

HIS 4201

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Com. Sub. For
HOUSE BILL No. 4204

(By Delegate's *Stator, Prezioso,*
Border)



Passed March 9 1996

In Effect Ninety Days From Passage



96 MAR 21 11 41 AM '96
LEGISLATIVE SERVICES DIVISION

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4204

(BY DELEGATES STATON, PREZIOSO AND BORDER)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections fifteen and seventeen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty; to amend and reenact sections seven-a and seven-c, article one, chapter fifty-seven of said code; and to further amend said article by adding thereto a new section, designated section seven-d, all relating to management and preservation of government records; offering government records to director of the section of archives and history of the division of culture and history for historical or other preservation purposes prior to destruction or disposal; preservation of government records by state records administrator, courts and Legislature; and providing copies of government records in computer disk, optical disk or other format.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and seventeen, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty; that sections seven-a and seven-c, article one, chapter fifty-seven of said code be amended and reenacted; and that said article be further amended by adding

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thereto a new section, designated section seven-d, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-15. Records management and preservation of local records.

1 (a) The governing body of each county, city, town,
2 authority or any public corporation or political entity,
3 whether organized and existing under a charter or under
4 general law, shall promote the principles of efficient
5 records management and preservation of local records.
6 Such governing body may, as far as practical, follow the
7 program established for the management and preservation
8 of state records. The administrator shall, upon the request
9 of a local governing body, provide advice and assistance
10 in the establishment of a local records management and
11 preservation program.

12 (b) In the event any such governing body decides to
13 destroy or otherwise dispose of a local record, the
14 governing body may, prior to destruction or disposal
15 thereof, offer the record to the director of the section of
16 archives and history of the division of culture and history
17 for preservation of the record as a document of historical
18 value.

§5A-8-17. Disposal of records.

1 Except as provided in section seven-a, article one,
2 chapter fifty-seven of this code, no record shall be
3 destroyed or otherwise disposed of by any agency of the
4 state, unless it is determined by the administrator and the
5 director of the section of archives and history of the
6 division of culture and history that the record has no
7 further administrative, legal, fiscal, research or historical
8 value. In the event the administrator is of the opinion that
9 the record has no further administrative, legal, fiscal,
10 research or historical value, the administrator shall, prior
11 thereto, give written notice of the administrator's intention
12 to direct the destruction or other disposal of the record to
13 the director. Upon the written request of the director,

14 given to the administrator within ten days of receipt of
15 said notice, the administrator shall direct the retention of
16 the record for a period of thirty days. In the event the
17 director fails to retrieve the original document from the
18 administrator or the administrator's designee within the
19 thirty day period, the administrator may direct the
20 destruction or other disposal of the original without
21 further notice to the director.

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

1 (a) *Findings and purpose* — The Legislature finds
2 that continuous advances in technology have resulted and
3 will continue to result in the development of alternate
4 formats for the nonerasable storage of state records, and
5 that the use of such alternative storage formats, where
6 deemed advisable, promote the efficient and economical
7 administration of government and provide a means for the
8 preservation of valuable records which are subject to
9 decay or destruction. It is the purpose of the Legislature
10 to authorize the storage of state records in such alternate
11 formats, as may be determined by the various branches of
12 the government of this state, that reasonably ensure that
13 the originals of such records are copied into such formats
14 in a manner in which the image thereof may not be erased
15 or altered, and from which true and accurate
16 reproductions of the original state records may be
17 retrieved.

18 (b) *Approved format* — In addition to those formats,
19 processes and systems described in section ten of this
20 article, sections seven-a and seven-c, article one, chapter
21 fifty-seven of this code, and section twelve, article five of
22 said chapter fifty-seven, which are otherwise authorized
23 for the reproduction of state records, a preservation
24 duplicate of a state record may be stored in any approved
25 format where the image of the original state record is
26 preserved in a form in which the image thereof is
27 incapable of erasure or alteration, and from which a
28 reproduction of the stored state record may be retrieved
29 which truly and accurately depicts the image of the
30 original state record.

31 (c) *Executive agency records* — (1) Except for those

32 formats, processes and systems used for the storage of
33 state records on the effective date of this section, no
34 alternate format for the storage of state records described
35 in this section is authorized for the storage of the state
36 records of any agency of this state unless the particular
37 format has been approved by the state records
38 administrator pursuant to legislative rule promulgated in
39 accordance with the provisions of chapter twenty-nine-a of
40 this code. No provision of this section shall be construed
41 to prohibit the state records administrator from
42 prohibiting the use of any format, process or system used
43 for the storage of executive state records upon his or her
44 determination that the same is not reasonably adequate to
45 preserve the state records from destruction, alteration or
46 decay.

47 (2) Upon creation of a preservation duplicate which
48 stores an original executive state record in an approved
49 format in which the image thereof is incapable of erasure
50 or alteration, and from which a reproduction of the stored
51 state record may be retrieved which truly and accurately
52 depicts the image of the original state record, the state
53 records administrator may destroy or otherwise dispose of
54 the original in accordance with the provisions of section
55 seventeen of this article for the destruction of records.

