

2020 Regular Session

HOUSE BILL NO. 588

BY REPRESENTATIVE DUPLESSIS

PUBLIC RECORDS: Provides relative to the preservation and microfilming of certain records

1 AN ACT

2 To amend and reenact R.S. 13:1904 (E), 14:132 (B), 44:7 (A), 46:58 (C), and 48:201, to  
3 enact R.S. 44:428 and 429, and to repeal R.S. 44:36 and 39, relative to public  
4 records; to provide relative to the preservation of public records; and to provide for  
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 13:1904 (E) is hereby amended and reenacted to read as follows:

8 §1904. City courts; destruction of useless records; certain courts

9 \* \* \*

10 E. The destruction of criminal records authorized by Subsection D of this  
11 Section may occur only after the clerk of court's office has scanned the records and  
12 stored them in an electronic format that is in compliance with all rules adopted by  
13 the Department of State relative to retention and storage of records or has an  
14 approved digital imaging exception pursuant to R.S. ~~44:39~~44:429.

15 Section 2. R.S. 14:132 (B) is hereby amended and reenacted to read as follows:

16 §132. Injuring public records

17 \* \* \*

18 B. Second degree injuring public records is the intentional removal,  
19 mutilation, destruction, alteration, falsification, or concealment of any record,  
20 document, or other thing, defined as a public record pursuant to R.S. 44:1 et seq. and

1 required to be preserved in any public office or by any person or public officer  
2 pursuant to R.S. ~~44:3644~~:428.

3 \* \* \*

4 Section 3. R.S. 44:7 (A) is hereby amended and reenacted and R.S. 44:428 and 429  
5 are hereby enacted to read as follows:

6 §7. Hospital records

7 A. Except as provided in Subsections B, C, and E of this Section and R.S.  
8 44:17, the charts, records, reports, documents, and other memoranda prepared by  
9 physicians, surgeons, psychiatrists, nurses, and employees in the public hospitals of  
10 Louisiana, adult or juvenile correctional institutions, public mental health centers,  
11 and public schools for the mentally deficient to record or indicate the past or present  
12 condition, sickness or disease, physical or mental, of the patients treated in the  
13 hospitals are exempt from the provisions of this Chapter, except the provisions of  
14 R.S. ~~44:3644~~:428 and ~~39~~ 429. Nothing herein shall prevent hospitals from providing  
15 necessary reports pursuant to R.S. 22:976, R.S. 29:765, R.S. 40:2019, and R.S.  
16 44:17, nor shall any liability arise from the good faith compliance therewith.

17 \* \* \*

18 §428. Preservation of records

19 A. All persons and public bodies having custody or control of any public  
20 record, other than conveyance, probate, mortgage, or other permanent records  
21 required by existing law to be kept for all time, shall exercise diligence and care in  
22 preserving the public record for the period or periods of time specified for such  
23 public records in formal records retention schedules developed and approved by the  
24 state archivist and director of the division of archives, records management, and  
25 history of the Department of State. However, in all instances in which a formal  
26 retention schedule has not been executed, such public records shall be preserved and  
27 maintained for a period of at least three years from the date on which the public  
28 record was made. However, where copies of an original record exist, the original  
29 alone shall be kept; when only duplicate copies of a record exist, only one copy of

1        the duplicate copies shall be kept. Where an appropriate form of the  
2        microphotographic process has been utilized to record, file, and otherwise preserve  
3        such public records with microforms produced in compliance with the provisions of  
4        R.S. 44:415, the microforms shall be deemed originals in themselves, as provided by  
5        R.S. 44:429(B), and disposition of original documents which have been  
6        microphotographically preserved and of duplicates and other copies thereof shall  
7        proceed as provided in R.S. 44:411.

8                B. All records of the Department of Revenue may be destroyed after five  
9        years from the thirty-first day of December of the year in which the tax to which the  
10       records pertain became due; however, these records shall not be destroyed if there  
11       is a contest relative to the payment of taxes or if a claim has been made for a refund  
12       or where litigation with reference thereto is pending.

13               C. All records of the various services of the state or its subdivisions that  
14       participate in federal programs or receive federal grants may be destroyed after three  
15       years from the date on which the records were made if this provision is not  
16       superseded by guidelines for the operative federal program or grant requiring longer  
17       retention periods for the records in question; however, these records shall not be  
18       destroyed if litigation with reference thereto is pending or until the appropriate state  
19       or federal audits have been conducted.

20               D. All records of the Department of Public Safety and Corrections,  
21       corrections services, pertaining to any adult offender shall be retained and may not  
22       be destroyed until after six years from the date the full term sentence imposed upon  
23       the offender expires, or six years from the date of death of the offender, whichever  
24       occurs first.

