

AMENDED IN SENATE APRIL 13, 1998

SENATE BILL

No. 1759

Introduced by Senator Ayala

February 18, 1998

An act to add Section 1785.135 to the Civil Code, to add Article 6 (commencing with Section 765.010) to Chapter 4 of Title 10 of Part 2 of the Code of Civil Procedure, *and* to amend ~~Section 27201 of the Government Code, and to add Section 152 to the Penal Code, relating to unlawful encumbrances. Section 27201 of, and to add Chapter 3.4 (commencing with Section 6223) to Division 7 of Title 1 to, the Government Code, relating to liens and encumbrances.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1759, as amended, Ayala. ~~Unlawful Liens and encumbrances.~~

(1) Existing law sets forth the procedures applicable to an action to quiet title to real or personal property, as specified.

This bill would prohibit a ~~public officer or employee from accepting for filing a claim of encumbrance against the property of a federal, state, or local officer or employee based on the performance or nonperformance of the official duties of the officer or employee unless accompanied by an order from a court of competent jurisdiction authorizing the filing, but would specify that no person or county shall be liable for accepting such an unlawful claim for filing; would specify that without such a court order, the claim of encumbrance has no legal effect; and would require a public officer or employee who has accepted such an unlawful claim of encumbrance to~~

~~accept for filing a specified removal of unlawful encumbrance submitted by counsel for the public entity employing the public officer or employee person from filing a lawsuit or recording or filing a lien or other encumbrance, against a public officer or employee, knowing it is false, with the intent to harass the officer or employee or influence or hinder the public officer or employee in discharging his or her official duties. This provision would take effect only if SB 2154 of the 1997-98 Regular Session is not enacted.~~

The bill would prohibit a consumer credit reporting agency from reporting ~~a claim of encumbrance which has recorded or filed with it a removal of unlawful encumbrance document which acts as a lien or other encumbrance but which has together with it a court order striking or releasing the lien or other encumbrance on the basis that it is an above described lien or encumbrance.~~ The bill would also specify that it does not apply to ~~a claim of lien or other encumbrance filed by a financial institution or a public entity, as defined.~~ ~~The bill would further specify that a removal of unlawful encumbrance shall clear title of the property affected from all claims, liens, charges, or liabilities attached to the property under the unlawful claim of encumbrance.~~ The bill would also create an expedited action, filed pursuant to a complaint form established by the Judicial Council, ~~to clear title to property from an unlawful claim of requesting the striking or release of such a lien or other encumbrance,~~ and provide for a civil penalty of \$5,000 for knowingly filing or directing another to file ~~an unlawful claim of such a lien or other encumbrance.~~

(2) Existing law requires the county recorder to accept a document for recordation as authorized or required by law to be recorded.

This bill would specify that the document be authorized or required to be recorded by statute or court order rather than authorized or required by law.

(3) Existing law makes it a misdemeanor to file a civil claim against a peace officer or a lien against his or her property, knowing the claim to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, provided that claim pertains to actions that arise in the course and scope of the officer's duties.



~~This bill would enact similar provisions as to any such civil claims or liens affecting any public officer or employee.~~

~~The bill would impose a state-mandated local program by requiring new duties of local public officers, and by creating a new crime.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes *no*.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.135 is added to the Civil
2 Code, to read:
3 1785.135. No consumer credit reporting agency shall
4 make any consumer credit report with respect to a
5 ~~document which acts as a claim of encumbrance but~~
6 ~~which has together with it a removal of unlawful~~
7 ~~encumbrance recorded or filed pursuant to Article 6~~
8 ~~(commencing with Section 765.010) of Chapter 4 of Title~~
9 ~~10 of Part 1 of the Code of Civil Procedure. *document*~~
10 ~~*which acts as a lien or other encumbrance but which has*~~
11 ~~*together with it a court order striking or releasing the lien*~~
12 ~~*or other encumbrance pursuant to Section 765.030 of the*~~
13 ~~*Code of Civil Procedure.*~~



1 ~~SEC. 2. Article 6 (commencing with Section 765.010)~~
2 ~~is added to Chapter 4 of Title 10 of Part 2 of the Code of~~
3 ~~Civil Procedure, to read:~~

4
5 Article 6. ~~Unlawful Encumbrances~~

6
7 ~~765.010. No public officer or employee may~~
8 ~~knowingly accept for recording or filing a document~~
9 ~~which acts as a claim of encumbrance against the~~
10 ~~property of a federal, state, or local officer or employee~~
11 ~~based on the performance or nonperformance of the~~
12 ~~official duties of the officer or employee unless~~
13 ~~accompanied by an order from a court of competent~~
14 ~~jurisdiction authorizing the recording or filing of the~~
15 ~~encumbrance.~~

16 ~~765.020. A document which acts as a claim of~~
17 ~~encumbrance against the property of a federal officer or~~
18 ~~employee or a state or local officer or employee based on~~
19 ~~the performance or nonperformance of the official duties~~
20 ~~of the official or employee that is not accompanied by an~~
21 ~~order from a court of competent jurisdiction is an~~
22 ~~unlawful claim of encumbrance and has no legal effect.~~

23 ~~765.030. If an unlawful claim of encumbrance against~~
24 ~~the property of a federal, state, or local officer or~~
25 ~~employee is accepted for recording or filing, the~~
26 ~~recording or filing officer shall also accept for recording~~
27 ~~or filing a removal of unlawful encumbrance signed and~~
28 ~~submitted by counsel for the federal, state, or local agency~~
29 ~~by which the individual is employed. The County~~
30 ~~Recorder shall index such a document as a “removal of~~
31 ~~unlawful encumbrance.”~~

32 ~~765.040. A removal of unlawful encumbrance shall be~~
33 ~~in substantially the following form:~~

34
35 REMOVAL OF UNLAWFUL ENCUMBRANCE

36
37 FILED AGAINST _____ (Insert Name)



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_____ is a _____
(Name) (Title)

~~“Notice is hereby given that the document entitled _____, purporting to create an obligation against or an interest in the real or personal property of the person named above, filed and/or signed by _____ (insert name), and filed or recorded in book/reel/volume no. _____ on page _____ or document/fee/file/instrument/microfilm no. _____ in the _____ (insert name of office where document was filed or recorded), is an unlawful claim of encumbrance under Article 6 (commencing with Section 765.010) of Chapter 4 of Title 10 of Part 1 of the Code of Civil Procedure.~~

~~“No order from a court of competent jurisdiction authorizing the filing of the encumbrance accompanied the filing and, pursuant to Section 765.010 of the Code of Civil Procedure, the encumbrance has no legal effect and is invalid.~~

~~“A copy of this removal of unlawful encumbrance has been mailed this day by the undersigned by depositing a true copy of the removal of unlawful encumbrance in the United States mail, addressed to _____ (name and address of encumbrance claimant), the last known address of _____ (insert name of encumbrance claimant).~~

~~“Dated this _____ day of _____, _____.~~

Attorney for _____ (Agency Name)

Notary Public for California
My commission expires _____”



1 ~~765.050. A copy of the removal of unlawful~~
 2 ~~encumbrance recorded or filed under this article shall be~~
 3 ~~mailed by counsel for the federal, state, or local agency as~~
 4 ~~specified in Section 765.030 to the encumbrance claimant~~
 5 ~~at the encumbrance claimant's last known address, if~~
 6 ~~available.~~

7 ~~765.060. No person or county shall be liable under this~~
 8 ~~article for accepting for recording or filing an unlawful~~
 9 ~~claim of encumbrance or for accepting for recording or~~
 10 ~~filing a removal of unlawful encumbrance.~~

