WEST VIRGINIA CODE: §5a-8-20

§5A-8-20. Alternate storage of state records.

(a) Findings and purpose. -- The Legislature finds that continuous advances in technology have resulted and will continue to result in the development of alternate formats for the nonerasable storage of state records, and that the use of such alternative storage formats, where deemed advisable, promote the efficient and economical administration of government and provide a means for the preservation of valuable records that are subject to decay or destruction. It is the purpose of the Legislature to authorize the storage of state records in those alternate formats, as may be determined by the various branches of the government of this state, that will reasonably ensure that the originals of those records are copied into alternative formats in a manner in which the image of the original records is not erased or altered, and from which true and accurate reproductions of the original state records may be retrieved.

(b) Approved format. -- (1) In addition to those formats, processes and systems described in section ten of this article, sections seven-a and seven-c, article one, chapter fifty-seven of this code, and section twelve, article five of that chapter which are otherwise authorized for the reproduction of state records, a preservation duplicate of a state record may be stored in any approved format where the image of the original state record is preserved in a form in which the image thereof is incapable of erasure or alteration, and from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record.

(2) As a substitute for using medium that is incapable of erasure or alteration, a preservation duplicate of a state record may be stored on other electronic storage medium or other medium capable of storing digitized documents if:

(A) The medium is stored to maximize its life by minimizing exposure to environmental contaminants;

(B) At least two copies of the preservation duplicate are made and one copy is stored in an off-site location; and

(C) A procedure is established and followed which ensures that:

(i) Modifications in the archiving process are made as technology changes so that the preservation duplicates are readily accessible, which may include migrating the preservation duplicates to different medium or different file formats; and

(ii) The medium is periodically examined to determine if the preservation duplicates remain readable and intact.

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(c) Executive agency records. -- (1) The alternate formats for the storage of state records described in this section are authorized for the storage of the state records of any agency of this state. The state records administrator shall establish a procedure for executive agencies to follow implementing the provisions of subsection (b) of this section by July 1, 2013. The procedure shall include, at a minimum, the identification of examples of medium and accompanying procedures to be followed for executive agencies when making preservation duplicates of state records on medium readily available, other than microfilm or microfiche.

(2) Upon creation of a preservation duplicate from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the state records administrator may destroy or otherwise dispose of the original in accordance with the provisions of section seventeen of this article for the destruction of records.

(d) Judicial records. -- (1) Except for those formats, processes and systems used for the storage of state records on the effective date of this section, no alternate format for the storage of state records described in this section is authorized for the storage of the state records of any court of this state unless the particular format has been approved by the Supreme Court of Appeals by rule. This section does not prohibit the Supreme Court of Appeals from prohibiting the use of any format, process or system used for the storage of judicial state records upon its determination that the same is not reasonably adequate to preserve the state records from destruction, alteration or decay.

(2) Upon creation of a preservation duplicate which stores an original judicial state record in an approved format from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the court or the clerk thereof creating the same may, consistent with rules of the Supreme Court of Appeals, destroy or otherwise dispose of the original in accordance with the provisions of section seven, article one, chapter fifty-seven of this code for the destruction of records.

(e) Legislative records. -- In accordance with all applicable provisions of the West Virginia Constitution, the procedures for the storage and destruction of legislative records shall be determined by each house, or by a joint rule.

(f) Upon request and payment of a reasonable cost, one copy of any state record archived or preserved pursuant to the provisions of this article shall be provided to any person or entity: Provided, That the person or entity that has produced the state record may receive one copy without charge. For the purpose of this subsection "state record" means electronic record created and maintained by state agencies.

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