

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 435

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

G. X. MCSHERRY

AN ACT

RELATING TO AGRICULTURE; MAKING CHANGES IN THE PRODUCER'S LIEN ACT TO CLARIFY ITS PROVISIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 48-5B-1 NMSA 1978 (being Laws 1995, Chapter 157, Section 1) is amended to read:

"48-5B-1. SHORT TITLE. -- [~~Sections 1 through 15 of this act~~] Chapter 48, Article 5B NMSA 1978 may be cited as the "Producer's Lien Act". "

Section 2. Section 48-5B-2 NMSA 1978 (being Laws 1995, Chapter 157, Section 2) is amended to read:

"48-5B-2. DEFINITIONS. -- As used in the Producer's Lien Act:

A. "department" means the New Mexico department of

Underscored material = new
[bracketed material] = delete

1 agriculture;

2 B. "director" means the director of the department;

3 ~~[B.] C. "farm product" means an unprocessed~~
4 ~~agricultural commodity; [as species of livestock used or~~
5 ~~produced in farming operations or a product of such crop or~~
6 ~~livestock in its unmanufactured state that is in the possession~~
7 ~~of a person engaged in farming operations and includes a list of~~
8 ~~farm products that are covered by this general definition as~~
9 ~~prepared by the secretary of state]~~

10 D. "person" means an individual or any other legal
11 entity;

12 E. "process" means to treat, refine or prepare for
13 sale, use, transportation or marketing;

14 ~~[E.] F. "processor" means [any] a person [firm or~~
15 ~~corporation that treats] who processes [or refines or in any~~
16 ~~other way prepares for sale, use, transportation or marketing]~~
17 farm products; and

18 ~~[D.] G. "producer" means [any] a person [firm or~~
19 ~~corporation that is] engaged in the business of [growing or]~~
20 producing [any] a farm product [and

21 ~~E. "director" means the director of the New Mexico~~
22 ~~department of agriculture]. "~~

23 Section 3. Section 48-5B-3 NMSA 1978 (being Laws 1995,
24 Chapter 157, Section 3) is amended to read:

25 "48-5B-3. EXTENT OF LIEN--PROPERTY SUBJECT TO

Underscored material = new
[bracketed material] = delete

1 LIEN - - ATTACHMENT AND ~~[COMPLETION]~~ PERFECTION. - -

2 A. ~~[In addition to all other rights and remedies~~
3 ~~that are provided for by law]~~ Every producer ~~[of a farm product]~~
4 that sells a farm product ~~[grown by him]~~ to a processor under
5 contract ~~[express or implied]~~ has a lien to be known as a
6 "producer's lien" upon the farm product and upon all processed
7 or manufactured forms of the farm product to secure payment to
8 him for his labor, care and expense in ~~[growing and harvesting]~~
9 producing the farm product.

10 B. The amount of a producer's lien ~~[shall be to the~~
11 ~~extent of]~~ is the ~~[agreed]~~ contract price for the farm product
12 sold. If there is no ~~[agreed price or method for determining~~
13 ~~it, the extent]~~ contract price, the amount of the producer's
14 lien is the value of the farm product ~~[as of]~~ on the date of
15 delivery to the processor. ~~[Any portion of the farm product or~~
16 ~~the processed or manufactured forms of the farm product in~~
17 ~~excess of the amount necessary to satisfy the total amount owed~~
18 ~~under contract to a producer shall be free and clear of the~~
19 lien]

20 C. ~~[Every]~~ A producer's lien ~~[that is provided for~~
21 ~~in the Producer's Lien Act is on every]~~ attaches to a farm
22 product and any processed form of the farm product that is in
23 the possession of the processor ~~[without]~~. Segregation of the
24 product is not required. For purposes of the Producer's Lien
25 Act, ~~[any]~~ a farm product or processed form of a farm product

Underscored material = new
[bracketed material] = delete

1 deposited by a processor [~~with~~] in a warehouse, whether or not
2 warehouse receipts are given as security to a lender, [~~shall be~~
3 ~~considered as being~~] are deemed to be in the possession of the
4 processor and subject to the producer's lien.

5 D. The producer's lien attaches [~~on all of the~~
6 ~~delivered product~~] from the date of delivery of the farm product
7 or any portion of it by a producer to [~~any~~] a processor.

8 E. Unless the producer's lien is released by payment
9 or by security given for the payment as provided in Section [~~6~~
10 ~~of the Producer's Lien Act~~] 48-5B-5 NMSA 1978, the producer's
11 lien is [~~complete from~~] perfected on the date of delivery of the
12 farm product or [~~from~~] the date of the last delivery if there is
13 a series of deliveries.

