

CHAPTER 5
SECRETARY OF STATE
SUBCHAPTER 1
GENERAL PROVISIONS

§81. Office and duties; vacancy; salary; expenses; fees

The Department of the Secretary of State, as heretofore established, shall consist of the Secretary of State, the State Archives and such other state departments and agencies as are by law subject to the direction of the Secretary of State. The secretary shall keep his office at the seat of government; have the custody of the state seal and preserve all records in such office, at the expense of the State. The Secretary of State may appoint deputy secretaries of state who shall serve at the pleasure of the Secretary of State. The secretary shall designate one of his deputies as first deputy secretary of state. When a vacancy happens in the office of Secretary of State during the recess of the Legislature, the first deputy secretary of state shall act as Secretary of State until a Secretary of State is elected by the Legislature. Such deputy shall take the oath required of the elected Secretary of State and have the same compensation while he performs the duties of the office. [PL 1977, c. 674, §1 (AMD).]

The Secretary of State and his deputy shall receive such actual traveling expenses incident to the administration of his department as shall be necessary. [PL 1969, c. 504, §4 (AMD).]

The Secretary of State shall collect the legal and usual fees payable to him by virtue of his office and shall pay them over forthwith to the Treasurer of State.

SECTION HISTORY

PL 1965, c. 421, §1 (AMD). PL 1967, c. 383 (AMD). PL 1967, c. 476, §7 (AMD). PL 1969, c. 504, §4 (AMD). PL 1971, c. 494, §§1,3 (AMD). PL 1973, c. 537, §1 (AMD). PL 1975, c. 771, §31 (AMD). PL 1977, c. 674, §1 (AMD).

§81-A. Transition period

In order to provide for an orderly transition following the biennial election of the Secretary of State, the Secretary of State-elect shall not take the oath of his office or otherwise qualify for the office for a period of no less than 30 days following that election. [PL 1983, c. 65, §1 (NEW).]

SECTION HISTORY

PL 1983, c. 65, §1 (NEW).

§82. Appointment of notaries public; term of appointment; additional requirements for resident of adjoining state; term renewal of commissions

1. Appointment and renewal. The Secretary of State may appoint and renew a commission of a notary public who:

- A. Is 18 years of age or older at the time of appointment; [PL 2007, c. 285, §1 (NEW).]
- B. Is a resident of this State at the time of appointment or is a resident of an adjacent state, is regularly employed or carries on a trade or business in this State at the time of appointment and submits an affidavit as described in subsection 2; [PL 2007, c. 285, §1 (NEW).]
- C. Demonstrates proficiency in the English language at the time of appointment; [PL 2007, c. 285, §1 (NEW).]

D. Has not had a notary commission revoked or suspended for official misconduct in this State or any other jurisdiction during the 5-year period preceding the date of application; [PL 2007, c. 285, §1 (NEW).]

E. Has not been convicted of a crime punishable by imprisonment for one year or more, or of a lesser offense incompatible with the duties of a notary public as defined by rule by the Secretary of State during the 10-year period preceding the date of application for a new or renewed commission; and [PL 2007, c. 285, §1 (NEW).]

F. Has satisfactorily completed a written examination prescribed by the Secretary of State to determine the fitness of the person to exercise the functions of the office of notary public. [PL 2007, c. 285, §1 (NEW).]

[PL 2007, c. 285, §1 (NEW).]

2. Affidavit. An applicant for appointment as a notary public who resides in an adjoining state must submit to the Secretary of State with the application an affidavit as follows:

A. If the applicant is not self-employed, an affidavit from the applicant's employer stating that:

- (1) The employer is licensed, authorized or registered to do business in this State; and
- (2) The employer regularly employs the applicant at an office, business or facility that is located in this State; or [PL 2007, c. 285, §1 (NEW).]

B. If the applicant is self-employed, an affidavit from the applicant stating that:

- (1) The applicant is licensed, authorized or registered to do business in this State; and
- (2) The applicant has an office, business or facility that is located in this State. [PL 2007, c. 285, §1 (NEW).]

The affidavit required by this subsection must be in a form and format as defined by rule by the Secretary of State.

