

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4321

BY DELEGATES UPSON, HOUSEHOLDER, MARTIN,

ELLINGTON AND BLAIR

[Introduced January 26, 2018; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended, relating
2 to permitting electronic records of documents to serve as original records.

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; permitting electronic records to serve as original; 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. Notwithstanding the foregoing, any bank is permitted to
9 store its checks, documents, books, records, correspondence and other instruments, papers or
10 writings, in an electronic format as the original. ~~Thereafter, such~~ A copy or reproduction ~~in the~~
11 ~~form of a positive print thereof~~ shall be deemed for all purposes to be an original counterpart of
12 and shall have the same force and effect as the original ~~thereof~~ and shall be admissible in
13 evidence in all courts and administrative agencies in this state, to the same extent and for the
14 same purposes as the original ~~thereof~~, and the banking institution may destroy or otherwise
15 dispose of the original, but every banking institution shall retain either the originals or such copies
16 or reproductions of its records of final entry, including, without limiting the generality of the
17 foregoing, cards used under the card system and deposit tickets for deposits made, for a period
18 of at least five years from the date of the last entry on such books or the date of making of such
19 deposit tickets and card records or, in the case of a banking institution exercising trust or fiduciary

20 powers, accounting and legal records shall be retained until the expiration of five years from the
21 date of termination of any trust or fiduciary relationship relating to such accounting and legal
22 records by a final accounting, release, court decree or other proper means of termination and
23 supporting documentation for fiduciary account transactions shall be retained for five years from
24 the dates of entry of such transactions.

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

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

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

NOTE: The purpose of this bill is to permitting banks to use electronic records as originals.

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