

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**ENGROSSED**

## **House Bill 4406**

BY DELEGATES NELSON, CRISS, PORTERFIELD AND

ESPINOSA

[Introduced January 17, 2020; Referred to the  
Committee on Banking and Insurance.]



1 A BILL to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended, relating  
2 to the reproduction of checks and other records, and the preservation and disposition of  
3 originals.

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

**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,  
2 microphotographic or by similar miniature photographic process or by nonerasable optical image  
3 disks (commonly referred to as compact disks) or by other records retention technology approved  
4 by rule of the Commissioner of Banking, all or any number of its checks and all or any part of its  
5 documents, books, records, correspondence and all other instruments, papers and writings in any  
6 manner relating to the operation of its business, other than its notes, bonds, mortgages and other  
7 securities and investments, and may substitute such copies or reproductions either in positive or  
8 negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a  
9 positive print thereof shall be deemed for all purposes to be an original counterpart of and shall  
10 have the same force and effect as the original thereof and shall be admissible in evidence in all  
11 courts and administrative agencies in this state, to the same extent and for the same purposes  
12 as the original thereof, and the banking institution may destroy or otherwise dispose of the original,  
13 but every banking institution shall retain either the originals or such copies or reproductions of its  
14 records of final entry, including, without limiting the generality of the foregoing, cards used under  
15 the card system and deposit tickets for deposits made, for a period of at least five years from the  
16 date of the last entry on such books or the date of making of such deposit tickets and card records  
17 or, in the case of a banking institution exercising trust or fiduciary powers, accounting and legal  
18 records shall be retained until the expiration of five years from the date of termination of any trust  
19 or fiduciary relationship relating to such accounting and legal records by a final accounting,

20 release, court decree or other proper means of termination and supporting documentation for  
21 fiduciary account transactions shall be retained for five years from the dates of entry of such  
22 transactions.

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

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

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

39 (c) Notwithstanding any other provision of this code establishing a statute of limitations for  
40 any period greater than five years, any action by or against a bank for any balance, amount, or  
41 proceeds from any time, savings or demand deposit account based on the contents of records for  
42 which a period of retention or preservation is set forth in section (a) of this section shall be brought  
43 within the time for which the record must be retained or preserved. If records are retained beyond  
44 the period set forth in section (a) of this section or the bank otherwise has information regarding  
45 the status of funds held or previously held in any time, savings or demand deposit account, the

46 bank shall provide such information, to the extent permitted by all applicable state and federal  
47 privacy laws, upon written request, to anyone with a legal interest in such balance, amount, or  
48 proceeds. This section does not apply to savings accounts or certificates of deposit established  
49 as a result of any legal action for the benefit of a minor.

NOTE: The purpose of this bill is to provide repose from risk for a bank having lawfully destroyed records in accordance with the existing record retention law.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.