

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

No. 2147

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H.P. 1525

House of Representatives, January 20, 1998

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**An Act to Amend the Laws Relating to Archives and the Retention and Admissibility of Electronic Records.**

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Submitted by the Secretary of State pursuant to Joint Rule 204.  
Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative LEMKE of Westbrook.  
Cosponsored by Senator RUHLIN of Penobscot and  
Representatives: BUCK of Yarmouth, CHICK of Lebanon, CHIZMAR of Lisbon, JONES of  
Bar Harbor, KNEELAND of Easton, McALEVEY of Waterboro, O'NEAL of Limestone,  
WATERHOUSE of Bridgton.

Be it enacted by the People of the State of Maine as follows:

2

Sec. 1. 5 MRSA §92, as amended by PL 1995, c. 148, §2, is  
4 further amended to read:

6

§92. Declaration of policy

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The Legislature declares that it is the policy of the State  
10 to make the operations of State Government and local government  
more efficient, more effective and more economical through  
12 current records management; and, to the end that the people may  
derive maximum benefit from a knowledge of state affairs,  
14 preserve its noncurrent records of permanent value for study and  
research.

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Sec. 2. 5 MRSA §92-A, sub-§§1 and 2, as enacted by PL 1973, c.  
18 625, §16, are amended to read:

18

1. Agency records. "Agency records" means semicurrent  
20 records of government agencies to which they retain legal title,  
but that have been transferred to the custody of the Maine State  
22 Archives to effect economies and efficiency in their storage and  
use pending their ultimate disposition as authorized by law.

24

2. Archives. "Archives" means noncurrent government records  
26 that have been determined by the State Archivist to have  
sufficient value to warrant their continued preservation and that  
28 are in the physical and legal custody of the Maine State Archives.

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Sec. 3. 5 MRSA §92-A, sub-§5, as amended by PL 1995, c. 148,  
32 §4, is further amended to read:

32

5. Record. "Record" means ~~any-written,-printed-or-graphic~~  
34 ~~matter-or-any-mechanical-or-electronic-data-compilation-from~~  
~~which-information-can-be-obtained,-directly-or-after-translation~~  
36 ~~into-a-form-susceptible-of-visual-or-aural-comprehension,-that-is~~  
~~in-the-possession-or-custody-of-an-agency-or-public-official-of~~  
38 ~~the-State-and-has-been-received-or-prepared-for-use-in-connection~~  
~~with-the-transaction-of-public-or-governmental-business-or~~  
40 ~~contains-information-related-to-the-transaction-of-public-or~~  
~~governmental-business~~ all documentary material, regardless of  
42 media or characteristics, made or received and maintained by an  
agency in accordance with law or rule or in the transaction of  
44 its official business. "Record" does not include extra copies of  
printed or processed material of which official or record copies  
46 have been retained, stocks of publications and processed  
documents intended for distribution or use or records relating to  
48 personal matters that may have been kept in an office for  
convenience.

50

2                   **Sec. 4. 5 MRSA §92-A, sub-§6** is enacted to read:

4                   **6. Electronic record.** "Electronic record" means a record  
6                   whose content is not human readable unless retrieved by means of  
                  an electronic device such as a computer or an audio or video  
                  player.

8                   **Sec. 5. 5 MRSA §95, sub-§7, ¶¶A to D,** as amended by PL 1995, c.  
10                   148, §7, are further amended to read:

12                   A. Provide standards, procedures and techniques for  
                  effective management of state and local government records  
14                   in the conduct of ~~current~~ business;

16                   B. Recommend improvements in ~~current~~ records management  
                  practices, including the use of space, equipment and  
18                   supplies employed in creating, maintaining, storing and  
                  servicing state and local government records;

20                   C. Establish schedules, in consultation with the heads of  
                  state agencies and local government agencies, under which  
22                   each agency shall retain records of continuing value, and  
                  dispose, as provided by this chapter, of records no longer  
24                   possessing sufficient administrative, legal or fiscal value  
                  to warrant their further keeping for ~~current~~ business  
26                   purposes; and

28                   D. Obtain such reports from state or local government  
                  agencies as are required for the administration of the  
30                   program~~s~~.

