

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Laws Relating to Government Records

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

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

5. Record. "Record" means all documentary material, regardless of media or characteristics and regardless of when it was created, made or received and/or 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.

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

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

1. Ownership and possession; notice and demand of return. A record created by or belonging to the State, to a local or county government in the State or to any agency of the State remains the property of the State until ownership and possession are formally relinquished in accordance with statute and rules. Whenever the State Archivist has reasonable grounds to believe that 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 a person or entity not authorized by the State Archivist, other lawful custodian or by law to possess those records, the State Archivist may issue a written notice and demand to that person or entity for the immediate return of the records. The notice and demand must be sent by certified or registered mail, return receipt requested. The notice and demand must identify the 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 records claimed to belong to the State or local government may not destroy, alter, transfer, convey or otherwise alienate those 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 records after receipt of the notice and demand constitutes a Class E crime in violation of section 97.

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

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

they are possessed. If the auctioneer has physical possession of the records, the auctioneer may not sell or transfer the records for a period of 30 days after notification to the State Archivist, pending the issuance of the notice and demand by the State Archivist pursuant to subsection 1.

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

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

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

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

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

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

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

SUMMARY

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

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

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