

## Amendment No. 124

Assembly Amendment to Assembly Bill No. 195

(BDR 19-550)

**Proposed by:** Assembly Committee on Judiciary**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

DP/KEL



Date: 4/4/2011

A.B. No. 195—Revises provisions governing the destruction and storage of court records. (BDR 19-550)



## 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:**

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

**Section 1** of this bill instead requires that, before a court record is destroyed by ~~the clerk of the court,~~ the Clerk of the Supreme Court, a deputy clerk of the Supreme Court, a county clerk, the clerk of a district court or a deputy clerk of a district court, the clerk must place an image of the record on microfilm or save the image in an electronic recordkeeping system. However, a deputy clerk of a justice court or a clerk of a municipal court may destroy a court record pursuant to a schedule for the retention and disposition of court records established by the Supreme Court without placing an image of the record on microfilm or saving the image in an electronic recordkeeping system.

**Section 1** also: (1) requires the microfilm or saved image to be durable, accurate, complete and clear; (2) clarifies that a reproduction of a court record is considered to be the original, regardless of whether the actual original document exists; and (3) requires the clerk who microfilms or saves the court records to store the microfilm or the medium used to save the image in a manner and place so as to protect it reasonably from loss or damage and as prescribed by the Supreme Court. **Section 3** of this bill authorizes the State Library and Archives Administrator to receive into the State Archives any court record from the Supreme Court or a district court if: (1) the Administrator finds that the court record is of historical value; (2) the record is provided to the State Archives by an order of the Supreme Court; or (3) the Administrator and the Supreme Court or a district court, as applicable, enter into an agreement for the Administrator to receive into the State Archives any other record from the Supreme Court or district court. **Section 4** of this bill authorizes the State Library and Archives Administrator to establish, maintain and operate a center for storing and retrieving

records for the Supreme Court or a district court pending acceptance of the records by the Division of State Library and Archives of the 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:

**Section 1.** NRS 239.110 is hereby amended to read as follows:

239.110 1. ~~[(The)]~~ *In addition to any other requirement of this section, the Clerk of the Supreme Court, a deputy clerk of the Supreme Court, a county clerk, the clerk of a district court, a deputy clerk of a district court, a deputy clerk of a justice court or a clerk of a municipal court may destroy ~~[all documents, records, instruments, books, papers, depositions and transcripts in any action or proceeding in the Supreme Court, district court, justice court or municipal court, respectively, or otherwise filed in the clerk's office pursuant to law, including transcripts of coroners' inquests and depositions, if the records of the clerk do not show that the action or proceeding is pending on appeal or review in any court.]~~ a court record only in accordance with a schedule for the retention and disposition of court records which is approved by the Supreme Court.* ~~], except that:~~

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

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

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

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

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

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

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

~~4.]~~ *5. A microfilmed image of a court record or an image of a court record saved in an electronic recordkeeping system pursuant to this section must be durable, accurate, complete and clear.*

~~5.7~~ **6.** *If, pursuant to this section, an image of a court record is placed on microfilm or is saved in an electronic recordkeeping system, the clerk who does so shall promptly store at least one copy of the microfilm or any tape, disc or other medium used for the storage of the saved image in a manner and place:*

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

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

~~6.7~~ **7.** The Supreme Court may provide by rule for the destruction, without prior microfilming, of such other documents of the several courts of this State as are held in the offices of the clerks but which:

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

*(b) Do not have any historical value.*

~~5.7~~ ~~7.7~~ **8.** The Court Administrator may request the Division to advise and assist the Supreme Court in its establishment of the rules ~~or of a schedule for the retention and disposition of court records.~~

~~8.7~~ **9.** *As used in this section, "court record" means any document, device or item, regardless of physical form or characteristic, that:*

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

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

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

378.005 As used in this chapter:

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

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

~~2.7~~ 3. *"Director" means the Director of the Department.*

~~3.7~~ 4. *"Division" means the Division of State Library and Archives of the Department.*

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

378.250 1. The State Library and Archives Administrator may:

~~1.7~~ (a) Receive into the archives material from a state agency if the State Library and Archives Administrator finds that it is of historical value.

~~2.7~~ (b) With the approval of the Committee to Approve Schedules for the Retention and Disposition of Official State Records created pursuant to NRS 239.073, return to the state agency from which it was received, material in the archives which the State Library and Archives Administrator finds is not of historical value.

~~3.7~~ (c) Receive into the archives material which has been directed to be deposited in the archives by an order or resolution of the governing body of a local governmental entity, if the State Library and Archives Administrator finds that it is of historical value.

~~4.7~~ (d) *Except as otherwise provided in subsection 2, receive into the archives any court record from the Supreme Court or a district court, if:*

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

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

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

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

~~(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 Administrator  
3 finds to be surplus, not properly in the archives or appropriate to be kept elsewhere.

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

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

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

10 378.255 The State Library and Archives Administrator may:

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

13 2. Make continuing surveys of current practices for the management of  
14 records and recommend improvements in those practices, including the use of  
15 space, equipment and supplies to create, maintain and store records.

16 3. Establish standards for the preparation of schedules providing for the  
17 retention of state records of continuing value and for the prompt and orderly  
18 disposition of state records which no longer possess sufficient administrative, fiscal,  
19 legal or research value to warrant their further retention.

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

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

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

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

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

35 9. With the approval of the Committee to Approve Schedules for the  
36 Retention and Disposition of Official State Records created pursuant to NRS  
37 239.073, bring an action to obtain possession of the records of a state or local  
38 governmental agency which are:

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

40 (b) Privately held.

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

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