

SENATE BILL NO. 88—SENATORS RHOADS AND MCGINNESS

FEBRUARY 8, 2001

Referred to Committee on Judiciary

SUMMARY—Provides for creation and foreclosure of liens for farm products. (BDR 9-643)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to statutory liens; providing for the creation and foreclosure of a lien for farm products; prohibiting the removal from the state of farm products subject to certain liens; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 108 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 20, inclusive, of this act.
- 3 **Sec. 2.** *As used in sections 2 to 20, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to*
5 *7, inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
- 7 **Sec. 3.** *“Cash” means coin or currency of the United States. The*
8 *term does not include a check or money order.*
- 9 **Sec. 4.** *“Farm product” includes every agricultural, horticultural,*
10 *viticultural or vegetable product grown and harvested in this state. The*
11 *term does not include timber or a timber product.*
- 12 **Sec. 5.** *“Processed farm product” includes, without limitation, a*
13 *farm product in a preserved, manufactured or processed form.*
- 14 **Sec. 6.** 1. *“Processor” means a person who:*
15 *(a) Is engaged in the business of processing or manufacturing farm*
16 *products; and*
17 *(b) Solicits, buys, contracts to buy or otherwise takes title to, or*
18 *possession or control of, farm products from the producer for the*
19 *purposes of processing, manufacturing, selling, reselling or redelivering*
20 *the farm product.*
- 21 2. *The term does not include a retail merchant who:*
22 *(a) Has a fixed or established place of business in this state; and*



1 (b) Does not sell at wholesale a farm product that is processed or
2 manufactured by him.

3 **Sec. 7.** "Producer" means a person who is engaged in the business
4 of growing or producing a farm product in this state.

5 **Sec. 8. 1.** In addition to all other rights and remedies which are
6 provided by law, a producer that delivers or sells a farm product which is
7 grown by him to a processor pursuant to a contract, express or implied,
8 has a perfected lien by operation of law for the labor, care and expense
9 in growing and harvesting the farm product upon:

- 10 (a) The farm product;
11 (b) The processed farm product derived from the farm product; and
12 (c) The proceeds of a sale of the farm product or the processed farm
13 product.

14 2. A lien on a farm product, processed farm product, or proceeds
15 from the sale of a farm product or processed farm product extends to an
16 amount of the farm product, processed farm product or proceeds equal in
17 value to the agreed price or an agreed method for determining the price
18 for the farm product. For purposes of determining the extent of the lien,
19 the value of the farm product is the market value of the farm product on
20 the date of delivery of the farm product to the processor.

21 3. Any portion of the farm product, processed farm product or
22 proceeds in excess of the amount necessary to satisfy the total amount
23 owed to a producer pursuant to a contract is free of the lien provided by
24 this section.

25 **Sec. 9. 1.** Unless released by payment or by security which is given
26 for payment before attachment of a lien, the lien of a producer pursuant
27 to section 8 of this act:

28 (a) Attaches on the date of delivery of the farm product by a producer
29 to a processor; and

30 (b) Is a preferred lien and superior to all other liens, claims or
31 encumbrances, except:

32 (1) Claims for wages and salaries for personal services and labor
33 which are rendered by a person to a processor in connection with the
34 processing of the farm product after the delivery of the farm product to
35 the processor; or

36 (2) The lien of a warehouseman pursuant to chapter 104 of NRS.

37 2. The lien of a producer for a series of deliveries of a farm product
38 attaches on the date of the last delivery.

39 **Sec. 10. 1.** The lien provided for in section 8 of this act applies to
40 any farm product and any processed farm product in the possession of
41 the processor that has not been segregated.

42 2. For the purposes of this section, a farm product or a processed
43 farm product deposited by a processor with a warehouse, whether or not
44 warehouse receipts are given as security to a lender, shall be deemed to
45 be in the possession of the processor and subject to the lien of the
46 producer.

47 3. As used in this section:

48 (a) "Lender" includes any person who advances new value to a
49 processor.



1 (b) "New value" includes a new advance or loan, whether in money or
2 property, that is made by a lender to a processor. The term does not
3 include an:

4 (1) Extension or renewal of an existing obligation of the processor;
5 or

6 (2) Obligation that is substituted for an existing obligation of the
7 processor.

8 **Sec. 11.** 1. A lien on a farm product or processed farm product
9 may be released to the extent that the value of the claim upon the farm
10 product or processed farm product is secured by:

- 11 (a) A surety bond;
12 (b) A cash deposit; or
13 (c) Other security given and approved by a producer who holds a lien.
14 2. A producer holding a lien may release a lien upon:

15 (a) Payment for the agreed amount or for the reasonable value of the
16 farm product that is sold or delivered; or

17 (b) Arrangements being made for payment of the agreed amount or
18 for the reasonable value of the farm product that is sold or delivered that
19 are satisfactory to the producer.