32                   **Sec. 6. 5 MRSA §95, sub-§10,** as amended by PL 1991, c. 837,  
34                   Pt. A, §9, is further amended to read:

36                   **10. Transfer of state and official records.** To receive all  
                  state records transferred to the Maine State Archives under  
38                   subsection 8 and to negotiate for the transfer of official  
                  records from the custody of any public official not governed by  
40                   subsection 7. The State Archivist shall charge a fee sufficient  
                  to cover the cost of receiving and processing all transfers from  
42                   the custody of any public official not governed by subsection 7.  
                  The fees collected must be deposited in the General Fund. Any  
44                   public officer in Maine is authorized to turn over to the State  
                  Archivist those official records legally in that public  
46                   official's custody that are not needed for the transaction of the  
                  ~~current~~ business of that office, whenever the State Archivist is  
48                   willing and able to receive them. Whenever such a transfer is  
                  made, the State Archivist shall transmit to the office from which  
                  the records are transferred a memorandum in which such records  
50                   are described in terms sufficient to identify them, which must be  
                  preserved in the transferring office. Unless otherwise directed

2 by law, the state records of any public office, commission or  
committee in the State must, upon the termination of its  
4 existence or functions, be transferred to the custody of the  
State Archivist;

6 **Sec. 7. 5 MRSA §95-A**, as amended by PL 1995, c. 148, §9, is  
further amended to read:

8 **§95-A. Protection and recovery of public records**

10 **1. Notice and demand of return.** Whenever the State  
12 Archivist has reasonable grounds to believe that ~~documents--or~~  
records belonging to the State or to a local government or any  
14 agency of the State or to which the State or its agencies have a  
lawful right of possession are in the possession of ~~the a~~ person  
16 or entity not authorized by the State Archivist, other lawful  
custodian or by law to possess those ~~documents--or~~ records, the  
18 State Archivist may issue a written notice and demand to that  
person or entity for the immediate return of the ~~documents--or~~  
20 records. The notice and demand must be sent by certified or  
registered mail, return receipt requested. The notice and demand  
22 must identify the ~~documents--or~~ records claimed to belong to the  
State or local government with reasonable specificity. Upon  
24 receipt of the notice and demand, the person or entity in the  
possession of ~~documents--or~~ records claimed to belong to the State  
26 or local government may not destroy, alter, transfer, convey or  
otherwise alienate those ~~documents--or~~ records unless authorized  
28 in writing by the State Archivist or by an order issued by a  
court of competent jurisdiction. The notice and demand must  
30 specifically state that any transfer, conveyance or other  
alienation of the ~~documents--or~~ records after receipt of the  
32 notice and demand constitutes a Class E crime in violation of  
section 97.

34 **2. Petition; hearing.** Following the issuance of a notice  
36 and demand in accordance with subsection 1, the State Archivist,  
with the assistance of the Attorney General, may petition the  
38 Superior Court of Kennebec County or the Superior Court in the  
county in which ~~documents--or~~ records are located for the return  
40 of state ~~documents--or~~ records that are in the possession of a  
person or entity not authorized by the State Archivist, other  
42 lawful custodian or by law to possess those ~~documents--or~~  
records. After hearing, the court shall order the ~~documents--or~~  
44 records to be delivered to the State Archivist, or other  
custodian designated by the State Archivist, upon a finding that  
46 the materials in question are ~~documents--or~~ records and that the  
~~documents--or~~ records are in the possession of a person or entity  
48 not authorized by the State Archivist, other lawful custodian or  
provision of law to possess the ~~documents--or~~ records. The court  
50 may issue all orders necessary to protect the ~~documents--or~~

2 records from destruction, alteration, transfer, conveyance or  
4 alienation by the person or entity in possession of the materials  
6 and may also order the person or entity in possession of the  
materials to surrender the ~~documents or~~ records into the custody  
of the State Archivist pending the court's decision on the  
petition.

8 **3. Presumption.** In any proceeding pursuant to subsection  
10 2, there is a rebuttable presumption that ~~documents or~~ records  
12 that were once in the custody of the State or a local government  
were not lawfully alienated from that custody.

14 ~~4. Definition. For the purpose of this section, "records"~~  
16 ~~means all documentary material, regardless of media or~~  
18 ~~characteristics, made or received and maintained by an agency in~~  
20 ~~accordance with law or rule or in the transaction of its official~~  
22 ~~business. This term shall not include extra copies of printed or~~  
processed material of which official or record copies have been  
retained, ~~stocks of publications and processed documents intended~~  
~~for distribution or use or records relating to personal matters~~  
~~that may have been kept in an office for convenience.~~

24 **Sec. 8. 5 MRSA §95-B, sub-§2,** as enacted by PL 1995, c. 148,  
§10, is amended to read:

26 **2. Safe or vault for preservation.** Each local government  
28 shall provide a fireproof safe or vault for the preservation of  
30 all records that must be retained permanently but are not current  
32 records required for business purposes. The official having  
responsibility for those records shall deposit them in the safe  
or vault where those records must be kept except when required  
for use.

