

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2274

H. P. 2126

House of Representatives, March 1, 1976

Reported by Mrs. Miskavage from the Committee on Judiciary pursuant to H. P. 1752 and printed under Joint Rules No. 3.

EDWIN H. PERT, Clerk

Filed under Joint Rule 3, pursuant to H. P. 1752.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Protect Owners and Bona Fide Purchasers of Real Property from Unrecorded Mechanics' Liens and to Protect Them from Double Payment to Contractors and Subcontractors.

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

10 MRSA § 3255, as last amended by P.L. 1975, c. 91, § 2, is repealed and the following enacted in place thereof:

§ 3255. Liens preserved and enforced by action

1. Enforcement by action. The liens mentioned in sections 3251 to 3254 may be preserved and enforced by action against the debtor and owner of the property affected and all other parties interested therein, filed with the clerk of courts in the county where the house, building or appurtenances, wharf, pier or building thereon, on which a lien is claimed, is situated, within 120 days after the last of the labor or services are performed or labor, materials or services are so furnished, except as provided in section 3256.

2. Bona fide purchaser. Any person who is a bona fide purchaser for value of a house, building or appurtenances, a public building erected or owned by any city, town, county, school district or other municipal corporation, or a wharf or pier or any building thereon, including the ground adjacent to and upon which any such objects are constructed, shall take title free of the lien described in this chapter, unless, before the bona fide purchaser takes title to the premises on which such lien attaches, the person performing or furnishing that labor, materials or services either has filed the notice required by section 3253 or has filed a notice in the office of the register of deeds in the county or registry district in which these premises are located, setting forth a description of the property sufficiently accurate to identify it; the names of the owners; that the claimant is going to perform or furnish, is

performing or furnishing, or has performed or furnished labor, materials or services and that the claimant may claim a lien therefor. If notice provided by this subsection is filed, the lien claimant must also comply with the notice requirements of section 3253 and institute the legal action required by subsection 1 to the extent that this compliance is required in order to preserve his lien claim. The notice provided by this subsection shall only be effective relative to a bona fide purchaser for value for the period of 90 days from the date of recording thereof; provided that this notice may again be recorded any number of times, but further notices shall also only be effective relative to a bona fide purchaser for value for the period of 90 days each from the date of their respective recordings.

3. Notice to owner. If the labor, materials or services were not performed or furnished by a contract with the owner of the property affected, the lien described in this chapter may only be enforced against the owners of the property affected to the extent that the owner has not paid the contract price to the person with whom the owner has directly contracted to perform or furnish the labor, materials and services on which that lien claim is based. The defense established by this subsection shall not be available with respect to an amount equal to the unpaid contract price or part thereof if, prior to the payment of that amount by the owner of the property affected to the person with whom the owner has directly contracted, the person with whom the owner has not directly contracted to perform or furnish such labor, materials or services gives actual notice to the owner which sets forth a description of the property sufficiently accurate to identify it; the names of the owners; that the claimant is going to perform or furnish, is performing or furnishing, or has performed or furnished labor, materials or services; that the claimant may claim a lien therefor and which shall contain the following warning at the top of the notice:

YOUR FAILURE TO ASSURE THAT _____
 (name of the claimant
 _____ **IS PAID BEFORE FURTHER PAYMENT BY**
 giving notice)
YOU TO _____ MAY RESULT IN YOUR
 (name of the contractor)
PAYING TWICE.

If the owner does not reside in the place where the property is located, but has a known agent therein, notice may be given to the agent or to the owner at the place where he resides. If the notice provided by this subsection is given to the owner of the property affected, the lien claimant must also comply with the notice requirements of section 3253 and institute the legal action required by subsection one to the extent that this compliance is required in order to preserve his lien claim.

STATEMENT OF FACT

The purpose of this bill is to provide better protection of owners and bona fide purchasers of real property from unrecorded mechanics' liens and from the possibility of having to make double payment to contractors and sub-contractors.