WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4688
(By Delegate Kuhn, Claypole, Stainaker, Thompson, Capito, Everson and H. White)

Passed March 14, 1998
In Effect Ninety Days from Passage
ENROLLED

H. B. 4688

(By Delegates Kuhn, Claypole, Stalnaker, Thompson, Capito, Everson and H. White)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend article two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three; and to amend and reenact section ten, article eight, chapter five-a of said code, all relating to the retention and destruction of the records of the secretary of state and to the authorization of digital imaging as a means of creating a preservation duplicate of a state record.

Be it enacted by the Legislature of West Virginia:

That article two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three; and that section ten, article eight, chapter five-a of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 2. SECRETARY OF STATE.

§5-2-3. Retention and preservation of records of the secretary of state; destruction of records.
(a) The secretary of state shall provide for the storage and retention of those essential records, as defined in section four, article eight, chapter five-a of this Code, filed in the office of the secretary of state for the period specified by law or legislative rule. The secretary of state shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code identifying the essential records and providing for the minimum retention period.

(b) Where a preservation duplicate, as defined in section three, article eight, chapter five-a of this Code, is made of a record filed with the secretary of state by photography, microphotography, digital imaging or other electronic means which accurately reproduces and preserves the record on microfilm, microfiche, optical disks or other unalterable electronic storage medium which complies with national standards or nationally accepted practice for permanent archival storage, the secretary of state may provide for the destruction of the original paper copy when the following conditions are met:

1. The preservation duplicate has been created, reviewed for quality, indexed in a reasonable manner as provided by the secretary of state and determined to be accessible by means of the index;
2. An additional archive copy of the preservation duplicate has been created and stored in a fireproof, secure storage location; and
3. The original paper copy has been preserved for at least three months following the creation of the preservation duplicate.

(c) The original copies of the papers of the governor, including executive orders, proclamations, appointments, pardons and other documents signed by the governor, shall be retained permanently, regardless of whether a preservation duplicate has been created.

(d) The secretary of state shall have authority to determine the retention period for nonessential records.
(e) The secretary of state may, upon mutual agreement with the director of the division of archives and history, transfer to the division of archives and history those records of the secretary of state as may be identified as having primarily historic value in order to make those records more available for purposes of research.

(f) Following the expiration of the required retention period, the destruction of confidential original records shall be conducted in a manner designed to protect the secrecy of those records.

(g) Nothing in this section shall be deemed to require the secretary of state to destroy original records immediately upon the expiration of the retention period.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-10. Essential state records — Preservation duplicates.

(a) The administrator may make or cause to be made preservation duplicates or may designate as preservation duplicates existing copies of essential state records. A preservation duplicate shall be durable, accurate, complete and clear, and a preservation duplicate made by means of photography, microphotography, photocopying, film, microfilm or digital image stored on unalterable media shall be made in conformity with the standards prescribed therefor by the administrator.

(b) A preservation duplicate made by a photographic, photostatic, microfilm, microcard, miniature photographic, digital image or other process which accurately reproduces or forms a durable and unalterable medium for so reproducing the original, shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification or certified copy of the original record.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the 1st day of April, 1998.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/98
Time 2:55 pm