

AMENDED IN ASSEMBLY JULY 3, 2012  
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**

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**Introduced by Senator Harman**

February 17, 2011

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An act to amend Sections 57401, 57402, 57405, ~~57406~~, and 57413 of, ~~and~~ to repeal Section 57412 of, *and to repeal and add Section 57406 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 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 *and service of the notice of claim of lien*, 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 *the notice to be provided to the lien debtor, to any person from which the lien claimant has received, before the lien claimant files the notice, notification of a claim of interest in the proceeds, and to any other secured party or lienholder that held a security interest in or other lien on the proceeds, as specified, 10 days before the filing of the notice. The 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. The bill would also require a lien claimant to send to a lien debtor a termination statement for the notice of claim of lien or to file the termination statement in the office of the Secretary of State within 20 days after receiving a demand from a lien debtor if the lien has terminated, as specified.*

(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. *The bill would instead make applicable to dairy cattle supply liens specified statutes governing secured transactions generally, including a provision requiring that conflicting perfected security interests and agricultural*

*liens rank according to priority in time of filing or perfection, as specified.*

(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.

(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, *after payment default by the lien debtor*, 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~~ *and a writ of attachment, or temporary protective order*, 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 define a “person obligated on any proceeds” for purposes of provisions governing dairy cattle supply liens.* The bill would authorize a lien debtor to secure a release of a lien ~~in one of 3 ways, including by paying the amount secured by the lien or 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 bond~~, as specified. *The bill would require a lien claimant that receives proceeds pursuant to a notice that is provided to a person who is obligated on the proceeds to account to, and pay the lien debtor for, any surplus, and shall be liable for any deficiency.*

(7) *The bill would provide that the provisions described above shall apply prospectively to all contracts entered into on or after January 1, 2013.*

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

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

1 SECTION 1. Section 57401 of the Food and Agricultural Code  
2 is amended to read:

3 57401. (a) The definitions in this section govern the  
4 construction of this chapter.

1 (b) “Feed or materials” means commercial feed, grain, forage,  
 2 feed ingredients, mineral feed, drugs, animal health products,  
 3 customer-formula feed, any mixture or preparation for feeding  
 4 animals, any of the constituent nutrients of an animal ration, or  
 5 any other food which is used for the feeding of dairy cattle.

6 (c) “*Person obligated on any proceeds*” means a handler, as  
 7 defined in Section 61826, who is in possession of proceeds.

8 (e)

9 (d) “Proceeds” means funds derived from the sale of milk or  
 10 milk products which are payable to the lien debtor by the possessor  
 11 of the funds, except for any of the following:

12 (1) Deductions for taxes, fees, and assessments.

13 (2) Funds due or owing milk processing cooperative associations  
 14 organized and operating pursuant to Chapter 1 (commencing with  
 15 Section 54001).

16 (3) Funds retained by the cooperative association.

17 (4) Deductions made pursuant to a court order.

18 (5) Deductions due or owing the buyer of the milk for hauling  
 19 services provided by the buyer pursuant to subdivision (e) of  
 20 Section 62096 and deductions due or owing the buyer for the  
 21 testing of milk for purposes of payment pursuant to Section 34231.

22 (d)

23 (e) “Raising or maintaining of dairy cattle” means feeding,  
 24 pasturing, caring for, and managing dairy cattle kept or raised for  
 25 use or profit.

26 (e)

27 (f) “Reasonable or agreed charges” means the agreed price, if  
 28 any, for the feed and materials sold to the lien debtor, at the lien  
 29 debtor’s request. If there is no agreed price or a method for  
 30 determining price which is agreed upon, “reasonable or agreed  
 31 charges” means the reasonable value of the feed or materials as of  
 32 the date of delivery.

33 **SECTION 1.**

34 *SEC. 2.* Section 57402 of the Food and Agricultural Code is  
 35 amended to read:

36 57402. A person who provides feed or materials to aid the  
 37 raising or maintaining of dairy cattle or offspring therefrom has a  
 38 lien upon the proceeds of the milk or milk products produced from  
 39 the dairy cattle, for the reasonable or agreed charges for the feed  
 40 or materials provided and for the costs of enforcing the lien.

1 However, the amount of charges secured by the lien cannot exceed  
2 an amount equal to the reasonable or agreed charges for feed or  
3 material provided within a 60-day period, and only two providers  
4 of feed or materials shall have an enforceable lien at any time  
5 according to the priority set forth in Section 57406. Only one lien  
6 *under this chapter* per dairy producer is available per affiliated  
7 business-~~entity~~ *supplier*.

8 ~~SEC. 2.~~

9 *SEC. 3.* Section 57405 of the Food and Agricultural Code is  
10 amended to read:

11 57405. The lien created by this chapter shall be perfected by  
12 the filing of a notice of claim of lien with the Secretary of State  
13 *and service of the notice of claim of lien* pursuant to all the  
14 provisions of this section.

