

**Montana Legislature Records Retention
NCSL Summit Presentation
August 6, 2012
Chicago, Illinois**

ARTICLE II--DECLARATION OF RIGHTS

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

MONTANA CODE ANNOTATED

2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;

(b) public records, kept in this state, of private writings, including electronic mail, except as provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from disclosure.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings, including electronic mail.

(4) All other writings are private.

History: En. Secs. 3170, 3171, 3172, 3182, C. Civ. Proc. 1895; re-en. Secs. 7895, 7896, 7897, 7900, Rev. C. 1907; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1887, 1888, 1889, 1894; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1935; R.C.M. 1947, 93-1001-1, 93-1001-2, 93-1001-3, 93-1001-6; amd. Sec. 4, Ch. 476, L. 1985; amd. Sec. 11, Ch. 748, L. 1991; amd. Sec. 1, Ch. 485, L. 1999; amd. Sec. 2, Ch. 77, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 77 in (2)(b) and (3)(d) after "writings" inserted "including electronic mail". Amendment effective July 1, 2001.

1999 Amendment: Chapter 485 in (2)(a) and (2)(b) at end inserted exception clause. Amendment effective October 1, 1999.

Severability: Section 4, Ch. 485, L. 1999, was a severability clause.

1991 Amendment: In (2)(b) inserted reference to 22-3-807. Amendment effective July 1, 1991.

1985 Amendment: In (2)(b) at end inserted exception clause.

2-6-111. Custody and reproduction of records by secretary of state. (1) The secretary of state is charged with the custody of:

- (a) the enrolled copy of the constitution;
- (b) all the acts and resolutions passed by the legislature;
- (c) the journals of the legislature;
- (d) the great seal;
- (e) all books, records, parchments, maps, and papers kept or deposited in the

secretary of state's office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records. Reproduction is not necessary for transferred records. The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies must be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in the office with suitable equipment for displaying a record by projection to not less than its original size and for preparing copies of the record for persons entitled to copies.

(6) All duplicates of records must be identified and indexed.

History: En. Sec. 400, Pol. C. 1895; re-en. Sec. 153, Rev. C. 1907; re-en. Sec. 133, R.C.M. 1921; Cal. Pol. C. Sec. 407; re-en. Sec. 133, R.C.M. 1935; R.C.M. 1947, 82-2201; amd. Sec. 1, Ch. 152, L. 1979; amd. Sec. 8, Ch. 467, L. 1987; amd. Sec. 1, Ch. 185, L. 1989; amd. Sec. 48, Ch. 61, L. 2007.

Compiler's Comments:

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: At end of (2) substituted "reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013" for "recorded by photostatic or microphotographic means, microfilm, or any other mechanical process that produces a clear, accurate, and permanent duplicate of the original record in accordance with standards not less than those approved for permanent records by the American national standards institute"; and made minor changes in phraseology and grammar.

1989 Statement of Intent: The statement of intent attached to Ch. 185, L. 1989, provided: "A statement of intent is required for this bill because it permits the secretary of state to establish by rule methods for archiving documents filed in his office. Because the technology for archiving documents is developing quickly, it is necessary to provide the secretary of state with the flexibility for establishing the method of archiving.

The legislature intends that the rules require the storage of records in a manner that allows the retrieval of clear and accurate duplicates of the original document. The process must be quick and efficient for both reproducing the original and retrieving the duplicate. The process must have adequate safeguards to ensure that the stored documents will be preserved for many years.

The legislature intends that the rules permit the use of appropriate technology that meets these requirements. The rules must allow for the use of microfilm, photostatic or microphotographic means, computerized electronic disc, or other new technologies that may be developed. These rules may permit storage systems that allow public access through computer hookups as long as no person is able to tamper with the stored records."

1987 Amendment: In (1)(e), after "records", deleted "deeds".

2-6-201. Purpose. The purpose of this part is to create an effective records

management program for executive branch agencies of the state of Montana and political subdivisions by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state and local records.

History: En. 82-3333 by Sec. 2, Ch. 339, L. 1977; R.C.M. 1947, 82-3333; amd. Sec. 5, Ch. 420, L. 1993.

