

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

CITE AUTHORITY W.VA. CODE §39-5-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 30

TITLE OF RULE BEING PROPOSED: USE OF ELECTRONIC SIGNATURES BY STATE
AGENCIES

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



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TITLE 153
LEGISLATIVE RULES
JOINT RULE OF THE SECRETARY OF STATE AND STATE AUDITOR

SEP 23 3 57 PM '98

SERIES 30
Use of Electronic Signatures by State Agencies

OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE

§153-30-1. General

1.1. Scope. -- This legislative rule establishes the requirements for state agencies intending to use or accept electronic signatures on filings and other messages in electronic form which require the signature of an authorized person.

1.2. Authority. -- W. Va. Code §§ 39-5-4.

1.3. Filing Date. --

1.4. Effective Date. --

§153-30-2. Definitions

2.1. "Agency" includes any state, county or municipal office, department, division, bureau, board, commission, public corporation or other governmental entity created by the State Constitution, statute, rule or executive order.

2.2. "Authorized officer" means the elected or appointed official, or a designee, who has authority to act on behalf of the agency.

2.3. "Electronic signature" means any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the person using it to have the same force and effect as a manual

signature. Electronic signatures include, but are not limited to:

2.3.a. A "digitized signature" which consists of a handwritten signature entered on a recording device utilizing electronic recording software which simultaneously converts the image created to a digital record and attaches it to the electronic document to which it relates;

2.3.b. A "digital mark" which consists of an electronic code indicating approval or confirmation which is entered into a protected digital record following access protocols which identify the user and require a password, personal identification number, encrypted card or other security device which restricts access to one or more authorized individuals; and

2.3.c. A "digital signature" which consists of a message transformed using an asymmetric cryptosystem so that a person having the initial message and the signer's public key can accurately determine whether the message was created using the corresponding private key, and whether the message has been altered since the message was transformed.

2.4. "Accept an electronic signature" means to accept an electronic record which requires the signature of an authorized person when that electronic record contains an

electronic signature in lieu of an original signature.

2.5. "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other technology that is similar to these technologies.

2.6. "Electronic record" means a record generated, communicated, received, or stored by electronic means.

2.7. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, which includes an official record, including but not limited to a message, document, form, return or other instrument which is transmitted electronically from an authorized officer or other person to an agency to meet the requirements of law or to execute an essential transaction. An informal communication will not be considered an electronic record for purposes of this rule.

§153-30-3. Agency Use of Electronic Records and Electronic Signatures Generally.

3.1. Each agency shall determine if, and the extent to which, it will send and receive electronic records and electronic signatures to and from other persons and otherwise create, use, store, and rely upon electronic records and electronic signatures.

3.2. In any case where an agency decides to send or receive electronic records, or to accept document filings by electronic records, the agency may, giving due consideration to security, specify:

3.2.a. The manner and format in which such electronic records must be created, sent, received, and stored;

3.2.b. If such electronic records must be signed, the type of electronic signature that is required or acceptable, the manner and format in which the signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by the sender of the electronic record to facilitate the process;

3.2.c. Control processes and procedures as appropriate to ensure adequate integrity, security, confidentiality, and auditability of the electronic records; and

3.2.d. Any other required attributes for the electronic records that are currently specified for corresponding paper documents, or reasonably necessary under the circumstances.

3.3. Whenever any rule of law requires or authorizes the filing of any information, notice, lien, or other document or record with any agency, a filing made by an electronic record has the same force and effect as a filing made on paper in all cases where the agency has authorized or agreed to the electronic filing and the filing is made in accordance with applicable rules or agreement.

3.4. Subject to prior notice by the receiving agency, submission of an electronic record containing an electronic signature record constitutes an agreement by the sender to accept equivalent electronic signature types on return or corresponding electronic records.

§153-30-4. Agency Procedures for Adoption, Modification or Revocation of Electronic Signature Acceptance

4.1. Each agency shall evaluate the types of records received to determine which records can be accepted with electronic signatures, and which form of electronic signature meets the security requirements of the specific transaction.

4.1.a. An electronic record which requires the signature of a person under oath before an authorized official or with the acknowledgment of a notary public may not be accepted with an electronic signature prior to the authorization in law of an electronic attestation.

4.1.b. An electronic record which requires the signature of a person under a self-executing oath may be accepted with a digital signature or other electronic signature which is encrypted, capable of verifying the identity of the signer and discerning any alteration of the message since transformation.

4.2. An agency may accept an electronic record containing an electronic signature only after complying with the procedural requirements of this rule.

