STATE OF NEW YORK

179

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, the penal law and the county law, in relation to enacting the "public officer protection act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "public officer protection act".

§ 2. The executive law is amended by adding a new section 65-a to read as follows:

§ 65-a. Recognized courts, tribunals, or other judicial or quasi judicial bodies. 1. The attorney general shall annually prepare a listing of all recognized courts, tribunals, and judicial and quasi judicial bodies, as defined in subdivision two of section 189.00 of the penal law, and shall annually publish such prepared listing. Any court, tribunal, or judicial or quasi judicial body that is not a recognized court, tribunal, or other judicial or quasi judicial body, as defined in paragraph (a), (b) or (c) of subdivision two of section 189.00 of the penal law may apply to the attorney general pursuant to subdivision two of this section to become certified as a recognized court, tribunal, or judicial or quasi judicial body.

2. An application to the attorney general for certification as a recognized court, tribunal, or other judicial or quasi judicial body shall be in such form and manner as prescribed by the attorney general. No fee shall be imposed by the attorney general for the submission of such an application. The determination as to whether or not to certify an applicant as a recognized court, tribunal, or other judicial or quasi judicial body shall be in the sole discretion of the attorney general and shall not be subject to review pursuant to article seventy-eight of the civil practice law and rules.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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3. The attorney general shall annually provide all county clerks with a complete listing of all recognized courts, tribunals, and judicial and quasi judicial bodies.

§ 3. The executive law is amended by adding a new section 719 to read as follows:

§ 719. Public protection of public officers. 1. Legislative intent. The legislature finds and determines that the state of New York and the United States of America have recently seen a disturbing number of retaliatory actions against public officers in the conduct of their official duties that present a profound threat to our freedom and liberty as a free people. These actions often seek to circumvent the processes of free speech, fair elections, the administration of justice and the proper conduct of the judicial system, to which our constitutions are dedicated, and in an effort to obtain change, engage in intimidation, violence, death, destruction and/or deception.

The legislature further finds and determines that one of the practices frequently employed by persons taking these retaliatory actions, in an effort to undermine state authority and civil integrity, is to issue orders, judgments, decrees, proclamations or other quasi judicial documents from what have been termed as "common law courts" or "citizen courts". These "courts" have no real standing authority, in law or equity, and merely serve as a subterfuge for these persons.

The legislature additionally finds and determines that a further practice employed by persons taking these retaliatory actions, in an effort to undermine state authority and civil integrity, is to file records or instruments, that are traditionally recognized under the civil justice system, including liens and encumbrances of real or personal property, in retaliation for or on account of the performance of the official duties of a public officer. These records or instruments, which are meritless, frivolous, false, fictitious or fraudulent, are merely filed with the purpose to intimidate or injure the public official.

The legislature finally finds and declares that when public officers in performance of their official duties are issued with civil or criminal papers from these "common law courts" or "citizen courts", or have a meritless, frivolous, false, fictitious or fraudulent record or instrument filed against them, a great deal of confusion and injury can result, and the integrity of our real court and judicial system is thereby threatened. These misfounded individuals use the respect and integrity that our court and judicial system has taken centuries to obtain, to intimidate their victims and impose their will. It is a process based in misconduct, fraud, deception, and deceit, and it cannot be allowed to continue.

2. Public officer protection team. There shall be established a public officer protection team. Such team shall consist of the commissioner of the division, the superintendent of state police, the commissioner of criminal justice services, the attorney general, the chief administrative judge of the office of court administration, the president of the New York state association of county clerks, and the president of the New York state sheriff's association. The public officer protection team shall meet no less than biannually to discuss strategies and develop recommendations to protect public officers from intimidation, threats, violence, injury and retaliation in the course of their official duties, and the reduction of the filing of retaliatory records or instruments against public officers and jurisprudential fraud. On or before the thirty-first of December of each year, the public officer protection team shall develop and transmit recommenda-

tions to the governor, the speaker of the assembly, and the temporary president of the senate, on legislative and administrative measures that can be taken to protect public officers from intimidation, threats, violence, injury and retaliation in the course of their official duties, and the reduction of the filing of retaliatory records or instruments against public officers and jurisprudential fraud.

§ 4. The penal law is amended by adding a new article 189 to read as follows:

ARTICLE 189

JURISPRUDENTIAL FRAUD

Section 189.00 Jurisprudential fraud offenses; definitions of terms.
189.05 Jurisprudential fraud in the second degree.
189.10 Jurisprudential fraud in the first degree.
189.15 Filing a retaliatory record or instrument against a public officer.
189.20 Jurisprudential fraud offenses; defenses.

§ 189.00 Jurisprudential fraud offenses; definitions of terms.

The following definitions are applicable to this article:

1. "Jurisprudential document" means any document which on its face represents that it has been drafted, created or issued by, upon the authority of, under the jurisdiction of, or pursuant to civil or criminal litigation before, any court, tribunal or other judicial or quasi judicial body; and shall include, but not be limited to:

(a) a summons;
(b) a pleading;
(c) motion papers;
(d) appeal papers;
(e) an order;
(f) a decision;
(g) a judgment;
(h) a lien;
(i) a lis pendens; or
(j) any other paper involved in criminal or civil litigation.

