

SENATE BILL NO. 421

BY SENATOR MILLER

1 AN ACT

2 To amend and reenact R.S. 44:40(A), (B), (C), and (E) and 116 and to repeal R.S. 44:118,  
3 relative to clerks of court; to provide relative to additional copies of records; to  
4 provide relative to the purchase of certain equipment, software, and services; to  
5 provide with respect to equipment and services for the electronic conversion of  
6 records; to provide relative to defraying the cost of equipment, software, and services  
7 for converting records in certain circumstances; to provide relative to the destruction  
8 of documents and the preservation method of records; to provide relative to  
9 photostatic, photographic, microfilm or electronic copies of records; to authorize  
10 methods of reproduction or conversion of records in certain circumstances; to  
11 provide relative to the disposition, retention, and storage of records in certain  
12 circumstances; to provide relative to the preservation of certain records; to provide  
13 for terms and definitions; to provide relative to electronic copies of records in  
14 Lafayette Parish; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 44:40(A), (B), (C), and (E) and 116 are hereby amended and  
17 reenacted to read as follows:

18 §40. Additional copies of records; purchase of equipment; funds available for  
19 payment; copies of suit records

20 A. The ~~several~~ **district** clerks of court and ex officio recorders ~~and registers~~  
21 ~~of conveyances and recorders of mortgages, throughout the state,~~ are hereby  
22 authorized ~~at their option~~ to make additional copies, by any means authorized by  
23 R.S. 44:116, of every nature and kind in their custody by virtue of their various  
24 official capacities as such clerks of court and ex officio recorders ~~and registers of~~  
25 ~~conveyances and recorders of mortgages,~~ filed or recorded in their offices prior to  
26 July 29, 1964, and subsequent thereto.

27 B. ~~Such~~ **District** clerks of court and ex officio recorders ~~and registers~~ are

1 hereby authorized to purchase the necessary equipment, **software, and services** for  
 2 **converting records into an electronic record**, photorecording, photocopying,  
 3 microfilming, or electronic imaging, to lease such equipment **and software** or to  
 4 contract with competent independent contractors, or both, according to the discretion  
 5 of the clerks of court and ex officio recorders ~~and registers~~, to cause the records  
 6 described in this Section to be copied **or converted** and reproduced.

7 C. Each ~~such~~ clerk of court and ex officio recorder ~~and register~~ is hereby  
 8 authorized to defray the cost of **equipment, software, or services for converting**,  
 9 copying, reproducing, **digitizing, storing**, and retrieving the records described in this  
 10 Section out of any funds available in the clerk's salary fund.

11 \* \* \*

12 E. Notwithstanding the provisions of Subsection A of this Section or any  
 13 other provision of law to the contrary, prior to destroying the original criminal  
 14 records and any other records of every nature and kind that are deemed permanent  
 15 under a record retention and disposal schedule adopted by the secretary of state and  
 16 the clerks of court in accordance with R.S. 44:410 and 411, the destruction of which  
 17 is authorized by R.S. 13:917, the ~~several~~ **district** clerks of court, including the clerks  
 18 of the Criminal or Civil District Courts for the parish of Orleans, shall make and  
 19 retain in their custody a copy of such records electronically ~~on nonrewritable~~  
 20 ~~magnetic, optical, or laser-type storage media, including but not limited to CD-ROM.~~  
 21 No cause of action for any claim shall exist against a clerk of court for any damage  
 22 or loss resulting from the destruction of an original record after proper preservation  
 23 of the record in accordance herewith. However, all records in suits affecting records  
 24 relating to immovable property, or adoption, interdiction, successions, trusts, or  
 25 emancipation created prior to 1922 shall be retained in their original form.

26 \* \* \*

27 §116. Photostatic, photographic, microfilm, or other photographic or electronic  
 28 copies of records; indexes of conveyance and mortgage records;  
 29 disposition; evidentiary status; preservation

30 A. In all cases where the **district** clerks of court and **ex officio** recorders ~~of~~

1 the various parishes throughout the state, Orleans Parish excepted; are required by  
2 law to make records of filings, documents, pleadings, and all other written  
3 instruments, including indexes, and registers of the same, such records may be made  
4 by any method of photorecording, photocopying, microfilming, or other  
5 photographic method of reproduction or electronically on non-rewritable magnetic,  
6 optical, or laser-type storage media, including but not limited to CD-ROM. However,  
7 the film stock used in making photographic or microphotographic copies and the  
8 processing of the copies shall comply with the standards of the American National  
9 Standards Institute for permanent record photographic microcopying film and the  
10 electronic media used shall comply with the standards of the International Standards  
11 Organization for electronic storage of records **reproduced or converted using any**  
12 **photographic, microphotographic, or electronic digitizing process capable of**  
13 **producing an unalterable and accessible representation of the original source**  
14 **record provided the usage of these processes is not otherwise prohibited by law.**

15 B. Whenever recordation by means of photorecording, photocopying,  
16 microfilming, or other photographic method of reproduction is used or when  
17 electronic recordation on non-rewritable magnetic, optical, or laser-type storage  
18 media is used, any requirement expressed or implied in law for the above-mentioned  
19 records, including indexes and registers of the same, to be maintained in a book or  
20 bound volume shall be satisfied by the appropriate storage unit of microfilm or other  
21 photographic method employed, or tape or disk; however, if a clerk of court elects  
22 to record by means of microfilming or other photographic method of reproduction,  
23 or electronically, he shall have copies of the films, tapes, or disks available for  
24 inspection, examination, and copying under the provisions of R.S. 44:31 et seq., and  
25 other applicable laws.