[PL 2007, c. 285, §1 (NEW).]

3. Written examination. The Secretary of State shall:

A. Make the written examination required by subsection 1 a part of the application for a new commission or the renewal of a commission; and [PL 2007, c. 285, §1 (NEW).]

B. Furnish study materials relating to the written examination to an applicant without charge upon request of the applicant. [PL 2007, c. 285, §1 (NEW).]

[PL 2007, c. 285, §1 (NEW).]

3-A. Oath. A newly appointed notary public shall take and subscribe the following oath or affirmation before a dedimus justice:

"I, (name), do swear that I will support the Constitution of the United States and of this State, so help me God."

"I, (name), do swear that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as a Notary Public according to the Constitution of Maine and laws of this State, so help me God."

When a person is conscientiously scrupulous of taking an oath, the word "affirm" may be substituted for the word "swear" and the words "this I do under penalty of perjury" may be substituted for the words "so help me God."

[PL 2009, c. 74, §3 (NEW).]

4. Term. A person appointed as a notary public serves the following term of office:

A. For a resident of this State, a term of 7 years; or [PL 2007, c. 285, §1 (NEW).]

B. For a resident of an adjacent state, a term of 4 years. [PL 2007, c. 285, §1 (NEW).]
[PL 2007, c. 285, §1 (NEW).]

5. Power extends to all counties. A person appointed as a notary public may exercise that person's power and duties in any and all counties in this State.
[PL 2007, c. 285, §1 (NEW).]

6. Rules. The Secretary of State shall adopt rules relating to the appointment and renewal of commissions of notaries public. The rules must include criteria and a procedure to be applied by the Secretary of State in appointment and renewal. The Secretary of State may not refuse to appoint or renew solely because the applicant lives or works in a specific geographic area or because of political party affiliation. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.
[PL 2007, c. 285, §1 (NEW).]

7. Notice of expiration of commission. The Secretary of State shall provide notice of the expiration of a commission to a notary public 30 days prior to the expiration date. The notice must be in a form or format as determined by rule by the Secretary of State. Failure to receive a notice does not affect the expiration date of a commission.
[PL 2007, c. 285, §1 (NEW).]

8. Investigation of complaints.
[PL 2009, c. 74, §4 (RP).]

SECTION HISTORY

PL 1975, c. 87, §2 (RPR). PL 1975, c. 771, §§31-A (RPR). PL 1979, c. 541, §A19 (AMD). PL 1981, c. 456, §A15 (RPR). PL 1987, c. 736, §5 (AMD). PL 1991, c. 465, §§6,7 (AMD). PL 1997, c. 712, §3 (AMD). PL 2007, c. 285, §1 (RPR). PL 2009, c. 74, §§3, 4 (AMD).

§82-A. Publications

1. Informational publications. The Secretary of State shall make available such informational publications as may be necessary to ensure that notaries public are knowledgeable in the performance of their duties. One copy of these publications must be made available with each appointment or renewal of a notary public commission. The printing and distribution costs of the first copy of publications sent to commissioned notaries public must be paid from the fees paid by the notaries public pursuant to section 87. The Secretary of State may establish by rule in accordance with the Maine Administrative Procedure Act the procedures for the sale of these publications and a fee schedule to cover the cost of printing and distribution for:

A. Additional copies of publications requested by commissioned notaries public; and [PL 1991, c. 465, §8 (NEW).]

B. Copies of publications requested by noncommissioned individuals, corporations, agencies or other entities. [PL 1991, c. 465, §8 (NEW).]

[PL 1991, c. 465, §8 (NEW).]

2. Fund; fees deposited. All fees collected pursuant to this section must be deposited in a fund for use by the Secretary of State for replacing and updating publications offered in accordance with this chapter and for funding new publications.
[PL 1991, c. 465, §8 (NEW).]

SECTION HISTORY

PL 1991, c. 465, §8 (NEW).

§82-B. Notary Public Review Board (REPEALED)

SECTION HISTORY

PL 2007, c. 285, §2 (NEW). PL 2009, c. 74, §§5-7 (AMD). PL 2011, c. 344, §1 (RP).

