

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4406

BY DELEGATES NELSON, CRISS, PORTERFIELD AND

ESPINOSA

[Passed March 7, 2020; 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,
2 relating to the reproduction of checks and other records; the period for which banks shall
3 retain or preserve records; providing clarification that an action against a bank for any
4 balance, amount, or proceeds of an account must be brought during the retention or
5 preservation period; providing duties of a bank in possession of records after expiration of
6 the record retention or preservation period; and providing an exception to retention or
7 preservation period limitation for actions brought on behalf of minors.

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.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor