

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 787

*An Act to amend and reenact §§ 42.1-77, 42.1-79, 42.1-82, 42.1-83, 42.1-86, 42.1-86.1, and 42.1-87 of the Code of Virginia and to repeal §§ 42.1-79.1 and 42.1-84 of the Code of Virginia, relating to the Virginia Public Records Act.*

[H 1791]

Approved March 26, 2005

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 42.1-77, 42.1-79, 42.1-82, 42.1-83, 42.1-86, 42.1-86.1, and 42.1-87 of the Code of Virginia are amended and reenacted as follows:**

§ 42.1-77. Definitions.

As used in this chapter:

"Agency" means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

"Archival quality" means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American Standards Association, and the National Bureau of Standards.

*"Archival record" means a public record of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law that is identified on a Library of Virginia approved records retention and disposition schedule as having sufficient informational value to be permanently maintained by the Commonwealth. In appraisal of public records deemed archival, the terms "administrative," "fiscal," "historical," and "legal" value shall be defined as:*

*1. "Administrative value": Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.*

*2. "Fiscal value": Records shall be deemed of fiscal value if they are needed to document and verify financial authorizations, obligations, and transactions.*

*3. "Historical value": Records shall be deemed of historical value if they contain unique information, regardless of age, that provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.*

*4. "Legal value": Records shall be deemed of legal value if they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.*

*"Archives" means the program administered by The Library of Virginia for the preservation of archival records.*

"Board" means the State Library Board.

"Council" means the State Public Records Advisory Council.

"Custodian" means the public official in charge of an office having public records.

"Data" means symbols, or representations, of facts or ideas that can be communicated, interpreted, or processed by manual or automated means.

"Database" means a set of data, consisting of one file or a group of integrated files, maintained as an information system managed by a database management system.

"Database management system" means a set of software programs that controls the organization, storage and retrieval of data in a database. It also controls the security and integrity of the database.

*"Disaster plan" means the information maintained by an agency that outlines recovery techniques and methods to be followed in case of an emergency that impacts the agency's records.*

"Electronic record" means any information that is recorded in machine readable form.

"Electronic records system" means any information system that produces, processes, or stores records by using a computer, and is also called an automated information system.

"Information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

"Librarian of Virginia" means the State Librarian of Virginia or his designated representative.

*"Original record" means the first generation of the information and is the superior version of a record. Archival records should to the maximum extent possible be original records.*

*"Preservation" means the processes and operations involved in ensuring the technical and intellectual survival of authentic records through time.*

*"Private record" means a record that does not relate to or affect the carrying out of the constitutional, statutory, or other official ceremonial duties of a public official, including the*

*correspondence, diaries, journals, or notes that are not prepared for, utilized for, circulated, or communicated in the course of transacting public business.*

"Public official" means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

"Public record" or "*record*" means recorded information that documents a transaction or activity by or with any public officer, agency or employee of the state government or its political subdivisions *an agency*. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium ~~on~~ *upon* which such information is recorded may be, but is not limited to paper, film, magnetic, optical or solid state devices which can store electronic signals; tapes, mylar, linen, silk or vellum. The general types of records may be, but are not limited to books, papers, letters, documents, printouts, photographs, films, tapes, microfiche, microfilm, photostats, sound recordings, maps, drawings, and any representations held in computer memory *has no bearing on the determination of whether the recording is a public record.*

~~Nonrecord~~ For purposes of this chapter, "*public record*" shall not include *nonrecord* materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications; shall not be included within the definition of public records as used in this chapter.

"Archival records" means all noncurrent records of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law. In appraisal of public records deemed archival, the terms "administrative," "legal," "fiscal," and "historical" shall be defined as:

1. "Administrative value": Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.

2. "Legal value": Records shall be deemed of legal value when they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

3. "Fiscal value": Records shall be deemed of fiscal value so long as they are needed to document and verify financial authorizations, obligations and transactions.

4. "Historical value": Records shall be deemed of historical value when they contain unique information, regardless of age, which provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.

"Medical records" means the documentation of health care services, whether physical or mental, rendered by direct or indirect patient-provider interaction which is used as a mechanism for tracking the patient's health care status. Medical records may be technologically stored by computerized or other electronic process, or through microfilm or other similar photographic form or chemical process. Notwithstanding the authority provided by this definition to store medical records on microfilm or other similar photographic form or chemical process, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

"Official records" means public records.

"Persons under a disability" means persons so defined under subsection A of § 8.01-229.

"Preservation" means maintaining archival records in their original physical form by stabilizing them chemically or strengthening them physically to ensure their survival as long as possible in their original form. It also means the reformatting of written, printed, electronic or visual archival information to extend the life of the information.

"Retention *Records retention* and disposition schedule" means *an a* Library of Virginia-approved timetable stating the *required* retention ~~time~~ period and disposition action of *a* records series.

"Software programs" means the written specifications used to operate an electronic records system as well as the documentation describing implementation strategies.