34 **Sec. 9. 16 MRSA §456-A** is enacted to read:

36 **§465-A. Admissibility of electronic records**

38 **1. Definitions.** As used in this section, unless the  
40 context otherwise indicates, the following terms have the  
following meanings.

42 A. "Electronic record" means a record whose content is not  
44 human readable unless retrieved by means of an electronic  
device such as a computer or an audio or video player.

46 B. "Record" means all documentary material, regardless of  
48 media or characteristics, made or received and maintained by  
an agency in accordance with law or rule or in the  
50 transaction of its official business. "Record" does not  
include extra copies of printed or processed material of

2 which official or record copies have been retained, stocks  
3 of publications and processed documents intended for  
4 distribution or use or records relating to personal matters  
5 that may have been kept in an office for convenience.

6 2. Effect. A record may not be denied legal effect,  
7 validity or enforceability solely because it is in the form of an  
8 electronic record.

10 3. Accuracy. The assessment of accuracy and integrity of  
11 information set forth in electronic records is governed by the  
12 following.

14 A. If a rule of law requires a record to be presented or  
15 retained in its original form or provides consequences for  
16 the record not being presented or retained in its original  
17 form, that requirement is met by an electronic record if  
18 there exists a reliable assurance as to the integrity of the  
19 information set forth in the electronic record at the time  
20 it was first generated in its final form, whether as an  
21 electronic record or in another form.

22 B. The basis for assessing the integrity and accuracy of  
23 the information in an electronic record is whether the  
24 information has remained complete and unaltered, apart from  
25 the addition of any endorsement and any change that arises  
26 in the normal course of communication, storage and display.  
27 The standard of reliability required must be assessed in  
28 light of the purpose for which the information was generated  
29 and in light of all the relevant circumstances.

32 4. Admissibility. The admissibility of electronic records  
33 and information in legal proceedings is governed by the following.

34 A. In any legal proceeding, nothing in the application of  
35 the rules of evidence may result in the denial of the  
36 admissibility of an electronic record or electronic  
37 signature into evidence:

38 (1) On the sole ground that it is an electronic record  
39 or electronic signature; or

40 (2) On the grounds that it is not in its original form  
41 or is not an original.

42 B. Admissible information in the form of an electronic  
43 record or electronic signature must be given evidential  
44 weight by the trier of fact. In assessing the evidential  
45 weight of an electronic record or electronic signature, the  
46 trier of fact shall consider the manner in which the  
47 information was generated, stored, transmitted, received,  
48 and displayed.

2 electronic record or electronic signature was generated,  
3 stored, communicated or retrieved, the reliability of the  
4 manner in which the integrity of the electronic record or  
5 electronic signature was maintained, the manner in which its  
6 originator was identified or the electronic record was  
7 signed and any other relevant information or circumstances.

8 Nothing in this subsection relieves a party from establishing the  
9 necessary foundation for the admission of an electronic record or  
10 electronic signature.

11 5. Retention. The ability of electronic records to meet  
12 legal requirements regarding the retention of documents, records  
13 or information is governed by the following.

14 A. If a rule of law requires that certain documents,  
15 records or information be retained, that requirement is met  
16 by retaining electronic records as long as the following  
17 conditions are satisfied:

18 (1) The information contained in the electronic record  
19 remains accessible so as to be usable for subsequent  
20 reference;

21 (2) The electronic record is retained in the format in  
22 which it was generated, stored, sent or received, or in  
23 a format that can be demonstrated to reflect accurately  
24 the information as originally generated, stored, sent  
25 or received; and

26 (3) Any information that enables the identification of  
27 the source or origin and destination of an electronic  
28 record and the date and time when it was sent or  
29 received is retained.

30 B. A requirement to retain documents, records or  
31 information in accordance with paragraph A does not extend  
32 to any information the sole purpose of which is to enable  
33 the record to be sent or received.

34 C. A person may satisfy the requirement referred to in  
35 paragraph A by using the services of any other person as  
36 long as the conditions set forth in paragraph A,  
37 subparagraphs (1) to (3) are met.

38 D. Nothing in this subsection precludes any state agency  
39 from specifying additional requirements for the retention of  
40 records, either written or electronic, that are subject to  
41 the jurisdiction of that agency.

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## SUMMARY

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This bill amends the laws relating to archives and the retention and admissibility of electronic records.