56 (d) *Judicial records* — (1) Except for those formats,
57 processes and systems used for the storage of state records
58 on the effective date of this section, no alternate format for
59 the storage of state records described in this section is
60 authorized for the storage of the state records of any court
61 of this state unless the particular format has been approved
62 by the supreme court of appeals by rule. No provision of
63 this section shall be construed to prohibit the supreme
64 court of appeals from prohibiting the use of any format,
65 process or system used for the storage of judicial state
66 records upon its determination that the same is not
67 reasonably adequate to preserve the state records from
68 destruction, alteration or decay.

69 (2) Upon creation of a preservation duplicate which
70 stores an original judicial state record in an approved
71 format in which the image thereof is incapable of erasure

72 or alteration, and from which a reproduction of the stored
73 state record may be retrieved which truly and accurately
74 depicts the image of the original state record, the court or
75 the clerk thereof creating the same may destroy or
76 otherwise dispose of the original in accordance with the
77 provisions of section seven, article one, chapter fifty-seven
78 of this code for the destruction of records.

79 (e) *Legislative records* — (1) Except for those
80 formats, processes and systems used for the storage of
81 state records on the effective date of this section, no
82 alternate format for the storage of state records described
83 in this section is authorized for the storage of the state
84 records of the Legislature unless the particular format has
85 been approved in a writing jointly by the speaker of the
86 House of Delegates and the president of the Senate to the
87 clerks of their respective houses. No provision of this
88 section shall be construed to prohibit the presiding
89 officers of the houses of the Legislature from prohibiting
90 the use of any format, process or system used for the
91 storage of legislative state records upon their
92 determination that the same is not reasonably adequate to
93 preserve the state records from destruction, alteration or
94 decay.

95 (2) Upon creation of a preservation duplicate which
96 stores an original legislative state record in an approved
97 format in which the image thereof is incapable of erasure
98 or alteration, and from which a reproduction of the stored
99 state record may be retrieved which truly and accurately
100 depicts the image of the original state record, the clerks of
101 the respective houses of the Legislature may destroy or
102 otherwise dispose of the original. However, prior thereto,
103 the clerks shall give written notice of their intention to do
104 so to the director of the section of archives and history of
105 the division of culture and history. Upon the written
106 request of the director, given to the clerks within ten days
107 of receipt of said notice, the clerks shall retain the original
108 record for a period of thirty days. In the event the
109 director fails to retrieve the original document from the
110 clerks within the thirty day period, the clerks may destroy
111 or otherwise dispose of the original without further notice
112 to the director.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-7a. Use of photographic copies in evidence; state records, papers or documents; destruction or transfer to archives of originals; destruction of canceled checks and paid and canceled bonds and coupons.

1 Any public officer of the state may, with the approval
2 of the state records administrator, cause any or all records,
3 papers or documents kept by him to be photographed,
4 microphotographed, microfilmed or reproduced on film.
5 Such photographic film shall be of durable material and
6 the device used to reproduce such records on such film
7 shall be one which accurately reproduces the original
8 thereof in all details.

9 Such photographs, microphotographs, microfilms or
10 photographic film shall be deemed to be an original
11 record for all purposes, including introduction in evidence
12 in all courts or administrative agencies. A transcript,
13 exemplification or certified copy thereof shall, for all
14 purposes recited herein, be deemed to be a transcript,
15 exemplification or certified copy of the original.
16 Whenever photographs, microphotographs, microfilms or
17 reproductions on film have been made and put in
18 conveniently accessible fireproof files, and provision has
19 been made for preserving, examining and using the same,
20 the respective heads of the departments, divisions,
21 institutions and agencies of the state may, with the
22 approval of the state records administrator, cause the
23 records and papers so photographed, microphotographed
24 or reproduced on film, or any part thereof, to be
25 destroyed; but before any such records, papers or
26 documents are authorized to be destroyed, the state
27 records administrator shall obtain the advice and counsel
28 of the state historian and archivist, or his designated
29 representative, as to the desirability of placing the said
30 records, papers and documents in the archives of that
31 department. In the event the administrator is of the
32 opinion that the record has no further administrative, legal,

33 fiscal, research or historical value, the administrator may
34 destroy or otherwise dispose of the record, paper or
35 document if otherwise permitted to do so after complying
36 with the provisions of section seventeen, article eight,
37 chapter five-a of this code. Notwithstanding any other
38 provisions of this code to the contrary, the state treasurer
39 may at his discretion destroy any canceled checks of the
40 state after ten years have elapsed since the date of the
41 check, whether or not such checks have been
42 photographed, microphotographed, microfilmed or repro-
43 duced on film: *Provided*, That any canceled bonds or
44 interest coupons of any bond issues of this state in the
45 custody of the treasurer, or for which the treasurer acts as
46 fiscal agent or paying agent, may at his discretion be
47 destroyed by one of the two methods described below:

48 **Method I** — The treasurer shall maintain a permanent
49 record for the purpose of recording the destruction of
50 bonds and coupons, showing the following: (1) With
51 respect to bonds, the purpose of issuance, the date of issue,
52 denomination, maturity date, and total principal amount;
53 and (2) with respect to coupons, the purpose of issue and
54 date of the bonds to which the coupons appertain, the
55 maturity date of the coupons, and, as to each maturity
56 date, the denomination, quantity and total amount of
57 coupons.

