

Regular Session, 2012

HOUSE BILL NO. 763

BY REPRESENTATIVE ST. GERMAIN

PUBLIC RECORDS: Provides relative to retention and disposal of records of a clerk of court

1 AN ACT

2 To amend and reenact R.S. 13:917(A) and (C), 1221(A), 1903(A), 1904(A) and (C) through  
3 (E), 1904.1, and 2562.26(A) and R.S. 44:40(E) and to repeal R.S. 44:40(F) and 427,  
4 relative to records in the custody of a clerk of court; to provide for the destruction  
5 of such records in certain circumstances; to provide for retention in certain  
6 circumstances and in certain formats; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 13:917(A) and (C), 1221(A), 1903(A), 1904(A) and (C) through (E),  
9 1904.1, and 2562.26(A) are hereby amended and reenacted to read as follows:

10 §917. Destruction of useless records

11 A. The clerk of court may upon consent of the judge, or of the majority of  
12 judges in districts with several divisions, destroy records of any of the following  
13 judicial proceedings when such records have been deemed by the presiding judge or  
14 judges to have no further use or value: suits on open accounts, tort suits, worker's  
15 compensation suits, suits on unsecured notes, suits on promissory notes, suits on  
16 chattel mortgages, and suits for eviction of tenants and occupants. However, such  
17 proposed destruction shall only be authorized when ten years have elapsed from the  
18 last date of action on said record or records and authorization for such destruction  
19 has been obtained from the state archivist in accordance with R.S. 44:411.

20 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 C. The clerk of court for a district court may destroy parts of records of any  
 2 of the following judicial proceedings after the lapse of five years from the date of the  
 3 final dismissal of the proceeding if authorization has been obtained from the state  
 4 archivist as provided in R.S. 44:411: suits on open accounts, tort suits, worker's  
 5 compensation suits, suits on unsecured notes, suits on promissory notes, and suits for  
 6 the eviction of tenants and occupants. The parts of records to be destroyed under this  
 7 Subsection shall be limited to depositions, subpoenas and subpoenas duces tecum,  
 8 returns on subpoenas and subpoenas duces tecum, medical records, and X-rays. No  
 9 cause of action shall exist against any clerk of court or his employee for the  
 10 destruction of records in accordance with this Subsection.

11 \* \* \*

12 §1221. Destruction of useless records

13 A. The clerk of court may upon consent of the majority of the judges and  
 14 with authorization from the state archivist as provided in R.S. 44:411 destroy records  
 15 of any of the following judicial proceedings when such records have been deemed  
 16 by the majority of judges to have no further use or value: suits on open accounts, tort  
 17 suits, worker's compensation suits, suits on unsecured notes, suits on promissory  
 18 notes, and suits on chattel mortgages.

19 \* \* \*

20 §1903. Destruction of audio and video recordings

21 A. The clerk of court may, upon consent of the judge who presided over the  
 22 case, or a majority of the judges of the court sitting en banc and with authorization  
 23 from the state archivist as provided in R.S. 44:411, cause electronically taped  
 24 proceedings, both audio and video, in civil, criminal, traffic, and juvenile cases to be  
 25 erased when such records have been deemed to have no further use or value.

26 \* \* \*

27 §1904. City courts; destruction of useless records; certain courts

28 A. The clerk of court may, upon consent of the judge or of the majority of  
 29 judges in jurisdictions with several divisions and with authorization from the state

1 archivist as provided in R.S. 44:411, destroy records of any of the following judicial  
 2 proceedings when such records have been deemed by the presiding judge or judges  
 3 to have no further use or value: suits on open accounts, tort suits, suits on unsecured  
 4 notes, suits on promissory notes, suits on chattel mortgages, and suits for eviction of  
 5 tenants and occupants. However, such proposed destruction shall only be authorized  
 6 where ten years have elapsed from the last date of action on the record or records.

7 \* \* \*

8 C. Notwithstanding the provisions of Subsection A to the contrary, the clerk  
 9 of the City Court of Houma, the clerk of the City Court of Ruston, and the clerk of  
 10 the City Court of Lake Charles may, upon consent of the judge or of the majority of  
 11 judges; if there is more than one city judge and with authorization from the state  
 12 archivist as provided in R.S. 44:411, destroy records of judicial proceedings  
 13 involving suits for eviction of tenants and occupants when such records have been  
 14 deemed by the presiding judge or judges to have no further use or value. However,  
 15 such proposed destruction shall be authorized only when two years have elapsed  
 16 from the last date of action on the record or records when the suit is not appealed or  
 17 two years have elapsed after all appeals are exhausted.

18 D. The clerk of the City Court of Houma, the clerk of the City Court of  
 19 Ruston, and the clerk of the City Court of Lake Charles may, upon consent of the  
 20 judge or of the majority of judges; if there is more than one city judge and with  
 21 authorization from the state archivist as provided in R.S. 44:411, destroy records of  
 22 criminal proceedings involving misdemeanor convictions when such records have  
 23 been deemed by the presiding judge or judges to have no further use or value.  
 24 However, such proposed destruction shall be authorized only when ten years have  
 25 elapsed from the date of the judgment of conviction when the conviction is not  
 26 appealed or two years have elapsed after all appeals are exhausted. The provisions  
 27 of this Subsection shall not apply to a conviction for operating a vehicle while  
 28 intoxicated.

1 E. The destruction of criminal records authorized by Subsection D of this  
2 Section; may only be destroyed after the clerk of court's office has scanned the  
3 records ~~onto an optical disc for storage~~ and stored them in an electronic format that  
4 is in compliance with all rules adopted by the Department of State relative to  
5 retention and storage of records.

