

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2012 to July 10, 2013

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 9, 2013

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

Augusta, Maine
2013

(3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action; and

Sec. 13. 4 MRSA §1804, sub-§3, ¶K is enacted to read:

K. Pay appellate counsel.

Sec. 14. 15 MRSA §2115-A, sub-§8, as amended by PL 1979, c. 663, §110, is further amended to read:

8. Fees and costs. The Law Court shall allow ~~reasonable~~ counsel fees and costs for the defense of appeals under this section, to be paid by the Maine Commission on Indigent Legal Services under Title 4, section 1801. The compensation paid by the commission may not exceed the rates established by the commission for the payment of counsel providing indigent legal services.

Sec. 15. 15 MRSA §2115-A, sub-§9, as enacted by PL 1987, c. 461, is amended to read:

9. Appeals to Federal Court; fees and costs. The Law Court shall allow ~~reasonable attorneys attorney's~~ fees for court appointed counsel when the State appeals a judgment to any Federal Court or to the United States Supreme Court on certiorari. Any fees allowed pursuant to this subsection ~~shall~~ must be paid out of the accounts of the ~~Judicial Department~~ Maine Commission on Indigent Legal Services under Title 4, section 1801. The compensation paid by the commission may not exceed the rates established by the commission for the payment of counsel providing indigent legal services.

See title page for effective date.

CHAPTER 160

H.P. 167 - L.D. 206

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

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.

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

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

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

2. Expedited process for a court to review the filing of recordable instruments. This subsection governs the procedure by which a public employee or public official may dispute the filing of a recordable instrument at a registry of deeds.

A. A public employee or public official who asserts that a recordable instrument was filed against property of the public employee or public official 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 may file, at any time, a motion for a judicial declaration that the recordable instrument is without a legal basis. The motion may be filed in the Superior Court in the county where the public employee or public official resides. The motion must be supported by a signed and notarized affidavit of the moving party setting forth a concise statement of the facts upon which the claim for relief is based.

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

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

D. The court shall enter judgment in favor of the moving party 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.

E. After review, the court shall enter an appropriate finding of fact and conclusion of law, an attested copy of which must be filed and indexed under the moving party's name in the registry of deeds where the original recordable instrument was filed. 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. A secured party or creditor 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 the Maine Rules of Appellate Procedure, the secured party or creditor shall give notice of the appeal to the registry of deeds where the original recordable instrument was filed.

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

3. 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 file, attempt to file or cause to be filed in a registry of deeds a recordable instrument against the real or personal property of a public employee or a public official that the person knows:

- (1) Is without a legal basis; or
- (2) 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.

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

- (1) The greater of:
 - (a) Ten thousand dollars; and
 - (b) Damages equal to the amount of the recordable instrument that was filed or attempted to be filed;
- (2) Court costs;
- (3) Reasonable attorney's fees;
- (4) Related expenses of bringing the action, including investigative expenses; and
- (5) Punitive damages in an 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 public employee or public official; and
- (2) The Attorney General.

D. 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 reside.

E. 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.

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

G. If the fee imposed under paragraph E 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 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.

Effective May 29, 2013.