§ 42.1-79. Records management function vested in Board; State Library Board to be official custodian; State Archivist.

The archival and records management function shall be vested in the State Library Board. The State Library Board shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind *which that* are transferred to it from any public office of the Commonwealth or any political subdivision thereof *agency*. As the Commonwealth's official repository of public records, The Library of Virginia shall assume administrative control of such records on behalf of the Commonwealth.

The Librarian of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.

§ 42.1-82. Duties and powers of Library Board.

The State Library Board shall ~~with the advice of the Council~~:

1. Issue regulations to facilitate the creation, preservation, storage, filing, reformatting, management,

and destruction of public records by all agencies. Such regulations shall establish procedures for records management containing recommendations for the retention, disposal or other disposition of public records; procedures for the physical destruction or other disposition of public records proposed for disposal; and standards for the reproduction of records by photocopy or microphotography processes with the view to the disposal of the original records. The procedures for the disposal, physical destruction or other disposition of public records containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or undecipherable by any means. Such standards shall relate to the quality of film used, preparation of the records for filming, proper identification of the records so that any individual document or series of documents can be located on the film with reasonable facility, and that the copies contain all significant record detail, to the end that the photographic or microphotographic copies shall be of archival quality.

2. Issue regulations specifying permissible qualities of paper, ink, and other materials to be used by agencies for public record purposes. The Board shall determine the specifications for and shall select and make available to all agencies lists of approved papers, photographic materials, ink, or other writing materials for archival public records, and only those approved may be purchased for use in the making of such records. These regulations and specifications shall also apply to clerks of courts of record.

3. Provide assistance to agencies in determining what records no longer have administrative, legal, fiscal, or historical archival value and should be destroyed or disposed of in another manner. Each public official having in his custody ~~official~~ public records shall assist the Board in the preparation of an inventory of all public records in his custody and in preparing a suggested schedule for retention and disposition of such records. No land or personal property book shall be destroyed without being first offered to The Library of Virginia for preservation.

All records created prior to the Constitution of 1902 that are declared archival may be transferred to the archives.

§ 42.1-83. Records of counties, cities and towns; storage of records.

~~The State Library Board shall formulate and execute a program to inventory, schedule, and microfilm official records of counties, cities and towns which it determines have permanent value and to provide safe storage for microfilm copies of such records, and to give advice and assistance to local officials in their programs for creating, preserving, filing and making available public records in their custody.~~

Original archival public records *of counties, cities, or towns* shall be either stored in The Library of Virginia or in the locality at the decision of the local officials responsible for maintaining public records. Original archival public records shall be returned to the locality upon the written request of the local officials responsible for maintaining local public records. Microfilm shall be stored in The Library of Virginia but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.

§ 42.1-86. Program to select and preserve important records; availability to public; security copies.

In cooperation with the head of each agency, the Librarian of Virginia shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and for the protection of the rights and interests of persons. He shall provide for preserving, classifying, arranging, and indexing so that such records are made available to the public and shall make security copies or designate as security copies existing copies of such essential public records. Security copies shall be of archival quality and shall be made by photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces and forms a durable medium. Security copies shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Security copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor. Public records deemed unnecessary for the transaction of the business of any agency, yet deemed to be of ~~administrative, legal, fiscal, or historical~~ archival value, may be transferred with the consent of the Librarian of Virginia to the custody of The Library of Virginia.

§ 42.1-86.1. Disposition of public records.

~~No agency shall destroy or discard public records without a retention and disposition schedule approved by the Librarian of Virginia as provided in § 42.1-82. No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to § 42.1-82 and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.~~

§ 42.1-87. Where records kept; duties of agencies; repair, etc., of record books; agency heads not divested of certain authority.

Custodians of archival public records shall keep them in fire-resistant, environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to cooperate with The Library of Virginia in complying with rules and regulations promulgated by the Board. Each agency shall establish and maintain an active and continuing program for the economic and efficient management of *public* records.

~~Each agency shall develop and implement a program for the management of records created, received, maintained, used, or stored on electronic media. Each agency shall schedule the retention and disposition of all electronic records, as well as related access documentation and indexes and shall ensure the implementation of their provisions in accordance with procedures established under § 42.1-82. Procedures governing access to electronic records shall be in accordance with the Virginia Freedom of Information Act, the Virginia Privacy Protection Act, the Intellectual Property Act and any other provision of law as may be applicable and shall be enumerated in the retention and disposition schedule.~~

Record books *deemed archival* should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the Commonwealth may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Before any restoration or repair work is initiated, a treatment proposal from the contractor shall be submitted and reviewed in consultation with The Library of Virginia. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty. Whenever legislation affecting public records management and preservation is under consideration, The Library of Virginia shall review the proposal and advise the General Assembly on the effects of its proposed implementation.

**2. That §§ 42.1-79.1 and 42.1-84 of the Code of Virginia are repealed.**