20 **Sec. 12.** 1. Except as otherwise provided in this section, a
21 processor or an agent of a processor shall not remove from this state, or
22 beyond his ownership or control, a farm product that is delivered to him
23 or any processed farm product to which a lien has attached pursuant to
24 section 9 of this act with the intent to defeat, hinder or delay the claims of
25 a producer pursuant to sections 2 to 20, inclusive, of this act. A person
26 who violates this subsection is guilty of a misdemeanor.

27 2. A processor or agent of a processor may sell a farm product or a
28 processed farm product to which a lien has attached if the amount of the
29 farm product or processed farm product sold is from a quantity on hand
30 in excess of an amount that is sufficient in value to satisfy all existing
31 liens of a producer or producers.

32 3. This section does not prohibit the sale of a farm product or a
33 processed farm product if the total proceeds of the sale are used to satisfy
34 obligations that are secured by a lien pursuant to sections 2 to 20,
35 inclusive, of this act.

36 4. As used in this section, "agent" means a person who contracts for
37 or solicits a farm product from a producer of the farm product on behalf
38 of a processor.

39 **Sec. 13.** 1. Subject to the approval of a producer holding a lien, a
40 processor may obtain a release of the lien by:

41 (a) Paying the agreed or actual value of any farm product that is
42 delivered to or purchased by the processor within 20 days after the date
43 of delivery of the farm product, unless the date of payment is otherwise
44 agreed upon in writing or payment is secured by an instrument or
45 arrangement other than the lien.

46 (b) Obtaining a surety bond which is executed by the processor as the
47 principal and by a surety company which is authorized to do business in
48 this state as a surety in an amount equal to the current market value of
49 the farm product or processed farm product that the processor intends to



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1 *dispose of or sell. The bond must be conditioned that if the processor*
2 *fails to make payments to producers for the lawful claims of all*
3 *producers whose liens have been released by the bond in an amount*
4 *equal to or greater than the amount of the bond within 35 days after the*
5 *date of the bond, the surety will be liable to and shall pay the claimants*
6 *all lawful claims that may be covered by the amount of the bond and the*
7 *costs of suit if an action is filed on the bond.*

8 *(c) Depositing cash with a financial institution in this state in an*
9 *amount that is set apart by an instrument in writing which is signed by*
10 *the processor for the purpose of guaranteeing, to the extent of the*
11 *amount deposited, the payment of all existing claims of producers whose*
12 *liens are released by the deposit within 35 days after the date of the*
13 *deposit. The financial institution where a deposit is made pursuant to this*
14 *paragraph must be named as the trustee in the instrument to carry out*
15 *the provisions of the instrument.*

16 *(d) Designating, setting apart and depositing a quantity of a processed*
17 *farm product in a public warehouse, and endorsing over and delivering*
18 *the warehouse receipt to the producer for a quantity of processed farm*
19 *products in an amount that is satisfactory to the producer for the purpose*
20 *of guaranteeing, to the extent of the value of the deposit, payment of the*
21 *existing claims of producers and labor claimants whose liens are*
22 *released by the deposit within 35 days after the date of the deposit.*

23 *(e) Securing a release after payment in full for the farm products.*

24 *2. If a processor has paid all lawful claims of the producers in*
25 *compliance with this section, a processor may sell, transport or otherwise*
26 *dispose of any farm product for which the lien has been released.*

27 *3. If a bond, cash deposit, warehouse deposit or other security is*
28 *given by a processor pursuant to this section, the processor may sell,*
29 *transport or otherwise dispose of an amount of the farm product or*
30 *processed farm product not exceeding the current market value*
31 *represented by the bond, cash deposit, warehouse deposit or other*
32 *security given by the processor.*

33 *4. For the purposes of this section, the current market value of a*
34 *farm product or processed farm product may be based upon quotations*
35 *from the Federal-State Market News Service or a similar source agreed*
36 *to in writing by the parties to be determined, as appropriate, on the date:*

37 *(a) Of the bond;*

38 *(b) Of the deposit; or*

39 *(c) Other security is given.*

40 **Sec. 14.** *An action commenced pursuant to sections 2 to 20,*
41 *inclusive, of this act may be filed in a county in this state where:*

42 *1. The processor received the farm products;*

43 *2. The principal place of business of a producer is located; or*

44 *3. A violation of a provision of sections 2 to 20, inclusive, of this act*
45 *occurred.*

46 **Sec. 15.** *1. The remedies provided in sections 2 to 20, inclusive, of*
47 *this act are cumulative and in addition to any other remedies provided by*
48 *law.*



1 2. The provisions of sections 2 to 20, inclusive, of this act do not
2 impair the right of a claimant who holds a lien to maintain a personal
3 action to recover a debt owed by a processor, whether in an action to
4 foreclose a lien or in a separate action. The holder of a lien pursuant to
5 section 8 of this act is not required to allege that his demand is secured
6 by a lien.

