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HOUSE BILL NO. 1054

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 8.01-391, 15.2-1412, and 17.1-213 of the Code of Virginia, and to repeal § 17.1-209 of the Code of Virginia, relating to public records; retention and destruction of original records by clerk.

Patrons—Anderson and Webert

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-391, 15.2-1412, and 17.1-213 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-391. Copies of originals as evidence.

A. Whenever the original of any official publication or other record has been filed in an action or introduced as evidence, the court may order the original to be returned to its custodian, retaining in its stead a copy thereof. The court may make any order to prevent the improper use of the original.

B. If any department, division, institution, agency, board, or commission of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, acting pursuant to the law of the respective jurisdiction or other proper authority, has copied any record made in the performance of its official duties, such copy shall be as admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy either by the custodian of said record or by the person to whom said custodian reports, if they are different, and is accompanied by a certificate that such person does in fact have the custody.

C. If any court or clerk's office of a court of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, has copied any record made in the performance of its official duties, such copy shall be admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy by a clerk or deputy clerk of such court.

D. If any business or member of a profession or calling in the regular course of business or activity has made any record or received or transmitted any document, and again in the regular course of business has caused any or all of such record or document to be copied, the copy shall be as admissible in evidence as the original, whether the original exists or not, provided that such copy is satisfactorily identified and authenticated as a true copy by a custodian of such record or by the person to whom said custodian reports, if they be different, and is accompanied by a certificate that said person does in fact have the custody. Copies in the regular course of business shall be deemed to include reproduction at a later time, if done in good faith and without intent to defraud. Copies in the regular course of business shall include items such as checks which are regularly copied before transmission to another person or bank, or records which are acted upon without receipt of the original when the original is retained by another party.

E. The original of which a copy has been made may be destroyed ~~in the regular course of business~~ unless its preservation is required by law, or its validity has been questioned.

EF. The introduction in an action of a copy under this section neither precludes the introduction or admission of the original nor the introduction of a copy or the original in another action.

FG. Copy, as used in this section, shall include photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

§ 15.2-1412. Reproductions of records and documents and legal status thereof; destruction of originals.

Any locality may provide for the photographing or microphotographing, or the recording by any other process which accurately reproduces or forms a durable medium for reproducing the original of all or any part of the papers, records, documents or other material kept by or in the charge of any department, agency or institution of such locality in accordance with such standards and retention schedules as may be issued in pursuance of § 42.1-82.

A reproduction thereof if substantially the same size as the original, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise

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59 admissible in evidence if the original reproduction is in existence and available for inspection under
60 direction of the court. The introduction of a reproduced record, enlargement or facsimile, does not
61 preclude admission of the original.

62 Whenever photographs or microphotographs have been made and put in conveniently accessible files,
63 and provision has been made for preserving, examining and using the same, the locality may notify the
64 Librarian of Virginia that it intends to destroy the records and papers so photographed or
65 microphotographed, or any part thereof. If within ~~sixty~~ 60 days the Librarian of Virginia has not notified
66 the locality that such records or papers should be retained, the locality may destroy them. A locality
67 may also, in its discretion, consult with the locality's librarian with reference to the advisability of
68 destroying any such records, papers, documents or other material because of any historical significance
69 or value.

70 With the approval of the judge of the circuit court entered of record, the clerk of the circuit court
71 and the clerk of the district court, if directed to do so by the governing body, may microphotograph
72 records in their respective offices which are not required for current use. No record so
73 microphotographed shall be destroyed but may be stored in a safe place. The microphotograph or a
74 certified copy thereof shall have the same force and effect as the original record.

75 § 17.1-213. Disposition of papers in ended cases.

76 A. All case files for cases ended prior to January 1, 1913, shall be permanently maintained in
77 hardcopy form, either in the locality served by the circuit court where such files originated or in The
78 Library of Virginia in accordance with the provisions of § 42.1-86 and subsection C of § 42.1-87.

79 B. The following records for cases ending on or after January 1, 1913, ~~may be destroyed in their~~
80 ~~entirety at the discretion of the clerk of each circuit court after having been~~ *shall be* retained for 10
81 years after conclusion:

- 82 1. Conditional sales contracts;
- 83 2. Concealed weapons permit applications;
- 84 3. Minister appointments;
- 85 4. Petitions for appointment of trustee;
- 86 5. Name changes;
- 87 6. Nolle prosequi cases;
- 88 7. Civil actions that are voluntarily dismissed, including nonsuits, cases that are dismissed as settled
89 and agreed, cases that are dismissed with or without prejudice, cases that are discontinued or dismissed
90 under § 8.01-335 and district court appeals dismissed under § 16.1-113 prior to 1988;
- 91 8. Misdemeanor and traffic cases, except as provided in subdivision C 3, including those which were
92 commenced on a felony charge but concluded as a misdemeanor;
- 93 9. Suits to enforce a lien;
- 94 10. Garnishments;
- 95 11. Executions except for those covered in § 8.01-484;
- 96 12. Miscellaneous oaths and qualifications, but only if the order or oath or qualification is spread in
97 the appropriate order book; and
- 98 13. Civil cases pertaining to declarations of habitual offender status and full restoration of driving
99 privileges.

100 C. All other records or cases ending on or after January 1, 1913, ~~may be destroyed in their entirety~~
101 ~~at the discretion of the clerk of each circuit court shall be retained~~ subject to the following guidelines:

102 1. All civil case files to which subsection D does not pertain ~~may be destroyed after~~ *shall be*
103 *retained* 20 years from the court order date.

104 2. All criminal cases dismissed, including those not a true bill, acquittals and not guilty verdicts, ~~may~~
105 ~~be destroyed after~~ *shall be retained* 10 years from the court order date.

106 3. All criminal case files involving a felony conviction and all criminal case files involving a
107 misdemeanor conviction under § 16.1-253.2, 18.2-57.2, or 18.2-60.4 ~~may be destroyed~~ *shall be retained*
108 (i) ~~after~~ 20 years from the sentencing date or (ii) ~~when~~ *until* the sentence term ends, whichever comes
109 later.

110 D. Under the provisions of subsections B and C, the entire file of any case deemed by the local clerk
111 of court to have historical value, as defined in § 42.1-77, or genealogical or sensational significance shall
112 be retained permanently as shall all cases in which the title to real estate is established, conveyed or
113 condemned by an order or decree of the court. The final order for all cases in which the title to real
114 estate is so affected shall include an appropriate notification thereof to the clerk.

115 E. Except as provided in subsection A, the clerk of a circuit court may cause (i) any or all ~~ended~~
116 ~~records, papers, or documents~~ pertaining to civil and criminal cases which have been ~~ended~~ *imaged* for a
117 period of three years or longer; (ii) any unexecuted search warrants and affidavits for unexecuted search
118 warrants, provided at least three years have passed since issued; (iii) any abstracts of judgments; and (iv)
119 original wills, to be destroyed if such records, papers, documents, or wills no longer have administrative,
120 fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or

121 documents have been microfilmed or converted to an electronic format. Such microfilm and
122 microphotographic processes and equipment shall meet state archival microfilm standards pursuant to
123 § 42.1-82, or such electronic format shall follow state electronic records guidelines, and such records,
124 papers, or documents so converted shall be placed in conveniently accessible files and provisions made
125 for examining and using same. The clerk shall further provide security negative copies of any such
126 microfilmed materials for storage in The Library of Virginia.
127 **2. That § 17.1-209 of the Code of Virginia is repealed.**