Compiler's Comments:

1993 Amendment: Chapter 420 near middle, after "Montana", inserted "and political subdivisions" and at end, before "records", inserted "and local". Amendment effective April 20, 1993.

2-6-202. Definitions. As used in this part, the following definitions apply:

(1) (a) "Public records" includes:

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:

(A) has been made or received by a state agency to document the transaction of official business;

(B) is a public writing of a state agency pursuant to 2-6-101(2)(a); and

(C) is designated by the state records committee for retention pursuant to this part; and

(ii) all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official business.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013.

History: (1)En. 82-3334 by Sec. 3, Ch. 339, L. 1977; Sec. 82-3334, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 82-3334(1); amd. Sec. 5, Ch. 77, L. 2001; amd. Sec. 1, Ch. 30, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 30 in definition of public records in (a)(i) near middle after "including" deleted "all" and after "the record" inserted "required by law to be kept as part of the official record", in (a)(i)(A) near middle after "agency" substituted "to document" for "in connection with" and after "business and" deleted "preserved for informational value or as evidence of a transaction", inserted (a)(i)(B) concerning a public writing of a state agency, inserted (a)(i)(C) concerning a record designated by the state records committee for retention, and inserted (c) providing that a public record does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 77 in definition of public records inserted (b) to include certain electronic mail; and made minor changes in style. Amendment effective July 1, 2001.

2-6-203. Secretary of state's powers and duties. (1) In order to insure the proper management and safeguarding of public records, the secretary of state shall

undertake the following:

(a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;

(e) operate a central microfilm unit which will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state; and

(f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies.

(2) Upon request, the secretary of state shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch.

History: (1)En. 82-3335 by Sec. 4, Ch. 339, L. 1977; Sec. 82-3335, R.C.M. 1947; (2)En. 82-3337 by Sec. 6, Ch. 339, L. 1977; Sec. 82-3337, R.C.M. 1947; R.C.M. 1947, 82-3335, 82-3337; amd. Sec. 1, Ch. 378, L. 1991.

Compiler's Comments:

1991 Amendment: Throughout substituted references to Secretary of State for references to Department of Administration. Amendment effective July 1, 1991.

2-6-204. State records committee approval. The committee shall approve, modify, or disapprove the recommendations on retention schedules of all public records to determine which documents not included in the provisions of this part are to be designated public records and approve agency requests to dispose of such public records.

History: En. 82-3338 by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(3).t effective October 1, 2007.

2-6-205. Preservation of public records. All public records are and shall remain the property of the state. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

History: En. 82-3334 by Sec. 3, Ch. 339, L. 1977; R.C.M. 1947, 82-3334(2).

2-6-206. Protection and storage of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after the emergency. A list of essential records must be forwarded to the secretary of state. The list must be reviewed from time to time by the elected or appointed officers to ensure its accuracy. Any changes or revisions must be forwarded to the secretary of state.

(2) Each elected and appointed officer of state government shall ensure that the

security of essential records is accomplished by the most economical means possible. Protection and storage of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives or in an alternative location provided pursuant to 2-6-211(2), or any other method approved by the secretary of state.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the secretary of state.

History: En. 82-3341 by Sec. 10, Ch. 339, L. 1977; R.C.M. 1947, 82-3341; amd. Sec. 2, Ch. 378, L. 1991; amd. Sec. 2, Ch. 30, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 30 in (2) at beginning of second sentence after "Protection" inserted "and storage" and near middle after "archives" inserted "or in an alternative location provided pursuant to 2-6-211(2)"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Throughout substituted references to Secretary of State for references to Department of Administration. Amendment effective July 1, 1991.

2-6-207. Certified copies of public records. (1) The Montana historical society shall reproduce and certify copies of public records in its possession upon application of any citizen of this state.

(2) The certified copy of a public record has the same force in law as if made by the original custodian.

History: En. Sec. 1, Ch. 102, L. 1979.

2-6-211. Transfer and storage of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government that may be abolished or discontinued must be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if the records are considered to have permanent administrative or historical value.

(2) Subject to approval by the secretary of state pursuant to 2-6-206, the state records center and the state archives may store transferred permanent public records in locations other than in the buildings occupied by the state records center or the state archives when it is in the best interests of the state.

