

ASSEMBLY BILL NO. 195—COMMITTEE ON JUDICIARY

FEBRUARY 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the destruction and storage of court records. (BDR 19-550)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to court records; revising requirements for saving images of court records before the records may be destroyed; authorizing the State Library and Archives Administrator to receive the court records of the Supreme Court or of a district court into the State Archives under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, the Clerk of the Supreme Court, a county clerk, a deputy
2 clerk of a justice court or a clerk of a municipal court may destroy documents,
3 records, instruments, books, papers, depositions and transcripts of court actions and
4 proceedings if the action or proceeding is not on appeal or review in any court.
5 (NRS 239.110) The clerk is required to maintain a microphotographic film copy of
6 every such record destroyed, and the copies are deemed to be the original
7 documents.

8 **Section 1** of this bill instead requires that, before a court record is destroyed by
9 a clerk of the court, the clerk must place an image of the record on microfilm or
10 save the image in an electronic recordkeeping system. **Section 1** also: (1) requires
11 the microfilm or saved image to be durable, accurate, complete and clear; (2)
12 clarifies that a reproduction of a court record is considered to be the original,
13 regardless of whether the actual original document exists; and (3) requires the clerk
14 who microfilms or saves the court records to store the microfilm or the medium
15 used to save the image in a manner and place so as to protect it reasonably from
16 loss or damage and as prescribed by the Supreme Court. **Section 3** of this bill
17 authorizes the State Library and Archives Administrator to receive into the State
18 Archives any court record from the Supreme Court or a district court if: (1) the
19 Administrator finds that the court record is of historical value; (2) the record is
20 provided to the State Archives by an order of the Supreme Court; or (3) the
21 Administrator and the Supreme Court or a district court, as applicable, enter into an
22 agreement for the Administrator to receive into the State Archives any other record



23 from the Supreme Court or district court. **Section 4** of this bill authorizes the State
24 Library and Archives Administrator to establish, maintain and operate a center for
25 storing and retrieving records for the Supreme Court or a district court pending
26 acceptance of the records by the Division of State Library and Archives of the
27 Department of Cultural Affairs or disposition of the records by law.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 239.110 is hereby amended to read as follows:
2 239.110 1. ~~[(The)]~~ *In addition to any other requirement of*
3 *this section, the* Clerk of the Supreme Court, *a deputy clerk of the*
4 *Supreme Court,* a county clerk, *a deputy clerk of a district court, a*
5 deputy clerk of a justice court or *a* clerk of a municipal court may
6 destroy ~~[all documents, records, instruments, books, papers,~~
7 ~~depositions and transcripts in any action or proceeding in the~~
8 ~~Supreme Court, district court, justice court or municipal court,~~
9 ~~respectively, or otherwise filed in the clerk's office pursuant to law,~~
10 ~~including transcripts of coroners' inquests and depositions, if the~~
11 ~~records of the clerk do not show that the action or proceeding is~~
12 ~~pending on appeal or review in any court,]~~ *a court record only in*
13 *accordance with a schedule for the retention and disposition of*
14 *court records which is approved by the Supreme Court,* except
15 that:

16 (a) If the written consent of the district attorney is first obtained,
17 transcripts of preliminary hearings may be destroyed as provided in
18 this section; and

19 (b) Minutes of the Supreme Court, district court, justice court or
20 municipal court, affidavits supporting applications for marriage
21 licenses, after those licenses have been issued, and certificates of
22 fictitious names of businesses may be destroyed immediately
23 subject to the provisions of subsections 2 ~~[and 3.]~~ *to 5, inclusive.*

24 2. ~~[(The clerk shall maintain for the use of the public a~~
25 ~~microphotographic film print or copy of each document, record,~~
26 ~~instrument, book, paper, deposition or transcript so destroyed, if the~~
27 ~~print or copy is placed and kept in a sealed container under~~
28 ~~certificate of the clerk and properly indexed. This print or copy shall~~
29 ~~be deemed to be the original.~~

30 ~~—3.— The clerk shall promptly seal and store at least one original~~
31 ~~negative of each microphotographic film in such manner and place~~
32 ~~as may reasonably ensure its preservation indefinitely against loss,~~
33 ~~theft, defacement or destruction.~~

34 ~~—4.]~~ *A clerk who destroys a court record pursuant to this*
35 *section may do so only if an image of the court record has been*
36 *placed on microfilm or has been saved in an electronic*



1 *recordkeeping system which permits the retrieval of the*
2 *information contained in the court record and the reproduction of*
3 *the court record.*

4 3. *A reproduction of an image of a court record that has been*
5 *placed on microfilm or saved pursuant to this section shall be*
6 *deemed to be the original court record, regardless of whether the*
7 *original exists.*

8 4. *A microfilmed image of a court record or an image of a*
9 *court record saved in an electronic recordkeeping system pursuant*
10 *to this section must be durable, accurate, complete and clear.*

11 5. *If, pursuant to this section, an image of a court record is*
12 *placed on microfilm or is saved in an electronic recordkeeping*
13 *system, the clerk who does so shall promptly store at least one copy*
14 *of the microfilm or any tape, disc or other medium used for the*
15 *storage of the saved image in a manner and place:*

16 (a) *So as to protect it reasonably from loss or damage; and*

17 (b) *As prescribed by the Supreme Court.*

18 6. The Supreme Court may provide by rule for the destruction,
19 without prior microfilming, of such other documents of the several
20 courts of this State as are held in the offices of the clerks but which:

21 (a) No longer serve any legal, financial or administrative
22 purpose; and

23 (b) Do not have any historical value.