14 F. [~~Nothing in~~] The Producer's Lien Act [~~shall~~
15 ~~operate to interfere with the operation of or shall relieve~~
16 does not change the rights and responsibilities of financial
17 institutions, producers or processors [~~of their rights and~~
18 ~~responsibilities under~~] pursuant to the Farm Products Secured
19 Interest Act and the provisions of the Uniform Commercial Code."

20 Section 4. Section 48-5B-5 NMSA 1978 (being Laws 1995,
21 Chapter 157, Section 5) is repealed and a new Section 48-5B-5
22 NMSA 1978 is enacted to read:

23 "48-5B-5. [NEW MATERIAL] TERMINATION OF PRODUCER'S
24 LIEN. --

25 A. A producer's lien is terminated by:

- 1 (1) payment of the full amount of the lien;
2 (2) the furnishing of security pursuant to the
3 provisions of Subsection C of this section; or
4 (3) execution of a written release of the lien
5 by the producer.

6 B. The effective date of a termination occurring
7 pursuant to Subsection A of this section is the date of payment,
8 the date of approval in writing of the furnishing of security or
9 the effective date of a written release.

10 C. The furnishing of acceptable security by a
11 processor to secure payment of the unpaid amount owed a producer
12 by a processor terminates the producer's lien on the farm
13 product for which payment has not been completed. Security is
14 acceptable if it is in a form and amount approved in writing by
15 the director pursuant to regulations adopted by the director for
16 the administration of the Producer's Lien Act. The amount or
17 value of the security shall be in an amount no less than the
18 amount of the producer's lien."

19 Section 5. Section 48-5B-6 NMSA 1978 (being Laws 1995,
20 Chapter 157, Section 6) is amended to read:

21 "48-5B-6. ~~REMOVAL--SALE--PROCEEDS USED TO SATISFY~~
22 ~~OBLIGATIONS.~~ -- [Nø] A processor shall not remove [~~any~~] a farm
23 product or [~~any~~] a processed form of the farm product from New
24 Mexico or from beyond his ownership or control if it is
25 delivered to him with a producer's lien attached. However, any

Underscored material = new
[bracketed material] = delete

1 of the farm product or processed farm product that is in excess
2 of a quantity on hand that is of a value sufficient to satisfy
3 all existing liens on that product may be removed by the
4 processor. ~~[Any]~~ A farm product or a processed form of the farm
5 product to which a producer's lien has attached may be sold
6 ~~[provided that]~~ only if the total proceeds of the sale are used
7 to and do satisfy obligations to producers that are secured by
8 ~~[a lien established pursuant to the Producer's Lien Act]~~
9 producer's liens. "

10 Section 6. Section 48-5B-7 NMSA 1978 (being Laws 1995,
11 Chapter 157, Section 7) is amended to read:

12 "48-5B-7. ACCEPTANCE OF SECURITY--PAYMENT OF
13 CLAIMS--ACTION TO ENFORCE PAYMENT UNDER BOND. --

14 A. The director may accept ~~[a bond or other]~~
15 security ~~[as provided in]~~ pursuant to Section ~~[6 of the~~
16 ~~Producer's Lien Act]~~ 48-5B-5 NMSA 1978. If a claim secured by a
17 producer's lien is not paid in accordance with the condition of
18 the security, the director may, on proof being made to his
19 satisfaction of the ~~[amounts that are]~~ amount due ~~[to the~~
20 ~~claimants]~~ a producer, pay all the unpaid claims insofar as
21 possible out of the ~~[deposit money]~~ security or proceeds from
22 ~~[any]~~ a sale made by him of ~~[any securities or processed farm~~
23 ~~products that are given as]~~ the security.

24 B. If a bond has been given as security, the
25 director shall notify the principal and surety of ~~[any]~~ default

Underscored material = new
[bracketed material] = delete

1 ~~[on the part]~~ of the principal ~~[under the bond]~~ and make demand
2 for payment on behalf of the unpaid ~~[claimants]~~ producer. If
3 payment is not made, the director may take any available legal
4 action ~~[he deems necessary]~~ to enforce payment under the bond.

5 ~~[C. If the director has received warehouse receipts~~
6 ~~for any processed farm product as security and the processor~~
7 ~~giving them has failed to pay the claims in accordance with the~~
8 ~~terms of the security, the director may sell the security with~~
9 ~~or without notice and in the manner he determines]~~ The director
10 shall adopt regulations establishing procedures for the sale of
11 security made pursuant to the provisions of this section."

