

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

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NON-EMERGENCY LAWS IS
JULY 9, 1998

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

sign is no longer available. A sign may not exceed 8 square feet in size and must be located within 5 miles of where the product is sold. A sign may only be erected on private property after the producer erecting the sign has obtained the landowner's written consent. A sign must be a minimum of 33 feet from the center of a road. A producer may not erect more than 4 signs pursuant to this paragraph and the total number of signs erected by that producer under this paragraph and section 1911, subsection 2 may not exceed 6.

See title page for effective date.

CHAPTER 636

H.P. 1525 - L.D. 2147

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

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

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

§92. Declaration of policy

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

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

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

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

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

5. Record. "Record" means ~~any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of the State and has been received or prepared for use in connection with the transaction of public or governmental business or contains information related to the transaction of public or governmental business~~ all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business. "Record" does 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.

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

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

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

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

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

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

D. Obtain such reports from state or local government agencies as are required for the administration of the program;

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

10. Transfer of state and official records. To receive all state records transferred to the Maine State Archives under subsection 8 and to negotiate for the transfer of official records from the custody of any public official not governed by subsection 7. The State Archivist shall charge a fee sufficient to cover the cost of receiving and processing all transfers from the custody of any public official not governed by subsection 7. The fees collected must be deposited in the General Fund. Any public officer in Maine is authorized to turn over to the State Archivist those official records legally in that public official's custody that are not needed for the transaction of the ~~current~~ business of that office, whenever the State Archivist is 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 are described in terms sufficient to identify them, which must be preserved in the transferring office. Unless otherwise directed by law, the state records of any public office, commission or committee in the State must, upon the termination of its existence or functions, be transferred to the custody of the State Archivist;

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

§95-A. Protection and recovery of public records

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

2. Petition; hearing. Following the issuance of a notice and demand in accordance with subsection 1,

the State Archivist, with the assistance of the Attorney General, may petition the Superior Court of Kennebec County or the Superior Court in the county in which ~~documents or~~ records are located for the return of state ~~documents or~~ records that are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those ~~documents or~~ records. After hearing, the court shall order the ~~documents or~~ records to be delivered to the State Archivist, or other custodian designated by the State Archivist, upon a finding that the materials in question are ~~documents or~~ records and that the ~~documents or~~ records are in the possession of a person or entity not authorized by the State Archivist, other lawful custodian or provision of law to possess the ~~documents or~~ records. The court may issue all orders necessary to protect the ~~documents or~~ records from destruction, alteration, transfer, conveyance or alienation by the person or entity in possession of the materials 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.

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

4. Definition. ~~For the purpose of this section, "records" means all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official 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.~~

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

2. Safe or vault for preservation. Each local government shall provide a fireproof safe or vault for the preservation of all records that must be retained permanently but are not ~~current 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.

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

§456-A. Admissibility of electronic records

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

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

B. "Record" means all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business. "Record" does 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.

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

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

A. If a rule of law requires a record to be presented or retained in its original form or provides consequences for the record not being presented or retained in its original form, that requirement is met by an electronic record if there exists a reliable assurance as to the integrity of the information set forth in the electronic record at the time it was first generated in its final form, whether as an electronic record or in another form. Reliable assurance may be based on documentation of standard operating, access and security procedures governing the system that manages the electronic record.

B. The integrity and accuracy of the information in an electronic record are determined by whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display. The standard of reliability required must be assessed in light of the purpose for which the information was generated and in light of all the relevant circumstances.

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

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

(1) The information contained in the electronic record remains accessible so that it is usable for subsequent reference;

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

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

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

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

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

See title page for effective date.

CHAPTER 637

H.P. 1483 - L.D. 2082

An Act to Improve the Integrity of the Citizen Initiative Process

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

Sec. 1. 21-A MRSA §903-A, sub-§§1 and 2, as enacted by PL 1993, c. 695, §35 and affected by §38, are amended to read:

1. Filing. Filing of petitions in accordance with the deadlines specified in the Constitution of Maine, Article IV, Part Third, Section 18 must be completed within ~~3 years~~ one year of the date of issuance under this chapter.

2. Invalid petition. Petitions not filed in accordance with the deadlines specified in the Constitution of Maine, Article IV, Part Third, Section