

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 867

H.P. 656

House of Representatives, February 23, 2007

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**An Act To Implement the Recommendations of a Joint Task Force  
on Fraudulent Uniform Commercial Code Filings as Adopted by the  
National Association of Secretaries of State and the International  
Association of Commercial Administrators**

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Submitted by the Secretary of State pursuant to Joint Rule 204.  
Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative SIMPSON of Auburn.  
Cosponsored by Senator HOBBS of York and  
Representatives: CASAVANT of Biddeford, LORING of the Penobscot Nation.

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

2 **Sec. 1. 5 MRSA §90-E** is enacted to read:

3 **§90-E. Expedited review and determination of the authorization of financing**  
4 **statement records filed under the Uniform Commercial Code; criminal**  
5 **penalties; civil penalties and injunctive relief**

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

8 A. "Authorized," when used with reference to a financing statement record, means  
9 that the financing statement record was filed by a person authorized to do so as  
10 provided in Title 11, sections 9-1509 and 9-1708.

11 B. "Court" means the Kennebec County Superior Court.

12 C. "Debtor" means a natural person whose name was provided in a financing  
13 statement record as:

14 (1) An individual debtor; or

15 (2) One of the types of persons listed in Title 11, section 9-1505, subsection 1.

16 D. "Filing office" or "filing officer" means the appropriate office or officer where or  
17 to whom a financing statement record is to be filed as provided by Title 11, section 9-  
18 1501.

19 E. "Financing statement record" means:

20 (1) An initial financing statement;

21 (2) An amendment that adds collateral covered by a financing statement; or

22 3) An amendment that adds a debtor to a financing statement.

23 For purposes of this paragraph, "collateral," "debtor" and "financing statement" have  
24 the same meanings as defined in Title 11, section 9-1102.

25 F. "Movant" means the person filing the motion.

26 **2. Expedited process to review and determine authorization of filing of**  
27 **financing statement records.** This subsection governs the procedure for disputing the  
28 authorization for a filing of a financing statement.

29 A. Any individual who asserts that the filing of a financing statement record that  
30 provides that individual's name as a debtor is not an authorized filing may file, at any  
31 time, a motion for a judicial declaration that the financing statement record is not an  
32 authorized filing under Title 11, section 9-1509 and thus is not effective with respect  
33 to that individual under Title 11, section 9-1510. This motion must be filed with the  
34 Kennebec County Superior Court. The motion must be supported by the affidavit of  
35 the movant setting forth a concise statement of the facts upon which the claim for  
36 relief is based. The motion must be in the form that follows:

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**MISC. DOCKET No. ....**

In Re: A Purported  
Financing Statement In the Kennebec County Superior Court

Against.....In and For .....

(Name of Movant).....Kennebec  
County, State of Maine

**Motion for Judicial Review of the Authorization of a Financing Statement Record**  
**Filed Under the Uniform Commercial Code, the Maine Revised Statutes, Title 11,**  
**Article 9-A**

Now Comes

.....  
(name)

(movant) and files this motion requesting a judicial determination of whether the  
financing statement record filed in the filing office, a copy of which is attached  
hereto, is not an authorized filing with respect to the movant under the Uniform  
Commercial Code, Title 11, section 9-1509 or 9-1708 and in support of the motion  
would show the court as follows:

**I.**

(Name), movant, herein is an individual whose name was provided as an individual  
debtor in a financing statement record filed under the Uniform Commercial Code,  
Title 11, Article 9-A, a copy of which is attached hereto.

**II.**

On (date), in the exercise of the filing officer's official duties as (Secretary of State or  
Register of Deeds), the filing officer received and indexed the financing statement  
providing the movant's name as an individual debtor and assigned the following file  
number, ..... to the record, bearing the following date of filing,  
.....

**III.**

Movant alleges that the financing statement record is not an authorized filing with  
respect to movant and that this court should declare the financing statement record  
ineffective with respect to movant for that reason.

**IV.**

Movant attests that assertions herein are true and correct.

**V.**

1 Movant does not request the court to make a finding as to any underlying claim of  
2 any person and asserts that this motion does not seek review of an effective financing  
3 statement record. Movant acknowledges that movant may be subject to sanctions if  
4 this motion is determined to be frivolous or intentionally wrongful.

5 **PRAYER**

6 Movant requests the court to review the attached documentation and enter an order  
7 finding that said financing statement record was filed by a person not authorized to  
8 do so with respect to movant and is for that reason not an authorized filing with  
9 respect to movant and, therefore, has no effect with respect to movant, together with  
10 such other findings as the court deems appropriate.

