

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

4 (b) A county clerk:

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

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

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

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

16 (5) May convert paper documents accepted for recording into
17 electronic form;

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

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

23 (8) May agree with other officials of a state or a political

1 subdivision thereof, or of the United States, on procedures or
2 processes to facilitate the electronic satisfaction of prior
3 approvals and conditions precedent to recording and the electronic
4 payment of fees and taxes.

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

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

17 (b) The commissioner shall appoint at least sixteen persons to
18 serve on the committee. In selecting persons to serve on the
19 committee, the commissioner shall appoint:

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

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

- 1 (3) A representative of the Secretary of State;
- 2 (4) A representative of the County Clerks' Association;
- 3 (5) A representative of the County Commissioners' Association;
- 4 (6) A representative of the State Auditor;
- 5 (7) A representative of the Governor's Office of Technology;
- 6 (8) A representative of the Division of Culture and History;
- 7 (9) A representative of the Community Bankers of West
8 Virginia;
- 9 (10) A representative of the West Virginia Bankers
10 Association;
- 11 (11) A representative of the West Virginia Housing Development
12 Fund;
- 13 (12) A representative of the Real Estate Division of the
14 Department of Administration;
- 15 (13) A representative of the Property Tax Division of the
16 Department of Tax and Revenue;
- 17 (14) A representative of the West Virginia Board of
18 Professional Surveyors;
- 19 (15) A representative of the West Virginia Real Estate
20 Commission; and
- 21 (16) At least one representative representing the mineral
22 extraction industry.
- 23 (c) In establishing, amending and repealing standards and

1 practices for the recording documents in electronic form, storing
2 electronic records and setting up systems for searching for and
3 retrieving these land records, the committee shall consider:

4 (1) Standards and practices of other jurisdictions;

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

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

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

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

15 (d) The Commissioner of the Division of Highways, or his or
16 her designee, shall serve as Chair of the Real Property Electronic
17 Recording Standards Advisory Committee.

18 (e) The commissioner shall:

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

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

23 (f) Each person, agency, board and organization on the

1 committee shall cover his or her own expenses necessitated by
2 participation on the committee.

3 (g) The commissioner shall submit a report to the Legislative
4 Manager on or before January 1 of each year until its tasks are
5 complete. The report shall include its efforts to adopt standards
6 in accordance with the requirements of this article and
7 recommendations for further legislative action necessary to
8 effectuate the purposes of this article.

9 **§39A-4-6. Uniformity of application and construction.**

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

14 **§39A-4-7. Relation to electronic signatures in Global and National
15 Commerce Act.**

16 This article modifies, limits and supersedes the federal
17 Electronic Signatures in Global and National Commerce Act (15
18 U.S.C. §7001, *et seq.*) but does not modify, limit or supersede
19 §101(c) of that act (15 U.S.C. §7001(c)) or authorize electronic
20 delivery of any of the notices described in §103(b) of that act (15
21 U.S.C. §7003(b)).

NOTE: The purpose of this bill is to adopt the Uniform Real

Property Electronic Recording Act. The bill defines terms and creates Real Property Electronic Recording Standards Advisory Committee consisting of sixteen members. The bill authorizes any requirement of state law describing or requiring that a land record document be an original, on paper, or in writing is satisfied by a document in electronic form. The bill authorizes any requirement that a 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 bill does not provide a means of funding the establishment or operation of an electronic recording system. 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 bill requires that standards are to be developed with a vision toward fostering intra-and interstate harmony and uniformity in the electronic recording process. The bill requires the council to engage in a stakeholder type rule-making process to assure that all of the affected parties have the opportunity to participate in the process. The bill also modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act.

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

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Commission on Interstate Cooperation.