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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

HOUSE BILL No. 4040

(By Delegates Thompson, Jenkins, Amores,
Kominar, Trump, Johnson and Smirl)



Passed February 11, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4040

(BY DELEGATES THOMPSON, JENKINS, AMORES, KOMINAR,
TRUMP, JOHNSON AND SMIRL)

[Passed February 11, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-five, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reproduction of checks and other records and disposition of originals; and providing separate retention periods for the accounting and legal documents related to trusts and fiduciary relationships and for the supporting transactional records related to such trusts and relationships.

Be it enacted by the Legislature of West Virginia:

That section thirty-five, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

**§31A-4-35. Reproduction of checks and other records;
admissibility of copies in evidence; disposition
of originals; record production generally.**

- 1 (a) Any bank may cause to be copied or reproduced,

2 by any photographic, photostatic, microphotographic or
3 by similar miniature photographic process or by
4 nonerasable optical image disks (commonly referred to as
5 compact disks) or by other records retention technology
6 approved by rule of the commissioner of banking, all or
7 any number of its checks, and all or any part of its
8 documents, books, records, correspondence and all other
9 instruments, papers and writings, in any manner relating to
10 the operation of its business, other than its notes, bonds,
11 mortgages and other securities and investments, and may
12 substitute such copies or reproductions either in positive
13 or negative form for the originals thereof. Thereafter,
14 such copy or reproduction in the form of a positive print
15 thereof, shall be deemed for all purposes to be an original
16 counterpart of and shall have the same force and effect as
17 the original thereof and shall be admissible in evidence in
18 all courts and administrative agencies in this state, to the
19 same extent, and for the same purposes as the original
20 thereof, and the banking institution may destroy or
21 otherwise dispose of the original, but every banking
22 institution shall retain either the originals or such copies or
23 reproductions of its records of final entry, including,
24 without limiting the generality of the foregoing, cards
25 used under the card system and deposit tickets for deposits
26 made, for a period of at least six years from the date of the
27 last entry on such books or the date of making of such
28 deposit tickets and card records, or, in the case of a
29 banking institution exercising trust or fiduciary powers,
30 accounting and legal records shall be retained until the
31 expiration of six years from the date of termination of any
32 trust or fiduciary relationship relating to such accounting
33 and legal records by a final accounting, release, court
34 decree or other proper means of termination, and
35 supporting documentation for fiduciary account
36 transactions shall be retained for six years from the dates
37 of entry of such transactions.

38 All circumstances surrounding the making or issuance
39 of such checks, documents, books, records, correspon-
40 dence and other instruments, papers or writings, or the
41 photographic, photostatic or microphotographic copies or
42 optical disks or other permissible reproductions thereof,

43 when the same are offered in evidence, may be shown to
44 affect the weight but not the admissibility thereof.

45 Any device used to copy or reproduce such
46 documents and records shall be one which correctly and
47 accurately reproduces the original thereof in all details
48 and any disk or film used therein shall be of durable
49 material.

50 (b) When a subpoena duces tecum is served upon a
51 custodian of records of any bank in an action or
52 proceeding in which the bank is neither a party nor the
53 place where any cause of action is alleged to have arisen
54 and the subpoena requires the production of all or any
55 part of the records of the bank relating to the conduct of
56 its business with its customers, the bank shall be entitled to
57 a search fee not to exceed ten dollars, together with
58 reimbursement for costs incurred in the copying or other
59 reproduction of any such record or records which have
60 already been reduced to written form, in an amount not to
61 exceed seventy-five cents per page. Any and all such
62 costs shall be borne by the party requesting the
63 production of the record or records.

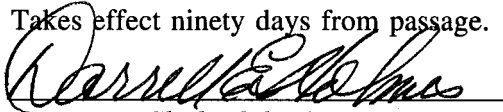
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

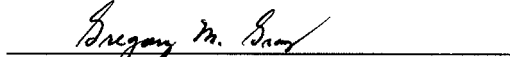

Chairman Senate Committee


Chairman House Committee

Originating in the House.

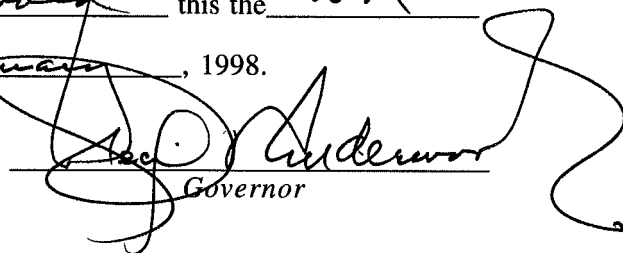
Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 20th
day of February, 1998.

Governor

PRESENTED TO THE

GOVERNOR

Date 2/18/98

Time 1:43 pm