

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.

~

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 the Clerk of the Supreme Court, a deputy clerk of the Supreme Court, a county
10 clerk, the clerk of a district court or a deputy clerk of a district court, the clerk must
11 place an image of the record on microfilm or save the image in an electronic
12 recordkeeping system. However, a deputy clerk of a justice court or a clerk of a
13 municipal court may destroy a court record pursuant to a schedule for the retention
14 and disposition of court records established by the Supreme Court without placing
15 an image of the record on microfilm or saving the image in an electronic
16 recordkeeping system. **Section 1** also: (1) requires the microfilm or saved image to
17 be durable, accurate, complete and clear; (2) clarifies that a reproduction of a court
18 record is considered to be the original, regardless of whether the actual original
19 document exists; and (3) requires the clerk who microfilms or saves the court
20 records to store the microfilm or the medium used to save the image in a manner
21 and place so as to protect it reasonably from loss or damage and as prescribed by
22 the Supreme Court. **Section 3** of this bill authorizes the State Library and Archives



* A B 1 9 5 R 1 *

23 Administrator to receive into the State Archives any court record from the Supreme
24 Court or a district court if: (1) the Administrator finds that the court record is of
25 historical value; (2) the record is provided to the State Archives by an order of the
26 Supreme Court; or (3) the Administrator and the Supreme Court or a district court,
27 as applicable, enter into an agreement for the Administrator to receive into the State
28 Archives any other record from the Supreme Court or district court. **Section 4**
29 of this bill authorizes the State Library and Archives Administrator to establish,
30 maintain and operate a center for storing and retrieving records for the Supreme
31 Court or a district court pending acceptance of the records by the Division of State
32 Library and Archives of the Department of Cultural Affairs or disposition of the
33 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, the clerk of a district court, a~~
5 ~~deputy clerk of a district court, a~~ deputy clerk of a justice court or a
6 clerk of a municipal court may destroy ~~all documents, records,~~
7 ~~instruments, books, papers, depositions and transcripts in any action~~
8 ~~or proceeding in the Supreme Court, district court, justice court or~~
9 ~~municipal court, respectively, or otherwise filed in the clerk's office~~
10 ~~pursuant to law, including transcripts of coroners' inquests and~~
11 ~~depositions, if the records of the clerk do not show that the action or~~
12 ~~proceeding is pending on appeal or review in any court, except that:~~
13 ~~—(a) If the written consent of the district attorney is first obtained,~~
14 ~~transcripts of preliminary hearings may be destroyed as provided in~~
15 ~~this section; and~~
16 ~~—(b) Minutes of the Supreme Court, district court, justice court or~~
17 ~~municipal court, affidavits supporting applications for marriage~~
18 ~~licenses, after those licenses have been issued, and certificates of~~
19 ~~fictitious names of businesses may be destroyed immediately~~
20 ~~subject to the provisions of subsections 2 and 3.~~
21 ~~—2. The clerk shall maintain for the use of the public a~~
22 ~~microphotographic film print or copy of each document, record,~~
23 ~~instrument, book, paper, deposition or transcript so destroyed, if the~~
24 ~~print or copy is placed and kept in a sealed container under~~
25 ~~certificate of the clerk and properly indexed. This print or copy shall~~
26 ~~be deemed to be the original.~~
27 ~~—3. The clerk shall promptly seal and store at least one original~~
28 ~~negative of each microphotographic film in such manner and place~~
29 ~~as may reasonably ensure its preservation indefinitely against loss,~~
30 ~~theft, defacement or destruction.~~



1 ~~4.]~~ a court record only in accordance with a schedule for the
2 retention and disposition of court records which is approved by the
3 Supreme Court.

4 2. The Clerk of the Supreme Court, a deputy clerk of the
5 Supreme Court, a county clerk, the clerk of a district court or a
6 deputy clerk of a district court who destroys a court record
7 pursuant to this section may do so only if an image of the court
8 record has been placed on microfilm or has been saved in an
9 electronic recordkeeping system which permits the retrieval of the
10 information contained in the court record and the reproduction of
11 the court record.

12 3. Except as otherwise prohibited by law, a deputy clerk of a
13 justice court or a clerk of a municipal court may destroy a court
14 record pursuant to a schedule for the retention and disposition of
15 court records established by the Supreme Court without placing
16 an image of the court record on microfilm or saving an image of
17 the court record in an electronic recordkeeping system.

18 4. A reproduction of an image of a court record that has been
19 placed on microfilm or saved pursuant to this section shall be
20 deemed to be the original court record, regardless of whether the
21 original exists.

22 5. A microfilmed image of a court record or an image of a
23 court record saved in an electronic recordkeeping system pursuant
24 to this section must be durable, accurate, complete and clear.

