

HOUSE BILL NO. 42

Introduced: 01/03/83

Referred to Committee on Judiciary: 01/03/83

Rereferred to Committee on Agriculture, Livestock, &

Irrigation: 02/04/83

Hearing: 2/14/83

Report: 02/16/83, Do Pass

2nd Reading: 02/18/83, Do Pass, As Amended

3rd Reading: 02/22/83, Do Pass

Transmitted to Senate 2/22/83

Referred to Committee on Judiciary: 3/1/83

Hearing: 3/12/83

Died in Senate Committee

HOUSE BILL NO. 42

INTRODUCED BY DONALDSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A LIEN IN FAVOR OF AGRICULTURAL COMMODITY PRODUCERS AND AGRICULTURAL COMMODITY DEALERS THAT HAS PRIORITY OVER ALL OTHER CREDITORS OF THE AGRICULTURAL COMMODITY PURCHASER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Agricultural commodity" means wheat, corn, oats, barley, rye, flaxseed, soybeans, grain sorghum, dry beans and peas, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed or other small seed, or any other agricultural commodity for which standards are established by the state or the federal government.

(2) "Agricultural commodity dealer" means a person engaged in the business of buying an agricultural commodity for shipment or milling.

(3) "Agricultural commodity producer" means a person who grows or raises an agricultural commodity.

(4) "Person" means an individual, trust, partnership, business trust, corporation, or unincorporated association or any other legal or commercial entity.

Section 2. Lien created -- who may have. An agricultural commodity producer or an agricultural commodity dealer who sells an agricultural commodity has a lien on the agricultural commodity or the proceeds of the sale of the agricultural commodity.

Section 3. When lien attaches. The lien created by [section 2] attaches to the agricultural commodity and to the proceeds of the subsequent sale of the agricultural commodity on the date the agricultural commodity is sold to the purchaser or on the date the agricultural commodity is physically delivered to the purchaser, whichever occurs last.

Section 4. Duration of lien -- notice of lien. (1) The lien created by [section 2] remains in effect for a period of not more than 90 days after the date of attachment except as provided for in subsections (2) and (3).

(2) The lien created by [section 2] may extend for a period of 6 months from the date the lien attaches if all of the following are completed within 90 days after the date of attachment:

(a) filing with the secretary of state of a written notice of lien, signed by the agricultural commodity producer or the agricultural commodity dealer and containing:

(i) a true statement of the demand of the agricultural

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1 commodity producer or agricultural commodity dealer after
2 deducting all credits and offsets;

3 (ii) the name of the person who purchased the
4 agricultural commodity from the agricultural commodity
5 producer or agricultural commodity dealer;

6 (iii) a description sufficient for identification of
7 the agricultural commodity charged with the lien;

8 (iv) a statement that the amount claimed is a true and
9 bona fide existing debt as of the date of filing of the
10 notice of lien; and

11 (v) such other information as the secretary of state
12 may require;

13 (b) sending, by certified mail, return receipt
14 requested, a copy of the notice described in subsection
15 (2)(a) of this subsection to all other persons who have
16 filed a claim of lien on the inventory or accounts
17 receivable of the purchaser of the agricultural commodity or
18 who have filed a financing statement under Title 30, chapter
19 9, covering the inventory or accounts receivable of the
20 purchaser.

21 (3) A lien extended for a period of 6 months under
22 subsection (2) or this subsection may be extended for an
23 additional 6 months by completing the requirements of (a)
24 and (b) of subsection (2) prior to the expiration of the
25 lien.

1 Section 5. Priority of lien. The lien created by
2 [section 2] is preferred to a lien or security interest in
3 favor of a creditor of the purchaser, regardless of whether
4 the creditor's lien or security interest attaches to the
5 agricultural commodity or proceeds of the sale of the
6 agricultural commodity before or after the date on which the
7 lien created by [section 2] attaches.

8 Section 6. Discharge of lien. (1) The lien created by
9 [section 2] is discharged when the lienholder receives full
10 payment for the agricultural commodity. If payment is
11 received in the form of a negotiable instrument, full
12 payment is received when the negotiable instrument clears
13 banking channels.

14 (2) Except as to the proceeds of the sale of the
15 agricultural commodity, the lien created by [section 2] is
16 discharged upon sale of the agricultural commodity by the
17 purchaser to a third party.