7 3. The provisions of the Nevada Rules of Civil Procedure, the
8 District Court Rules and the local rules of practice adopted in the judicial
9 district where an action is pending apply to an action commenced
10 pursuant to sections 2 to 20, inclusive, of this act.

11 4. A nonprofit cooperative association acting as a bargaining
12 association for producers may assert the rights set forth in sections 2 to
13 20, inclusive, of this act for or on behalf of its members.

14 **Sec. 16.** Except as otherwise provided by law, an action commenced
15 by a producer pursuant to sections 2 to 20, inclusive, of this act to
16 enforce a lien must remain in effect until:

- 17 1. The agreed price or the value of the farm products is paid;
- 18 2. A deposit in the amount of the lien or claim is made with the clerk
19 of the court in which the action is pending; or
- 20 3. The court makes a final determination of the matter.

21 **Sec. 17.** 1. In an action commenced by a lien claimant, a
22 defendant processor may file a surety bond with the court in which the
23 action is pending in an amount that is sufficient to cover the demand of
24 the complaint of the plaintiff producer, including attorneys' fees and
25 costs.

26 2. Upon the filing of the bond described in subsection 1, the court, in
27 its discretion, may order the release of a portion of the farm product or
28 processed farm product upon which the lien of the plaintiff producer has
29 attached.

30 3. A processor may move the court for a hearing to introduce
31 evidence to the court to demonstrate that he has sufficient security or
32 money on deposit to protect the lien or other rights of the plaintiff
33 producer.

34 4. Upon proof of sufficient security, the court may order the release
35 of a portion or the whole of a farm product upon which the lien of the
36 plaintiff producer is attached and deny the plaintiff any recovery in the
37 action.

38 5. The other rights and remedies of a lien claimant, if any, are not
39 prejudiced by an order of the court for dismissal pursuant to
40 subsection 4.

41 **Sec. 18.** 1. The judgment, if any, obtained by a plaintiff in a
42 personal action against a producer to obtain payment for farm products
43 does not impair or merge the lien rights or claims that are held by a
44 plaintiff.

45 2. Any money collected from a personal judgment must be credited
46 against the amount of the lien or claim in an action that is brought to
47 enforce the lien or claim.



1 **Sec. 19.** *1. The plaintiff in an action that is commenced to*
2 *foreclose a lien provided for in section 8 of this act may obtain a*
3 *preliminary injunction against the processor to restrain the processor*
4 *from removing a processed farm product in his possession or under his*
5 *control and upon which valid liens exist beyond the jurisdiction of the*
6 *court to the injury of the plaintiff.*

7 *2. A conclusive presumption of irreparable harm to a plaintiff*
8 *producer arises when a processor removes or prepares to remove a farm*
9 *product or processed farm product in his possession or under his control*
10 *and upon which valid liens exist beyond the jurisdiction of the court.*

11 **Sec. 20.** *1. All actions commenced by a producer or producers*
12 *against a processor for the foreclosure of liens or other security provided*
13 *for in sections 2 to 20, inclusive, of this act may be consolidated by the*
14 *court and all persons that are necessary to a determination of the action*
15 *may be made parties to the action.*

16 *2. All claims in an action in relation to an obligation of a processor*
17 *for payment secured by a lien pursuant to section 8 of this act must have*
18 *equal standing and, if applicable, be paid proportionately to the claim of*
19 *each claimant.*

20 *3. A judgment in favor of a plaintiff producer to foreclose a lien must*
21 *state the exact amount due on the judgment from the defendant*
22 *processor.*

23 *4. If in a court proceeding to foreclose a lien, the court finds that*
24 *there is no cash, bond, deposit or other security for the payment of the*
25 *claims of producers, the judgment of foreclosure must be against a*
26 *sufficient quantity in value of farm products or processed farm products*
27 *in the possession or under the control of the defendant processor as may*
28 *be necessary to satisfy the claim or judgment.*

29 **Sec. 21.** The amendatory provisions of this act do not apply to
30 offenses committed before the effective date of this act.

