

Assembly Bill No. 1245

Passed the Assembly August 31, 2009

Chief Clerk of the Assembly

Passed the Senate August 27, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 3.01 (commencing with Section 6204) to Division 7 of Title 1 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1245, Monning. Recovery of public records.

Existing law provides that every officer having the custody of any public record, as specified, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment in the state prison for 2, 3, or 4 years if the officer willfully steals, removes, destroys, mutilates, defaces, alters, or falsifies the record, or causes another person to do so. Existing law also provides that every person not an officer who is guilty of any of these acts is punishable by imprisonment in the state prison or in a county jail for a period not exceeding one year, or by a fine not exceeding \$1,000, or by both.

This bill would authorize the Secretary of State, whenever the secretary, in consultation with the State Archivist, has reasonable grounds to believe that a public record belonging to a state or a local agency is in the possession of a person, organization, or institution not authorized by law to possess the record, to issue a written notice demanding that person, organization, or institution within 20 calendar days, either to return the record or respond in writing and declare why the record does not belong to the state or a local agency. The bill would require the secretary or a local agency to issue a copy or digital image of the record, when a record is returned and the person, organization, or institution returning that record makes that request.

The bill would also authorize the secretary, if the person, organization, or institution does not deliver the described record, does not respond to the notice and demand within the required time, or does not adequately demonstrate that the record does not belong to the state or a local agency, to ask the Attorney General to petition the superior court in the county in which the record is located for an order requiring the return of the record. The court would be required, after a hearing, and upon a finding that the

specified record is in the possession of a person, organization, or institution not authorized by law to possess the record, to order the record to be delivered to the State Archivist or other government official designated by the court, and would be authorized to make the record available for public access pursuant to the California Public Records Act.

The bill would provide that the prevailing party may be awarded reasonable attorney’s fees and costs in an action brought under these provisions. A local agency would be authorized to request the Secretary of State to act on its behalf under these circumstances and the bill would set forth the criteria pursuant to which the local agency could undertake these procedures on its own behalf. The bill would exempt from these provisions an organization or institution that follows professional practices recommended by the Society of American Archivists for the management, care, and preservation of historical records and that makes records in its possession available for inspection in accordance with disclosure requirements applicable to public agencies.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.01 (commencing with Section 6204) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 3.01. PUBLIC RECORDS PROTECTION AND RECOVERY

6204. (a) For purposes of this chapter, the following definitions shall apply:

(1) “Archivist” means the Keeper of the Archives, as specified in Section 12227.

(2) “Record” has the same meaning as “public records” is defined in subdivision (e) of Section 6252, and includes, but is not limited to, any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by a state or local agency regardless of physical form or characteristics.

(3) “Secretary” means the Secretary of State.

(b) Whenever the secretary, in consultation with the archivist, has reasonable grounds to believe that a record belonging to the state or a local agency is in the possession of a person, organization,

or institution not authorized by law to possess those records, the secretary may issue a written notice demanding that person, organization, or institution to do either of the following within 20 calendar days of receiving the notice:

(1) Return the record to the appropriate state or local agency.

(2) Respond in writing and declare why the record does not belong to the state or a local agency.

(c) The notice and demand issued pursuant to subdivision (b) shall identify the record claimed to belong to the state or local agency with reasonable specificity, and shall state that the secretary is authorized to take legal action to recover the record if the person, organization, or institution fails to respond in writing within the required time or does not adequately demonstrate that the record does not belong to the state or a local agency.

(d) The secretary shall send the notice and demand specified in subdivision (b) by certified or registered mail, return receipt requested.

(e) When a record is returned pursuant to paragraph (1) of subdivision (b), upon the request of the person, organization, or institution that returned the record, the secretary or a local agency that receives the record shall issue to that person, organization, or institution a copy or digital image of the record, which shall be certified as a true copy of the record that was returned to the state or local agency, and dated on the same day the record was returned.

6204.1. (a) If a person, organization, or institution that receives a written notice and demand from the secretary pursuant to Section 6204 does not deliver the described record, does not respond to the notice and demand within the required time, or does not adequately demonstrate that the record does not belong to the state or a local agency, the secretary may ask the Attorney General to petition the superior court in the county in which the records are located for an order requiring the return of the record.

(b) After a hearing, and upon a finding that the specified record is in the possession of a person, organization, or institution not authorized by law to possess the record, the court shall order the record to be delivered to the archivist or other government official designated by the court.

(c) The court may issue any order necessary to protect the record from destruction, alteration, transfer, conveyance, or alienation by the person, organization, or institution in possession of the record,

and may order the record to be surrendered into the custody of the archivist pending the court's decision on the petition. The court may order the record to be available for public access under a request made pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250)).

6204.2. (a) If a local agency has reasonable grounds to believe that a record belonging to that local agency is in the possession of a person, organization, or institution not authorized by law to possess the record, it may request the secretary to act on its behalf pursuant to the procedures specified in Sections 6204 and 6204.1, or undertake on its own behalf the same procedure available to the secretary under those sections, subject to subdivisions (b), (c), and (d).

(b) If a person, organization, or institution that receives a written notice and demand from a local agency issued pursuant to this section does not deliver the described record, does not respond to the notice and demand within the required time, or does not adequately demonstrate that the record does not belong to the local agency, the local agency may request the county district attorney or, where applicable, the city attorney, to petition the superior court in the county in which the record is located for an order requiring the return of the record.

(c) After a hearing, and upon a finding that a specified record is in the possession of a person, organization, or institution not authorized by law to possess the record, the court shall order the record to be delivered to the local agency or a government official designated by the court.

(d) The court may issue any order necessary to protect the record from destruction, alteration, transfer, conveyance, or alienation by the person, organization, or institution in possession of the record, and may order the record to be surrendered into the custody of the local agency pending the court's decision on the petition. The court may order the record to be available for public access under a request made pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250)).

6204.3. (a) Notwithstanding any other provision of this chapter, an organization or institution having physical custody of a record shall be exempt from Sections 6204 to 6204.2, inclusive, if the organization or institution meets both of the following requirements:

(1) It follows professional practices recommended by the Society of American Archivists, as used by the archivist, for the management, care, and preservation of historical records.

(2) It requires that all records it receives or maintains are subject to inspection to the same extent that the records would be subject to inspection and not exempt from disclosure pursuant to Chapter 3.5 (commencing with Section 6250) if received or maintained by a public agency.

(b) If an organization or institution refuses public inspection of a record in its custody in violation of the requirements described in paragraph (2) of subdivision (a), the archivist or local agency, or a designated representative, shall contact the organization or institution to inform it of those requirements and, if appropriate, facilitate inspection of the record. If an organization or institution continues to deny public inspection consistent with paragraph (2) of subdivision (a), the secretary, on behalf of the archivist or the local agency may pursue recovery of the records under this chapter.

6204.4. In an action brought pursuant to this chapter, the court may award reasonable attorney's fees and costs to the prevailing party.

Approved _____, 2009

Governor