25               E.(1) The public records of a prosecuting agency that pertain to a criminal  
26       prosecution that results in a conviction in a manner other than a plea shall be retained  
27       for a period of three years from the date on which a court of appeal affirms the  
28       conviction, the Louisiana Supreme Court denies writs, or the Louisiana Supreme  
29       Court makes its final ruling on the appeal, whichever occurs last.

1           (2) The provisions of this Subsection shall not apply to any records  
2           expunged as provided by law.

3           (3) Nothing in this Subsection shall be construed in any manner to affect or  
4           alter the provisions of R.S. 44:3 regarding the records of prosecuting agencies.

5           F. All records accumulated pursuant to R.S. 42:23 shall be preserved and  
6           maintained for a period of at least two years from the date on which the public record  
7           was made.

8           §429. Microfilm and electronic digitized records; use as evidence

9           A.(1) All persons and public bodies having custody or control of any public  
10           records of the state of Louisiana or any of its subdivisions may utilize any  
11           appropriate form of the microphotographic process, or an electronic digitizing  
12           process capable of reproducing an unalterable image of the original source  
13           document, for the recordation, filing, and preservation of all existing public records,  
14           forms, and documents or records, forms, and documents hereafter accumulated  
15           which pertain to their functions and operations in order to maintain efficient and  
16           economical records management programs and to conserve storage space if the use  
17           of such microphotographic or electronic digitizing processes is not otherwise  
18           prohibited by law and all microforms produced comply with standards established  
19           by the division of archives, records management, and history of the Department of  
20           State in accordance with the provisions of R.S. 44:415.

21           (2)(a) However, when electronic digitizing is utilized, the original source  
22           document or microfilm of such source document shall be maintained until such time  
23           as electronic digitizing is recognized as an acceptable means of records preservation.

24           (b) Notwithstanding the provisions of this Subsection, the agencies and  
25           entities set forth in this Subparagraph are not required to maintain the original source  
26           document or microfilm thereof when such document has been preserved utilizing  
27           electronic digitizing pursuant to written operating standards providing for retention  
28           and back-up schedules in accordance with recognized computer operating practices  
29           which at a minimum provide the technical equivalent of back-up copies:



1 Section 6. R.S. 44:36 and 39 are hereby repealed in their entirety.

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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)]

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HB 588 Original

2020 Regular Session

Duplessis

**Abstract:** Provides relative to the preservation and microfilming of certain records

Present law (R.S. 13:1904) provides that the destruction of criminal records can only occur after the records have been stored in an electronic format or has an approved digital imaging pursuant to R.S. 44:39.

Proposed law retains present law but changes exception to be pursuant to R.S. 44:429.

Present law (R.S. 14:132) provides that second degree injuring public records is the intentional removal or destruction of any public record that is required to be preserved pursuant to R.S. 44:36.

Proposed law retains present law regarding records required to be preserved pursuant to R.S. 44:36. Changes required method of preservation to be pursuant to R.S. 44:428 instead of R.S. 44:36.

Present law (R.S. 44:7) requires that documents prepared by doctors, nurses, and employees in the public hospitals of Louisiana, adult or juvenile correctional institutions, public mental health centers, and public schools for the mentally deficient are preserved pursuant to R.S. 44:36 and 39.

Proposed law retains present law but requires records to be preserved pursuant to R.S. 44:428 instead of R.S. 44:36.

Present law (R.S. 46:58) provides that the secretary may destroy all files of documents that have been preserved as provided for in R.S. 44:39.

Proposed law retains present law but requires records to be preserved pursuant to R.S. 44:429 instead of R.S. 44:39.

Present law (R.S. 48:201) provides that when microfilm copies of a file have been created, the Secretary may destroy original files three years following the date when the record was made. Further provides that pursuant to R.S. 44:39, the microfilm copies shall be admissible in evidence in all courts and administrative agency proceedings.

Proposed law retains present law but provides that microfilm copies shall be admissible in evidence pursuant to R.S. 44:429 instead of R.S. 44:39.

Present law provides for when certain public records may be destroyed.

Proposed law retains present law except to recodify the section of law to be R.S. 44:428.

Present law provides that public records may be preserved through the utilization of a microphotographic process or an electronic digitizing process capable of reproducing an unalterable image of the original source document. Further provides that any microfilm or electronically digitized copy, when satisfactorily identified, shall be admissible in evidence in all courts or administrative proceedings.

Proposed law retains present law except to recodify the section of law to be R.S. 44:429.

(Amends R.S. 13:1904 (E), 14:132 (B), 44:7 (A), 46:58 (C) and 48:201; Adds R.S. 44:428 and 429; Repeals R.S. 44:36 and 39)