

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES
AS PASSED BY THE
Ninety-first and Ninety-second
Legislatures
OF THE
STATE OF MAINE

From April 10, 1943 to April 21, 1945
AND MISCELLANEOUS STATE PAPERS
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PUBLIC LAWS
OF THE
STATE OF MAINE

As Passed by the Ninety-second Legislature

1945

Chapter 79

AN ACT Concerning Liens of Factors upon Merchandise or the Proceeds Thereof.

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

R. S., c. 167, §§ 3-A-3-H, additional. Chapter 167 of the revised statutes is hereby amended by adding thereto 8 new sections to be numbered 3-A to 3-H, inclusive, to read as follows:

'Sec. 3-A. Factors' liens. If so provided by any written agreement, all factors shall have a continuing general lien upon all materials, goods in process and merchandise from time to time consigned to or pledged with them, whether in their constructive, actual or exclusive occupancy or possession or not, and upon the proceeds resulting from the sale or other disposition of such materials, goods in process and merchandise, for all their loans and advances to or for the account of the person creating the lien, hereinafter called the borrower, together with interest thereon, and also for the commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower and for the amounts due or owing upon any notes or other obligations given to or received by them for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges and expenses, and such lien shall be valid from the time of filing the notice hereinafter referred to, whether such materials, goods in process or merchandise shall be in existence at the time of the agreement creating the lien or at the time of filing such notice or shall come into existence subsequently thereto or shall subsequently thereto be acquired by the borrower; provided that there shall be placed and maintained on the door of, or in a conspicuous place at one of the principal entrances of the place of business or other premises in or at which such materials, goods in process and merchandise shall be located, kept or stored, the name of the factor in legible lettering and a designation of said factor as factor; and provided, further, that a notice of the lien is filed stating:

I. The name and address of the factor, the name under which the factor does business, if an assumed name; the principal place of business of the factor within the state, or if he has no place of business within the state, his principal place of business outside of this state; and if the factor is a partnership or association, the name of the partners, and if a corporation, the state under whose laws it was organized.

II. The name of the borrower, and the interest of such person in the materials, goods in process and merchandise, as far as known to the factor.

III. The general character of materials, goods in process and merchandise subject to the lien, or which may become subject thereto, and the period of time during which such loans or advances may be made under the terms of the agreement providing for such loans or advances and for such lien. Amendments of the notice may be filed from time to time to record any changes in the information contained in the original, subsequent or amended notices.'

'Sec. 3-B. Recording. Such notice must be verified by the factor or his agent, to the effect that the statements therein contained are true to the best of his knowledge. It must be recorded in the same manner as to the place of recording, as is provided by law for the recording of chattel mortgages; and also if the factor has an office or principal place of business in the state, it shall be likewise recorded in the office of the town or city clerk where such principal office or place of business of the factor within the state is located. Such officers shall record every such notice presented to them for that purpose and shall endorse thereon the time of its receipt. Such officers at the time of recording such notice shall upon request issue to the person recording the same a receipt in writing setting forth the recording data. Such officers shall be entitled to receive for their services hereunder fees at the same rates as they are entitled to receive for the recording of chattel mortgages.'

'Sec. 3-C. Effect of recording. Such notice may be recorded at any time after the making of the agreement and shall be effectual from the time of the recording thereof as against all claims of unsecured creditors of the borrower and as against subsequent liens of creditors, except that if, pursuant to the laws of this state, a lien should subsequently attach to the materials, goods in process or merchandise in favor of a processor, dyer, mechanic or other artisan, then the lien of the factor on such materials, goods in process or merchandise shall be subject to such subsequent lien. When materials, goods in process or merchandise subject to the lien provided for by sections 3-A to 3-H, inclusive, are sold in the ordinary course of the business of the borrower, such lien, whether or not the purchaser has knowledge of the existence thereof, shall terminate as to the materials, goods in process or merchandise and shall attach to the proceeds of such sale in the hands of the borrower.'

'Sec. 3-D. Discharge. Upon the payment or satisfaction of indebtedness secured by any lien specified in sections 3-A to 3-H, inclusive, the factor or his legal representative, upon the request of any person interested in the said materials, goods in process and merchandise, must sign and acknowledge a certificate setting forth such payment or satisfaction.

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The officer or officers with whom the notice of lien is recorded must, on receipt of such certificate or a copy thereof certified as required by law, record the same in his office and write the word "Discharged" in the book where the notice of lien is entered, opposite the entry thereof, and the lien is thereby discharged. All notices of liens recorded pursuant to the provisions of sections 3-A to 3-H, inclusive, and not satisfied by filing a certificate setting forth payment or satisfaction thereof shall be deemed to be and remain in full force and effect under the provisions of sections 3-A to 3-H, inclusive, without further or other recording.'

'Sec. 3-E. Returned merchandise and allowances. Where accounts receivable, arising out of the sale of materials, goods in process or merchandise which has become subject to the lien provided for by sections 3-A to 3-H, inclusive, by compliance with the provisions of section 3-A hereof, are assigned to a factor, the right to or lien of the factor upon any balance remaining owing on such accounts receivable and his right to or lien upon any other accounts receivable assigned to him by the assignor shall not be invalidated by reason of the fact that the materials, goods in process or merchandise sold, or any part thereof, are returned to or recovered by the assignor from the person owing the account receivable and is thereafter dealt with by him as his own property or by reason of the fact that the assignor grants credits, allowances or adjustments to the person owing an account receivable, irrespective of whether the factor shall have consented to, or acquiesced in, such acts of the assignor.'

'Sec. 3-F. Common law lien. When any factor, or any third party for the account of any such factor, shall have possession of materials, goods in process or merchandise, such factor shall have a continuing general lien, as set forth in section 3-A, without recording the notice and posting the sign provided for in sections 3-A to 3-H, inclusive.'

'Sec. 3-G. Definitions. The terms "factor" and "factors", wherever used in sections 3-A to 3-H, inclusive, mean persons, firms, banks and corporations, and their successors in interest, who purchase or lend on the security of materials, goods in process or merchandise, whether or not they are employed to sell such materials, goods in process or merchandise. The term "merchandise" wherever used in sections 3-A to 3-H, inclusive, shall mean any and all goods, wares and materials, raw, wrought or in process.'

'Sec. 3-H. Construction. The provisions of sections 3-A to 3-H, inclusive, are to be construed liberally to secure the beneficial interest and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to

enforce the same. Nothing in sections 3-A to 3-H, inclusive, shall be construed as affecting or limiting any existing or future lien at common law or any rights at common law, or any right given by any other statute, and as to any transaction falling within the provisions both of sections 3-A to 3-H, inclusive, and of any other statute of this state requiring filing, recording, consent, publication, notices or formalities of execution, the factor shall not be required to comply with the provisions of any such other statute.'

Effective July 21, 1945

Chapter 80

AN ACT to Regulate Trust Investments.

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

R. S., c. 147, §§ 17-A-17-D, additional. Chapter 147 of the revised statutes is hereby amended by adding thereto 4 new sections to be numbered 17-A to 17-D to read as follows:

'Sec. 17-A. Fiduciary to exercise prudence. In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

Sec. 17-B. Exception. Nothing contained in the provisions of sections 17-A to 17-D, inclusive, shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument,