

H. B. 2519

(By Delegates Ferro, Walters, Pethtel, Perry, Fluharty, Storch,
P. Smith, Longstreth, Trecost, Hornbuckle and Reynolds)

[Introduced January 30, 2015; 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 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

1 legislative rule; providing for a report and recommendations to the Legislature; providing
2 that members of the Real Property Electronic Recording Standards Council pay their own
3 expenses; setting forth areas for consideration when adopting or changing standards;
4 providing for uniformity of application and construction of the act; and providing that this
5 act modifies, limits and supersedes certain parts of the federal Electronic Signatures in
6 Global and National Commerce Act.

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

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

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

12 **§39A-4-1. Short title.**

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

14 **§39A-4-2. Definitions.**

15 In this article:

16 (1)“Commissioner” means the Commissioner of the Division of Highways.

17 (2)“Document” means information that is:

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

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

22 (3) “Electronic” means relating to technology having electrical, digital, magnetic, wireless,

1 optical, electromagnetic or similar capabilities.

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

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

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

10 (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
11 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
12 United States.

13 **§39A-4-3. Validity of electronic documents.**

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

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

19 (c) A requirement that a document or a signature associated with a document be notarized,
20 acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of the
21 person authorized to perform that act, and all other information required to be included, is attached
22 to or logically associated with the document or signature. A physical or electronic image of a stamp,

1 impression or seal need not accompany an electronic signature.

2 **§39A-4-4. Recording of documents.**

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

5 (b) A county clerk:

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

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

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

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

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

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

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

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

22 **§39A-4-5. Administration and standards.**

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

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

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

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

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

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

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

16 (6) A representative of the State Auditor;

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

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

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

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

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

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

- 1 (13) A representative of the Property Tax Division of the Department of Tax and Revenue;
2 (14) A representative of the West Virginia Board of Professional Surveyors;
3 (15) A representative of the West Virginia Real Estate Commission; and
4 (16) At least one representative representing the mineral extraction industry.
- 5 (c) In establishing, amending and repealing standards and practices for the recording
6 documents in electronic form, storing electronic records, and setting up systems for searching for and
7 retrieving these land records, the committee shall consider:
- 8 (1) Standards and practices of other jurisdictions;
9 (2) The most recent standards promulgated by national standard-setting bodies such as the
10 Property Records Industry Association;
- 11 (3) The views of interested persons and governmental officials and entities;
12 (4) The needs of counties of varying size, population and resources; and
13 (5) Standards requiring adequate information security protection to ensure that electronic
14 documents are accurate, authentic, adequately preserved and resistant to tampering.
- 15 (d) The Commissioner of the Division of Highways, or his or her designee, shall serve as
16 chair of the Real Property Electronic Recording Standards Advisory Committee.
- 17 (e) The commissioner shall:
- 18 (1) Provide administrative support to the committee; and
19 (2) Propose rules for legislative approval in accordance with the provisions of article three,
20 chapter twenty-nine-a of this code that contain the standards to implement this article.
- 21 (f) Each person, agency, board and organization on the committee shall cover his or her own
22 expenses necessitated by participation on the committee.

1 (g) The commissioner shall submit a report to the legislative manager on or before January
 2 1 of each year until its tasks are complete. The report shall include its efforts to adopt standards in
 3 accordance with the requirements of this article and recommendations for further legislative action
 4 necessary to effectuate the purposes of this article.

5 **§39A-4-6. Uniformity of application and construction.**

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

9 **§39A-4-7. Relation to electronic signatures in global and national commerce act.**

10 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and
 11 National Commerce Act (15 U.S.C. §7001, et seq.) but does not modify, limit or supersede §101(c)
 12 of that act (15 U.S.C. §7001(c)) or authorize electronic delivery of any of the notices described in
 13 §103(b) of that act (15 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, it has been completely underscored.