

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4837

By Delegates Criss and Barnhart

[Introduced January 17, 2024; Referred
to the Committee on Banking and Insurance then
Judiciary]

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) 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 as
49 a result of any legal action for the benefit of a minor: Provided, That an action to enforce a demand,
50 savings, or time deposit, including a deposit that is automatically renewable is barred where the
51 property meets the criteria for abandonment pursuant to §36-8-2(a)(5) of this code.

52 (d) No liability shall accrue against any bank because of the destruction of any of its
53 records or copies thereof as permitted by subsection (a), and in any judicial or other action or
54 proceeding in which any such records or copies thereof may be called in question or be demanded
55 of the institution or any officer or employee thereof, a showing that such records or copies thereof
56 have been destroyed in accordance with the provisions of subsection (a) is a sufficient defense for
57 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: Provided, That an action to enforce a demand, savings, or time deposit, including a
5 deposit that is automatically renewable is barred where the property is deemed abandoned
6 pursuant to §36-8-2(a)(5) of this code: *Provided further*, That an action to enforce the obligation of
7 a demand, savings, or time deposit, including a deposit that is automatically renewable, brought
8 more than 10 years after the initial date of the maturity shall be presumed to have been paid and
9 redeemed absent evidence of:

10 (1) Owner consent in a record on file with the holder to renewal at or about the time of
11 renewal pursuant to §36-8-2 of this code; or

12 (2) Escheatment to the state pursuant to §46-3-118(g) of this code.

13 (b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker
14 of a note payable on demand, an action to enforce the obligation of a party to pay the note must be
15 commenced within ~~six~~ five years after the demand and within the time the bank is required to retain
16 records relating to the note, pursuant to §31A-4-35 of this code. If no demand for payment is made
17 to the maker, an action to enforce the note is barred if:

18 (1) ~~neither~~ Neither principal nor interest on the note has been paid for a continuous period
19 of 10 years;

20 (2) The bank is no longer required to retain records relating to the note;

21 (3) The note has been presumed abandoned pursuant to §36-8-2 of this code.

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 the following time period: ~~within six years after demand for~~
30 ~~payment is made to the maker, but if the instrument states a due date and the maker is not~~
31 ~~required to pay before that date, the six-year period begins when a demand for payment is in effect~~
32 ~~and the due date has passed~~

33 (1) Within the time the bank is required to retain records relating to the certificate of
34 deposit, pursuant to §31A-4-35 of this code, or

35 (2) Within five years after demand for payment is made to the maker: *Provided*, That in any
36 instance in which an instrument otherwise specifies a due date before which the maker is not
37 required to pay, then the five-year period begins once a demand for payment is in effect and the
38 due date has passed.

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

43 (g) Unless governed by other law regarding claims for indemnity or contribution, an action
44 (i) for conversion of an instrument, for money had and received, or like action based on
45 conversion, (ii) for breach of warranty or (iii) to enforce an obligation, duty, or right arising under
46 this article and not governed by this section must be commenced within three years after the
47 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.