11 Respectfully submitted,

12 .....  
13 (Signature and typed name and address)

14 B. The completed form for ordinary certificate of acknowledgment must be as  
15 follows:

16 **AFFIDAVIT**

17 STATE OF MAINE

18 COUNTY OF .....

19 BEFORE ME, the undersigned authority, personally appeared ..... who,  
20 being by me duly sworn, deposed as follows:

21 "My name is..... I am over 18 years of age, of sound mind, with  
22 personal knowledge of the following facts, and fully competent to testify. I further attest  
23 that the assertions contained in the accompanying motion are true and correct."

24 Further affiant sayeth not.

25 SUBSCRIBED and SWORN TO before me, this ..... day  
26 of .....

27 NOTARY PUBLIC, State of Maine

28 Notary's signature: .....

29 Notary's printed name: .....

30 My commission expires: .....

31 C. The clerk of the court may not collect a filing fee for filing a motion as provided  
32 in this subsection.

1 D. The court's finding may be made solely on a review of the documentation  
2 attached to the motion and the responses, if any, of the person named as a secured  
3 party in the financing statement record and without hearing any oral testimony if  
4 none is offered by the secured party. The court's review may be made only upon not  
5 less than 20 days' notice to each person named as a secured party in the financing  
6 statement record. Notice must be given to each secured party. Notice may be given  
7 to each secured party at the address given in the financing statement record as an  
8 address of that secured party by mail or personal service as provided in the Maine  
9 Rules of Civil Procedure. Each person named as a secured party in the financing  
10 statement record may respond to the motion based on pleadings, depositions,  
11 admissions and affidavits. The court's review of the pleadings, depositions,  
12 admissions and affidavits must be made on an expedited basis.

13 E. The court shall enter judgment in favor of the movant only if the pleadings,  
14 depositions, admissions and affidavits on file show that there is no genuine issue as to  
15 any material fact and that the moving party is entitled to a judgment as a matter of  
16 law.

17 F. After review, the court shall enter an appropriate finding of fact and conclusion of  
18 law in a form as provided in paragraph G regarding the financing statement record, an  
19 attested copy of which must be filed and indexed under the movant's name in the  
20 filing office where the original financing statement record was filed. The filing office  
21 may not collect a filing fee for filing the court's finding of fact and conclusion of law  
22 as provided in this section. A copy of the finding of fact and conclusion of law must  
23 be sent by the court to the movant, to each person named as a secured party in the  
24 financing statement record at the address of each person set forth in the financing  
25 statement and to the filing office. The copy must be sent within 7 days following the  
26 date that the finding of fact and conclusion of law are issued by the court. The  
27 secured party may appeal the finding of fact and conclusion of law as provided in the  
28 Maine Rules of Appellate Procedure. In addition to the notice requirements of those  
29 rules, the secured party shall give notice of the appeal to the filing office.

30 G. The finding of fact and conclusion of law must be in substantially the following  
31 form:

32 **MISC. DOCKET No. ....**

33 In Re: A Purported  
34 Financing Statement In the Kennebec County Superior Court

35 Against ..... In and For .....

36 (Name of Movant) ..... Kennebec  
37 County, State of Maine

38 **Judicial Finding of Fact and Conclusion of Law Regarding the Authorization of a**  
39 **Financing Statement Record Filed Under the Uniform Commercial Code**

1 On the (number) day of (month), (year), in the above entitled and numbered cause, this  
2 court reviewed a motion, verified by affidavit, of (name), the documentation attached  
3 thereto, and the pleadings, depositions, admissions and affidavits submitted by the  
4 secured party, if any. Notice was given to each person named as a secured party in the  
5 financing statement record as provided by law to the secured party's address as provided  
6 in the Uniform Commercial Code, the Maine Revised Statutes, Title 11, Article 9-A. No  
7 oral testimony was taken from any party, the court having made the determination that a  
8 decision could be made solely on review of the documentation provided hereunto.

9 The court finds as follows (only an item initialed is a valid court ruling):

10 .....The financing statement record providing movant's name as an individual debtor  
11 attached to the motion IS an authorized filing as to movant under the Uniform  
12 Commercial Code, Title 11, section 9-1509 or 9-1708.

13 .....The financing statement record providing movant's name as an individual debtor  
14 attached to the motion IS NOT an authorized filing as to movant under the Uniform  
15 Commercial Code, Title, 11, section 9-1509 or 9-1708 and, therefore, is not effective with  
16 respect to movant.

