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
ENROLLED

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,
by any photographic, photostatic, microphotographic or
by similar miniature photographic process or by
nonerasable optical image disks (commonly referred to as
compact disks) or by other records retention technology
approved by rule of the commissioner of banking, all or
any number of its checks, and all or any part of its
documents, books, records, correspondence and all other
instruments, papers and writings, in any manner relating to
the operation of its business, other than its notes, bonds,
mortgages and other securities and investments, and may
substitute such copies or reproductions either in positive
or negative form for the originals thereof. Thereafter,
such copy or reproduction in the form of a positive print
thereof, shall be deemed for all purposes to be an original
counterpart of and shall have the same force and effect as
the original thereof and shall be admissible in evidence in
all courts and administrative agencies in this state, to the
same extent, and for the same purposes as the original
thereof, and the banking institution may destroy or
otherwise dispose of the original, but every banking
institutions shall retain either the originals or such copies or
reproductions of its records of final entry, including,
without limiting the generality of the foregoing, cards
used under the card system and deposit tickets for deposits
made, for a period of at least six years from the date of the
last entry on such books or the date of making of such
deposit tickets and card records, or, in the case of a
banking institution exercising trust or fiduciary powers,
accounting and legal records shall be retained until the
expiration of six years from the date of termination of any
trust or fiduciary relationship relating to such accounting
and legal records by a final accounting, release, court
decree or other proper means of termination, and
supporting documentation for fiduciary account
transactions shall be retained for six years from the dates
of entry of such transactions.

All circumstances surrounding the making or issuance
of such checks, documents, books, records, correspond-
dence and other instruments, papers or writings, or the
photographic, photostatic or microphotographic copies or
optical disks or other permissible reproductions thereof,
when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

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

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

day of , 1998.

Governor