26 C. Notwithstanding the provisions of Subsections A and B of this Section or  
27 any other provision of law to the contrary, clerks of court and recorders may make  
28 indexes of conveyance and mortgage records by any method of photorecording,  
29 photocopying, microfilming, or other photographic method of reproduction or  
30 electronically on non-rewritable magnetic, optical, or laser type storage media;

1 including but not limited to CD-ROM; however, the standards described in  
2 Subsection A of this Section shall apply.

3 ~~D. Notwithstanding the provisions of Subsection B of this Section or any~~  
4 ~~other provision of law to the contrary, for~~ **For** any record filed on or after January  
5 1, 2005, with the exception of records of a graphic nature, including but not limited  
6 to plats, maps, and photographs as related to the work of a Professional Land  
7 Surveyor engaged in the "Practice of Land Surveying", as defined in R.S. 37:682, a  
8 clerk of court may reproduce the record as provided in this Section and shall return  
9 the original record to the indicated person and to the address shown on the first page  
10 of the record, or if no such person and address is indicated, to any vendee or other  
11 transferee whose name and address are stated in the instrument. The clerk of court  
12 shall verify that the copy of the record is complete and legible prior to the return or  
13 disposal of the original record.

14 ~~E.C.(1) Notwithstanding the provisions of Subsection B of this Section or~~  
15 ~~any other provision of law to the contrary, with~~ **With** the exception of instruments  
16 filed in the conveyance records, a clerk of court shall not be required to maintain ~~an~~  
17 **the** original record filed on or prior to December 31, 2004, provided ~~that~~:

18 (a) The record has been preserved using one of the methods contained in this  
19 Section.

20 (b) The original of the record has been transferred to the state archivist  
21 pursuant to the provisions of R.S. 44:406 ~~or R.S. 44:427~~.

22 (c) The original of the record is not of a graphic nature including but not  
23 limited to plats, maps, and photographs as related to the work of a Professional Land  
24 Surveyor engaged in the "Practice of Land Surveying", as defined in R.S. 37:682.

25 (2)(a) With the exception of instruments filed in the conveyance records on  
26 or prior to December 31, 2004, a clerk of court may destroy any record provided for  
27 in this Subsection or return it to the person who is indicated and to the address shown  
28 on the first page of the record, or if no such person and address is indicated, to the  
29 person who presented the record after the clerk of court has done all of the following:

30 (i) Received ~~certification~~ **written approval** from the state archivist ~~that the~~

1 to dispose of the records ~~are not subject to~~ in accordance with R.S. 44:406 or 411.

2 (ii) Preserved the record as provided in this Section.

3 (iii) Verified that the copy of the record is complete and legible.

4 (b) No cause of action for any claim shall exist against a clerk of court for  
5 any damage or loss resulting from the return or destruction of an original record in  
6 accordance with this Paragraph after receipt of ~~the certification~~ written approval  
7 from the state archivist to dispose of the record and proper preservation of the  
8 record in accordance with this Section.

9 (3) The Department of State shall not make or authenticate a copy or  
10 reproduction of any original record it receives from a clerk of court pursuant to R.S.  
11 44:406. Upon receipt of any request for service or any inquiry relating to such a  
12 record, it shall forward the request or inquiry to the appropriate clerk of court who  
13 shall render the necessary service and charge the appropriate fee, as provided for by  
14 R.S. 13:841 or R.S. 13:844.

15 ~~F.D.~~ When a clerk of court certifies that a copy of a record preserved by him  
16 using a method provided for in this Section is true and correct, the certified copy of  
17 the record shall be received in evidence, if relevant, by any court or administrative  
18 agency as prima facie proof of its contents.

19 ~~G.E.~~ All rules adopted by the Department of State relative to retention and  
20 storage of records of public bodies shall apply to all records provided for in  
21 ~~Subsections D and E of this Section. In addition, each clerk of court shall maintain~~  
22 ~~a locally available backup copy of any record destroyed pursuant to Subsection E of~~  
23 ~~this Section.~~

24 ~~H.F.~~ For purposes of ~~Subsections D, E, F, and G~~ of this Section ~~the term:~~

25 (1) "clerk Clerk of court" shall mean any parish district clerk of court; and  
26 ex officio recorder ~~the register of conveyances, recorder of mortgages, and~~  
27 ~~custodian of notarial records in the parish of Orleans.~~

28 (2) "Convert" shall mean to capture all information contained in the  
29 source records, including all pages or parts from the source records to be  
30 preserved in a manner which protects against unauthorized deletions, additions,

1 or alterations and is accessible for the retention period applicable to the record.

2 (3) "Electronic digitizing process" shall mean the process of scanning  
3 and capturing paper or other media formats into a digital format that is of  
4 sufficient authenticity, reliability, usability, and integrity to serve in place of the  
5 original source record.

6 Section 2. R.S. 44:118 is hereby repealed.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_