11 ~~765.070. Recording or filing a removal of unlawful~~
 12 ~~encumbrance under this article shall restore title to all~~
 13 ~~property that is affected by the unlawful claim of~~
 14 ~~encumbrance as if the unlawful claim of encumbrance~~
 15 ~~had not been recorded or filed.~~

16 ~~765.080. A person whose property is subject to an~~
 17 ~~unlawful claim of encumbrance may petition the superior~~

18 *SEC. 2. Article 6 (commencing with Section 765.010)*
 19 *is added to Chapter 4 of Title 10 of Part 2 of the Code of*
 20 *Civil Procedure, to read:*

21
 22 *Article 6. Liens and Encumbrances*
 23

24 *765.010. A public officer or employee whose property*
 25 *is subject to a lien or other encumbrance in violation of*
 26 *Section 6223 of the Government Code may petition the*
 27 *superior court of the county in which the person resides*
 28 *or in which the property is located for an order, which*
 29 *may be granted ex parte, directing the lien or other*
 30 *encumbrance claimant to appear at a hearing before the*
 31 *court and show cause why the claim of lien or other*
 32 *encumbrance should not be stricken and other relief*
 33 *provided by this article should not be granted. The court*
 34 *shall schedule the hearing no earlier than seven 14 days*
 35 *after the date of the order. The scheduled date of the*
 36 *hearing shall allow adequate time for notice of the*
 37 *hearing.*

38 ~~765.090.~~

39 *765.020. A petition under this article shall state the*
 40 *grounds upon which relief is requested, and shall be*



1 supported by the affidavit of the petitioner or the
2 petitioner's attorney setting forth a concise statement of
3 the facts upon which the motion is based.

4 The petition and affidavit shall be in substantially the
5 form prescribed by the Judicial Council.

6 ~~765.100.—If the court determines that the claim of~~

7 *765.030. If the court determines that the lien or other*
8 *encumbrance is unlawful in violation of Section 6223 of*
9 *the Government Code, the court shall issue an order*
10 *striking and releasing the claim of lien or other*
11 *encumbrance and may award costs and reasonable*
12 *attorney fees to the petitioner to be paid by the lien or*
13 *other encumbrance claimant. If the court determines*
14 *that the claim of lien or other encumbrance is valid, the*
15 *court shall issue an order so stating and may award costs*
16 *and reasonable attorney fees to the encumbrance*
17 *claimant to be paid by the petitioner. The court may*
18 *direct that such an order shall be recorded.*

19 ~~765.110.—Any person who knowingly records or files,~~
20 ~~or directs another to record or file, an unlawful claim of~~
21 ~~encumbrance shall be liable to the owner of the property~~
22 ~~bound by the claim of encumbrance for a sum of five~~
23 ~~thousand dollars (\$5,000) together with costs and~~
24 ~~reasonable attorney fees.~~

25 ~~765.120.—~~

26 *765.040. Any person who records or files, or directs*
27 *another to record or file, a lien or other encumbrance in*
28 *violation of Section 6223 of the Government Code shall be*
29 *liable to the owner of the property bound by the lien or*
30 *other encumbrance for a civil penalty of up to five*
31 *thousand dollars (\$5,000).*

32 *765.050. This article does not apply to a document*
33 *which acts as a claim of encumbrance by a financial*
34 *institution, as defined in subdivision (a) of Section 14161*
35 *of the Penal Code or Section 481.113 of this code, or a*
36 *public entity, as defined in Section 481.200 of this code.*

37 *765.060. If a lien or other encumbrance is recorded or*
38 *filed in violation of Section 6223 of the Government Code,*
39 *the public officer or employee may be represented by*
40 *counsel for the federal, state, or local agency by which the*



1 *individual is employed in an action pursuant to Section*
2 *765.010.*

3 *SEC. 2.5. Chapter 3.4 (commencing with Section*
4 *6223) is added to Division 7 of Title 1 of the Government*
5 *Code, to read:*

