



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia  
Secretary Of State

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

AGENCY: Secretary Of State TITLE-SERIES: 153-30  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Use of Digital Signatures  
CITE STATUTORY AUTHORITY: W. Va. Code §39A-3-3

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 334

Section W. Va. Code §64-9-20(d) Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 14, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

Donald Kersey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE

SERIES 30  
USE OF DIGITAL SIGNATURES

**§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 § 39A-3-3.

1.3. Filing Date. -- April 14, 2022.

1.4. Effective Date. -- April 14, 2022.

1.5. Sunset Provision. -- This Rule shall terminate and have no further force or effect on August 1, 2027.

**§153-30-2. Definitions.**

2.1. The definitions of terms established in W. Va. Code §§ 39A-1-2 and 39A-3-1 shall apply when those terms are used in this rule.

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 record" means a record created, generated, sent, communicated, received, or stored by electronic means.

2.4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

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

3.1. Each agency shall determine 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 shall, giving due consideration to security, specify:

3.2.1. The manner and format in which the electronic records must be created, sent, received, and stored;

3.2.2. The type of electronic signature that is required or acceptable, the security level required for the transaction, the manner and format in which the signature must be affixed to the electronic record, and the criteria that must be met by any third party used by the sender of the electronic record to facilitate the process;

3.2.3. Processes and procedures to ensure adequate integrity, security, confidentiality, and auditability of the electronic records;

3.2.4. The software vendor, software product, and software version that will be used;

3.2.5. The categorical types of documents on which the agency intends to use or accept electronic signatures; and

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

3.3. For all agency applications to implement electronic signatures submitted on or after March 4, 2010, the specifications outlined in subsection 3.2 of this rule shall be submitted by the agency to the Office of Technology in an agency application.

3.4. All agency applications must be signed by an Authorized officer. Once the Office of Technology has approved an agency application, the agency shall forward a copy of the application and the Office of Technology's approval to the Secretary of State. Upon receipt Office of Technology approval, the agency shall forward to the Secretary of State a copy of the completed application and the Office of Technology approval. After confirmation of receipt by the Secretary of State of an agency application and Office of Technology approval, the agency may begin implementing electronic signature certificates for its usage and acceptance.

3.5. In the event that an agency intends to employ a new software vendor, software product, or software version, the agency shall obtain a new approval pursuant to subsection 3.4 of this rule.

3.6. 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.

3.7. Subject to prior notice by the receiving agency, submission of an electronic record containing an electronic signature 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 type of electronic signature meets the security requirements of the specific transaction.

4.2. 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 give notice in conjunction with the electronic filing system which shall specify:

4.2.1. The type(s) of electronic signature that will be accepted on the record;

4.2.2. A description of any restrictions on who may electronically sign the record;

4.2.3. Specifications for any procedures or technology that must be used to create, communicate,

or store the electronic signature; and

4.2.4. The name of one or more contacts, including an Authorized officer, within the agency who can provide additional information, along with one or more of the address, telephone and e-mail address of the contact person(s).

4.3. 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:

4.3.1. Notice shall be given as required at least thirty (30) days prior to the termination of acceptance of a type of electronic signature; and

4.3.2. 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.

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

4.5. 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.

4.6. 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 Signatures.**

5.1. The Secretary of State, pursuant W. Va. Code §39A-3-3, hereby authorizes the West Virginia Office of Technology to be the state certificate authority for the registration and issuance of certificates to subscribers for the use of digital signatures.

5.2. An agency which agrees to accept a digital signature in connection with an electronic filing, shall obtain, install, and test the essential hardware and software as prescribed by the Office of Technology.

5.3. Any Authorized officer or other authorized person who becomes a subscriber to the certificate authority authorized by the Secretary of State or Office of Technology, and who maintains an authorized key pair, shall be permitted to use a digital signature on any electronic document which an agency agrees to accept.

**§153-30-6. Reserved.**

**§153-30-7. Selection of Existing Federal Certificate Authority Program as State Authority and Repository; Purchase of Certificates; Fees; Revocation of Authorization.**

7.1. The Secretary of State may designate and authorize as the official state certificate authority and repository an existing federal certificate authority and repository program, providing:

7.1.1. The program permits the acquisition and use of electronic signature certificates by state and local government agencies for their employees and by individuals for transactions with those agencies at or below the rate established for the federal program;

7.1.2. The program has published a certificate policy or certificate practice statement that establishes comprehensive requirements for the security of all aspects of the system, including the physical and technical security of the software and hardware and the security requirements for authorized personnel.

