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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

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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.**

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

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

22 (1) The preservation duplicate has been created,
23 reviewed for quality, indexed in a reasonable manner as
24 provided by the secretary of state and determined to be
25 accessible by means of the index;

26 (2) An additional archive copy of the preservation
27 duplicate has been created and stored in a fireproof,
28 secure storage location; and

29 (3) The original paper copy has been preserved for at
30 least three months following the creation of the
31 preservation duplicate.

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

37 (d) The secretary of state shall have authority to
38 determine the retention period for nonessential records.

39 (e) The secretary of state may, upon mutual agreement
40 with the director of the division of archives and history,
41 transfer to the division of archives and history those
42 records of the secretary of state as may be identified as
43 having primarily historic value in order to make those
44 records more available for purposes of research.

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

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

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESER- VATION ACT.

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

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

10 (b) A preservation duplicate made by a photographic,
11 photostatic, microfilm, microcard, miniature photographic,
12 digital image or other process which accurately
13 reproduces or forms a durable and unalterable medium
14 for so reproducing the original, shall have the same force
15 and effect for all purposes as the original record whether
16 the original record is in existence or not. A transcript,
17 exemplification or certified copy of such preservation
18 duplicate shall be deemed for all purposes to be a
19 transcript, exemplification or certified copy of the original
20 record.

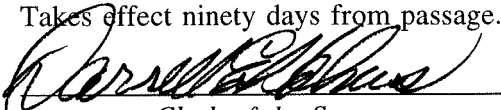
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

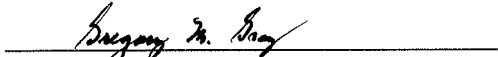

Chairman Senate Committee

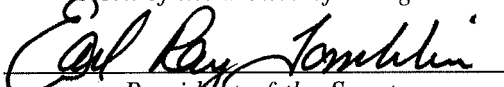

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

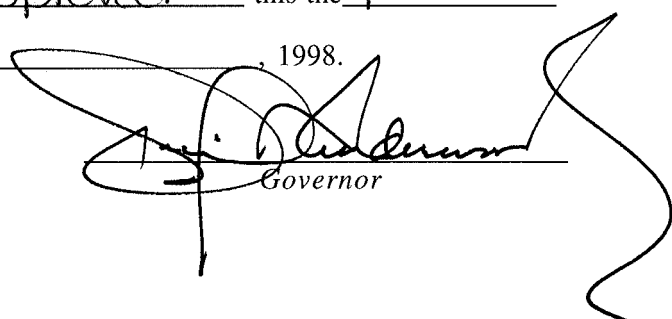

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

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


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 2:55 pm