§83. Clerks of courts to keep lists of appointments; lists and certificates as evidence

The clerks of the state courts shall make a memorandum on such lists of the fact and date of their reception, and either of such lists so attested, or the certificate of such clerk under the seal of his court, shall be legal but not conclusive evidence of the appointment and qualification of such officers. [PL 1979, c. 13, §7 (AMD).]

SECTION HISTORY

PL 1979, c. 13, §7 (AMD).

§84. Preparation of commissions and recording qualifications

The Secretary of State shall prepare and present to the Governor under the seal of the State, in order that the same may receive the signature of the Governor, a commission for every person appointed or a certificate of election to every person elected to any office for which a commission or certificate of election is required; record in a suitable manner the time when and the person by whom any commission or certificate of election is taken from that person's office, and the time when any certificate of the qualification of any officer is filed therein. When a duty must be paid as a prerequisite of holding the office, the Secretary of State shall notify every person appointed to such office of the fact and on receipt of evidence of its payment shall then, and no sooner, present the commission or certificate to the Governor. When the commission or certificate shall have been signed by the Governor, the Secretary of State shall deliver or forward the same to the person so appointed or elected. All bills passed by the Legislature shall be filed with the Secretary of State for the purpose of issuing certified copies thereof. [PL 1987, c. 816, Pt. KK, §7 (RPR).]

SECTION HISTORY

PL 1975, c. 771, §32 (AMD). PL 1979, c. 596, §1 (AMD). PL 1987, c. 816, §KK7 (RPR).

§85. Distribute blanks for election returns; penalty for neglect

(REPEALED)

SECTION HISTORY

PL 1969, c. 35, §9 (RP).

§86. Fees

The Secretary of State shall receive: [RR 2001, c. 2, Pt. B, §2 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

For a certificate under the seal of the State, \$5 for a short form and \$10 for a special detailed certificate. For all copies of corporate, limited partnership and mark documents, the rate of \$2 per page; and for all other copies, the rate of 75¢ per page if such copies are prepared by the office of the Secretary of State. The Secretary of State may reduce or waive the fee for other governmental agencies and bodies; [PL 1995, c. 373, §1 (AMD).]

For receiving, filing and recording certificate of organization of officers of a proposed insurance company, and issuing certificates of organization, \$20; for receiving and filing certificate of increase of capital stock of an insurance company, \$10; [RR 2001, c. 2, Pt. B, §2 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

For receiving, filing and recording certificate of officers of a proposed fraternal benefit society and issuing certificate of organization, \$5; [RR 2001, c. 2, Pt. B, §2 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

For filing certificate of organization of a cooperative marketing association, \$10; for filing an amendment thereto, \$2.50; [RR 2001, c. 2, Pt. B, §2 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

For filing, copying, comparing or authenticating any document required or permitted to be filed under Title 13-C, that fee specified in Title 13-C, chapter 1, subchapter 2; [RR 2001, c. 2, Pt. B, §2 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

For filing, copying, comparing or authenticating any document required or permitted to be filed under Title 13-B, that fee specified in Title 13-B, chapter 14; and [RR 2001, c. 2, Pt. B, §2 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

For filing a federal tax lien or other federal liens, certificates or notices affecting the liens of which under any Act of Congress or any federal regulation are required or permitted to be filed under Title 33, chapter 39, that fee specified in Title 33, section 1906. [PL 2003, c. 518, §1 (AMD).]

For filing and recording a designated office for service of trustee process under Title 14, section 2608-A, \$25. [PL 2003, c. 149, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §2 (AMD). PL 1969, c. 225, §1 (AMD). PL 1969, c. 517, §§1,2 (AMD). PL 1971, c. 439, §§5,6 (AMD). PL 1973, c. 730, §1 (AMD). PL 1977, c. 525, §1 (AMD). PL 1979, c. 572, §1 (AMD). PL 1987, c. 645, §1 (AMD). PL 1989, c. 501, §L2 (AMD). PL 1991, c. 780, §U1 (AMD). PL 1993, c. 316, §1 (AMD). PL 1995, c. 373, §1 (AMD). RR 2001, c. 2, §B2 (COR). RR 2001, c. 2, §B58 (AFF). PL 2003, c. 149, §1 (AMD). PL 2003, c. 518, §1 (AMD).

