

AMENDED IN ASSEMBLY MAY 15, 2012
AMENDED IN SENATE JANUARY 23, 2012
AMENDED IN SENATE MAY 17, 2011
AMENDED IN SENATE MAY 2, 2011

SENATE BILL

No. 592

Introduced by Senator Harman

February 17, 2011

An act to amend Sections 57402, ~~57403~~, 57405, 57406, and 57413 of, *and to repeal Section 57412 of*, the Food and Agricultural Code, relating to dairy cattle supply liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 592, as amended, Harman. Dairy cattle supply liens.

(1) Existing law provides that a person who provides feed or materials to aid the raising or maintaining of dairy cattle has a lien upon the proceeds of the milk or milk products produced from the dairy cattle, for the reasonable or agreed charges for the feed or materials provided and for the costs of enforcing the lien, *not to exceed an amount equal to charges for feed or material provided within a 45-day period.*

This bill would, in addition, provide that a person who provides feed or materials to aid the offspring of the dairy cattle has a lien on the proceeds of milk or milk products produced from the dairy cattle, *and would increase the limit of a lien to an amount equal to charges for feed or material provided within a 60-day period.* ~~The bill would specify that the lien attaches to dairy products proceeds.~~ *The bill would establish a limit of one lien per dairy producer per affiliated business entity.*

(2) Existing law provides that the lien shall be perfected and shall be effective upon the filing of a notice of claim of lien with the Secretary

of State, as specified. Existing law requires the notice of claim of lien, among other things, to state the name and address of the lien debtor. The notice of claim of lien is required to be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

This bill would delete the requirement that the lien be effective upon filing a notice of claim of lien with the Secretary of State, and would instead require the lien to be perfected by filing a notice of claim of lien with the Secretary of State, as specified. The bill would require the notice of claim of lien to state the last known name and address of the lien debtor. The bill would also delete the language providing that the notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

(3) Existing law requires the lien claimant to provide written notice of the claim of the lien to the lien debtor within 10 days of the date of filing with the Secretary of State.

This bill would require notice to be served, as specified, depending on whether the lien debtor is an entity, individual, or general partnership. The bill would also provide that failure to give written notice of the claim would not affect the validity or priority of the lien.

(4) Existing law requires these liens to have a certain priority, as specified.

This bill would delete the requirement that the lien have priority in accordance with the time the notice of claim of lien is filed.

(5) *Existing law requires a lien claimant to provide written notice to secured creditors, as defined, at least 30 days prior to enforcing a claim of lien.*

This bill would delete those provisions.

~~(5)~~

(6) Existing law requires the lien claimant to foreclose on a lien only in an action to recover the reasonable or agreed charges for feed and materials delivered and enforce a final judgment as provided.

This bill would instead authorize the lien claimant to foreclose on a lien in an action to recover the reasonable or agreed charges for feed and materials delivered and authorize the lien claimant to enforce a final judgment, as provided, and apply for a right to attach order or writ of attachment through the court in which the action is brought. *The bill would authorize a lien claimant to take certain actions after payment default by the lien debtor, including notifying any person obligated on any proceeds subject to the lien to make payment to the lien claimant.*

The bill would authorize a lien debtor to secure a release of a lien in one of 3 ways, including by depositing with the Secretary of State a cash sum that is expressly set apart by a written instrument in which the Secretary of State is named as trustee, as specified.

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

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

1 SECTION 1. Section 57402 of the Food and Agricultural Code
2 is amended to read:

3 57402. A person who provides feed or materials to aid the
4 raising or maintaining of dairy cattle or offspring therefrom has a
5 lien upon the proceeds of the milk or milk products produced from
6 the dairy cattle, for the reasonable or agreed charges for the feed
7 or materials provided and for the costs of enforcing the lien.
8 However, the amount of charges secured by the lien cannot exceed
9 an amount equal to the reasonable or agreed charges for feed or
10 material provided within a ~~45-day~~ 60-day period, and only two
11 providers of feed or materials shall have an enforceable lien at any
12 time according to the priority set forth in Section 57406. *Only one*
13 *lien per dairy producer is available per affiliated business entity.*

14 ~~SEC. 2. Section 57403 of the Food and Agricultural Code is~~
15 ~~amended to read:~~

16 ~~57403. (a) The lien created pursuant to this chapter attaches~~
17 ~~to dairy products proceeds.~~

18 ~~(b) Except as otherwise provided in this chapter, the notice of~~
19 ~~claim of lien shall remain in effect, and no new notice of claim of~~
20 ~~lien shall be required in order to maintain the lien, as long as the~~
21 ~~person who provides feed or materials either (1) remains unpaid~~
22 ~~for amounts secured by the lien, or (2) continues to provide feed~~
23 ~~or materials on a regular basis to the lien debtor. For purposes of~~
24 ~~this section, providing feed or materials shall not be deemed to be~~
25 ~~made on a regular basis if a period of more than 30 days elapses~~
26 ~~between deliveries.~~

27 ~~SEC. 3.~~

28 SEC. 2. Section 57405 of the Food and Agricultural Code is
29 amended to read:

1 57405. The lien created by this chapter shall be perfected by
2 the filing of a notice of claim of lien with the Secretary of State
3 pursuant to all the provisions of this section.

4 (a) The person who provides feed or materials may, at any time,
5 file in the manner and at the place set forth in this section, the
6 notice of claim of lien.

7 (b) The notice of claim of lien shall, at a minimum, set forth all
8 of the following information:

9 (1) The name and address of the lien claimant.

10 (2) The last known name and address of the lien debtor.

11 (3) The location of the dairy to which the feed and materials
12 were provided.

13 (4) That the lien claimant has a dairy cattle supply lien pursuant
14 to Section 57402.

15 (c) The notice of claim of lien shall be filed on a form which is
16 the standard form of original financing statement prescribed by
17 the Secretary of State pursuant to Section 9521 of the Commercial
18 Code. The standard form shall be completed with the following
19 changes:

20 (1) The lien claimant may be identified either as lien claimant
21 or as secured party.

22 (2) The form shall be signed by the lien claimant and need not
23 be signed by the debtor.

24 (3) In the space for the description of the collateral there shall
25 instead be entered the statement substantially as set forth in
26 paragraphs (3) and (4) of subdivision (b).

27 (d) The notice of claim of lien shall be filed, indexed, and
28 marked in the office of the Secretary of State in the same manner
29 as a financing statement is filed, indexed, and marked pursuant to
30 Section 9519 of the Commercial Code.

31 (e) (1) The lien claimant shall provide written notice of the
32 claim of lien to the lien debtor within 10 days of the date of the
33 filing with the office of the Secretary of State.

34 (2) If the lien debtor is an entity, notice shall be given to the
35 lien debtor's registered agent for service of process. If the lien
36 debtor is an individual or general partnership, the notice shall be
37 given at any address at which the individual conducts business.

38 (3) Failure to give written notice of the claim to the lien debtor
39 shall have no effect on the validity or priority of the lien.

1 (f) For the purpose of the Secretary of State’s index pursuant
2 to Sections 9515, 9516, and 9522 of the Commercial Code and for
3 the purpose of the issuance of a certificate pursuant to Section
4 9519 or 9528 of the Commercial Code, the Secretary of State shall
5 identify a notice pursuant to this section as a financing statement.

6 ~~SEC. 4.~~

7 *SEC. 3.* Section 57406 of the Food and Agricultural Code is
8 amended to read:

9 57406. Notwithstanding Chapter 6.7 (commencing with Section
10 3080) of Title 14 of Part 4 of Division 3 of the Civil Code, the lien
11 created by this chapter shall have the same priority as a security
12 interest perfected by the filing of a financing statement as of the
13 date the notice of claim of lien was filed.

14 *SEC. 4. Section 57412 of the Food and Agricultural Code is*
15 *repealed.*

16 ~~57412. The lien claimant shall provide written notice to secured~~
17 ~~creditors at least 30 days prior to enforcing a claim of lien. For the~~
18 ~~purposes of this section, “secured creditors” means those creditors~~
19 ~~having a perfected security interest in dairy cattle, milk, milk~~
20 ~~products, or the proceeds thereof, as of the date the notice of claim~~
21 ~~of lien is filed with the Secretary of State.~~

22 *SEC. 5.* Section 57413 of the Food and Agricultural Code is
23 amended to read:

24 57413. (a) The lien claimant may foreclose on a lien created
25 by this chapter in the following manners:

26 (a)

27 (1) The lien claimant may foreclose in an action to recover the
28 reasonable or agreed charges for feed and materials delivered. In
29 such an action, the final judgment may be enforced pursuant to
30 Title 9 (commencing with Section 680.010) of Part 2 of the Code
31 of Civil Procedure.

32 (b)

33 (2) In such an action, the lien claimant may apply pursuant to
34 Title 6.5 (commencing with Section 481.010) of Part 2 of the Code
35 of Civil Procedure for a right to attach order and a writ of
36 attachment by filing an application for the order and writ with the
37 court in which the action is brought.

38 (b) *After payment default by the lien debtor, the lien claimant*
39 *may do all of the following, provided that the lien creditor provides*
40 *concurrent notice to the lien debtor:*

1 (1) *Notify any person obligated on any proceeds subject to the*
2 *lien created under this chapter to make payment to, or otherwise*
3 *render performance to or for the benefit of, the lien claimant,*
4 *provided that the lien claimant may not demand that payment or*
5 *performance be made at any time prior to 15 calendar days*
6 *following the date of notice. Notice of lien shall be given by*
7 *certified mail.*

8 (2) *Enforce the obligations of any person obligated on any*
9 *proceeds subject to the lien created under this chapter and exercise*
10 *the rights of the lien debtor with respect to the proceeds and any*
11 *property that secures the right to the proceeds subject to the lien*
12 *created under this chapter.*

13 (c) *A lien debtor may secure a release of a lien created under*
14 *this chapter by doing one of the following:*

15 (1) *Paying the amount secured by the lien.*

16 (2) *Depositing with the Secretary of State a surety bond that is*
17 *executed by the lien debtor as principal and by a surety company*
18 *that is qualified and authorized to do business in this state as a*
19 *surety in an amount that equals the current amount secured by the*
20 *lien. If the lien debtor fails to pay the claims, up to the amount of*
21 *the bond, of the lien creditor within 35 days after entry of final*
22 *judgment in favor of the lien creditor, the surety shall be liable to*
23 *the lien creditor, and shall pay all lawful claims that are covered*
24 *by the amount of the lien and the legal costs if an action is filed*
25 *on the bond.*

26 (3) *Depositing with the Secretary of State a cash sum that is*
27 *expressly set apart by a written instrument that is signed by the*
28 *lien debtor for the purpose of guaranteeing payment of the full*
29 *amount secured by the lien within 35 days from the date of entry*
30 *of final judgment in favor of the lien creditor. The Secretary of*
31 *State shall be named in the instrument as trustee to carry out the*
32 *purpose and intent of the instrument.*