18 Section 7. Filing notice of discharge. (1) If a notice
19 of lien is filed with the secretary of state pursuant to
20 [section 4] and the lienholder subsequently receives full
21 payment, the lienholder shall file with the secretary of
22 state a notice of discharge, signed by the lienholder,
23 declaring that full payment has been received and that the
24 lien is discharged.

25 (2) Upon receiving the notice, the secretary of state

1 shall enter it in the book kept to record such liens.

2 (3) If a lienholder, after receiving full payment,
3 fails to file a notice of discharge of the lien within 10
4 days after being requested to do so, he is liable to the
5 purchaser of the agricultural commodity for all actual
6 damages caused by the failure to file the notice of
7 discharge.

8 Section 8. Form of filing with secretary of state --
9 fees. (1) The secretary of state shall prescribe by rule the
10 form of the filing provided for by [section 4] and [section
11 7].

12 (2) The secretary of state shall by rule set the fee
13 for the filing provided for by [section 4].

-End-

Rereferred and
Approved by Committee
on Agriculture Livestock
& Irrigation

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INTRODUCED BY DONALDSON, E. SMITH, IVERSON, HANSON,
ROUSH, KOEHNKE, SCHULTZ, SOLBERG, MANUEL, JACOBSEN,
RYAN, ELLISON, UNDERDAL, ERNST, BLISS, SALES,
SARDANOUE, OCHSNER, CONOVER, ETCHART, KOLSTAD,
BOYLAN, GRAHAM, HALLIGAN, CHRISTIAENS, FULLER, MOHAR,
BERG, H. HAMMOND, SPAETH, KITSELMAN, WALLIN, FAGG

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rapeseed, flaxseed, leguminous seed or other small seed, or
any other agricultural commodity for which standards are
established by the state or the federal government.

(2) "Agricultural commodity dealer" means a person
engaged in the business of buying an agricultural commodity
for shipment or milling.

(3) "Agricultural commodity producer" means a person
who grows or raises an agricultural commodity.

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business trust, corporation, or unincorporated association
or any other legal or commercial entity.

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lien created by [section 2] remains in effect for a period
of not more than 90 days after the date of attachment except
as provided for in subsections (2) and (3).

(2) The lien created by [section 2] may extend for a
period of 6 months from the date the lien attaches if all of
the following are completed within 90 days after the date of
attachment:

1 (a) filing with the secretary of state of a written
2 notice of lien, signed by the agricultural commodity
3 producer or the agricultural commodity dealer and
4 containing:

5 (i) a true statement of the demand of the agricultural
6 commodity producer or agricultural commodity dealer after
7 deducting all credits and offsets;

8 (ii) the name of the person who purchased the
9 agricultural commodity from the agricultural commodity
10 producer or agricultural commodity dealer;

11 (iii) a description sufficient for identification of
12 the agricultural commodity charged with the lien;

13 (iv) a statement that the amount claimed is a true and
14 bona fide existing debt as of the date of filing of the
15 notice of lien; and

16 (v) such other information as the secretary of state
17 may require;

18 (b) sending, by certified mail, return receipt
19 requested, a copy of the notice described in subsection
20 (2)(a) of this subsection to all other persons who have
21 filed a claim of lien on the inventory or accounts
22 receivable of the purchaser of the agricultural commodity or
23 who have filed a financing statement under Title 30, chapter
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25 purchaser.

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2 subsection (2) or this subsection may be extended for an
3 additional 6 months by completing the requirements of (a)
4 and (b) of subsection (2) prior to the expiration of the
5 lien.

6 Section 5. Priority of lien. The lien created by
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3 declaring that full payment has been received and that the
4 lien is discharged.

5 (2) Upon receiving the notice, the secretary of state
6 shall enter it in the book kept to record such liens.

7 (3) If a lienholder, after receiving full payment,
8 fails to file a notice of discharge of the lien within 10
9 days after being requested to do so, he is liable to the
10 purchaser of the agricultural commodity for all actual
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11 agricultural commodity before or after the date on which the
12 lien created by [section 2] attaches. ~~NOTHING SET FORTH~~
13 ~~HEREIN IN ANY WAY AFFECTS THE STATUS OF PRIORITY OF THE LIEN~~
14 ~~OF A CREDITOR OF THE AGRICULTURAL COMMODITY PRODUCER.~~

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