2. "Recognized court, tribunal, or other judicial or quasi judicial body" means:

(a) any court of record as defined in section two of the judiciary law;

(b) any court, tribunal, or other judicial or quasi judicial body established pursuant to the constitution of the United States or of this state, or federal or state law or the law of any political subdivision of the state;

(c) any court in another state or country which if located in this state would be a court of record or which is established by the laws of that state or country or a political subdivision thereof; and

(d) any other court, tribunal, or other judicial or quasi judicial body certified by the attorney general pursuant to section sixty-five-a of the executive law.

§ 189.05 Jurisprudential fraud in the second degree.

A person is guilty of jurisprudential fraud in the second degree when he or she intentionally aids another to knowingly and intentionally distribute, serve, file, produce or publish a jurisprudential document, when such jurisprudential document was not:

1. drafted, created or issued by a recognized court, tribunal, or other judicial or quasi judicial body; or

2. drafted, created or issued by a person or governmental entity, acting upon the authority of a recognized court, tribunal, or other

judicial or quasi judicial body, or the state criminal justice system; or

3. drafted, created or issued by a person or governmental entity, acting pursuant to the commencement or prosecution of civil or criminal litigation, before a recognized court, tribunal, or other judicial or quasi judicial body; or

4. drafted, created or issued by a person or governmental entity, acting under the jurisdiction of a recognized court, tribunal, or other judicial or quasi judicial body, or the state criminal justice system.

Jurisprudential fraud in the second degree is a class A misdemeanor.

§ 189.10 Jurisprudential fraud in the first degree.

A person is guilty of jurisprudential fraud in the first degree when:

1. he or she knowingly and intentionally distributes, serves, files, produces or publishes a jurisprudential document, representing that such document was:

(a) drafted, created or issued by a court, tribunal, or other judicial or quasi judicial body; or

(b) drafted, created or issued by a person or governmental entity, acting upon the authority of a court, tribunal, or other judicial or quasi judicial body; or

(c) drafted, created or issued by a person or governmental entity, acting pursuant to the commencement or prosecution of civil or criminal litigation, before a court, tribunal, or other judicial or quasi judicial body; or

(d) drafted, created or issued by a person or governmental entity, acting under the jurisdiction of a court, tribunal, or other judicial or quasi judicial body; and

2. when such jurisprudential document was not:

(a) drafted, created or issued by a recognized court, tribunal, or other judicial or quasi judicial body; or

(b) drafted, created or issued by a person or governmental entity, acting upon the authority of a recognized court, tribunal, or other judicial or quasi judicial body, or the state criminal justice system; or

(c) drafted, created or issued by a person or governmental entity, acting pursuant to the commencement or prosecution of civil or criminal litigation, before a recognized court, tribunal, or other judicial or quasi judicial body; or

(d) drafted, created or issued by a person or governmental entity, acting under the jurisdiction of a recognized court, tribunal, or other judicial or quasi judicial body, or the state criminal justice system.

Jurisprudential fraud in the first degree is a class D felony.

§ 189.15 Filing a retaliatory record or instrument against a public officer.

1. A person is guilty of filing a retaliatory record or instrument against a public officer, when he or she, with the intent to intimidate, injure or influence a public officer, files, attempts to file or conspires to file, a false, fictitious, fraudulent or frivolous record or instrument, including a lien or encumbrance against the real or personal property of a public officer, in retaliation for or on account of the performance of the official duties of such public officer.

2. For the purposes of this section, "public officer" shall mean any officer or employee of:

(a) the state;

(b) a political subdivision of the state;

(c) the federal government;

(d) a school district; or

(e) a public authority.

Filing a retaliatory record or instrument against a public officer is a class D felony.

§ 189.20 Jurisprudential fraud offenses; defenses.

In any prosecution for jurisprudential fraud in the first degree, as defined in section 189.10, or jurisprudential fraud in the second degree, as defined in section 189.05, or filing a retaliatory record or instrument against a public officer, as defined in section 189.15 of this article, it shall be an affirmative defense, that the defendant in his or her capacity as a public officer, distributed, served, filed, produced or published a jurisprudential document believing it to have been:

1. drafted, created or issued by a recognized court, tribunal, or other judicial or quasi judicial body; or

2. drafted, created or issued by a person or governmental entity, acting upon the authority of a recognized court, tribunal, or other judicial or quasi judicial body; or

3. drafted, created or issued by a person or governmental entity, acting pursuant to the commencement or prosecution of civil or criminal litigation, before a recognized court, tribunal, or other judicial or quasi judicial body; or

4. drafted, created or issued by a person or governmental entity, acting under the jurisdiction of a recognized court, tribunal, or other judicial or quasi judicial body.

§ 5. The county law is amended by adding a new section 531 to read as follows:

§ 531. Prohibited filings. The county clerk shall not accept for filing any jurisprudential document, as defined in subdivision one of section 189.00 of the penal law, from any court, tribunal, or other judicial or quasi judicial body that is not a recognized court, tribunal, or other judicial or quasi judicial body, as defined in subdivision two of section 189.00 of the penal law. Any such document mistakenly filed or received for filing, shall be deemed to have never been so filed or received for filing, and shall be further deemed as void as a matter of law. The attorney general shall annually provide all county clerks with a complete list of all recognized courts, tribunals, and judicial and quasi judicial bodies pursuant to section sixty-five-a of the executive law.

§ 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided, however, that effective immediately, the attorney general shall promulgate such rules and regulations as shall be necessary for the timely implementation of the provisions of this act on its effective date.