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FIRST REPRINT

S.B. 88

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; 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 17, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 17, 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*
23 *(b) Does not sell at wholesale a farm product that is processed or*
24 *manufactured by him.*



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

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

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

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

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

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

26 *(a) Attaches on the date of delivery of the farm product by a producer*
27 *to a processor; and*

28 *(b) Is a preferred lien and superior to all other liens, claims or*
29 *encumbrances, except:*

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

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

35 *2. The lien of a producer for a series of deliveries of a farm product*
36 *attaches on the date of the last delivery.*

37 **Sec. 10.** *1. To perfect the lien provided for in section 8 of this act,*
38 *a producer must, not later than 45 days after the date on which the lien*
39 *attaches pursuant to section 9 of this act, file a notice of the lien in the*
40 *office of the secretary of state.*

41 *2. A notice of lien that is filed pursuant to subsection 1 must be*
42 *verified by the oath of the producer and must contain:*

43 *(a) The name of the producer;*

44 *(b) The name of the processor;*

45 *(c) A statement of the terms and conditions of the contract between*
46 *the producer and the processor; and*

47 *(d) The total amount owed to the producer by the processor under the*
48 *terms of the contract, after deducting any applicable credits or offsets.*



1 3. *Not later than 24 hours after filing a notice of lien pursuant to this*
2 *section, a producer shall send a copy of the notice of lien to the processor*
3 *by certified mail.*

4 **Sec. 11.** *1. The lien provided for in section 8 of this act applies to*
5 *any farm product and any processed farm product in the possession of*
6 *the processor.*

7 *2. For the purposes of this section, a farm product or a processed*
8 *farm product deposited by a processor with a warehouse, whether or not*
9 *warehouse receipts are given as security to a lender, shall be deemed to*
10 *be in the possession of the processor and subject to the lien of the*
11 *producer.*

12 *3. As used in this section:*

13 *(a) "Lender" includes any person who advances new value to a*
14 *processor.*

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

18 *(1) Extension or renewal of an existing obligation of the processor;*
19 *or*

20 *(2) Obligation that is substituted for an existing obligation of the*
21 *processor.*

22 **Sec. 12.** *1. A lien on a farm product or processed farm product*
23 *may be released to the extent that the value of the claim upon the farm*
24 *product or processed farm product is secured by:*

25 *(a) A surety bond;*

26 *(b) A cash deposit; or*

27 *(c) Other security given and approved by a producer who holds a lien.*

28 *2. A producer holding a lien may release a lien upon:*

29 *(a) Payment for the agreed amount or for the reasonable value of the*
30 *farm product that is sold or delivered; or*

31 *(b) Arrangements being made for payment of the agreed amount or*
32 *for the reasonable value of the farm product that is sold or delivered that*
33 *are satisfactory to the producer.*

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

36 *(a) Paying the agreed or actual value of any farm product that is*
37 *delivered to or purchased by the processor within 20 days after the date*
38 *of delivery of the farm product, unless the date of payment is otherwise*
39 *agreed upon in writing or payment is secured by an instrument or*
40 *arrangement other than the lien.*

41 *(b) Obtaining a surety bond which is executed by the processor as the*
42 *principal and by a surety company which is authorized to do business in*
43 *this state as a surety in an amount equal to the current market value of*
44 *the farm product or processed farm product that the processor intends to*
45 *dispose of or sell. The bond must be conditioned that if the processor*
46 *fails to make payments to producers for the lawful claims of all*
47 *producers whose liens have been released by the bond in an amount*
48 *equal to or greater than the amount of the bond within 35 days after the*
49 *date of the bond, the surety will be liable to and shall pay the claimants*



