

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1718

H.P. 1219

House of Representatives, January 6, 2010

An Act To Amend the Laws Relating to Government Records

Submitted by the Secretary of State pursuant to Joint Rule 204.

Reference to the Committee on State and Local Government suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative ADAMS of Portland.
Cosponsored by Senator SIMPSON of Androscoggin and
Representative: BOLAND of Sanford.

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

2 **Sec. 1. 5 MRSA §92-A, sub-§5**, as amended by PL 1997, c. 636, §3, is further
3 amended to read:

4 **5. Record.** "Record" means all documentary material, regardless of media or
5 characteristics and regardless of when it was created, made or received and or maintained
6 by an agency in accordance with law or rule or in the transaction of its official business.
7 "Record" does not include extra copies of printed or processed material of which official
8 or record copies have been retained, stocks of publications and processed documents
9 intended for distribution or use or records relating to personal matters that may have been
10 kept in an office for convenience.

11 "Record" includes records of historic and archival value to the State, regardless of the
12 date of their generation, including all documents determined to have such value to the
13 State by statute and, when appropriate, by the State Archivist.

14 **Sec. 2. 5 MRSA §95-A, sub-§1**, as amended by PL 1997, c. 636, §7, is further
15 amended to read:

16 **1. Ownership and possession; notice and demand of return.** A record created by
17 or belonging to the State, to a local or county government in the State or to any agency of
18 the State remains the property of the State until ownership and possession are formally
19 relinquished in accordance with statute and rules. Whenever the State Archivist has
20 reasonable grounds to believe that records belonging to the State or to a local government
21 or any agency of the State or to which the State or its agencies have a lawful right of
22 possession are in the possession of a person or entity not authorized by the State
23 Archivist, other lawful custodian or by law to possess those records, the State Archivist
24 may issue a written notice and demand to that person or entity for the immediate return of
25 the records. The notice and demand must be sent by certified or registered mail, return
26 receipt requested. The notice and demand must identify the records claimed to belong to
27 the State or local government with reasonable specificity. Upon receipt of the notice and
28 demand, the person or entity in the possession of records claimed to belong to the State or
29 local government may not destroy, alter, transfer, convey or otherwise alienate those
30 records unless authorized in writing by the State Archivist or by an order issued by a
31 court of competent jurisdiction. The notice and demand must specifically state that any
32 transfer, conveyance or other alienation of the records after receipt of the notice and
33 demand constitutes a Class E crime in violation of section 97.

34 **Sec. 3. 5 MRSA §95-A, sub-§6** is enacted to read:

35 **6. Licensed auctioneer to notify State Archivist.** A person licensed as an
36 auctioneer in accordance with Title 32, chapter 5-B who, in the course of conducting an
37 auction or offering to sell property at auction or on consignment, has reasonable suspicion
38 to believe that records belonging to the State or to a local government or agency of the
39 State are in the possession of a person or entity not authorized by the State Archivist or
40 other lawful custodian or by law to possess those records shall promptly notify the State
41 Archivist of the nature of the records, where they are located and by whom they are
42 possessed. If the auctioneer has physical possession of the records, the auctioneer may

1 not sell or transfer the records for a period of 30 days after notification to the State
2 Archivist, pending the issuance of the notice and demand by the State Archivist pursuant
3 to subsection 1.

4 A licensed auctioneer who fails to comply with the requirements of this subsection is
5 subject to the provisions of Title 32, section 291-A.

6 **Sec. 4. 32 MRSA §291-A, sub-§2**, as enacted by PL 2007, c. 402, Pt. G, §7, is
7 amended to read:

8 **2. Record-keeping violations.** Failure to comply with or properly maintain records
9 required by Title 30-A, section 3971; or

10 **Sec. 5. 32 MRSA §291-A, sub-§3**, as enacted by PL 2007, c. 402, Pt. G, §7, is
11 amended to read:

12 **3. Improper advertising.** Advertising an auction without including the name and
13 license number of the auctioneer; or

14 **Sec. 6. 32 MRSA §291-A, sub-§4** is enacted to read:

15 **4. Failure to notify State Archivist.** Failure to comply with the requirements of
16 Title 5, section 95-A, subsection 6.

17 SUMMARY

18 This bill clarifies that government records of historic and archival value to the State,
19 regardless of the date of their generation, are the property of the State.

20 The bill clarifies that custody of a record rests with the State until ownership and
21 possession are formally relinquished.

22 The bill also requires a licensed auctioneer to notify the State Archivist if the
23 auctioneer believes that records belonging to the State are in the possession of a person
24 not authorized to have those records. If the auctioneer fails to notify the State Archivist,
25 the auctioneer may be denied a license or a disciplinary sanction may be imposed
26 pursuant to the Maine Revised Statutes, Title 32, section 291-A.