4.3. For each type of electronic record on which an agency is willing to accept an electronic signature in satisfaction of a legal signature requirement, the agency shall publish a notice which shall specify:

- 4.3.a. the name of the agency authorizing use of the electronic record;
- 4.3.b. a description of the type of electronic record;

4.3.c. the type or types of electronic signature which will be accepted on the record;

4.3.d. a description of any restrictions on who may electronically sign the record;

4.3.e. the date that the electronic record with an electronic signature will first be accepted;

4.3.f. specifications for any procedures or technology that must be used to create, communicate, or store the electronic signature; and

4.3.g. the name of one or more contacts within the agency who can provide additional information, along with the address, telephone and/or e-mail address of the contact person.

4.4. An agency subject to the Administrative Procedures Act, West Virginia Code Chapter 29A-1-1 et seq., shall comply with the notice requirements of subsection 4.3 of this section prior to acceptance of electronic signatures on electronic records, as follows:

4.4.a. When an agency intends to accept electronic signatures on electronic records sent to or received from employees within the agency or within the department of which the agency is a subdivision, the authorized officer shall give notice as required by subsection 4.3 of this section to the appropriate personnel.

4.4.b. When an agency intends to accept electronic signatures on electronic records received from other agencies outside the receiving agency's department, the agency shall give notice to the Information Services and Communications Division of the Department of Administration (IS&C) as

required by subsection 4.3 of this section, at least thirty (30) days before first acceptance. The IS&C shall maintain a database of the agencies and the specific information provided for each type of record.

4.4.c. When an agency intends to use or accept electronic signatures on electronic records received from a person acting on his or her own behalf, or from a person acting on behalf of an entity not subject to the Administrative Procedures Act, the agency shall give notice as required by subsection 4.3 of this section, at least thirty (30) days prior to first acceptance, by publication in the State Register.

4.4.d. The agency shall make available a summary of technical or procedural information to assist persons desiring to file electronically and utilize electronic signatures.

4.5. An agency not subject to the Administrative Procedures Act, including county and municipal agencies, shall comply with the notice requirements of subsection 4.3 of this section prior to its use or acceptance of electronic signatures on electronic records as follows:

4.5.a. When an agency intends to use or accept electronic signatures on electronic records received from employees within the agency or within the governmental entity of which the agency is a subdivision, the authorized officer shall give notice as required by subsection 4.3 of this section to the appropriate personnel.

4.5.b. When an agency intends to use or accept electronic signatures on electronic

records received from a person acting on his or her own behalf, or from a person acting on behalf of an entity other than the governmental entity of which the agency is a subdivision, the agency shall give notice as required by subsection 4.3 of this section, at least thirty (30) days prior to first acceptance, by publication as a Class I legal advertisement in a qualified newspaper published in the municipality or county where the principal office of the agency is located.

4.6. An agency may modify, suspend, or terminate the acceptance of the electronic signatures after giving notice according to the requirements of this section; provided, that

4.6.a. Notice shall be given as required at least on hundred twenty (120) days prior to the termination of acceptance of a type of electronic signature; and

4.6.b. In an emergency which prevents the acceptance of the electronic signature, an agency may suspend acceptance of electronic signatures and require filings and signatures be provided on paper. The agency shall provide reasonable notice to potential filers.

4.7. Nothing in this rule shall be construed to require an agency to accept electronic signatures in lieu of written signatures.

4.8. Nothing in this rule shall be construed to allow an agency, without the specific authority of statute, to require a person acting on his or her own behalf, or a person acting on behalf of an entity other than a governmental entity to use an electronic

signature in order to complete an essential filing.

4.9. All agencies may enter into agreements with other agencies relating to the use and acceptance of electronic signatures on electronic records communicated between those agencies.

§153-30-5. Requirements for Acceptance of Digital Marks

5.1. An agency which intends to accept digital marks shall establish, at a minimum, the security measures and procedural requirements as provided in this section.

5.2. The agency shall establish a secure registry of persons authorized to sign filings and records, or shall utilize a secure registry for verification of the identity of the signer.

5.2.a. A person who desires to become authorized to file with the agency using a digital mark shall file with the secure registry a signed statement verifying that he or she:

5.2.a.1. Will not share with any other person the password, code or other security key required for use of the mark;

5.2.a.2. Agrees that the use of the mark represents confirmation of a record;

5.2.a.3. Agrees to notify the agency immediately once he or she becomes aware that the security key is compromised; and

5.2.a.4. Understands that the provisions of West Virginia Code §61-3C-10 prescribes the penalties for the unauthorized disclosure of a password, identifying code, personal identification number or other confidential security information.

5.2.b. The agency or secure registry shall issue an authorized person an identifying number and shall enter that number, name and date of authorization into the registry

5.2.c. The appropriate administrator shall revoke the access privileges of the authorized person upon termination of authority.

5.3. Each authorized person shall utilize a unique number, password or other personal authorization which shall be encrypted and which shall indicate the approval of that person.