§87. Fees payable by public officers

A fee of \$50 must be paid to the Secretary of State by a person appointed to the office of notary public, commissioner to take depositions and disclosures, disclosure commissioner or commissioner appointed under Title 33, section 251, before the person enters upon the discharge of official duties. [PL 2005, c. 12, Pt. FF, §1 (AMD).]

SECTION HISTORY

PL 1969, c. 225, §2 (AMD). PL 1981, c. 456, §A16 (AMD). PL 1989, c. 501, §L3 (AMD). PL 2005, c. 12, §FF1 (AMD).

§88. Facsimile signature of Secretary of State

A facsimile of the signature of the Secretary of State imprinted by or at his direction upon any renewal of commissions by him under authority of section 82, or upon any certificate of true copy, certificate of any record of the Secretary of State, or certificate of good standing, or upon any attestation required of him by law, shall have the same validity as his written signature. [PL 1975, c. 273 (NEW).]

SECTION HISTORY

PL 1975, c. 273 (NEW).

§88-A. State identification cards; information; fee (REPEALED)

SECTION HISTORY

PL 1987, c. 45, §A1 (NEW). PL 1987, c. 342, §1 (AMD). PL 1991, c. 249 (AMD). PL 1991, c. 595, §§1,2 (AMD). PL 1991, c. 824, §B3 (AMD). PL 1993, c. 658, §1 (AMD). PL 1995, c. 65, §A7 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 645, §§B1,2 (AMD). PL 1995, c. 645, §B24 (AFF). PL 1997, c. 437, §1 (RP).

§89. Cooperative document production capability

1. Purpose. State motor vehicle operators' licenses and identification documents have an increasingly important role in our society. They serve not only to identify persons who have received permission to undertake a specific regulated activity, but also serve as identification in numerous public and private transactions.

It is becoming vitally important to insure that state motor vehicle operators' licenses be issued in a form that clearly identifies them as official state documents, that they positively and easily identify the holder and that they are extremely difficult to counterfeit or alter.

[PL 1981, c. 506, §1 (NEW).]

2. Form. An official state motor vehicle operator's license or identification card issued under this section shall be a one-piece document and shall:

A. Clearly indicate its nature as an official state document; [PL 1981, c. 506, §1 (NEW).]

B. Contain a photograph of the person to whom issued; [PL 1981, c. 506, §1 (NEW).]

C. Be manufactured in a manner to prohibit, as nearly as possible, the ability to reproduce, alter or counterfeit the document without ready detection; [PL 1981, c. 506, §1 (NEW).]

D. Contain other information required or appropriate for that license or identification card; and [PL 1981, c. 506, §1 (NEW).]

E. Provide that any license issued to persons under 21 years of age shall be distinguished by a different color or other means to make the distinction easily observable. [PL 1985, c. 539, §1 (AMD).]

[PL 1985, c. 539, §1 (AMD).]

SECTION HISTORY

PL 1981, c. 506, §1 (NEW). PL 1983, c. 480, §A2 (AMD). PL 1985, c. 539, §1 (AMD).

§90. Central filing system for security interests in farm products

(REPEALED)

SECTION HISTORY

PL 1985, c. 824, §1 (NEW). MRSA T. 5 §90 (RP).

§90-A. Central filing system for security interests in farm products

The Secretary of State may establish and operate a central filing system to record and provide notice of financing statements evidencing security interests in farm products. For this purpose, the Secretary of State may adopt rules, in accordance with the Maine Administrative Procedure Act, chapter 375, subchapter II, establish procedures and adopt a schedule of fees in conjunction with filing, registering, providing notices and other services performed by the Secretary of State in carrying out this section. [PL 1987, c. 27, §1 (NEW).]

Receipt of notice by a registered buyer entitled to receive a master list of notices of filed effective financing statements shall be considered to occur on the date that a master list was sent or delivered by the Secretary of State. [PL 1987, c. 27, §1 (NEW).]

SECTION HISTORY

PL 1987, c. 27, §1 (NEW).