6

7

CHAPTER 3.4. RECORDING OF DOCUMENTS

8

9 *6223. No person shall file a lawsuit against a public*
10 *officer or employee, or record or file a lien or other*
11 *encumbrance against the property of a public officer or*
12 *employee, knowing it is false, with the intent to harass the*
13 *officer or employee or influence or hinder the public*
14 *officer or employee in discharging his or her official*
15 *duties. This section applies only to lawsuits, liens, or other*
16 *encumbrances pertaining to actions that arise in the*
17 *course and scope of the public officer's or employee's*
18 *duties.*

19 *SEC. 3. Section 27201 of the Government Code is*
20 *amended to read:*

21 *27201. (a) The recorder shall, upon payment of*
22 *proper fees and taxes, accept for recordation any*
23 *instrument, paper, or notice which is authorized or*
24 *required by statute or court order to be recorded, if the*
25 *instrument, paper, or notice contains sufficient*
26 *information to be indexed as provided by statute, meets*
27 *recording requirements of state statutes and local*
28 *ordinances, and is photographically reproducible. The*
29 *county recorder shall not refuse to record any*
30 *instrument, paper, or notice which is authorized or*
31 *required by statute or court order to be recorded on the*
32 *basis of its lack of legal sufficiency.*

33 *“Photographically reproducible,” for purposes of this*
34 *division, means all instruments, papers, or notices which*
35 *comply with standards as recommended by the American*
36 *National Standards Institute or the Association for*
37 *Information and Image Management for recording of*
38 *records.*



1 (b) Each instrument, paper, or notice shall contain an
2 original signature or signatures, except as otherwise
3 provided by law, or be a certified copy of the original.

4 ~~SEC. 4. Section 152 is added to the Penal Code, to~~
5 ~~read:~~

6 ~~152. Any person who records or files a civil claim~~
7 ~~against a public officer or employee or a lien against his~~
8 ~~or her property, knowing the claim or lien to be false and~~
9 ~~with the intent to harass or dissuade the officer from~~
10 ~~carrying out his or her official duties, is guilty of a~~
11 ~~misdemeanor. This section applies only to claims~~
12 ~~pertaining to actions that arise in the course and scope of~~
13 ~~the official duties of the public officer or employee.~~

14 ~~SEC. 5. No reimbursement is required by this act~~
15 ~~pursuant to Section 6 of Article XIII B of the California~~
16 ~~Constitution for certain costs that may be incurred by a~~
17 ~~local agency or school district because in that regard this~~
18 ~~act creates a new crime or infraction, eliminates a crime~~
19 ~~or infraction, or changes the penalty for a crime or~~
20 ~~infraction, within the meaning of Section 17556 of the~~
21 ~~Government Code, or changes the definition of a crime~~
22 ~~within the meaning of Section 6 of Article XIII B of the~~
23 ~~California Constitution.~~

24 ~~However, notwithstanding Section 17610 of the~~
25 ~~Government Code, if the Commission on State Mandates~~
26 ~~determines that this act contains other costs mandated by~~
27 ~~the state, reimbursement to local agencies and school~~
28 ~~districts for those costs shall be made pursuant to Part 7~~
29 ~~(commencing with Section 17500) of Division 4 of Title~~
30 ~~2 of the Government Code. If the statewide cost of the~~
31 ~~claim for reimbursement does not exceed one million~~
32 ~~dollars (\$1,000,000), reimbursement shall be made from~~
33 ~~the State Mandates Claims Fund.~~

34 ~~Notwithstanding Section 17580 of the Government~~
35 ~~Code, unless otherwise specified, the provisions of this act~~
36 ~~shall become operative on the same date that the act~~
37 ~~takes effect pursuant to the California Constitution.~~



1 *SEC. 4. Section 2.5 of this bill shall only become*
2 *operative if SB 2154 of the 1997–98 Regular Session is not*
3 *enacted on or before January 1, 1999.*

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