58 After recording the specified information, the
59 treasurer shall have the canceled bonds and coupons
60 destroyed either by burning or shredding, in the presence
61 of an employee of the treasurer and an employee of the
62 legislative auditor, each of whom shall certify that he saw
63 the canceled bonds and coupons destroyed. Such
64 certificates shall be made a part of the permanent record.
65 Canceled bonds or coupons shall not be destroyed until
66 after one year from the date of payment.

67 **Method II** — The treasurer may contract with any
68 bank or trust company acting as paying agent or copaying
69 agent for a bond issue of the state for the destruction of
70 bonds and interest coupons which have been canceled by
71 the paying agent. The contract shall require that the
72 paying agent give the treasurer a written certificate

73 containing the same information required by Method I.
74 Such certificate shall include a sworn statement that the
75 described bonds or coupons have been destroyed. The
76 certificate shall be made a part of the treasurer's
77 permanent record.

78 Each contract shall also require that the paying agent
79 be responsible for proper payment and disposition of all
80 bonds and coupons, and for any duplicate payments to
81 unauthorized persons and nonpayment to authorized
82 persons occurring as a result of destruction of bonds or
83 coupons under this section. In addition, the treasurer may
84 require the paying agent to submit an indemnity bond, in
85 an amount to be determined by the treasurer, to assure
86 performance of the duties specified in this section.
87 Canceled bonds or coupons may not be destroyed until
88 one year from the date of payment.

89 For purposes of this section, the term "bonds" shall
90 include interim certificates.

**§57-1-7c. Use of microfilm or microcards to reproduce and
preserve records; destruction or transfer of
originals to archivist.**

1 The clerk of any court of record of the state may, with
2 the approval of the court for which he or she is clerk,
3 cause any or all records, papers, plats, or other documents
4 kept by him or her to be reproduced on photographic
5 microfilm or microcards and may, with the approval of the
6 court for which he or she is clerk, record, keep and
7 preserve any and all records, papers, plats, or other
8 documents required by the laws of this state to be
9 recorded or kept by said clerk or court exclusively upon
10 photographic microfilm or microcards instead of in
11 well-bound books or instead of by any other method
12 heretofore prescribed by law.

13 Such photographic microfilm and microcards shall be
14 of durable material and possess good, archival qualities.
15 The device used to reproduce such records on such film
16 and cards shall be one which accurately reproduces the
17 original thereof in all details.

18 Such photographic microfilm and microcards shall be

19 deemed to be an original record for all purposes,
20 including introduction into evidence in all courts or
21 administrative agencies. A transcript, exemplification, or
22 photographic reproduction thereof shall, when properly
23 authenticated by the clerk of such court, be deemed for all
24 purposes to be a transcript, exemplification, or certified
25 copy of the original.

26 Such photographic microfilm and microcards shall be
27 put in convenient, accessible fireproof files and adequate
28 provision shall be made for preserving, examining and
29 using the same.

30 Any such records, papers, plats, or other documents
31 not held for others by said clerk or court or required by
32 law to be delivered to some other person, court,
33 corporation or agency, may with the approval of the court
34 keeping such records, papers, plats, or other documents be
35 destroyed; but before any such records, papers, plats or
36 other documents are authorized to be destroyed the court
37 keeping them or the clerk thereof shall obtain the advice
38 and counsel of the state historian or archivist, or his
39 designated representatives, as to the desirability of placing
40 the said records, papers, plats, or other documents in the
41 department of archives and history. However, prior to
42 destroying or otherwise disposing of the same, the court or
43 clerk thereof shall give written notice of the intention to
44 do so to the director of the section of archives and history
45 of the division of culture and history. Upon the written
46 request of the director, given to the court or clerk thereof
47 within ten days of receipt of said notice, the court or clerk
48 thereof shall retain the original record for a period of
49 thirty days. In the event the director fails to retrieve the
50 original document from the court or clerk thereof within
51 the thirty day period, the court or clerk thereof may
52 destroy or otherwise dispose of the original without
53 further notice to the director.

§57-1-7d. Records provided on computer or optical disc.

1 Notwithstanding any other provision of this code to
2 the contrary, where any provision of this code requires
3 that a copy of any record of any branch of the
4 government of this state be provided or delivered, the

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5 custodian of said record is authorized to comply with the
6 requirement by providing or delivering a true copy in the
7 form of a computer or optical disc which is not subject to
8 alteration, is formatted to write once read many, and is
9 attested by the custodian thereof to be a true, accurate and
10 complete copy of the record required to be provided or
11 delivered.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy McManis
Chairman Senate Committee

Rudy Seacrest
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll B. Smith
Clerk of the Senate

Gregory M. Boag
Clerk of the House of Delegates

Carl Roy Tomblin
President of the Senate

Robert L. Corcoran
Speaker of the House of Delegates

The within is approved this the 25th
day of March, 1996.

James L. Cox
Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/96

Time 9:15 AM