§90-B. Address Confidentiality Program

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

A. "Address" means a residential street, school or work address of an individual, including any geographically specific description or coordinate that identifies a residential address, as specified on the individual's application to be a program participant under this section. [PL 2011, c. 195, §1 (AMD).]

B. "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking and who has been designated by the respective agency, and trained, accepted and registered by the secretary to assist individuals in the completion of program participation applications. [PL 2001, c. 539, §1 (NEW).]

C. "Designated address" means the address assigned to a program participant by the secretary pursuant to this section. [PL 2001, c. 539, §1 (NEW).]

D. "Mailing address" means an address that is recognized for delivery by the United States Postal Service. [PL 2001, c. 539, §1 (NEW).]

E. "Program" means the Address Confidentiality Program established in this section. [PL 2001, c. 539, §1 (NEW).]

F. "Program participant" means a person certified by the Secretary of State to participate in the program. [PL 2001, c. 539, §1 (NEW).]

G. "Secretary" means the Secretary of State. [PL 2001, c. 539, §1 (NEW).]
[PL 2011, c. 195, §1 (AMD).]

2. Program established. The Address Confidentiality Program is established to protect victims of domestic violence, stalking or sexual assault by authorizing the use of designated addresses for such victims. The program is administered by the secretary under the following application and certification procedures.

A. Upon recommendation of an application assistant, an adult person, a parent or guardian acting on behalf of a minor or a guardian acting on behalf of an incapacitated person may apply to the secretary to have a designated address assigned by the secretary to serve as the person's address or the address of the minor or incapacitated person. [PL 2001, c. 539, §1 (NEW).]

B. The secretary may approve an application only if it is filed with the office of the secretary in the manner established by rule and on a form prescribed by the secretary. A completed application must contain:

(1) The application preparation date, the applicant's signature and the signature and registration number of the application assistant who assisted the applicant in applying to be a program participant;

(2) A designation of the secretary as agent for purposes of service of process and for receipt of first-class mail;

(3) The mailing address where the applicant may be contacted by the secretary or a designee and the telephone number or numbers where the applicant may be called by the secretary or the secretary's designee; and

(4) One or more addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household. [PL 2001, c. 539, §1 (NEW).]

C. Upon receipt of a properly completed application, the secretary may certify the applicant as a program participant. A program participant is certified for 4 years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The secretary shall send notification of lapsing certification and a reapplication form to a program participant at

least 4 weeks prior to the expiration of the program participant's certification. [PL 2001, c. 539, §1 (NEW).]

D. The secretary shall forward first-class mail to the appropriate program participants. [PL 2001, c. 539, §1 (NEW).]

E. A person who violates this paragraph commits a Class E crime.

(1) An applicant may not file an application knowing that it:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made. [RR 2001, c. 2, Pt. A, §4 (COR).]

[RR 2001, c. 2, Pt. A, §4 (COR).]

3. Cancellation. Certification for the program may be canceled if one or more of the following conditions apply:

A. If the program participant obtains a name change, unless the program participant provides the secretary with documentation of a legal name change within 10 business days of the name change; [PL 2001, c. 539, §1 (NEW).]

B. If there is a change in the residential street address from the one listed on the application, unless the program participant provides the secretary with notice of the change in such manner as the secretary provides by rule; or [PL 2001, c. 539, §1 (NEW).]

C. The applicant or program participant violates subsection 2, paragraph E, subparagraph (1). [PL 2001, c. 539, §1 (NEW).]
[PL 2001, c. 539, §1 (NEW).]

4. Use of designated address. Upon demonstration of a program participant's certification in the program, state and local government agencies and the courts shall accept and use only the designated address as a program participant's address unless the secretary has approved an exemption pursuant to subsection 5-A.

A. [PL 2015, c. 313, §1 (RP).]

B. [PL 2015, c. 313, §1 (RP).]

[PL 2015, c. 313, §1 (AMD).]

5. Disclosure to law enforcement and state agencies.

[PL 2015, c. 313, §2 (RP).]

