

By: Representative Snowden

To: Judiciary A

HOUSE BILL NO. 599
(As Passed the House)

1 AN ACT TO CREATE THE UNIFORM REAL PROPERTY ELECTRONIC
2 RECORDING ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE
3 VALIDITY OF ELECTRONIC DOCUMENTS; TO PROVIDE FOR THE RECORDING OF
4 ELECTRONIC DOCUMENTS; TO CREATE THE MISSISSIPPI ELECTRONIC
5 RECORDING COMMISSION; TO PROVIDE FOR ADMINISTRATION AND STANDARDS;
6 TO PROVIDE FOR UNIFORMITY; TO CLARIFY THE RELATION OF THIS ACT TO
7 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; TO
8 AMEND SECTIONS 89-3-1, 89-5-1 AND 89-5-3, MISSISSIPPI CODE OF
9 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1. SHORT TITLE.** This act may be cited as the
12 Uniform Real Property Electronic Recording Act.

13 **SECTION 2. DEFINITIONS.** In this act:

14 (1) "Document" means information that is:

15 (a) Inscribed on a tangible medium or that is stored in
16 an electronic or other medium and is retrievable in perceivable
17 form; and

18 (b) Eligible to be recorded in the land records
19 maintained by the chancery clerk.

20 (2) "Electronic" means relating to technology having
21 electrical, digital, magnetic, wireless, optical, electromagnetic,
22 or similar capabilities.

23 (3) "Electronic document" means a document that is received
24 by the chancery clerk in an electronic form.

25 (4) "Electronic signature" means an electronic sound,
26 symbol, or process attached to or logically associated with a
27 document and executed or adopted by a person with the intent to
28 sign the document.

29 (5) "Person" means an individual, corporation, business
30 trust, estate, trust, partnership, limited liability company,



31 association, joint venture, public corporation, government, or
32 governmental subdivision, agency, or instrumentality, or any other
33 legal or commercial entity.

34 (6) "State" means a state of the United States, the District
35 of Columbia, Puerto Rico, the United States Virgin Islands, or any
36 territory or insular possession subject to the jurisdiction of the
37 United States.

38 **SECTION 3. VALIDITY OF ELECTRONIC DOCUMENTS.**

39 (a) If a law requires, as a condition for recording, that a
40 document be an original, be on paper or another tangible medium,
41 or be in writing, the requirement is satisfied by an electronic
42 document satisfying this act.

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

46 (c) A requirement that a document or a signature associated
47 with a document be notarized, acknowledged, verified, witnessed,
48 or made under oath is satisfied if the electronic signature of the
49 person authorized to perform that act, and all other information
50 required to be included, is attached to or logically associated
51 with the document or signature. A physical or electronic image of
52 a stamp, impression, or seal need not accompany an electronic
53 signature.

54 **SECTION 4. RECORDING OF DOCUMENTS.**

55 (a) In this section, "paper document" means a document that
56 is received by the chancery clerk in a form that is not
57 electronic.

58 (b) A chancery clerk:

59 (1) Who implements any of the functions listed in this
60 section shall do so in compliance with standards established by
61 the commission.

62 (2) May receive, index, store, archive, and transmit
63 electronic documents.



64 (3) May provide for access to, and for search and
65 retrieval of, documents and information by electronic means.

66 (4) Who accepts electronic documents for recording
67 shall continue to accept paper documents as authorized by state
68 law and shall place entries for both types of documents in the
69 same index.

70 (5) May convert paper documents accepted for recording
71 into electronic form.

72 (6) May convert into electronic form information
73 recorded before the chancery clerk began to record electronic
74 documents.

75 (7) May accept electronically any fee or tax that the
76 chancery clerk is authorized to collect.

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

82 **SECTION 5. ADMINISTRATION AND STANDARDS.**

83 (a) The Mississippi Electronic Recording Commission
84 consisting of eleven (11) members is created to adopt standards to
85 implement this act. The membership of the commission shall
86 comprise the following:

87 (1) A person appointed by the Governor;

88 (2) A person appointed by the Lieutenant Governor;

89 (3) A person appointed by the Speaker of the House of
90 Representatives;

91 (4) Three (3) members of the Chancery Clerks'
92 Association;

93 (5) A person appointed by the Mississippi Association
94 of Supervisors;

95 (6) The director of the Mississippi Information
96 Technology Services or his designee; and



97 (7) Three (3) persons appointed by the Secretary of
98 State.

99 Appointed members of the commission shall serve a term of two
100 (2) years from the date of appointment as evidenced by letters to
101 the Secretary of the Senate and the Clerk of the House of
102 Representatives, with the appointment letter last received being
103 the effective date of appointment. Any member serving by virtue
104 of appointment shall serve until a successor is duly appointed.
105 Appointed members shall be eligible for reappointment at the end
106 of their terms.