6 §1904.1. City courts; destruction of useless records; City Court of Baton Rouge

7 A. Notwithstanding the provisions of R.S. 13:1904(A) and (B) and R.S.  
8 44:36(A) to the contrary, the clerk of the City Court of Baton Rouge may, upon  
9 consent of a majority of judges and with authorization from the state archivist as  
10 provided in R.S. 44:411, destroy records of judicial proceedings involving suits for  
11 eviction of tenants and occupants when such records have been deemed by the  
12 presiding judge or judges to have no further use or value. However, such proposed  
13 destruction shall only be authorized where two years have elapsed from the last date  
14 of action on the record or records when the suit is not appealed or two years have  
15 elapsed after all appeals are exhausted.

16 B. The clerk of the City Court of Baton Rouge may, upon consent of a  
17 majority of judges and with authorization from the state archivist as provided in R.S.  
18 44:411, destroy records of criminal proceedings involving misdemeanor convictions  
19 when such records have been deemed by the presiding judge or judges to have no  
20 further use or value. However, such proposed destruction shall only be authorized  
21 where ten years have elapsed from the date of the judgment of conviction when the  
22 conviction is not appealed or two years have elapsed after all appeals are exhausted.  
23 The provisions of this Subsection shall not apply to a conviction for operating a  
24 vehicle while intoxicated.

25 C. The destruction of criminal records authorized by Subsection B of this  
26 Section may occur only after the clerk of court's office has scanned the records ~~onto~~  
27 ~~an optical disc for storage~~ and stored them in an electronic format that is in

1 compliance with all rules adopted by the Department of State relative to retention  
2 and storage of records.

3 \* \* \*

4 §2562.26. Parish courts; Jefferson Parish; destruction of useless records

5 A. The clerk of court may, upon consent of the judge or of the majority of  
6 judges in the jurisdictions with several divisions and with authorization from the  
7 state archivist as provided in R.S. 44:411, destroy records of any of the following  
8 judicial proceedings when such records have been deemed by the presiding judge or  
9 judges to have no further use or value: suits on open accounts, tort suits, suits on  
10 unsecured notes, suits on promissory notes, suits on chattel mortgages, and suits for  
11 eviction of tenants and occupants. However, such proposed destruction shall only  
12 be authorized when ten years have elapsed from the last date of action on the record  
13 or records.

14 \* \* \*

15 Section 2. R.S. 44:40(E) is hereby amended and reenacted to read as follows:

16 §40. Additional copies of records by microphotographic process; purchase of  
17 equipment; funds available for payment; copies of suit records

18 \* \* \*

19 E. The several clerks of court, including the clerks of the Criminal or Civil  
20 District Courts for the parish of Orleans, shall make and retain in their custody, by  
21 means of the microphotographic process, a copy of all original criminal and civil  
22 records of every nature and kind, which are deemed permanent under a record  
23 retention and disposal schedule adopted by the secretary of state and the clerks of  
24 court in accordance with R.S. 44:410 and 411, ~~and which have been in their custody~~  
25 ~~for a period of five or more years~~. The clerks of court may then destroy the original  
26 criminal records and any other records, the destruction of which is authorized by R.S.  
27 13:917, which have been so copied and retained. However, all records in suits  
28 affecting records relating to immovable property, or adoption, interdiction,

1 successions, trusts, or emancipation; created prior to 1922 shall be retained in their  
2 original form, ~~even though they have been copied as provided herein.~~

3 Section 3. R.S. 44:40(F) and 427 are hereby repealed in their entirety.

4 Section 4. This Act shall become effective upon signature by the governor or, if not  
5 signed by the governor, upon expiration of the time for bills to become law without signature  
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
8 effective on the day following such approval.

---

#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

---

St. Germain

HB No. 763

**Abstract:** Provides relative to the retention and destruction of records in the custody of clerks of court.

Present law (R.S. 44:1(2)(a)) provides that "public records" generally are any: books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state.

Present law (R.S. 44:410 et seq) provides for the scheduled retention of public records by the agencies having custody of such records.

Proposed law retains present law.

Present law in Title 13 of the Louisiana Revised Statutes of 1950, authorizes clerks of court to destroy records in certain circumstances. Proposed law requires such destruction to be authorized by the state archivist pursuant to provisions in present law.

Present law provides that certain records may be destroyed by a clerk of court only after they have been scanned to "an optical disc" for storage. Proposed law changes this to requiring the document to be stored in an electronic format that is in compliance with rules adopted by the Dept. of State relative to retention of records.

Present law (R.S. 44:40) authorizes clerks of court to retain in a specific format certain records in their custody deemed "permanent" under a records retention schedule. Proposed law retains present law.

Present law further requires all records relating to suits on immovable property, adoption, interdiction, successions, trusts, or emancipation shall be retained in their original form regardless of whether they have been copied into another format. Proposed law changes this requirement so that only such records created prior to 1922 must be retained in their original format.

Present law (R.S. 44:40(F)) provides relative to the transmittal of certain records to the Dept. of State for microphotographic copying. Further provides for the creation and retention of master copies of the negatives and of copies of the documents. Proposed law repeals present law.

Present law (R.S. 44:427) provides for the transfer of records to the state archives pursuant to present law (R.S. 44:40(F)) and places restrictions on making copies of such records. Proposed law repeals present law.

(Amends R.S. 13:917(A) and (C), 1221(A), 1903(A), 1904(A) and (C)-(E), 1904.1, and 2562.26(A) and R.S. 44:40(E); Repeals R.S. 44:40(F) and 427)