5-A. Disclosure to law enforcement and to other state and local agencies. If the secretary determines it appropriate, the secretary may make a program participant's address or mailing address available for use by granting an exemption under the following circumstances:

A. Upon request to the secretary by:

(1) A law enforcement agency in the manner provided for by rule; or

(2) A commissioner or other chief administrator of a state or local government agency or the commissioner's or administrator's designee in the manner provided for by rule; and [PL 2015, c. 313, §3 (NEW).]

B. Upon a finding by the secretary that:

(1) An agency under paragraph A has a bona fide statutory, administrative or law enforcement requirement for use of the program participant's address or mailing address such that the agency is unable to fulfill its statutory duties and obligations without the address or mailing address; and

(2) The program participant's address or mailing address will be used only for those statutory, administrative or law enforcement purposes and otherwise will be kept under seal and excluded from public inspection. [PL 2015, c. 313, §3 (NEW).]

[PL 2015, c. 313, §3 (NEW).]

6. Disclosure pursuant to court order or canceled certification. If the secretary determines appropriate, the secretary shall allow a program participant's address and mailing address to be made available for use under the following circumstances:

A. To a person identified in a court order, upon the secretary's receipt of that court order that specifically orders the disclosure of a particular program participant's address and mailing address and the reasons stated for the disclosure; or [PL 2001, c. 539, §1 (NEW).]

B. If the certification has been canceled because the applicant or program participant violated subsection 2, paragraph E, subparagraph (1). [PL 2001, c. 539, §1 (NEW).]

[PL 2013, c. 478, §1 (AMD).]

7. Confidentiality. The program participant's application, supporting materials and the program's state e-mail account are not a public record and must be kept confidential by the secretary.

[PL 2011, c. 195, §2 (AMD).]

8. Rules. The secretary shall adopt rules to carry out this section. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 2001, c. 539, §1 (NEW).]

SECTION HISTORY

RR 2001, c. 2, §A4 (COR). PL 2001, c. 539, §1 (NEW). PL 2011, c. 195, §§1, 2 (AMD). PL 2013, c. 478, §1 (AMD). PL 2015, c. 313, §§1-3 (AMD).

§90-C. Voluntary filing system for designation of office for trustee process

The Secretary of State shall establish and operate a central filing system to record and provide notice of offices designated by financial institutions authorized to do business in this State and credit unions authorized to do business in this State for service of trustee process under Title 14, section 2608-A, subsection 1. For this purpose, the Secretary of State may adopt rules, establish procedures and adopt a schedule of fees in conjunction with filing, registering, providing notices and other services performed by the Secretary of State in carrying out this section. Rules adopted pursuant to this paragraph are routine technical rules as defined in chapter 375, subchapter 2-A. [PL 2003, c. 149, §2 (NEW).]

SECTION HISTORY

PL 2003, c. 149, §2 (NEW).

§90-D. Public Comment Publication Fund

The Public Comment Publication Fund, referred to in this section as "the fund," is established as a nonlapsing fund within the Department of the Secretary of State. The fund consists of fees for public

comment on constitutional resolutions and statewide referenda received by the Secretary of State pursuant to Title 1, section 354. The money in the fund must be used for the purpose of publishing the informational pamphlet that includes the public comment, explanatory statement and fiscal estimate pursuant to Title 1, section 354. The unobligated and unencumbered balance of the fund in excess of \$5,000 as of December 1st of each year must be transferred to the General Fund. [PL 2005, c. 316, §3 (NEW).]

SECTION HISTORY

PL 2005, c. 316, §3 (NEW).

§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. [PL 2007, c. 228, §1 (NEW).]

B. "Court" means the Kennebec County Superior Court. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

F. "Movant" means the person filing the motion. [PL 2007, c. 228, §1 (NEW).]
[PL 2007, c. 228, §1 (NEW).]

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) [PL 2007, c. 228, §1 (NEW).]

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, deposed 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: [PL 2007, c. 228, §1 (NEW).]

C. The clerk of the court may not collect a filing fee for filing a motion as provided in this subsection. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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

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

Judicial Finding of Fact and Conclusion of Law Regarding 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 documentation attached thereto, and the pleadings, depositions, admissions and affidavits submitted by the secured 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 address 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 provided 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 under 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, therefore, 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 conclusion of law in the filing office for the duration of the period for which they would have otherwise been retained. 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 THEDAY OF.....