107 (b) Appointments are to be made no later than October 1,
108 2011, and the initial meeting of the commission is to be held no
109 later than November 1, 2011. The initial meeting is to be called
110 at a time and place designated by the Secretary of State who shall
111 preside until a permanent chair is elected. The election of a
112 permanent chair shall be held at the initial meeting. The chair
113 shall serve during the chair's tenure but shall not serve
114 consecutive terms as chair. The commission shall establish rules
115 to govern the conduct of its meetings and shall elect such
116 officers as provided in the rules. A quorum shall consist of no
117 fewer than six (6) members.

118 (c) To keep the standards and practices of chancery clerks
119 in this state in harmony with the standards and practices of
120 recording offices in other jurisdictions that enact substantially
121 this act and to keep the technology used by chancery clerks in
122 this state compatible with technology used by recording offices in
123 other jurisdictions that enact substantially this act, the
124 commission, so far as is consistent with the purposes, policies,
125 and provisions of this act, in adopting, amending, and repealing
126 standards shall consider:

127 (1) Standards and practices of other jurisdictions;



128 (2) The most recent standards promulgated by national
129 standard-setting bodies, such as the Property Records Industry
130 Association;

131 (3) The views of interested persons and governmental
132 officials and entities;

133 (4) The needs of counties of varying size, population,
134 and resources; and

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

138 **SECTION 6. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
139 applying and construing this uniform act, consideration must be
140 given to the need to promote uniformity of the law with respect to
141 its subject matter among states that enact it.

142 **SECTION 7. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
143 **NATIONAL COMMERCE ACT.** This act modifies, limits, and supersedes
144 the federal Electronic Signatures in Global and National Commerce
145 Act (15 USCS Section 7001, et seq.) but does not modify, limit, or
146 supersede Section 101(c) of that act (15 USCS Section 7001(c)) or
147 authorize electronic delivery of any of the notices described in
148 Section 103(b) of that act (15 USCS Section 7003(b)).

149 **SECTION 8.** Section 89-3-1, Mississippi Code of 1972, is
150 amended as follows:

151 89-3-1. Except in cases governed by the Uniform Commercial
152 Code, the provisions of Sections 1 through 7 of House Bill No.
153 599, 2011 Regular Session, or otherwise specially provided for by
154 law, a written instrument of or concerning the sale of lands,
155 whether the same be made for passing an estate of freehold or
156 inheritance, or for a term of years, or for any other purpose, or
157 any writing conveying personal estate, shall not be admitted to
158 record in the clerk's office unless the execution thereof be first
159 acknowledged or proved, and the acknowledgment or proof duly
160 certified by an officer competent to take the same in the manner



161 directed by this chapter; and any such instrument which is
162 admitted to record without such acknowledgment or proof shall not
163 be notice to creditors or subsequent purchasers for valuable
164 consideration.

165 **SECTION 9.** Section 89-5-1, Mississippi Code of 1972, is
166 amended as follows:

167 89-5-1. Except as provided by Sections 1 through 7 of House
168 Bill No. 599, 2011 Regular Session, a conveyance of land shall not
169 be good against a purchaser for a valuable consideration without
170 notice, or any creditor, unless it be acknowledged by the party
171 who executed it, or be proved by one or more of the subscribing
172 witnesses to it that such party signed and delivered the same as
173 his or her voluntary act before some officer authorized to take
174 such acknowledgment or proof; and a certificate of such
175 acknowledgment or proof shall be written upon or under the
176 conveyance, and be signed by the officer before whom it was made,
177 and be lodged with the clerk of the chancery court of the county
178 in which the lands are situated to be recorded; but after filing
179 with the clerk, the priority of time of filing shall determine the
180 priority of all conveyances of the same land as between the
181 several holders of such conveyances.

182 **SECTION 10.** Section 89-5-3, Mississippi Code of 1972, is
183 amended as follows:

184 89-5-3. Except as provided by Sections 1 through 7 of House
185 Bill No. 599, 2011 Regular Session, all bargains and sales, and
186 all other conveyances whatsoever of lands, whether made for
187 passing an estate of freehold or inheritance, or for a term of
188 years; and all instruments of settlement upon marriage wherein
189 land, money, or other personality should be settled or covenanted
190 to be left or paid at the death of the party, or otherwise; and
191 all deeds of trust and mortgages whatsoever, shall be void as to
192 all creditors and subsequent purchasers for a valuable
193 consideration without notice, unless they be acknowledged or



194 proved and lodged with the clerk of the chancery court of the
195 proper county, to be recorded in the same manner that other
196 conveyances are required to be acknowledged or proved and
197 recorded. Failure to file such instrument with the clerk for
198 record shall prevent any claim of priority by the holder of such
199 instrument over any similar recorded instrument affecting the same
200 property, to the end that with reference to all instruments which
201 may be filed for record under this section, the priority thereof
202 shall be governed by the priority in time of the filing of the
203 several instruments, in the absence of actual notice. But as
204 between the parties and their heirs, and as to all subsequent
205 purchasers with notice or without valuable consideration, said
206 instruments shall nevertheless be valid and binding.

207 **SECTION 11.** This act shall take effect and be in force from
208 and after July 1, 2011.

