

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4250**

4 (By Delegates Doyle, Rodighiero, Ferro,  
5 Frazier, Reynolds, Storch and Walters)

6  
7 (Originating in the Committee on the Judiciary)

8 [January 25, 2012]

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; clarifying validity of electronic documents and  
15 electronic signatures; providing for recording of electronic  
16 documents; requiring any county clerk implementing the  
17 provisions of the act to comply with established standards;  
18 authorizing county clerks to receive, index, store, archive  
19 and transmit electronic documents; authorizing county clerks  
20 to allow public access, search and retrieval of electronic  
21 documents; allowing county clerks to convert paper documents  
22 accepted for recording into electronic documents; authorizing  
23 county clerks to collect electronically any tax or fee  
24 relating to electronic recording of real property documents  
25 they are authorized by law to collect; authorizing county  
26 clerks to agree with other jurisdictions on procedures or  
27 processes necessary for electronic recording of documents;

1 creating the Real Property Electronic Recording Standards  
2 Advisory Committee to develop the standards necessary to  
3 electronically record real property documents; authorizing a  
4 legislative rule; providing for a report and recommendations  
5 to the Legislature; providing that members of the Real  
6 Property Electronic Recording Standards Advisory Committee pay  
7 their own expenses; setting forth areas for consideration when  
8 adopting or changing standards; providing for uniformity of  
9 application and construction of the act; and providing that  
10 this act modifies, limits and supersedes certain parts of the  
11 federal Electronic Signatures in Global and National Commerce  
12 Act.

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

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

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

19 **§39A-4-1. Short title.**

20 This article may be cited as the Uniform Real Property  
21 Electronic Recording Act.

22 **§39A-4-2. Definitions.**

23 In this article:

24 "Document" means information that is:

25 (1) Inscribed on a tangible medium or that is stored in an

1 electronic or other medium and is retrievable in perceivable form;

2 and

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

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

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

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

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

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

24 **§39A-4-3. Validity of electronic documents.**

25 (a) If a law requires, as a condition for recording, that a  
26 document be an original, be on paper or another tangible medium or

1 be in writing, the requirement is satisfied by an electronic  
2 document satisfying the requirements of this article.

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

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

14 **§39A-4-4. Recording of documents.**

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

17 (b) A county clerk:

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

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

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

26 (4) Who accepts electronic documents for recording shall

1 continue to accept paper documents as authorized by state law and  
2 shall place entries for both types of documents in the same index;

3 (5) May convert paper documents accepted for recording into  
4 electronic form;

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

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

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

15 (9) May not accept a document written in a language other than  
16 English unless it is accompanied by a certified translation into  
17 English. In such a case, the document to be recorded shall consist  
18 of (1) the English translation; (2) a certification of the accuracy  
19 of the translation, signed by the translator and acknowledged; and  
20 (3) the original foreign language document.

21 **§39A-4-5. Administration and standards.**

22 (a) For the purpose of keeping the standards and practices of  
23 county clerks in this state in harmony with the standards and  
24 practices of recording offices in other jurisdictions that enact  
25 substantially the Uniform Real Property Electronic Recording Act  
26 and to keep the technology used by clerks in this state compatible

1 with technology used by recording offices in other jurisdictions  
2 that enact substantially this act, the Commissioner of the Division  
3 of Highways shall establish the Real Property Electronic Recording  
4 Standards Advisory Committee, to, so far as is consistent with the  
5 purposes, policies, and provisions of this article, assist in the  
6 adoption, amendment and repeal of standards and practices.

7 (b) The Commissioner, shall appoint at least sixteen persons  
8 to serve on the committee. In selecting persons to serve on the  
9 committee, the Commissioner shall appoint:

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

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

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

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

16 (5) A representative of the County Commissioners' Association;

17 (6) A representative of the State Auditor;

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

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

20 (9) A representative of the Community Bankers of West  
21 Virginia;

22 (10) A representative of the West Virginia Bankers  
23 Association;

24 (11) A representative of the West Virginia Housing Development  
25 Fund;

26 (12) A representative of the Real Estate Division of the

1 Department of Administration;

2 (13) A representative of the Property Tax Division of the  
3 Department of Tax and Revenue;

4 (14) A representative of the West Virginia Board of  
5 Professional Surveyors;

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

8 (16) At least one representative of the mineral extraction  
9 industry.

10 (c) In establishing, amending and repealing standards and  
11 practices for the recording documents in electronic form, storing  
12 electronic records, and setting up systems for searching for and  
13 retrieving these land records, the committee shall consider:

14 (1) Standards and practices of other jurisdictions;

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

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

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

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

25 (d) The Commissioner of the Division of Highways, or his or  
26 her designee, shall serve as chair of the Real Property Electronic

1 Recording Standards Advisory Committee.

2 (e) The Commissioner shall:

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

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

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

10 (g) The Commissioner shall submit a report to the Legislative  
11 Manager on or before January 1 of each year until its tasks are  
12 complete. The report shall include its efforts to adopt standards  
13 in accordance with the requirements of this article and  
14 recommendations for further legislative action necessary to  
15 effectuate the purposes of this article.

16 **§39A-4-6. Uniformity of application and construction.**

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

21 **§39A-4-7. Relation to electronic signatures in global and national**  
22 **commerce act.**

23 This article modifies, limits, and supersedes the federal  
24 Electronic Signatures in Global and National Commerce Act (15  
25 U.S.C. §7001, et seq.) but does not modify, limit or supersede



1 §101(c) of that act (15 U.S.C. §7001(c)) or authorize electronic  
2 delivery of any of the notices described in §103(b) of that act (15  
3 U.S.C. §7003(b)).