.....Justice, Maine Superior Court [PL 2007, c. 228, §1 (NEW).]

H. This subsection is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document. [PL 2007, c. 228, §1 (NEW).]
[PL 2007, c. 228, §1 (NEW).]

3. Criminal penalty. A violation of this section is governed by Title 17-A, section 706-A.
[PL 2007, c. 228, §1 (NEW).]

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 presented 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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 1, §1 (COR).]

D. A filing officer may refer a matter to the Attorney General for filing the legal actions under this subsection. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

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. [PL 2007, c. 228, §1 (NEW).]

[RR 2007, c. 1, §1 (COR).]

SECTION HISTORY

RR 2007, c. 1, §1 (COR). PL 2007, c. 228, §1 (NEW).

§90-F. Refusal of records for filing or recording; removal of filed or recorded records

1. Refusal. Notwithstanding any other provision of law, if a person presents a record to the Secretary of State for filing or recording, the Secretary of State may refuse to accept the record for filing or recording if the record is not required or authorized to be filed or recorded with the Secretary of State or the Secretary of State has reasonable cause to believe the record is materially false or fraudulent. This subsection does not create a duty upon the Secretary of State to inspect, evaluate or investigate a record that is presented for filing or recording.

[PL 2015, c. 180, §1 (NEW).]

2. Removal. The Secretary of State may remove a record that has been filed or recorded with the Secretary of State if the Secretary of State determines that the record was filed or recorded erroneously because the record was not required or authorized to be filed or recorded with the Secretary of State or the Secretary of State has reasonable cause to believe that the record is materially false or fraudulent. If the Secretary of State removes a record that was filed or recorded, the Secretary of State shall immediately notify the person who presented the record for filing or recording.

[PL 2015, c. 180, §1 (NEW).]

3. Action after refusal or removal. If the Secretary of State, pursuant to subsection 1, refuses to accept a record for filing or recording, the person who presented the record to the Secretary of State may commence an action in or apply for an order from the Superior Court to require the Secretary of State to accept the record for filing or recording. If the Secretary of State, pursuant to subsection 2, removes a record that was filed or recorded, the person who presented the record to the Secretary of State may commence an action in or apply for an order from the Superior Court to require the Secretary of State to reinstate the filing or recording from the original date of filing or recording. If the court determines that the record is appropriate for filing or recording, it shall order the Secretary of State to accept the record for that purpose or require the Secretary of State to reinstate the record from the original date of filing or recording.

[PL 2015, c. 180, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 180, §1 (NEW).

SUBCHAPTER 2

SPECIAL ADVOCATE

§90-N. Bureau established

The Bureau of the Special Advocate, referred to in this subchapter as "the bureau," is established within the Department of the Secretary of State to assist in resolving regulatory enforcement actions affecting small businesses that, if taken, are likely to result in significant economic hardship and to advocate for small business interests in other regulatory matters. [PL 2011, c. 304, Pt. D, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. D, §2 (NEW).

§90-O. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2011, c. 304, Pt. D, §2 (NEW).]

1. Agency. "Agency" has the same meaning as set out in section 8002, subsection 2. [PL 2011, c. 304, Pt. D, §2 (NEW).]

2. Agency enforcement action. "Agency enforcement action" means an enforcement action initiated by an agency against a small business. [PL 2011, c. 304, Pt. D, §2 (NEW).]

3. Complaint. "Complaint" means a request to the special advocate for assistance under section 90-Q. [PL 2011, c. 304, Pt. D, §2 (NEW).]

4. Regulatory impact notice. "Regulatory impact notice" means a written notice from the Secretary of State to the Governor as provided in section 90-S. [PL 2011, c. 304, Pt. D, §2 (NEW).]

5. Significant economic hardship. "Significant economic hardship" means a hardship created for a small business by a monetary penalty or license suspension or revocation imposed by an agency enforcement action that appears likely to result in the:

A. Temporary or permanent closure of the small business; or [PL 2011, c. 304, Pt. D, §2 (NEW).]

B. Termination of employees of the small business. [PL 2011, c. 304, Pt. D, §2 (NEW).]

6. Small business. "Small business" means a business having 50 or fewer employees in the State. [PL 2011, c. 304, Pt. D, §2 (NEW).]