12 Section 7. Section 48-5B-9 NMSA 1978 (being Laws 1995,
13 Chapter 157, Section 9) is amended to read:

14 "48-5B-9. FORECLOSURE-- RIGHT OF ACTION AGAINST
15 PROCESSOR-- EFFECT OF PERSONAL JUDGMENT ON LIEN RIGHTS.--

16 A. A producer may enforce a producer's lien by
17 bringing a foreclosure action in district court. A producer's
18 lien is foreclosed in the same manner as a mortgage.

19 ~~[A.]~~ B. The Producer's Lien Act does not impair or
20 affect the right of a ~~[claimant who possesses]~~ producer having a
21 lien from maintaining a personal action to recover the debt
22 against a processor, either in an action to foreclose his lien
23 or in a separate action. [The claimant is not required to state
24 in his affidavit that his demand is not secured by a lien in
25 order to procure an attachment.]

Underscored material = new
[bracketed material] = delete

1 ~~[B.]~~ C. A money judgment obtained by a ~~[claimant]~~
2 producer in ~~[the personal action or personal judgment obtained~~
3 ~~in the lien action]~~ a foreclosure action or an action to enforce
4 the secured debt does not impair or merge any lien right or
5 claim held by the ~~[claimant. However]~~ producer, but any money
6 collected on the judgment shall be credited on the amount of the
7 producer's lien or ~~[claims]~~ underlying claim in any action that
8 is brought to enforce the lien or in any action that is filed
9 pursuant to the Producer's Lien Act by the director. "

10 Section 8. Section 48-5B-14 NMSA 1978 (being Laws 1995,
11 Chapter 157, Section 14) is amended to read:

12 "48-5B-14. DEPARTMENT DUTIES. --The department shall
13 ~~[promulgate]~~ adopt rules and regulations necessary to carry out
14 the provisions of the Producer's Lien Act, including procedures
15 for inspecting ~~[processor's]~~ processors' records regarding ~~[the]~~
16 farm ~~[product]~~ products. "

17 Section 9. A new section of the Producer's Lien Act is
18 enacted to read:

19 "[NEW MATERIAL] SALE OF PRODUCT-- REQUIREMENT FOR
20 PROCESSOR'S STATEMENT TO BUYER PRIOR TO DELIVERY. --

21 A. Prior to the delivery of a farm product or
22 processed farm product to a buyer pursuant to a sale to the
23 buyer, a processor shall furnish the buyer a written statement
24 made by the processor and verified under oath stating the
25 following:

1 (1) whether or not a producer's lien has
2 attached and exists in respect to the product being delivered,
3 and if a lien exists, the amount of the lien;

4 (2) if a lien previously attached to the
5 product and has been terminated prior to delivery, a description
6 of how the lien was terminated; and

7 (3) if a lien exists on the product, a
8 statement that the proceeds of the sale will be used to and are
9 sufficient to satisfy all liens attached to the product.

10 B. If a processor's statement furnished pursuant to
11 Subsection A of this section includes the information required
12 by Paragraph (2) of that subsection, the processor shall attach
13 to the statement all documents that evidence the stated
14 termination.

15 C. A processor who fails to provide the statement
16 required by this section or who provides the statement but
17 includes false information in the statement shall be liable to a
18 buyer who relies on the statement and accepts delivery of the
19 product or processed product in an amount equal to twice the
20 purchase price paid by the buyer to the processor for the
21 product. A buyer may enforce this right by action in the
22 district court. "

23 Section 10. REPEAL. -- Sections 48-5B-4, 48-5B-8 and
24 48-5B-10 through 48-5B-13 NMSA 1978 (being Laws 1995, Chapter
25 157, Sections 4, 8 and 10 through 13) are repealed.

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 1, 1996

Mr. Speaker:

Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
to whom has been referred

HOUSE BILL 435

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

Respectfully submitted,

G. X. McSherry, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HAGC/ HB435

Page 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

Excused: Casey, Crook, Porter, Stell

Absent: None

H0435AG1

Underscored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 5, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 435

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Cisco McSorley, Chairman

Underscored material = new
[bracketed material] = delete

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Baca, Luna, McSorley, Sanchez, R. G., Stewart

Absent: None

H0435JC1

Underscored material = new
[bracketed material] = delete

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 13, 1996

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred

HOUSE BILL 435

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.

Respectfully submitted,

TOM R. BENAVIDES, Chairman

Adopted _____ Not Adopted _____

Underscored material = new
[bracketed material] = delete

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Tsosie, Vernon, Wray

Absent: 0

H0435C01

Underscored material = new
[bracketed material] = delete

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 14, 1996

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 435

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Janice D. Paster, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Underscored material = new
[bracketed material] = delete

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: None

Absent: Carraro, Vernon

H0435JU1

Underscored material = new
[bracketed material] = delete