

## **Senate Bill No. 552**

(By Senators Tucker, Chafin, Nohe, Palumbo, Sypolt, Wells,  
McCabe, Fitzsimmons, Plymale and Stollings)

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[Introduced March 18, 2013;  
referred to the Committee on Interstate Cooperation;  
and then to the Committee on the Judiciary.]

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

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

That the Code of West Virginia, 1931, as amended, be 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 to read as follows:

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

**§39A-4-1. Short title.**

- 1 This article may be cited as the Uniform Real Property
- 2 Electronic Recording Act.

**§39A-4-2. Definitions.**

- 1 In this article:
- 2 (1)“Commissioner” means the Commissioner of the
- 3 Division of Highways.
- 4 (2)“Document” means information that is:
- 5 (A) Inscribed on a tangible medium or that is stored in an
- 6 electronic or other medium and is retrievable in perceivable
- 7 form; and

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

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

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

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

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

25           (7) “State” means a state of the United States, the District  
26   of Columbia, Puerto Rico, the United States Virgin Islands or

27 any territory or insular possession subject to the jurisdiction of  
28 the United States.

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

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

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

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

**§39A-4-4. Recording of documents.**

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

4           (b) A county clerk:

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

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

11          (3) May provide for access to, and for search and  
12          retrieval 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  
15          law and shall place entries for both types of documents in the  
16          same index;

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

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

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

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

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

1           (a) For the purpose of keeping the standards and practices  
2 of county clerks in this state in harmony with the standards  
3 and practices of recording offices in other jurisdictions that  
4 enact substantially the Uniform Real Property Electronic  
5 Recording Act and to keep the technology used by clerks in  
6 this state compatible with technology used by recording  
7 offices in other jurisdictions that enact substantially this act,  
8 the Commissioner of the Division of Highways shall

9 establish the Real Property Electronic Recording Standards  
10 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  
14 persons to serve on the committee. In selecting persons to  
15 serve on the committee, the commissioner shall appoint:

16 (1) At least one person who is an attorney who  
17 specializes in 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'  
23 Association;

24 (6) A representative of the State Auditor;

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



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

29       (9) A representative of the Community Bankers of West  
30 Virginia;

31       (10) A representative of the West Virginia Bankers  
32 Association;

33       (11) A representative of the West Virginia Housing  
34 Development Fund;

35       (12) A representative of the Real Estate Division of the  
36 Department of Administration;

37       (13) A representative of the Property Tax Division of the  
38 Department of Tax and Revenue;

39       (14) A representative of the West Virginia Board of  
40 Professional Surveyors;

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

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

45 (c) In establishing, amending and repealing standards and  
46 practices for the recording documents in electronic form,  
47 storing electronic records and setting up systems for  
48 searching for and retrieving these land records, the committee  
49 shall consider:

50 (1) Standards and practices of other jurisdictions;

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

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

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

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

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

64 (e) The commissioner shall:

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

66 (2) Propose rules for legislative approval in accordance

67 with the provisions of article three, chapter twenty-nine-a of

68 this code that contain the standards to implement this article.

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

70 committee shall cover his or her own expenses necessitated

71 by participation on the committee.

72 (g) The commissioner shall submit a report to the

73 Legislative Manager on or before January 1 of each year until

74 its tasks are complete. The report shall include its efforts to

75 adopt standards in accordance with the requirements of this

76 article and recommendations for further legislative action

77 necessary to effectuate the purposes of this article.

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

1 In applying and construing this Uniform Real Property

2 Electronic Recording Act, consideration must be given to the

3 need to promote uniformity of the law with respect to its

4 subject matter among states that enact it.

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

1 This article modifies, limits and supersedes the federal  
2 Electronic Signatures in Global and National Commerce Act  
3 (15 U. S. C. §7001, et seq.) but does not modify, limit or  
4 supersede §101(c) of that act (15 U. S. C. §7001(c)) or  
5 authorize electronic delivery of any of the notices described in  
6 §103(b) of that act (15 U. S. C. §7003(b)).

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(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.)