7. Special advocate. "Special advocate" means the person appointed pursuant to section 90-P. [PL 2011, c. 304, Pt. D, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. D, §2 (NEW).

§90-P. Special advocate; appointment and qualifications

The Secretary of State shall appoint a special advocate to carry out the purposes of this subchapter. The special advocate shall serve at the pleasure of the Secretary of State. [PL 2011, c. 304, Pt. D, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. D, §2 (NEW).

§90-Q. Small business requests for assistance

A small business may file a complaint requesting the assistance of the special advocate in any agency enforcement action initiated against that small business. The special advocate may provide assistance to the small business in accordance with section 90-R, subsection 2. The special advocate shall encourage small businesses to request the assistance of the special advocate as early in the regulatory proceeding as possible. Before providing any assistance, the special advocate shall provide a written disclaimer to the small business stating that the special advocate is not acting as an attorney representing the small business, that no attorney-client relationship is established and that no attorney-client privilege can be asserted by the small business as a result of the assistance provided by the special advocate under this subchapter. [PL 2011, c. 304, Pt. D, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. D, §2 (NEW).

§90-R. Powers and duties of the special advocate

1. General advocacy. The special advocate may advocate generally on behalf of small business interests by commenting on rules proposed under chapter 375, testifying on legislation affecting the interests of small businesses, consulting with agencies having enforcement authority over business matters and promoting the services provided by the special advocate.

[PL 2011, c. 304, Pt. D, §2 (NEW).]

2. Advocate on behalf of an aggrieved small business. Upon receipt of a complaint requesting assistance under section 90-Q, the special advocate may:

A. Consult with the small business that filed the complaint and with the staff in the agency that initiated the agency enforcement action to determine the facts of the case; [PL 2011, c. 304, Pt. D, §2 (NEW).]

B. After reviewing the complaint and discussing the complaint with the small business and the agency that initiated the agency enforcement action, determine whether, in the opinion of the special advocate, the complaint arises from an agency enforcement action that is likely to result in a significant economic hardship to the small business; [PL 2011, c. 304, Pt. D, §2 (NEW).]

C. If the special advocate determines that an agency enforcement action is likely to result in a significant economic hardship to the small business, seek to resolve the complaint through consultation with the agency that initiated the agency enforcement action and the small business and participation in related regulatory proceedings in a manner allowed by applicable laws; and [PL 2011, c. 304, Pt. D, §2 (NEW).]

D. If the special advocate determines that an agency enforcement action applies statutes or rules in a manner that is likely to result in a significant economic hardship to the small business, when an alternative means of effective enforcement is possible, recommend to the Secretary of State that the secretary issue a regulatory impact notice to the Governor. [PL 2011, c. 304, Pt. D, §2 (NEW).]

[PL 2011, c. 304, Pt. D, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. D, §2 (NEW).

§90-S. Regulatory impact notice

At the recommendation of the special advocate, the Secretary of State may issue a regulatory impact notice to the Governor informing the Governor that an agency has initiated an agency enforcement action that is likely to result in significant economic hardship to a small business, when an alternative means of enforcement was possible, and asking that the Governor take action, as appropriate and in a manner consistent with all applicable laws, to address the small business issues raised by that agency enforcement action. The regulatory impact notice may include, but is not limited to, a description of the role of the special advocate in attempting to resolve the issue with the agency, a description of how the agency enforcement action will affect the interests of the small business and a description of how an alternative enforcement action, when permitted by law, would relieve the small business of the significant economic hardship expected to result from the agency enforcement action. The Secretary of State shall provide a copy of the regulatory impact notice to the agency that initiated the agency enforcement action, the small business that made the complaint and the joint standing committee of the Legislature having jurisdiction over the agency. [PL 2011, c. 304, Pt. D, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 304, Pt. D, §2 (NEW).

§90-T. Regulatory Fairness Board

(REPEALED)

SECTION HISTORY

PL 2011, c. 304, Pt. D, §2 (NEW). PL 2021, c. 36, §2 (RP).

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