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AB-1267 Lawsuits, liens, and other encumbrances. (2015-2016)

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Assembly Bill No. 1267

CHAPTER 208

An act to amend Sections 765.030, 765.040, and 765.060 of, to repeal and add Section 765.010 of, the Code of Civil Procedure, and to repeal Section 6223 of the Government Code, relating to lawsuits, liens, and other encumbrances.

[Approved by Governor August 13, 2015. Filed with Secretary of State August 13, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1267, Bloom. Lawsuits, liens, and other encumbrances.

Existing law prohibits a person from filing or recording a lawsuit, lien, or other encumbrance, pertaining to actions arising in the course and scope of the duties of a public officer or employee, against a public officer or employee, knowing that it is false, with the intent to harass the public officer or employee or to influence or hinder the public officer or employee in discharging his or her official duties. Existing law also provides that a person who records or files a lawsuit, lien, or encumbrance against a public officer or employee in violation of this prohibition, as specified, is liable for a civil penalty not to exceed \$5,000. Existing law requires a court to issue an order striking and releasing a lien or other encumbrance against a public officer or official in violation of this prohibition, and it allows a court to award costs and reasonable attorney's fees in that instance.

Existing law permits a public officer or employee whose property is subject to a lien or other encumbrance in violation of this prohibition to petition the superior court of the county in which the person resides or in which the property is located for an order directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief should not be granted.

This bill would repeal and recast these provisions and instead prohibit a person from filing or recording, or directing another to file or record, a lawsuit, lien, or other encumbrance against any person or entity, knowing that it is false, with the intent to harass the person or entity or to influence or hinder the person in discharging his or her official duties if the person is a public officer or employee. The bill would also provide that a person who files a lawsuit, lien, or other encumbrance against any person or entity in violation of this prohibition is liable for a civil penalty not to exceed \$5,000.

This bill would allow any person or entity subject to a lien or other encumbrance in violation of its prohibitions to petition the superior court of the county in which the person or entity resides or in which the property is located for an order directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief should not be granted. The bill would expand the requirement for a court to issue an order striking and releasing a lien or other encumbrance to apply to a lawsuit, lien, or other encumbrance against any person or entity. The bill would also make other conforming changes.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 765.010 of the Code of Civil Procedure is repealed.

SEC. 2. Section 765.010 is added to the Code of Civil Procedure, to read:

765.010. (a) For purposes of this section:

(1) "Harass" means engage in knowing and willful conduct that serves no legitimate purpose.

(2) "Entity" includes both governmental and private entities.

(b) A person shall not file or record, or direct another to file or record, a lawsuit, lien, or other encumbrance, including a notice of lis pendens, against another person or entity knowing it is false, with the intent to harass the person or entity or to influence or hinder the person in discharging his or her official duties if the person is a public officer or employee.

(c) (1) A person or entity whose property is subject to a lien or encumbrance in violation of this section may petition the superior court of the county in which the person or entity resides or in which the property is located for an order, which may be granted ex parte, directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief provided by this article should not be granted.

(2) The court shall schedule the hearing no earlier than 14 days after the date of the order. The scheduled date of the hearing shall allow adequate time for notice of the hearing.

SEC. 3. Section 765.030 of the Code of Civil Procedure is amended to read:

765.030. If the court determines that the lien or other encumbrance is in violation of Section 765.010, the court shall issue an order striking and releasing the lien or other encumbrance and may award costs and reasonable attorney's fees to the petitioner to be paid by the lien or other encumbrance claimant. If the court determines that the lien or other encumbrance is valid, the court shall issue an order so stating and may award costs and reasonable attorney's fees to the encumbrance claimant to be paid by the petitioner. The court may direct that such an order shall be recorded.

SEC. 4. Section 765.040 of the Code of Civil Procedure is amended to read:

765.040. Any lien or encumbrance claimant who records or files, or directs another to record or file, a lawsuit, lien, or other encumbrance in violation of Section 765.010 shall be liable to the person subject to the lawsuit or the owner of the property bound by the lien or other encumbrance for a civil penalty of up to five thousand dollars (\$5,000).

SEC. 5. Section 765.060 of the Code of Civil Procedure is amended to read:

765.060. If a lien or other encumbrance is recorded or filed against a public officer or employee in violation of Section 765.010, the state or local agency that employs the public officer or employee may provide counsel for the public officer or employee in an action brought pursuant to that section.

SEC. 6. Section 6223 of the Government Code is repealed.