7.1.3. The program uses a comprehensive requirements evaluation process for selection of qualifying certificate authorities.

7.1.4. The program authorizes one or more entities or vendors to provide the services of certificate authority, repository and registration authority;

7.1.5. Each authorized certificate authority manages the application, issuance and revocation of a certificate that complies with the certificate policy of the program.

7.1.6. Each authorized certificate authority offers subscriptions for certificates through the federal program that meet, at a minimum, the security requirements of the Office of Technology, as may be amended from time to time.

7.1.7. The program requires an audit of each authorized certificate authority.

7.1.8. The Secretary of State may ask or enter into an agreement with the Office of Technology to validate that the program meets the standards outlined in subsections 7.1.1 through 7.1.7 of this section and to report the validation to the Secretary of State via a form prescribed by the Secretary of State.

7.2. Designation and authorization of the federal certificate authority and repository program as the state certificate authority shall substitute the requirements of the federal certificate authority and repository program for the requirements of the state certificate authority, repository and other requirements stated in sections nine through twenty-one of this rule. The certificate policy or certificate practice statement of the federal program shall control the form, application, issuance, expiration, suspension, and revocation of certificates and shall control the record keeping, record retention and audit requirements of the certificate authority and repository.

7.3. The Secretary of State may initiate a procurement process to establish a statewide contract with any or all of the certificate authorities authorized under the federal certificate authority and repository program, and only those authorized entities may be qualified to bid. The Secretary of State may defer to the Office of Technology his or her authority to initiate the procurement process.

7.3.1. The contract may establish the purchase price of one or more types of electronic signature certificates for a subscription of a specified term, and that price shall be inclusive of the services performed as the registration authority, certificate authority and repository for the term of the subscription.

7.3.2. The contract may include pricing for individual certificates and for business certificates if offered by the authorized certificate authorities.

7.3.3. The contract may include pricing for single certificates and bundles of certificates at preferred rates.

7.3.4. The contract shall allow an agency to purchase certificates for use by agency employees and agency customers at an established contract rate; and an agency may require payment or reimbursement for certificates issued to customers.

7.4. The Secretary of State may ask or enter into an agreement with the Office of Technology, through its chief technology officer or his or her designee, to submit to him or her on April 1, 2022, and annually thereafter, a report that outlines the following:

7.4.1. Affirmation that the requirements of the state's official certificate authority and repository are still valid or any changes to the requirements;

7.4.2. A listing of state agencies and their subdivisions currently using electronic signature certificates; and

7.4.3. Any future uses, changes or updates relating to the development, implementation, or use of electronic signatures that the state should take into consideration for its benefit.

7.5. The Secretary of State may revoke any agency approval or program authorization designated under this section if the approval or program fails to continue operation or fails to meet the requirements of the Secretary of State or the Office of Technology.

7.5.1. The Secretary of State may ask or enter into an agreement with the Office of Technology to inform him or her of any information that could contribute to the revocation of an agency approval or authorized program.

7.5.2. The Secretary of State shall publish a notice in the State Register of the intent to revoke the authority of the program to act as state certificate authority and repository at least ninety days before the revocation takes effect and shall additionally send notice to each state agency or state agency subdivision currently using electronic signature certificates.

7.5.3. Upon revocation of the designation of a state certificate authority and repository, an agency that accepts electronic signatures issued by that entity may determine whether to continue to accept those electronic signatures or establish a date after which those signatures will no longer be accepted, and shall give notice in conjunction with the electronic filing information of the agency's intent.

#### **§153-30-8. Compliance Audit.**

8.1. The Secretary of State or the Office of Technology may conduct compliance audits as needed to ensure compliance with this rule.

8.2. Following an audit, the Secretary of State may require reports as needed to assure matters identified in the audit are corrected.

8.3. If matters identified in the audit are not timely corrected, the Secretary of State may suspend or revoke the agency's approval to use electronic signatures.