25 6. If, pursuant to this section, an image of a court record is
26 placed on microfilm or is saved in an electronic recordkeeping
27 system, the clerk who does so shall promptly store at least one copy
28 of the microfilm or any tape, disc or other medium used for the
29 storage of the saved image in a manner and place:

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

31 (b) As prescribed by the Supreme Court.

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

35 (a) No longer serve any legal, financial or administrative
36 purpose; and

37 (b) Do not have any historical value.

38 ~~5.]~~ 8. The Court Administrator may request the Division to
39 advise and assist the Supreme Court in its establishment of the rules
40 ~~6.]~~ or of a schedule for the retention and disposition of court
41 records.

42 9. As used in this section, "court record" means any
43 document, device or item, regardless of physical form or
44 characteristic, that:



1 (a) *Is created by, received by or comes under the jurisdiction of*
2 *the Supreme Court or a district court, justice court or municipal*
3 *court; and*

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

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

8 378.005 As used in this chapter:

9 1. *“Court record” has the meaning ascribed to it in*
10 *NRS 239.110.*

11 2. “Department” means the Department of Cultural Affairs.

12 ~~{2}~~ 3. “Director” means the Director of the Department.

13 ~~{3}~~ 4. “Division” means the Division of State Library and
14 Archives of the Department.

15 **Sec. 3.** NRS 378.250 is hereby amended to read as follows:

16 378.250 1. The State Library and Archives Administrator
17 may:

18 ~~{1}~~ (a) Receive into the archives material from a state agency if
19 the State Library and Archives Administrator finds that it is of
20 historical value.

21 ~~{2}~~ (b) With the approval of the Committee to Approve
22 Schedules for the Retention and Disposition of Official State
23 Records created pursuant to NRS 239.073, return to the state agency
24 from which it was received, material in the archives which the State
25 Library and Archives Administrator finds is not of historical value.

26 ~~{3}~~ (c) Receive into the archives material which has been
27 directed to be deposited in the archives by an order or resolution of
28 the governing body of a local governmental entity, if the State
29 Library and Archives Administrator finds that it is of historical
30 value.

31 ~~{4}~~ (d) *Except as otherwise provided in subsection 2, receive*
32 *into the archives any court record from the Supreme Court or a*
33 *district court, if:*

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

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

38 (3) *The State Library and Archives Administrator enters*
39 *into an agreement with the Supreme Court or a district court to*
40 *receive any other records from the Supreme Court or district*
41 *court.*

42 (e) With the approval of the Committee to Approve Schedules
43 for the Retention and Disposition of Official State Records, turn
44 over to:

45 ~~{a}~~ (1) Any agency in the Department; or



1 ~~(b)~~ (2) The Nevada System of Higher Education,
2 → material in the archives which the State Library and Archives
3 Administrator finds to be surplus, not properly in the archives or
4 appropriate to be kept elsewhere.

5 ~~(f)~~ (f) Expend a gift of money the State Library and Archives
6 Administrator is authorized to accept for the purpose specified by
7 the donor or, if no purpose is specified, in a manner which will
8 further the purposes of the Division.

9 **2. *The State Library and Archives Administrator shall not***
10 ***receive into the archives any court record that a court has ordered***
11 ***sealed.***

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

13 378.255 The State Library and Archives Administrator may:

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

16 2. Make continuing surveys of current practices for the
17 management of records and recommend improvements in those
18 practices, including the use of space, equipment and supplies to
19 create, maintain and store records.

20 3. Establish standards for the preparation of schedules
21 providing for the retention of state records of continuing value and
22 for the prompt and orderly disposition of state records which no
23 longer possess sufficient administrative, fiscal, legal or research
24 value to warrant their further retention.

25 4. Establish, maintain and operate a center for storing and
26 retrieving records for state agencies ***or court records for the***
27 ***Supreme Court or a district court of this State*** pending the
28 acceptance of the records by the Division or the disposition of the
29 records in any other manner prescribed by law.

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

32 6. Establish a program of planning and preparation to assist
33 state agencies and local governments in providing protection for
34 records essential for the continuation or reestablishment of
35 government in the event of a disaster.

36 7. Provide advice and technical assistance to state agencies,
37 local governmental entities and, if requested, the Legislative and
38 Judicial Branches of State Government concerning any aspect of
39 managing records.

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

43 9. With the approval of the Committee to Approve Schedules
44 for the Retention and Disposition of Official State Records created



1 pursuant to NRS 239.073, bring an action to obtain possession of
2 the records of a state or local governmental agency which are:

- 3 (a) Of historical value and are not being properly cared for; or
4 (b) Privately held.

5 ➔ In an action to recover a record which is privately held, it is
6 rebuttably presumed that a governmental record which appears to be
7 the original of a document received or the file copy of a document
8 made by a governmental agency is governmental property.

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

⑩



* A B 1 9 5 R 1 *