

1993 Senate Bill 170

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## 1993 WISCONSIN ACT 172

AN ACT *to renumber and amend* 16.612; *to amend* 16.61 (3) (b), 16.61 (3) (t), 16.61 (7) (a) (intro.), 16.61 (7) (a) 5, 16.61 (8) (a), 16.61 (8) (b), 16.612 (title), 19.21 (4) (c), 59.39 (1), 66.40 (9) (v), 66.431 (5) (a) 5, 118.125 (3), 228.03, 228.04, 779.97 (4) (c) 2, 851.72 (2), 851.72 (5), 853.09 (2), 889.29 (1) and 978.07 (1) (a); and *to create* 16.612 (1) of the statutes, **relating to:** transfer of certain local government and private business records to optical disk format and granting rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 16.61 (3) (b) of the statutes is amended to read:

16.61 (3) (b) Upon the request of any state agency, county, town, city, village or school district, may order upon such terms as the board finds necessary to safeguard the legal, financial and historical interests of the state in public records, the destruction, reproduction by microfilm or other process, storage by optical disk, or the temporary or permanent retention or other disposition of public records.

**SECTION 2.** 16.61 (3) (t) of the statutes is amended to read:

16.61 (3) (t) Shall recommend to the department qualitative standards for optical disks and for copies of documents generated from optical disks used to store materials filed with ~~counties~~ local governmental units.

**SECTION 3.** 16.61 (7) (a) (intro.) of the statutes is amended to read:

16.61 (7) (a) (intro.) Any microfilm reproduction of an original record, or, ~~in the case of a record of a state agency,~~ a copy generated from an original record stored in optical disk format, is deemed an original public record if all of the following conditions are met:

**SECTION 4.** 16.61 (7) (a) 5. of the statutes is amended to read:

16.61 (7) (a) 5. The state agency records and forms officer or other person designated by the head of the state agency or the custodian of any other record executes a statement of intent and purpose describing the record to be reproduced or transferred to optical disk format, the disposition of the original record, the disposal authorization number assigned by the board for public records of state agencies, the enabling ordinance or resolution for cities, towns, villages or school districts, or the resolution which authorizes the reproduction or optical imaging for counties when required, and executes a certificate verifying that the record was received or created and microfilmed or transferred to optical disk format in the normal course of business and that the statement of intent and purpose is properly recorded as directed by the board.

**SECTION 5.** 16.61 (8) (a) of the statutes is amended to read:

16.61 (8) (a) Any microfilm reproduction of a public record meeting the requirements of sub. (7) or copy of a public record ~~of a state agency~~ generated from an original record stored in optical disk format in compliance with this section shall be taken as, stand in lieu of and have all the effect of the original document and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible.

**SECTION 6.** 16.61 (8) (b) of the statutes is amended to read:

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16.61 (8) (b) Any enlarged copy of a microfilm reproduction of a public record made as provided by this section or any enlarged copy of a public record of a state agency generated from an original record stored in optical disk format in compliance with this section that is certified by the custodian as provided in s. 889.08 shall have the same force as an actual-size copy.

**SECTION 7.** 16.612 (title) of the statutes is amended to read:

**16.612 (title) Local government records; optical disk standards.**

**SECTION 8.** 16.612 of the statutes is renumbered 16.612 (2) and amended to read:

16.612 (2) The department shall prescribe, by rule, qualitative standards for optical disks and for copies of documents generated from optical disks used to store materials filed with ~~counties~~ local governmental units. Prior to submitting any such rule to the legislative council staff under s. 227.15 (1), the department shall refer the rule to the public records and forms board for its recommendations.

**SECTION 9.** 16.612 (1) of the statutes is created to read:

16.612 (1) In this section, "local governmental unit" has the meaning given under s. 19.42 (7u).

