

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.]

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.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2024.

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Governor