

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4837**

By Delegates Criss, Espinosa, Riley, Westfall, Hott

and Barnhart

[Originating in the Committee on the Judiciary;

Reported on January 26, 2024]



1 A BILL to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §46-3-118 of said code, as amended, all relating to modifying the  
3 duties of banks to retain records; limiting bank liability for the routine destruction of  
4 documents; providing uniformity between the statute of limitations for actions to enforce  
5 the obligation of a note and a banks duty to retain and produce records on such notes;  
6 providing uniformity between statute of limitations and presumption of abandonment under  
7 §36-8-2; providing a presumption of payment by the bank on any demand, savings, or time  
8 deposit, where the property qualifies as abandoned property under §36-8-2 of this code or  
9 where there is evidence of escheatment to the state; and modifying banks record  
10 production of notes presumed abandoned with record of escheatment to the state.

*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.**

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 as  
12 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 an  
32 action or proceeding in which the bank is neither a party nor the place where any cause of action is  
33 alleged to have arisen and the subpoena requires the production of all or any part of the records of  
34 the bank relating to the conduct of its business with its customers, the bank shall be entitled to a  
35 search fee not to exceed \$10, together with reimbursement for costs incurred in the copying or  
36 other reproduction of any such record or records which have already been reduced to written form,

37 in an amount not to exceed 75 cents per page. Any and all such costs shall be borne by the party  
38 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)~~ subsection (a) of this section  
43 shall be brought within the time for which the record must be retained or preserved. ~~If records are~~  
44 ~~retained beyond the period set forth in section (a) of this section or the bank otherwise has~~  
45 ~~information regarding the status of funds held or previously held in any time, savings or demand~~  
46 ~~deposit account, the bank shall provide such information, to the extent permitted by all applicable~~  
47 ~~state and federal privacy laws, upon written request, to anyone with a legal interest in such~~  
48 ~~balance, amount, or proceeds. This section does not apply to savings accounts or certificates of~~  
49 ~~deposit established as a result of any legal action for the benefit of a minor.~~

50 (d) If records are retained beyond the period set forth in subsection (a) of this section or the  
51 bank otherwise has information regarding the status of funds held or previously held in any time,  
52 savings or demand deposit account, the bank shall provide such information, to the extent  
53 permitted by all applicable state and federal privacy laws, upon written request, to anyone with a  
54 legal interest in such balance, amount, or proceeds. This section does not apply to savings  
55 accounts or certificates of deposit established as a result of any legal action for the benefit of a  
56 minor.

57 (e) No liability shall accrue against any bank because of the destruction of any of its  
58 records or copies thereof as permitted by subsection (a), and in any judicial or other action or  
59 proceeding in which any such records or copies thereof may be called in question or be demanded  
60 of the institution or any officer or employee thereof, a showing that such records or copies thereof  
61 have been destroyed in accordance with the provisions of subsection (a) is a sufficient defense for  
62 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 ~~six~~ five years after the due date or  
3 dates stated in the note or, if a due date is accelerated, within ~~six~~ five years after the accelerated  
4 due date. An action to enforce the obligation of a demand, savings, or time deposit, including a  
5 deposit that is automatically renewable, brought more than 10 years after the initial date of the  
6 maturity 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 §38-8-1 et seq. of this code.

10          (b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker  
11 of a note payable on demand, an action to enforce the obligation of a party to pay the note must be  
12 commenced within ~~six~~ 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 ~~neither principal nor interest on the note has been~~  
14 ~~paid for a continuous period of 10 years.:~~

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to clarify the duty of banks to retain and procure records and to modify the statute of limitations for actions to enforce a demand to be uniform with the timeframe for property abandonment. This bill also provides a presumption of payment by the bank absent evidence of owner consent to renewal or escheatment to the state.

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