**SECTION 10.** 19.21 (4) (c) of the statutes is amended to read:

19.21 (4) (c) Any local governmental unit or agency may provide for the keeping and preservation of public records kept by that governmental unit through the use of microfilm or ~~other~~ another reproductive device or optical imaging. A local governmental unit or agency shall make such provision by ordinance or resolution. Any such action by a subunit of a local governmental unit or agency shall be in conformity with the action of the unit or agency of which it is a part. Any photographic reproduction of a record authorized to be reproduced under this paragraph is deemed an original record for all purposes if it meets the applicable standards established in ~~s. ss. 16.61 (7) and 16.612~~. This paragraph does not apply to public records kept by counties electing to be governed by ch. 228.

**SECTION 11.** 59.39 (1) of the statutes is amended to read:

59.39 (1) File and keep all papers properly deposited with him or her in every action or proceeding unless required to transmit such papers. Such papers may be microfilmed or microphotographed, or transferred to optical disks if authorized under s. 59.145, and the originals may thereafter be destroyed upon compliance with SCR chapter 72.

**SECTION 12.** 66.40 (9) (v) of the statutes is amended to read:

66.40 (9) (v) To establish a procedure for preservation of the records of the authority by the use of microfilm ~~or~~, another reproductive device or optical imaging, if

authorized under s. 19.21 (4) (c). Any such procedure shall assure that copies of such records that are open to public inspection continue to be available to members of the public requesting them. A photographic reproduction of a record or copy of a record generated from optical disk storage is deemed the same as an original record for all purposes if it meets the applicable standards established in ~~s. ss. 16.61 (7) and 16.612~~.

**SECTION 13.** 66.431 (5) (a) 5. of the statutes is amended to read:

66.431 (5) (a) 5. To establish a procedure for preservation of the records of the authority by the use of microfilm ~~or~~, another reproductive device or optical imaging, if authorized under s. 19.21 (4) (c). Any such procedure shall assure that copies of such records that are open to public inspection continue to be available to members of the public requesting them. A photographic reproduction of a record or copy of a record generated from optical disk storage is deemed the same as an original record for all purposes if it meets the applicable standards established in ~~s. ss. 16.61 (7) and 16.612~~.

**SECTION 14.** 118.125 (3) of the statutes is amended to read:

118.125 (3) MAINTENANCE OF RECORDS. Each school board shall adopt rules in writing specifying the content of pupil records and the time during which pupil records shall be maintained. No behavioral records may be maintained for more than one year after the pupil ceases to be enrolled in the school, unless the pupil specifies in writing that his or her behavioral records may be maintained for a longer period. A pupil's progress records shall be maintained for at least 5 years after the pupil ceases to be enrolled in the school. A school board may maintain the records on microfilm or optical disk if authorized under s. 19.21 (4) (c), or in such ~~other~~ form as the school board deems appropriate. A school board shall maintain peace officers' records obtained under s. 48.396 (1m) separately from a pupil's other pupil records. Rules adopted under this subsection shall be published by the school board as a class 1 notice under ch. 985.

**SECTION 15.** 228.03 of the statutes is amended to read:

**228.03 Copy to be deemed to be original record.**

(1) A photographic reproduction of an original document, court order, plat, paper, written instrument, writing, record, book of record, file or other material, or a copy of material generated from optical disk storage of the original material, bearing upon or pertinent to the activities and functions of any county office, department, agency, board, commission, court or institution, in counties having a population of 500,000 or more, is deemed to be an original for all purposes, if it meets the applicable standards established in ~~s. ss. 16.61 (7) and 16.612~~.

(2) Any photographic reproduction of an original record meeting the standards prescribed in s. 16.61 (7) or copy of a record generated from an original record stored

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in optical disk format in compliance with ss. 16.61 and 16.612 shall be taken as and stand in lieu of and have all of the effect of the original record and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible. A transcript, exemplification or certified copy of such a reproduction of an original record, or certified copy of a record generated from an original record stored in optical disk format, for the purposes specified in this subsection, is deemed to be a transcript, exemplification or certified copy of the original. The custodian of a photographic reproduction shall place the reproduction or optical disk in conveniently accessible files storage and shall make provision for preserving, examining and using the reproduction of the record or generating a copy of the record from optical disk storage. An enlarged copy of any a photographic reproduction on film of a record made in accordance with the standards specified in s. 16.61 (7) and or an enlarged copy of a record generated from an original record stored in optical disk format in compliance with ss. 16.61 and 16.612 that is certified by the custodian as provided in s. 889.18 (2) has the same effect as the photographic reproduction itself an actual-size copy.