5.4. The size, frequency of required changes and other elements of the security code shall meet state or agency security policies, if any are in effect. If no policy has been adopted, the elements of the security code shall meet generally acceptable standards for password security.

5.5 The agency shall establish the necessary computer hardware and software security, consistent with current generally acceptable standards for secure transactions, to prevent alteration of the electronic filing and to assure protection of the security key, and shall document that those features and measures are in place.

5.5.a. Information resources shall be protected by use of access control systems.

Access control systems can be either internal (passwords, encryption, access control lists, constrained user interfaces) or external (port protection devices, firewalls, host-based authentication).

5.5.b. Rules for access to resources (including internal and external telecommunications and networks) shall be established by the information/application owner or manager who is responsible for the resources.

5.5.c. When confidential or sensitive information from one agency is received by another agency in connection with the transaction of official business, the receiving agency shall maintain the confidentiality or sensitivity of the information in accordance with the conditions imposed by the providing agency.

5.5.d. Pursuant to state security policy, information security and audit controls shall be incorporated into new systems.

5.5.e. Online banner screens, if used, shall contain statements to the effect that unauthorized use of the system is prohibited, and that violators are subject to criminal prosecution.

5.6. For filings involving financial transmissions or financial liability, an agency may establish dollar limitations on the amount of a transaction for which a digital mark will be accepted.

§153-30-6. Requirements for Acceptance of Digitized Signatures

6.1. In order to assure the ease of use of digitized signatures between agencies, and between other persons and agencies, the state shall adopt a uniform system for digitized signature acceptance using software which meets interoperability standards, as defined by the Information Services & Communications Division of the Department of Administration.

6.2. The Information Services & Communications Division shall initiate a procurement process to identify and obtain the appropriate software. User agencies shall be responsible for the costs of software.

6.3. Each agency shall establish security procedures as provided in subsection 5.5. of this rule.

§153-30-7. Requirements for Acceptance of Digital Signatures

7.1. The Secretary of State, pursuant to legislative rule as required by West Virginia Code §39-5-4, shall establish a certification authority for the registration and issuance of certificates to subscribers for the use of digital signatures, as provided in Secretary of State Rule, Use of Digital Signatures, State Certification Authority and State Repository, 153CSR31.

7.2. An agency which agrees to accept a digital signature in connection with an electronic filing shall obtain, install and test the essential software prior to giving notice of the intent to accept digital signatures.

7.3. Any authorized officer or other authorized person who becomes a subscriber to the certification authority maintained by the Secretary of State and who maintains an

authorized key pair shall be permitted to use a digital signature on any electronic document which the agency agrees to accept.

§153-30-8. Requirements for Acceptance of Other Forms of Electronic Signatures

8.1. When an agency desires to accept a newly developed form of electronic signature not specifically listed in the definition of electronic signature contained in this rule, the agency shall apply to the Secretary of State for authority to accept the electronic signature.

8.2. To be acceptable as an electronic signature, the technology shall:

8.2.1. Allow the receiving agency to verify the identity of the sender; and

8.2.2. Allow the receiving agency to determine whether the message received has been altered en route.

8.3. The agency is responsible for assuring the security of the record following its acceptance.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
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Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

September 23, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mary Ratliff
Office of the Secretary of State
Capitol Complex
Building 1, Suite 157-K

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Use of Electronic Signatures by State Agencies, 153CSR30**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Secretary of State and State Auditor

Subject: Use of Electronic Signatures by State Agencies, 153CSR30

PERTINENT DATES

Filed for public comment: June 30, 1998
Public comment period ended: July 31, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 allows each agency to determine whether or not it will send and receive electronic records and signatures. It allows the agency to specify among other things, the manner and format in which the electronic records must be created, sent received and stored. It states that an electronic filing has the same force and effect as a paper filing.

Section 4 allows each agency to determine what type of electronic signature that it will accept and specifies those procedures an agency must follow prior to accepting electronic signatures. Specific requirements are listed for agencies subject to the Administrative Procedures Act and for those which are not subject to the Act, including counties and municipalities.

Section 5 sets forth the requirements which must be met by an agency which intends to accept digital marks.

Section 6 requires the State to adopt a uniform system for digitized signature acceptance and requires I S & C to initiate a procurement process to identify and obtain the appropriate software.

Section 7 states that the Secretary of State is to establish a certification authority for the registration and issuance of certificates to subscribers for the use of digital signatures by legislative rule.

Section 8 allows an agency to accept newly developed forms of electronic signatures that meet certain criteria and which are approved by the Secretary of State.

AUTHORITY

Statutory authority: W.Va. Code, §39-5-4, which provides, in part, as follows:

...(a) The secretary of state and state auditor shall propose joint legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish standards and processes to facilitate the use of electronic signatures in all governmental transactions by state agencies subject to chapter twenty-nine-a of this code...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has minor technical modifications to suggest.