

**WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4837**

BY DELEGATES CRISS, ESPINOSA, RILEY, WESTFALL,  
HOTT, AND BARNHART

[Passed March 8, 2024; in effect ninety days from  
passage.]

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2024 MAR 27 P 3:08

FILED

HB 4837



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1 AN ACT to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended; and  
2 to amend and reenact §46-3-118 of said code, all relating to duties of banks to retain  
3 records and limiting liability; providing uniformity between statute of limitations,  
4 presumption of abandonment, and duty of banks to retain records; limiting liability of banks  
5 based on the destruction of records as permitted by law; providing a presumption of  
6 payment by the bank on demand, savings, or time deposits; and modifying statute of  
7 limitations on notes, certificates of deposit, and drafts.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 31A. BANKS AND BANKING.**

### **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.**

8 (a) Any bank may cause to be copied or reproduced, by any photographic, photostatic,  
9 microphotographic or by similar miniature photographic process or by nonerasable optical image  
10 disks (commonly referred to as compact disks) or by other records retention technology approved  
11 by rule of the Commissioner of Banking, all or any number of its checks and all or any part of its  
12 documents, books, records, correspondence and all other instruments, papers and writings in any  
13 manner relating to the operation of its business, other than its notes, bonds, mortgages and other  
14 securities and investments, and may substitute such copies or reproductions either in positive or  
15 negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a  
16 positive print thereof shall be deemed for all purposes to be an original counterpart of and shall  
17 have the same force and effect as the original thereof and shall be admissible in evidence in all  
18 courts and administrative agencies in this state, to the same extent and for the same purposes  
19 as the original thereof, and the banking institution may destroy or otherwise dispose of the original,  
20 but every banking institution shall retain either the originals or such copies or reproductions of its

21 records of final entry, including, without limiting the generality of the foregoing, cards used under  
22 the card system and deposit tickets for deposits made, for a period of at least five years from the  
23 date of the last entry on such books or the date of making of such deposit tickets and card records  
24 or, in the case of a banking institution exercising trust or fiduciary powers, accounting and legal  
25 records shall be retained until the expiration of five years from the date of termination of any trust  
26 or fiduciary relationship relating to such accounting and legal records by a final accounting,  
27 release, court decree or other proper means of termination and supporting documentation for  
28 fiduciary account transactions shall be retained for five years from the dates of entry of such  
29 transactions.

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

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

38 (b) When a subpoena duces tecum is served upon a custodian of records of any bank in  
39 an action or proceeding in which the bank is neither a party nor the place where any cause of  
40 action is alleged to have arisen and the subpoena requires the production of all or any part of the  
41 records of the bank relating to the conduct of its business with its customers, the bank shall be  
42 entitled to a search fee not to exceed \$10, together with reimbursement for costs incurred in the  
43 copying or other reproduction of any such record or records which have already been reduced to  
44 written form, in an amount not to exceed 75 cents per page. Any and all such costs shall be borne  
45 by the party requesting the production of the record or records.

46 (c) Notwithstanding any other provision of this code establishing a statute of limitations for  
47 any period greater than five years, any action by or against a bank for any balance, amount, or  
48 proceeds from any time, savings or demand deposit account based on the contents of records for  
49 which a period of retention or preservation is set forth in subsection (a) of this section shall be  
50 brought within the time for which the record must be retained or preserved.

51 (d) If records are retained beyond the period set forth in subsection (a) of this section or  
52 the bank otherwise has information regarding the status of funds held or previously held in any  
53 time, savings or demand deposit account, the bank shall provide such information, to the extent  
54 permitted by all applicable state and federal privacy laws, upon written request, to anyone with a  
55 legal interest in such balance, amount, or proceeds. This section does not apply to savings  
56 accounts or certificates of deposit established as a result of any legal action for the benefit of a  
57 minor: *Provided*, That an action to enforce a demand, savings, or time deposit, including a deposit  
58 that is automatically renewable, is barred where the property meets the criteria for abandonment  
59 pursuant to §36-8-2(a)(5) of this code.

