

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 6, 2006 to June 21, 2007**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 20, 2007**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2007**

(a) The solicitor's true first and last name; and

(b) The name, address and telephone number of the soliciting organization.

**3. Compliance with law.** This section does not relieve a person from complying with any other applicable law.

**4. Duties of division.** The division shall establish and maintain a do-not-call registry of telephone numbers of consumers who request not to be solicited by telephone. The national "do-not-call" registry established and maintained by the Federal Trade Commission, pursuant to the 16 Code of Federal Regulations, Section 310.4(b)(1)(iii)(B), may serve as the Maine do-not-call registry required by this subsection. The division may provide the telephone numbers of residents that are in the state registry to the Federal Trade Commission for inclusion in the national registry.

**5. Adoption of rules.** The division may adopt rules consistent with Title 5, section 207, subsection 2 to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**6. Telephone solicitation violations.** It is a violation of this section for a telephone solicitor to initiate a telephone sales call to a consumer if that consumer's telephone number has been on the national or state do-not-call registry, established by the Federal Trade Commission, for at least 3 months prior to the date the call is made.

**7. Telephone solicitation disclosure.** A telephone solicitor who makes a telephone sales call to a consumer must immediately disclose the following information upon making contact with that consumer:

A. The solicitor's real first and last name; and

B. The name of the business on whose behalf the telephone solicitor is soliciting.

**8. Directories exemption.** This section does not apply to a person obtaining consumer information for inclusion in a directory assistance database or a telephone directory sold by a telephone company.

**9. Exclusion of a telephone number.** A telephone solicitor or person who obtains consumer information that includes telephone numbers shall exclude the telephone numbers that appear on the most current federal or state do-not-call registry.

**10. Unfair trade practice violations.** A telephone solicitor who fails to comply with any provision of this section commits an unfair and deceptive act that is a violation of the Maine Unfair Trade Practices Act.

**11. Attorney General remedies.** In an action under this section, the Attorney General may obtain any or all of the following:

A. An injunction to enjoin future violations of this section;

B. A civil penalty of not more than:

(1) Ten thousand dollars for the first violation; and

(2) Twenty-five thousand dollars for each subsequent violation;

C. All money the defendant obtained through violation of this section;

D. The Attorney General's reasonable cost in:

(1) The investigation of the deceptive act; and

(2) Maintaining the action under this subsection; and

E. Reasonable attorney's fees.

**12. Voidable contracts.** In an action under this section, the court may void or limit the application of contracts or clauses resulting from a violation of this section and order restitution to be paid to an aggrieved consumer.

**13. Jurisdiction.** An action under this section may be brought in the District Court or Superior Court of the jurisdiction in which an aggrieved consumer resides or in Kennebec County.

**Sec. 3. 32 MRSA §14716, sub-§3,** as enacted by PL 2001, c. 324, §12, is repealed.

See title page for effective date.

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## CHAPTER 228

### H.P. 656 - L.D. 867

#### 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

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

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

**§90-E. Expedited review and determination of the authorization of financing statement records filed under the Uniform Commercial**

**Code; criminal penalties; civil penalties  
and injunctive relief**

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

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

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

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

- (1) An individual debtor; or
- (2) One of the types of persons listed in Title 11, section 9-1505, subsection 1.

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

E. "Financing statement record" means:

- (1) An initial financing statement;
- (2) An amendment that adds collateral covered by a financing statement; or
- (3) An amendment that adds a debtor to a financing statement.

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

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

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

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

**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.**

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

**PRAYER**

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

Respectfully submitted,

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

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

**AFFIDAVIT**

STATE OF MAINE

COUNTY OF .....

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

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

Further affiant sayeth not.

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

NOTARY PUBLIC, State of Maine

Notary's signature: .....

Notary's printed name: .....

My commission expires: .....

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

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

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

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

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

**MISC. DOCKET No. ....**In Re: A PurportedFinancing Statement      In the Kennebec County Su-  
perior CourtAgainst ..... In and For .....(Name of Movant) .....Kennebec County, State of Maine**Judicial Finding of Fact and Conclusion of Law Re-**  
**garding the Authorization of a Financing**  
**Statement Record Filed Under the Uniform**  
**Commercial Code**

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

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

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

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

This court makes no finding as to any underlying  
claims of the parties involved and expressly limits its  
finding of fact and conclusion of law to the review of  
whether authorization for the filing exists. Insofar as it  
affects movant, the filing officer shall remove the  
subject financing statement record from the index so  
that the record is not reflected in or obtained as a result

of any search, standard or otherwise, conducted of the  
records of the filing office under the movant's name  
upon the occurrence of both of the following:

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

B. The earlier of:

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

(ii) The decision becoming final following any  
appeal.

The filing office shall retain the subject financing  
statement record and this finding of fact and conclu-  
sion of law in the filing office for the duration of the  
period for which they would have otherwise been re-  
tained. This finding of fact and conclusion of law, but  
not the financing statement record, shall be indexed  
under the movant's name.

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

.....Justice, Maine Su-  
perior Court

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

**3. Criminal penalty.** A violation of this section  
is governed by Title 17-A, section 706-A.

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

A. A person may not knowingly cause to be pre-  
sented for filing in a filing office or promote the  
filing in a filing office of a financing statement  
record that the person knows:

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

(2) Was filed or presented for filing with the  
intent that the financing statement record be  
used to harass or hinder the natural person  
whose name was provided as an individual

debtor in the financing statement record without that person's authorization; or

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

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

(1) The greater of:

(a) \$10,000; and

(b) The actual damages caused by the violation;

(2) Court costs;

(3) Reasonable attorney's fees;

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

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

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

(1) The natural person whose name was provided as an individual debtor in the financing statement record filed without that person's authorization under Title 11, section 9-1509 or 9-1708 or any guardian, conservator, executor, administrator or other legal representative of that person, a person who owns an interest in the collateral described or indicated in the financing statement record or a person directly harmed by the filing of the financing statement record; and

(2) The Attorney General.

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

E. An action under this subsection may be brought in any court in Kennebec County or in a county where any of the persons named in the cause of action under this subsection resides.

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

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

H. If the fee imposed under paragraph F is less than the filing fee the court imposes for filing

other similar actions and the plaintiff prevails in the action, the court may order a defendant to pay to the court the difference between the fee paid under paragraph F and the filing fee the court imposes for filing other similar actions.

I. 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.

**Sec. 2. 17-A MRSA §706-A** is enacted to read:

**§706-A. Falsely filing a recordable instrument**

1. A person is guilty of falsely filing a recordable instrument if, with intent to defraud, harass or intimidate, the person files or causes to be filed a will, deed, mortgage, security instrument or other writing for which the law provides public recording, knowing or believing the writing to be false or without legal authority.

2. Falsely filing a recordable instrument is a Class D crime.

See title page for effective date.

**CHAPTER 229**

**H.P. 724 - L.D. 964**

**An Act To Establish a Special  
License Plate To Honor Maine  
Residents Serving Our  
Country**

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

**Whereas**, Maine residents serving in conflicts throughout the world need our support; and

**Whereas**, the need to support our troops and assist their families is urgent and important; 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. 5 MRSA §12004-I, sub-§84-A** is enacted to read: