

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #6

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

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 RULE BEING PROPOSED: 30

TITLE OF RULE BEING PROPOSED: USE OF ELECTRONIC SIGNATURES BY

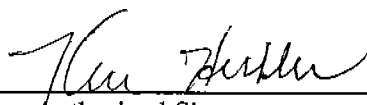
STATE AGENCIES

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S. B. 269

SECTION §64-9-2, PASSED ON MARCH 13, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: APRIL 1, 1999


Authorized Signature

\$3.40

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

SERIES 30
Use of Electronic Signatures by State Agencies

APR 1 11 33 AM '99
OFFICE OF THE SECRETARY OF STATE
COMMONWEALTH OF VIRGINIA

§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. -- April 1, 1999

1.4. Effective Date. -- April 1, 1999

§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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1 Bill-SOS

H. B. 2562

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(By Delegates Hunt, Linch, Compton, Faircloth,
Jenkins and Riggs)

[Introduced February 1, 1999; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact section two, article nine,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the secretary of state to promulgate a
14 legislative rule relating to the use of electronic
15 signatures by state agencies.

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

17 That section two, article nine, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**
22 **BOARDS TO PROMULGATE LEGISLATIVE RULES.**
23 **§64-9-2. Secretary of state.**

1 (a) The legislative rule filed in the state register
2 on the thirty-first day of July, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 two, article one, chapter fifty-nine of this code, modified
5 by the secretary of state to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the third day of November, one thousand
8 nine hundred ninety-seven, relating to the secretary of
9 state (fees relating to electronic records, 153 CSR 2), is
10 authorized.

11 (b) The legislative rule filed in the state register
12 on the thirty-first day of July, one thousand nine hundred
13 ninety-seven, authorized under the authority of section
14 sixty-seven, article one, chapter thirty-one of this code,
15 modified by the secretary of state to meet the objections
16 of the legislative rule-making review committee and refiled
17 in the state register on the fifth day of January, one
18 thousand nine hundred ninety-eight, relating to the
19 secretary of state (matters relating to corporations and
20 other business entity filing, 153 CSR 5), is authorized.

21 (c) The legislative rule filed in the state register
22 on the third day of August, one thousand nine hundred
23 ninety-eight, authorized under the authority of section

1 four, article five, chapter thirty-nine, of this code,
2 modified by the secretary of state to meet the objections
3 of the legislative rule-making review committee and refiled
4 in the state register on the twenty-third day of September,
5 one thousand nine hundred ninety-eight, relating to the
6 secretary of state (use of electronic signatures by state
7 agencies, 153 CSR 30), is authorized.

8

9 NOTE: The purpose of this bill is to authorize the
10 Secretary of State to promulgate a legislative rule
11 relating to the Use of Electronic Signatures by State
12 Agencies.

13

14 Strike-throughs indicate language that would be
15 stricken from the present law, and underscoring indicates
16 new language that would be added.