**SECTION 16.** 228.04 of the statutes is amended to read:

**228.04 Inspection of records and copies of records.** Every custodian of public records in counties having a population of 500,000 or more shall keep them in such arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, microfilm, ~~optical disk~~ or other mechanical process of reproduction of public records or optical imaging of public records shall be considered as accessible for convenient use ~~regardless of the size of such records~~, provided that a suitable means for public inspection of the records is provided by the ~~agency maintaining the records~~ custodian. Except as otherwise expressly provided by law, the custodian shall permit all public records in his or her custody to be inspected, examined, abstracted or copied at reasonable times and under his or her supervision and regulation by any person; and the custodian shall, upon the demand of any person, furnish certified copies thereof on payment in advance of fees not to exceed the fees prescribed by law.

**SECTION 17.** 779.97 (4) (c) 2. of the statutes is amended to read:

779.97 (4) (c) 2. If a certificate of release is presented for filing with any other filing officer specified in sub. (2), the officer shall enter the certificate with the date of filing in any alphabetical federal lien index on the line where the original notice of lien is entered and may then remove the notice of federal lien and any related refiling of a notice of lien, certificate of nonattachment, discharge or subordination from the files, provided that the officer shall keep the certificate of release or a microfilm or other

photographic record, or in the case of the secretary of state, or a register of deeds if authorized under s. 59.512, a microfilm or other photographic record or optical disk record, of the certificate of release in a file, separate from those containing currently effective notices of federal liens, for a period of 30 years after the date of filing of the certificate of release.

**SECTION 18.** 851.72 (2) of the statutes is amended to read:

851.72 (2) Keep a court record of every proceeding in the court under chs. 851 to 880 under its proper title, a brief statement of the nature of the proceeding and of all papers filed therein, with the date of filing and a reference to where minute records can be found or to the microfilm or optical disk file where papers have been ~~reordered stored~~ so that the court record is a complete index or brief history of each proceeding from beginning to final disposition.

**SECTION 19.** 851.72 (5) of the statutes is amended to read:

851.72 (5) Keep an alphabetical index to the court record and the file containing the original documents or microfilm or optical disk copies thereof.

**SECTION 20.** 853.09 (2) of the statutes is amended to read:

853.09 (2) DUTY OF REGISTER IN PROBATE. The register in probate shall issue a receipt for the deposit of the will and shall maintain a registry of all wills deposited. The original will, unless withdrawn under sub. (3) or opened in accordance with s. 856.03 after death of the testator, shall be kept on file for the period provided in SCR chapter 72; thereafter the register may either retain the original will or open the envelope, copy or reproduce the will for confidential record storage purposes by microfilm, optical disk or other method of comparable retrievability and destroy the original. If satisfactorily identified, the reproduction is admissible in court for probate or any other purpose the same as the original document. Wills deposited with the county judge under s. 238.15, 1967 stats., shall be transferred to the register in probate and become subject to this section.

**SECTION 21.** 889.29 (1) of the statutes is amended to read:

889.29 (1) If any business, institution or member of a profession or calling in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, or to be recorded on an optical disk, the original may be destroyed in the regular course of business, unless its preservation is required by law. Such reproduction, or

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optical disk record, when reduced to comprehensible format and when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction of a record or an enlarged copy of a record generated from an original record stored in optical disk format is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of

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court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

**SECTION 22.** 978.07 (1) (a) of the statutes is amended to read:

978.07 (1) (a) Any district attorney record, after it has first been microfilmed or transferred to optical disk storage and preserved in accordance with s. 16.61 (~~7~~).