60 (e) No liability shall accrue against any bank because of the destruction of any of its  
61 records or copies thereof as permitted by subsection (a), and in any judicial or other action or  
62 proceeding in which any such records or copies thereof may be called in question or be demanded  
63 of the institution or any officer or employee thereof, a showing that such records or copies thereof  
64 have been destroyed in accordance with the provisions of subsection (a) is a sufficient defense  
65 for the failure to produce them.

## **CHAPTER 46. UNIFORM COMMERCIAL CODE.**

### **PART 1. GENERAL PROVISIONS AND DEFINITIONS**

#### **ARTICLE 3. NEGOTIABLE INSTRUMENTS.**

##### **§46-3-118. Statute of limitations.**

1 (a) Except as provided in subsection (e), an action to enforce the obligation of a party to  
2 pay a note payable at a definite time must be commenced within five years after the due date or  
3 dates stated in the note or, if a due date is accelerated, within five years after the accelerated due  
4 date. An action to enforce the obligation of a demand, savings, or time deposit, including a deposit  
5 that is automatically renewable, brought more than 10 years after the initial date of the maturity  
6 shall be presumed to have been paid and redeemed absent evidence of:

7 (1) Owner consent in a record on file with the holder to renewal at or about the time of  
8 renewal pursuant to §36-8-2 of this code; or

9 (2) Escheatment to the state pursuant to §36-8-1 *et seq.* of this code.

10 (b) Except as provided in subsection (d) or (e), if demand for payment is made to the  
11 maker of a note payable on demand, an action to enforce the obligation of a party to pay the note  
12 must be commenced within five years after the demand. If no demand for payment is made to the  
13 maker, an action to enforce the note is barred if:

14 (1) Neither principal nor interest on the note has been paid for a continuous period of 10  
15 years;

16 (2) The bank, pursuant to §31A-4-35 of this code, is no longer required to retain records  
17 relating to the note and actually no longer has such records; or

18 (3) The note has, in accordance with §36-8-1 *et seq.* of this code, been presumed  
19 abandoned; reported to the State Treasurer; and paid, delivered, or caused to be paid or delivered  
20 to the State Treasurer.

21 (c) Except as provided in subsection (d), an action to enforce the obligation of a party to  
22 an unaccepted draft to pay the draft must be commenced within three years after dishonor of the  
23 draft or 10 years after the date of the draft, whichever period expires first.

24 (d) An action to enforce the obligation of the acceptor of a certified check or the issuer of  
25 a teller's check, cashier's check, or traveler's check must be commenced within three years after  
26 demand for payment is made to the acceptor or issuer, as the case may be.



27           (e) An action to enforce the obligation of a party to a certificate of deposit to pay the  
28 instrument must be commenced within five years after demand for payment is made to the maker,  
29 but if the instrument states a due date and the maker is not required to pay before that date, the  
30 five-year period begins when a demand for payment is in effect and the due date has passed:  
31 *Provided*, That no action to enforce the obligation may be maintained against the bank if the bank  
32 has destroyed or otherwise disposed of all records relating to the certificate of deposit in  
33 compliance with §31A-4-35 of this code.

34           (f) An action to enforce the obligation of a party to pay an accepted draft, other than a  
35 certified check, must be commenced (i) within five years after the due date or dates stated in the  
36 draft or acceptance if the obligation of the acceptor is payable at a definite time or (ii) within five  
37 years after the date of the acceptance if the obligation of the acceptor is payable on demand.

38           (g) Unless governed by other law regarding claims for indemnity or contribution, an action  
39 (i) for conversion of an instrument, for money had and received, or like action based on  
40 conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under  
41 this article and not governed by this section must be commenced within three years after the  
42 cause of action accrues.



The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

*Steve Harris*  
.....  
Clerk of the House of Delegates

*Joe Lynn*  
.....  
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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SECRETARY OF STATE

FILED

*Don Hancock*  
.....  
Speaker of the House of Delegates

*G. P. Blaine*  
.....  
President of the Senate

The within is *approved* ..... this the *27<sup>th</sup>* .....  
Day of *March* ..... 2024.

*James Justice*  
.....  
Governor



**PRESENTED TO THE GOVERNOR**

MAR 21 2024

Time 10:42am