

MAINE STATE LEGISLATURE

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L.D. 206

Date: 5/15/13

(Filing No. H-174)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 167, L.D. 206, Bill, "An Act To Protect Title to Real and Personal Property of Public Employees"

Amend the bill by striking out the title and substituting the following:

'An Act To Protect Title to Real and Personal Property of Public Employees and Public Officials'

Amend the bill by striking out everything after the title and before the summary and inserting the following:

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, liens and other encumbrances without a legal basis have been filed against property of public employees and public officials; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 14 MRSA c. 755 is enacted to read:

CHAPTER 755

ACTIONS FOR FILING FALSE RECORDABLE INSTRUMENTS AGAINST PUBLIC EMPLOYEES AND PUBLIC OFFICIALS

§8601. Actions by public employees and public officials for recordable instruments filed without a legal basis

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1 A. "Public employee" means a person employed by the State, a county, a
2 municipality or any entity identified in statute as a public instrumentality.

3 B. "Public official" means a person elected or appointed to a public office.

4 C. "Recordable instrument" means any lien or encumbrance, the false filing of which
5 is identified as a crime under Title 17-A, section 706-A.

6 **2. Expedited process for a court to review the filing of recordable instruments.**

7 This subsection governs the procedure by which a public employee or public official may
8 dispute the filing of a recordable instrument at a registry of deeds.

9 A. A public employee or public official who asserts that a recordable instrument was
10 filed against property of the public employee or public official by a person who
11 knows the recordable instrument is without a legal basis or was filed or presented for
12 filing with the intent that the instrument be used to harass or hinder the public
13 employee or public official in the exercise of the employee's or official's duties may
14 file, at any time, a motion for a judicial declaration that the recordable instrument is
15 without a legal basis. The motion may be filed in the Superior Court in the county
16 where the public employee or public official resides. The motion must be supported
17 by a signed and notarized affidavit of the moving party setting forth a concise
18 statement of the facts upon which the claim for relief is based.

19 B. The clerk of the court may not collect a filing fee for filing a motion under this
20 subsection.

21 C. The court's finding may be made solely on a review of the documentation
22 attached to the motion and the responses, if any, and without hearing any oral
23 testimony if none is offered. The court's review may be made only upon not less than
24 20 days' notice to each secured party or creditor named in the recordable instrument.
25 Each secured party or creditor named in the recordable instrument may respond to the
26 motion based on pleadings, depositions, admissions and affidavits. The court's
27 review of the pleadings, depositions, admissions and affidavits may be advanced on
28 the docket and receive priority over other cases when the court determines that the
29 interests of justice so require.

30 D. The court shall enter judgment in favor of the moving party only if the pleadings,
31 depositions, admissions and affidavits on file show that there is no genuine issue as to
32 any material fact and that the moving party is entitled to a judgment as a matter of
33 law.

34 E. After review, the court shall enter an appropriate finding of fact and conclusion of
35 law, an attested copy of which must be filed and indexed under the moving party's
36 name in the registry of deeds where the original recordable instrument was filed. The
37 copy must be sent within 7 days following the date that the finding of fact and
38 conclusion of law are issued by the court. A secured party or creditor may appeal the
39 finding of fact and conclusion of law as provided in the Maine Rules of Appellate
40 Procedure. In addition to the notice requirements of the Maine Rules of Appellate
41 Procedure, the secured party or creditor shall give notice of the appeal to the registry
42 of deeds where the original recordable instrument was filed.

PROFS

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

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

5 A. A person may not knowingly file, attempt to file or cause to be filed in a registry
6 of deeds a recordable instrument against the real or personal property of a public
7 employee or a public official that the person knows:

- 8 (1) Is without a legal basis; or
9 (2) Was filed or presented for filing with the intent that the instrument be used to
10 harass or hinder the public employee or public official in the exercise of the
11 employee's or official's duties.

12 B. A person who violates this subsection is liable to each public employee or public
13 official under paragraph A for:

- 14 (1) The greater of:
15 (a) Ten thousand dollars; and
16 (b) Damages equal to the amount of the recordable instrument that was filed
17 or attempted to be filed;
18 (2) Court costs;
19 (3) Reasonable attorney's fees;
20 (4) Related expenses of bringing the action, including investigative expenses;
21 and
22 (5) Punitive damages in an amount determined by the court.

23 C. The following persons may bring an action to enjoin a violation of this subsection
24 or to recover damages under this subsection:

- 25 (1) The public employee or public official; and
26 (2) The Attorney General.

27 D. An action under this subsection may be brought in any court in Kennebec County
28 or in a county where any of the persons named in the cause of action under this
29 subsection reside.

30 E. The fee for filing an action under this subsection is \$25. The plaintiff must pay
31 the fee to the clerk of the court in which the action is filed. The plaintiff may not be
32 assessed any other fee, cost, charge or expense by the clerk of the court.

33 F. A plaintiff who is unable to pay the filing fee and any fee for service of notice
34 may follow the court procedures to waive such fees.

35 G. If the fee imposed under paragraph E is less than the filing fee the court imposes
36 for filing other similar actions and the plaintiff prevails in the action, the court may

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order a defendant to pay to the court the difference between the fee paid under paragraph E and the filing fee the court imposes for filing other similar actions.

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

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.'

SUMMARY

This amendment replaces the bill and adds an emergency preamble and emergency clause. The amendment establishes an expedited process for a court to declare that a lien or encumbrance is without a legal basis. The expedited process authorizes a public employee or public official to file a motion for a judicial declaration if the lien or encumbrance was filed by a person who knows the recordable instrument is without a legal basis or was filed or presented for filing with the intent that the instrument be used to harass or hinder the public employee or public official in the exercise of the employee's or official's duties.

The amendment also provides a civil penalty against a person who knowingly files, attempts to file or causes to be filed in a registry of deeds a lien or other encumbrance against the real or personal property of a public employee or a public official if that person knows the lien or encumbrance is without a legal basis or was filed or presented for filing with the intent that the instrument be used to harass or hinder the public employee or public official in the exercise of the employee's or official's duties.

FISCAL NOTE REQUIRED

(See attached)



126th MAINE LEGISLATURE

LD 206

LR 541(02)

An Act To Protect Title to Real and Personal Property of Public Employees

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-174)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil cases and violations.

The collection of additional filing fees and fines may also increase General Fund revenue by minor amounts.