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- 1 all lawful claims that may be covered by the amount of the bond and the
2 costs of suit if an action is filed on the bond.
- 3 (c) Depositing cash with a financial institution in this state in an
4 amount that is set apart by an instrument in writing which is signed by
5 the processor for the purpose of guaranteeing, to the extent of the
6 amount deposited, the payment of all existing claims of producers whose
7 liens are released by the deposit within 35 days after the date of the
8 deposit. The financial institution where a deposit is made pursuant to this
9 paragraph must be named as the trustee in the instrument to carry out
10 the provisions of the instrument.
- 11 (d) Designating, setting apart and depositing a quantity of a
12 nonproprietary processed farm product in a public warehouse, and
13 endorsing over and delivering the warehouse receipt to the producer for
14 a quantity of nonproprietary processed farm products in an amount that
15 is satisfactory to the producer for the purpose of guaranteeing, to the
16 extent of the value of the deposit, payment of the existing claims of
17 producers and labor claimants whose liens are released by the deposit
18 within 35 days after the date of the deposit.
- 19 (e) Securing a release after payment in full for the farm products.
- 20 2. If a processor has paid all lawful claims of the producers in
21 compliance with this section, a processor may sell, transport or otherwise
22 dispose of any farm product for which the lien has been released.
- 23 3. If a bond, cash deposit, warehouse deposit or other security is
24 given by a processor pursuant to this section, the processor may sell,
25 transport or otherwise dispose of an amount of the farm product or
26 processed farm product not exceeding the current market value
27 represented by the bond, cash deposit, warehouse deposit or other
28 security given by the processor.
- 29 4. For the purposes of this section, the current market value of a
30 farm product or processed farm product may be based upon quotations
31 from the Federal-State Market News Service or a similar source agreed
32 to in writing by the parties to be determined, as appropriate, on the date:
- 33 (a) Of the bond;
34 (b) Of the deposit; or
35 (c) Other security is given.
- 36 **Sec. 14.** 1. In an action commenced by a lien claimant, a
37 defendant processor may file a surety bond with the court in which the
38 action is pending in an amount that is sufficient to cover the demand of
39 the complaint of the plaintiff producer, including attorneys' fees and
40 costs.
- 41 2. Upon the filing of the bond described in subsection 1, the court, in
42 its discretion, may order the release of a portion of the farm product or
43 processed farm product upon which the lien of the plaintiff producer has
44 attached.
- 45 3. A processor may move the court for a hearing to introduce
46 evidence to the court to demonstrate that he has sufficient security or
47 money on deposit to protect the lien or other rights of the plaintiff
48 producer.



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

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

8 **Sec. 15.** 1. The judgment, if any, obtained by a plaintiff in a
9 personal action against a processor to obtain payment for farm products
10 does not impair or merge the lien rights or claims that are held by a
11 plaintiff.

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

15 **Sec. 16.** 1. The plaintiff in an action that is commenced to
16 foreclose a lien provided for in section 8 of this act may obtain a
17 preliminary injunction against the processor to restrain the processor
18 from removing a processed farm product in his possession or under his
19 control and upon which valid liens exist beyond the jurisdiction of the
20 court to the injury of the plaintiff.

21 2. A presumption of irreparable harm to a plaintiff producer arises
22 when a processor removes or prepares to remove a farm product or
23 processed farm product in his possession or under his control and upon
24 which valid liens exist beyond the jurisdiction of the court.

25 **Sec. 17.** 1. All actions commenced by a producer or producers
26 against a processor for the foreclosure of liens or other security provided
27 for in sections 2 to 17, inclusive, of this act may be consolidated by the
28 court and all persons that are necessary to a determination of the action
29 may be made parties to the action.

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

34 3. A judgment in favor of a plaintiff producer to foreclose a lien must
35 state the exact amount due on the judgment from the defendant
36 processor.

37 4. If in a court proceeding to foreclose a lien, the court finds that
38 there is no cash, bond, deposit or other security for the payment of the
39 claims of producers, the judgment of foreclosure must be against a
40 sufficient quantity in value of farm products or processed farm products
41 in the possession or under the control of the defendant processor as may
42 be necessary to satisfy the claim or judgment.