17 This court makes no finding as to any underlying claims of the parties involved and  
18 expressly limits its finding of fact and conclusion of law to the review of whether  
19 authorization for the filing exists. Insofar as it affects movant, the filing officer shall  
20 remove the subject financing statement record from the index so that the record is not  
21 reflected in or obtained as a result of any search, standard or otherwise, conducted of the  
22 records of the filing office under the movant's name upon the occurrence of both of the  
23 following:

24 A. Receipt of a finding of fact and conclusion of law that the documentation attached to  
25 the motion IS NOT an authorized financing statement naming movant as an individual  
26 debtor under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708 and,  
27 therefore, is not effective with respect to movant; and

28 B. The earlier of:

29 (i) The lapse of any period for appeal without an appeal having been taken; and

30 (ii) The decision becoming final following any appeal.

31 The filing office shall retain the subject financing statement record and this finding of fact  
32 and conclusion of law in the filing office for the duration of the period for which they  
33 would have otherwise been retained. This finding of fact and conclusion of law, but not  
34 the financing statement record, shall be indexed under the movant's name.

1 SIGNED ON THIS THE .....DAY OF.....

2 .....Justice, Maine Superior Court

3 H. This subsection is cumulative of other law under which a person may obtain  
4 judicial relief with respect to any filed or recorded document.

5 3. Criminal penalty. A person who violates this section commits a Class D crime.  
6 A second or subsequent violation of this section is a Class C crime.

7 4. Civil penalty and injunction. A person who violates this section is subject to  
8 civil penalties and other relief as provided in this subsection.

9 A. A person may not knowingly cause to be presented for filing in a filing office or  
10 promote the filing in a filing office of a financing statement record that the person  
11 knows:

12 (1) Is not authorized under Title 11, section 9-1509 or 9-1708 by the natural  
13 person whose name was provided as an individual debtor in the financing  
14 statement record;

15 (2) Was filed or presented for filing with the intent that the financing statement  
16 record be used to harass or hinder the natural person whose name was provided  
17 as an individual debtor in the financing statement record without that person's  
18 authorization; or

19 (3) Was filed or presented for filing with the intent that the financing statement  
20 record be used to defraud any person.

21 B. A person who violates this section is liable to each debtor under paragraph A for:

22 (1) The greater of:

23 (a) \$10,000; and

24 (b) The actual damages caused by the violation;

25 (2) Court costs;

26 (3) Reasonable attorney's fees;

27 (4) Related expenses of bringing the action, including investigative expenses;  
28 and

29 (5) Punitive damages in the amount determined by the court.

30 C. The following persons may bring an action to enjoin a violation of this section or  
31 to recover damages under this section:

32 (1) The natural person whose name was provided as an individual debtor in the  
33 financing statement record filed without that person's authorization under Title  
34 11, section 9-1509 or 9-1708 or any guardian, conservator, executor,  
35 administrator or other legal representative of that person, a person who owns an



1 interest in the collateral described or indicated in the financing statement record  
2 or a person directly harmed by the filing of the financing statement record; and

3 (2) The Attorney General.

4 D. A filing officer may refer a matter to the Attorney General for filing the legal  
5 actions under this subsection.

6 E. An action under this subsection may be brought in any court in Kennebec County  
7 in which the financing statement record is presented for filing or in a county where  
8 any of the persons named in the cause of action under this subsection resides.

9 F. The fee for filing an action under this section is \$25. The plaintiff must pay the  
10 fee to the clerk of the court in which the action is filed. The plaintiff may not be  
11 assessed any other fee, cost, charge or expense by the clerk of the court.

12 G. A plaintiff who is unable to pay the filing fee and fee for service of notice may  
13 follow the court procedures to waive such fees.

14 H. If the fee imposed under paragraph F is less than the filing fee the court imposes  
15 for filing other similar actions and the plaintiff prevails in the action, the court may  
16 order a defendant to pay to the court the difference between the fee paid under  
17 paragraph F and the filing fee the court imposes for filing other similar actions.

18 I. This subsection is cumulative of other law under which a person may obtain  
19 judicial relief with respect to any filed or recorded document. This subsection is not  
20 intended to be an exclusive remedy.

21 **SUMMARY**

22 This bill implements the recommendations of the Joint Task Force on Fraudulent  
23 UCC Filings as adopted by the National Association of Secretaries of State and the  
24 International Association of Commercial Administrators to provide a remedy to a person  
25 who has been adversely affected by the filing of a lien against the person's personal  
26 property by an unauthorized filer.