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

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

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

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

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

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

26 (c) The notice of claim of lien shall be filed on a form which is  
27 the standard form of original financing statement prescribed by  
28 the Secretary of State pursuant to Section 9521 of the Commercial  
29 Code. The standard form shall be completed with the following  
30 changes:

31 (1) The lien claimant may be identified either as lien claimant  
32 or as secured party.

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

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

38 (d) The notice of claim of lien shall be filed, indexed, and  
39 marked in the office of the Secretary of State in the same manner

1 as a financing statement is filed, indexed, and marked pursuant to  
2 Section 9519 of the Commercial Code.

3 (e) (1) The lien claimant shall provide written notice of the  
4 claim of lien to the ~~lien debtor~~ *following persons* within 10 days  
5 of the date of the filing with the office of the Secretary of ~~State~~.  
6 *State:*

7 (A) *The lien debtor.*

8 (B) *Any person from which the lien claimant has received, before*  
9 *the lien claimant files the notice, notification of a claim of an*  
10 *interest in the proceeds.*

11 (C) *Any other secured party or lienholder that, 10 days before*  
12 *the filing of the notice, held a security interest in or other lien on*  
13 *the proceeds perfected by the filing of a financing statement that*  
14 *satisfied all of the following conditions:*

15 (i) *The statement identified the proceeds by referring to all*  
16 *assets, all personal property, goods, farm products, milk, or milk*  
17 *products, or otherwise identified the proceeds by any other*  
18 *description sufficient pursuant to Section 9108 of the Commercial*  
19 *Code.*

20 (ii) *The statement was indexed under the debtor's name as of*  
21 *that date.*

22 (iii) *The statement was filed against the debtor covering the*  
23 *proceeds as of that date and was filed in the office or offices in*  
24 *which a financing statement may be filed pursuant to Section 9501*  
25 *of the Commercial Code.*

26 (D) *Any other secured party that, 10 days before the filing of*  
27 *the notice, held a security interest in the proceeds perfected by*  
28 *compliance with a statute, regulation, or treaty described in*  
29 *subdivision (a) of Section 9311 of the Commercial Code.*

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

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

36 (f) For the purpose of the Secretary of State's index pursuant  
37 to Sections 9515, 9516, and 9522 of the Commercial Code and for  
38 the purpose of the issuance of a certificate pursuant to Section  
39 9519 or 9528 of the Commercial Code, the Secretary of State shall  
40 identify a notice pursuant to this section as a financing statement.

1 (g) *Within 20 days after a lien claimant receives a demand from*  
2 *a lien debtor, the lien claimant shall send to the lien debtor a*  
3 *termination statement for the notice of claim of lien or file the*  
4 *termination statement in the office of the Secretary of State, if the*  
5 *lien perfected by the notice of claim of lien has terminated pursuant*  
6 *to the provisions of Section 57403. Upon the filing of a termination*  
7 *statement with the office of the Secretary of State, the notice of*  
8 *claim of lien to which the termination statement relates ceases to*  
9 *be effective.*

10 ~~SEC. 3. Section 57406 of the Food and Agricultural Code is~~  
11 ~~amended to read:~~

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

17 ~~SEC. 4. Section 57406 of the Food and Agricultural Code is~~  
18 ~~repealed.~~

19 ~~57406. (a) The lien created by this chapter shall have priority~~  
20 ~~in accordance with the time the notice of claim of lien is filed.~~

21 ~~(b) The lien created by this chapter shall have the same priority~~  
22 ~~as a security interest perfected by the filing of a financing statement~~  
23 ~~as of the date the notice of claim of lien was filed.~~

24 ~~SEC. 5. Section 57406 is added to the Food and Agricultural~~  
25 ~~Code, to read:~~

26 ~~57406. The priority of conflicting interests, agricultural liens,~~  
27 ~~and the agricultural lien created under this chapter shall be~~  
28 ~~governed by subdivisions (a) to (f), inclusive, of Section 9322 of~~  
29 ~~the Commercial Code.~~

30 ~~SEC. 4.~~

31 ~~SEC. 6. Section 57412 of the Food and Agricultural Code is~~  
32 ~~repealed.~~

33 ~~SEC. 5.~~

34 ~~SEC. 7. Section 57413 of the Food and Agricultural Code is~~  
35 ~~amended to read:~~

36 ~~57413. (a) The After payment default by the lien debtor, the~~  
37 ~~lien claimant may foreclose on a lien created by this chapter in the~~  
38 ~~following manners:~~

39 (1) ~~The lien claimant may foreclose in an action to recover the~~  
40 ~~reasonable or agreed charges for feed and materials delivered. In~~

1 such an action, the final judgment may be enforced pursuant to  
2 Title 9 (commencing with Section 680.010) of Part 2 of the Code  
3 of Civil Procedure.