(3) When records are transferred to the state records center, the transferring agency does not lose its rights of control and access. The state records center is only a custodian of the agency records, and access is only by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(4) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule.

History: En. 82-3340 by Sec. 9, Ch. 339, L. 1977; R.C.M. 1947, 82-3340; amd. Sec. 3, Ch. 378, L. 1991; amd. Sec. 2, Ch. 6, Sp. L. January 1992; amd. Sec. 3, Ch. 30, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 30 inserted (2) allowing alternative storage of transferred permanent public records in locations other than the state records center or the state archives; in (3) near middle of first sentence before "agency" inserted "transferring"; and made minor changes in style. Amendment effective October 1, 2003.

1992 Special Session Amendment: Chapter 6 in (2) inserted last sentence requiring transfer of \$20,000 from the

proprietary account to the general fund on or before June 30, 1993. Amendment effective January 21, 1992.

Effective Date -- Termination: Section 3, Ch. 6, Sp. L. January 1992, provided: "[This act] is effective on passage and approval [approved January 21, 1992] and terminates July 1, 1993."

1991 Amendment: In (3) substituted reference to Secretary of State for reference to Department of Administration. Amendment effective July 1, 1991.

2-6-212. Disposal of public records. (1) Except as provided in subsection (2), no public record may be disposed of or destroyed without the unanimous approval of the state records committee. When approval is required, a request for the disposal or destruction must be submitted to the state records committee by the agency concerned.

(2) The state records committee may by unanimous approval establish categories of records for which no disposal request is required, providing those records are retained for the designated retention period.

History: En. 82-3339 by Sec. 8, Ch. 339, L. 1977; R.C.M. 1947, 82-3339; amd. Sec. 1, Ch. 173, L. 1981.

Compiler's Comments:

1981 Amendment: Inserted "Except as provided in subsection (2)" at the beginning of (1); inserted (2) allowing categories of records for which no disposal request is required; and made changes to conform to the exception.

Statement of Intent: The statement of intent attached to SB 187 (Ch. 173, L. 1981) provided: "The intent is to have the State Records Committee create by rule categories of records of minor importance for which agencies would be relieved of the burden of repetitively submitting disposal requests; for example:

- (a) motor vehicle applications that are being microfilmed;
- (b) inactive teacher certification records that are being microfilmed;
- (c) interstate invoices in the statewide budget and accounting system."

2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

- (1) coordinate all aspects of the agency records management function;
- (2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the secretary of state and the state records committee;
- (3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the secretary of state and the state records committee minimal retentions for all copies of public records within the agency;
- (4) approve all records disposal requests that are submitted by the agency to the state records committee;
- (5) review established records retention schedules to ensure that they are complete and current; and
- (6) officially designate an agency records custodian to manage the functions provided for in this section.

History: En. 82-3336 by Sec. 5, Ch. 339, L. 1977; R.C.M. 1947, 82-3336; amd. Sec. 4, Ch. 378, L. 1991; amd. Sec. 4, Ch. 30, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 30 inserted (6) requiring executive branch agencies to officially designate an agency records custodian to administer record management functions; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: In (1) and (2) substituted references to Secretary of State for references to Department of Administration. Amendment effective July 1, 1991.

2-6-214. Department of administration -- powers and duties. (1) In order to ensure compatibility with the information technology systems of state government, the department of administration shall develop standards for technological compatibility for

state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration shall approve all acquisitions of executive agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

(3) The department of administration is responsible for the management and operation of equipment, systems, facilities, or processes integral to the department's central computer center and statewide telecommunications system.

History: En. Sec. 8, Ch. 378, L. 1991; amd. Sec. 20, Ch. 313, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 313 in (1) near beginning substituted "information technology systems" for "computer and telecommunications systems"; and in (3) at end substituted "central computer center and statewide telecommunications system" for "central computer and telecommunications systems". Amendment effective July 1, 2001.

Effective Date: Section 10, Ch. 378, L. 1991, provided: "[This act] is effective July 1, 1991."

For further information, contact:

Sonia Gavin
Legislative Information Resources Manager

Montana Legislative Branch
Capitol Building Room 10F
PO Box 201706
Helena MT 59620-1706
406-444-4848
sgavin@mt.gov