24 ~~5-1~~ 7. The Court Administrator may request the Division to
25 advise and assist the Supreme Court in its establishment of the rules
26 ~~1-1~~ *or of a schedule for the retention and disposition of court*
27 *records.*

28 8. *As used in this section, "court record" means any*
29 *document, device or item, regardless of physical form or*
30 *characteristic, that:*

31 (a) *Is created by, received by or comes under the jurisdiction of*
32 *the Supreme Court or a district court, justice court or municipal*
33 *court; and*

34 (b) *Documents the organization, functions, policies, decisions,*
35 *procedures, operations or any other activities of the Supreme*
36 *Court, district court, justice court or municipal court.*

37 **Sec. 2.** NRS 378.005 is hereby amended to read as follows:

38 378.005 As used in this chapter:

39 1. *"Court record" has the meaning ascribed to it in*
40 *NRS 239.110.*

41 2. "Department" means the Department of Cultural Affairs.

42 ~~2-1~~ 3. "Director" means the Director of the Department.

43 ~~3-1~~ 4. "Division" means the Division of State Library and
44 Archives of the Department.



1 **Sec. 3.** NRS 378.250 is hereby amended to read as follows:
2 378.250 **1.** The State Library and Archives Administrator
3 may:

4 ~~1-1~~ **(a)** Receive into the archives material from a state agency if
5 the State Library and Archives Administrator finds that it is of
6 historical value.

7 ~~1-2~~ **(b)** With the approval of the Committee to Approve
8 Schedules for the Retention and Disposition of Official State
9 Records created pursuant to NRS 239.073, return to the state agency
10 from which it was received, material in the archives which the State
11 Library and Archives Administrator finds is not of historical value.

12 ~~1-3~~ **(c)** Receive into the archives material which has been
13 directed to be deposited in the archives by an order or resolution of
14 the governing body of a local governmental entity, if the State
15 Library and Archives Administrator finds that it is of historical
16 value.

17 ~~1-4~~ **(d)** *Except as otherwise provided in subsection 2, receive*
18 *into the archives any court record from the Supreme Court or a*
19 *district court, if:*

20 **(1)** *The State Library and Archives Administrator finds that*
21 *it is of historical value;*

22 **(2)** *The court record is provided to the archives by order of*
23 *the Supreme Court; or*

24 **(3)** *The State Library and Archives Administrator enters*
25 *into an agreement with the Supreme Court or a district court to*
26 *receive any other records from the Supreme Court or district*
27 *court.*

28 **(e)** With the approval of the Committee to Approve Schedules
29 for the Retention and Disposition of Official State Records, turn
30 over to:

31 ~~1-a~~ **(1)** Any agency in the Department; or

32 ~~1-b~~ **(2)** The Nevada System of Higher Education,

33 ↪ material in the archives which the State Library and Archives
34 Administrator finds to be surplus, not properly in the archives or
35 appropriate to be kept elsewhere.

36 ~~1-5~~ **(f)** Expend a gift of money the State Library and Archives
37 Administrator is authorized to accept for the purpose specified by
38 the donor or, if no purpose is specified, in a manner which will
39 further the purposes of the Division.

40 **2.** *The State Library and Archives Administrator shall not*
41 *receive into the archives any court record that a court has ordered*
42 *sealed.*



1 **Sec. 4.** NRS 378.255 is hereby amended to read as follows:

2 378.255 The State Library and Archives Administrator may:

3 1. Adopt regulations and establish standards, procedures and
4 techniques for the effective management of records.

5 2. Make continuing surveys of current practices for the
6 management of records and recommend improvements in those
7 practices, including the use of space, equipment and supplies to
8 create, maintain and store records.

9 3. Establish standards for the preparation of schedules
10 providing for the retention of state records of continuing value and
11 for the prompt and orderly disposition of state records which no
12 longer possess sufficient administrative, fiscal, legal or research
13 value to warrant their further retention.

14 4. Establish, maintain and operate a center for storing and
15 retrieving records for state agencies *or court records for the*
16 *Supreme Court or a district court of this State* pending the
17 acceptance of the records by the Division or the disposition of the
18 records in any other manner prescribed by law.

19 5. Establish a program for the control and management of
20 forms, files, reports, directives and correspondence.

21 6. Establish a program of planning and preparation to assist
22 state agencies and local governments in providing protection for
23 records essential for the continuation or reestablishment of
24 government in the event of a disaster.

25 7. Provide advice and technical assistance to state agencies,
26 local governmental entities and, if requested, the Legislative and
27 Judicial Branches of State Government concerning any aspect of
28 managing records.

29 8. Through the Division, inspect the physical nature of
30 governmental records in the custody of a state or local governmental
31 agency which are not confidential or privileged.

32 9. With the approval of the Committee to Approve Schedules
33 for the Retention and Disposition of Official State Records created
34 pursuant to NRS 239.073, bring an action to obtain possession of
35 the records of a state or local governmental agency which are:

36 (a) Of historical value and are not being properly cared for; or

37 (b) Privately held.

38 ↪ In an action to recover a record which is privately held, it is
39 rebuttably presumed that a governmental record which appears to be
40 the original of a document received or the file copy of a document
41 made by a governmental agency is governmental property.

42 **Sec. 5.** This act becomes effective on July 1, 2011.