4 ~~(2) In such an action, the lien claimant may apply pursuant to~~  
5 ~~Title 6.5 (commencing with Section 481.010) of Part 2 of the Code~~  
6 ~~of Civil Procedure for a right to attach order and a writ of~~  
7 ~~attachment by filing an application for the order and writ with the~~  
8 ~~court in which the action is brought.~~

9 ~~(b) After payment default by the lien debtor, the lien claimant~~  
10 ~~may do all of the following, provided that the lien creditor provides~~  
11 ~~concurrent notice to the lien debtor:~~

12 ~~(1) Notify~~

13 ~~(2) Provided that the lien claimant provides concurrent notice~~  
14 ~~to the lien debtor and the parties set forth in subdivision (e) of~~  
15 ~~Section 57405, the lien claimant may notify any person obligated~~  
16 ~~on any proceeds subject to the lien created under this chapter to~~  
17 ~~make payment to, or otherwise render performance to or for the~~  
18 ~~benefit of, the lien claimant, provided that the lien claimant may~~  
19 ~~not demand that payment or performance be made at any time~~  
20 ~~prior to 15 calendar days following the date of notice. Notice of~~  
21 ~~lien shall be given by certified mail.~~

22 ~~(2) Enforce~~

23 ~~(3) The lien claimant may enforce the obligations of any person~~  
24 ~~obligated on any proceeds subject to the lien created under this~~  
25 ~~chapter and exercise the rights of the lien debtor with respect to~~  
26 ~~the proceeds and any property that secures the right to the proceeds~~  
27 ~~subject to the lien created under this chapter.~~

28 ~~(b) A lien claimant that receives proceeds pursuant to a notice~~  
29 ~~provided pursuant to paragraph (2) of subdivision (a) shall account~~  
30 ~~to, and pay the lien debtor for, any surplus, and shall be liable for~~  
31 ~~any deficiency.~~

32 ~~(c) Nothing in this chapter shall prohibit a lien claimant from~~  
33 ~~applying pursuant to Title 6.5 (commencing with Section 481.010)~~  
34 ~~of Part 2 of the Code of Civil Procedure for a right to attach order~~  
35 ~~and a writ of attachment, or temporary protective order, by filing~~  
36 ~~an application for the order, writ, or temporary protective order~~  
37 ~~with the court in which the action is brought.~~

38 ~~(d) Notwithstanding the receipt of a notice pursuant to~~  
39 ~~paragraph (2) of subdivision (a), a person obligated on any~~  
40 ~~proceeds subject to a lien created under this chapter shall have~~

1 *no liability to a lien claimant for failure to comply with that notice*  
2 *to the extent that the person obligated on the proceeds pays the*  
3 *proceeds subject to the notice as follows:*

4 (1) *To a person holding a lien or security interest that is prior*  
5 *to the lien of the lien claimant issuing the notice.*

6 (2) *In satisfaction of a contractual assignment or valid notice*  
7 *provided pursuant to Section 9607 of the Commercial Code has*  
8 *been received from the person obligated on the proceeds prior to*  
9 *the receipt of the notice pursuant to paragraph (2) of subdivision*  
10 *(a).*

11 (e) *A person obligated on any proceeds subject to the lien*  
12 *created under this chapter and who makes payment pursuant to*  
13 *the notice required by paragraph (2) of subdivision (a) shall not*  
14 *be deemed, to the extent of that payment, to be in violation of the*  
15 *applicable provisions of law relating to failure to pay the amounts*  
16 *to the lien debtor and shall not be deemed to have engaged in an*  
17 *unlawful trade practice.*

18 ~~(e)~~

19 (f) *A lien debtor may secure a release of a lien created under*  
20 *this chapter by doing one of the following:*

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

22 (2) *Depositing with the Secretary of State a surety bond that is*  
23 *executed by the lien debtor as principal and by a surety company*  
24 *that is qualified and authorized to do business in this state as a*  
25 *surety in an amount that equals the current amount secured by the*  
26 *lien. If the lien debtor fails to pay the claims, up to the amount of*  
27 *the bond, of the lien-~~creditor~~ claimant within 35 days after entry*  
28 *of final judgment in favor of the lien-~~creditor~~ claimant, the-~~surety~~*  
29 *shall-be-liable bond shall be in an amount sufficient to cover the*  
30 *liability to the lien-~~creditor~~ claimant, and shall pay all lawful claims*  
31 *that are covered by the amount of the lien-and-the-legal-costs if an*  
32 *action is filed on the bond.*

33 ~~(3) Depositing with the Secretary of State a cash sum that is~~  
34 ~~expressly set apart by a written instrument that is signed by the~~  
35 ~~lien debtor for the purpose of guaranteeing payment of the full~~  
36 ~~amount secured by the lien within 35 days from the date of entry~~  
37 ~~of final judgment in favor of the lien creditor. The Secretary of~~  
38 ~~State shall be named in the instrument as trustee to carry out the~~  
39 ~~purpose and intent of the instrument.~~

1     *SEC. 8. The provisions of this act shall apply prospectively to*  
2     *all contracts entered into on or after January 1, 2013.*

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