

# MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2261

S. P. 726

In Senate, February 25, 1976

Reported by Senator Hichens of York from Committee on Agriculture pursuant to Joint Order S. P. 530 and printed under Joint Rules No. 3.

HARRY N. STARBRANCH, Secretary

Filed under Joint Rule 3, pursuant to S. P. 530.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SIX

AN ACT to Establish an Agriculture Lien Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 9-B MRSA § 466-A, is enacted to read:

§ 466-A. Unlawful acts; civil offenses

The action set forth in this section shall be unlawful and shall be deemed a civil offense.

1. Processor inventory loans limited. Any financial institution, financial institution holding company, or any other type of financial institution as defined in section 131 that provides credit, cash, securities, or any other type of loan secured by the inventory of the processor beyond 50% of the total value of the average annual inventory of such processor at any one time as defined in Title 10, section 3301 shall be deemed an unlawful act. Any credit, cash, security, or loan secured by the inventory of a processor that exceeds the limit established in this section shall be deemed unsecured and a last priority debt for purposes of repayment.

Sec. 2. 10 MRSA c. 605 is repealed and the following enacted in place thereof:

CHAPTER 605

AGRICULTURE LIEN LAW

§ 3301. Purpose

The Legislature finds that agriculture has a substantial and unique effect on the economy of the entire State and Aroostook County in particular. A large number of people in Maine are directly or indirectly dependent upon

agriculture. In the recent past, a number of agricultural producers, particularly in the potato industry, have been very adversely affected by the failure of processors of agricultural raw products to compensate producers for the raw product contracted and delivered to the processor. As a result, some producers have been forced out of business as a way of life and as a means of earning a livelihood.

The Legislature intends through this legislation to provide producers of farm products with a limited guarantee of payment for the raw product contracted by and delivered to a processor. This legislation is designed to afford limited protection for producers and thereby promote the general welfare of the State which is dependent upon agriculture and the producer.

### § 3302. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Average monthly inventory. "Average monthly inventory" shall mean the total value of the inventory of a processor for one year divided by 12.
2. Commissioner. "Commissioner" shall mean the Commissioner of Agriculture.
3. Farm product or raw product. "Farm product" or "raw product" shall mean any agricultural product grown or harvested on the land for sale to a processor or manufacturer except logs and lumber.
4. Finished product. "Finished product" shall mean any manufactured or processed form of a raw agricultural product except wood products.
5. Inventory. "Inventory" shall have the same meaning as defined in Title 11, section 9-109, subsection 4, except that timber and wood products shall not be considered inventory in this chapter.
6. New processor. "New processor" shall mean and is exclusively limited to a firm, person, or corporation that has not operated as a processor in the previous 3 years or has purchased an already existing plant that has not been operating for 3 years in Maine immediately prior to the purchase of the plant.
7. Processor. "Processor" means any person other than a consumer who purchases or contracts to purchase agricultural raw products produced or harvested from the land for processing or manufacturing which changes the physical form that the raw product possessed when harvested. The effects of the following operations shall be considered as changing the physical form possessed by such raw products when harvested: Chopping, slicing, cutting, dicing, mashing, removing skin or peel, frying or otherwise cooking, freezing, canning, dehydrating or comparable methods of preparation for marketing in what is generally considered to be a processed form.

### § 3303. Producer's lien attached to processed agricultural goods

Every producer of any farm product which the producer grows, harvests and sells to any processor under contract, express or implied, has a lien upon

such product and upon all processed or manufactured forms of such farm product for his labor, care, and expense in growing and harvesting the raw product. The producer's lien attached to the finished product shall be the full extent of the agreed price, if any, of the raw product delivered to the processor. If there is no agreed price or a method for determining it which is agreed upon, the extent of the lien shall be the full value of the raw product as of the date of delivery and shall be determined by the Commissioner of Agriculture.

1. Attachment of lien. The producer's lien is attached to the finished product manufactured or processed by a processor at the time of delivery of the producer's raw product to the processor.

#### § 3304. Priority of liens

1. Preferred liens. The producer's lien is a preferred lien attached to the total value of the finished product in inventory and prior in dignity to all other liens, claims, or encumbrances except for labor claims for wages and salaries for personal services which are rendered by any person to any processor in connection with the processing business and except for the claims of financial institutions as defined in Title 9-B, section 131 for loans or debts outstanding which are secured by the inventory of a processor.

A. In the event that several producers have delivered raw products to the processor or that one producer has made several deliveries to a processor, the preference of the producer liens shall be based on the date of delivery, and the first delivery shall have preference over the last delivery.

2. Processor inventory loans limited. No processor of agricultural raw products as defined in section 3302 shall pledge or have pledged more than a total of 50% of its average monthly inventory as computed according to paragraph A as collateral for credit, cash, securities, or any other type of loan from any person, firm, corporation, state agency or federal agency. Any credit, cash, security, or other type of loan that exceeds the limit established in this section shall be deemed unsecured and a last priority for repayment purposes.

A. The average monthly inventory shall be computed by the processor and the commissioner or his agent by June 30th of each year to determine for the next fiscal year, July 1st - June 30th, the maximum amount that a processor may borrow as established in this section.

B. A new processor as defined in section 3302 and the commissioner or his agent shall estimate the average monthly inventory for purposes established in this chapter and that inventory shall be based on the anticipated volume of production and sales.

#### § 3305. Duration of lien

Except as otherwise provided in section 3306 the lien of a producer, unless sooner released by payment or by security which is given for such payment as provided in this chapter, is complete from the date of delivery of such product, or if there is a series of deliveries, it is complete from the date of the

last delivery. The lien shall remain in effect for 60 days thereafter at which time it shall cease unless proceedings are commenced in a proper court within that time to enforce the lien.

§ 3306. Effect of lien during foreclosure proceeding

If suit is commenced by any such producer to enforce any lien, as provided in sections 3303 and 3304, such lien shall remain in effect until one of the following occurs.

1. Payment for product. The payment of the agreed price of the value of such product.
2. Deposit with court. Deposit of the amount of the lien or claims with the court in which any such action is pending.
3. Court decision. The final determination of such court proceeding.

§ 3307. Release from the lien

Any processor that desires to secure a release of any or all of such liens on any product or processed product may do so in the following way.

1. Payment within 20 days. By paying the agreed or actual value of any farm product which is purchased by such processor within 20 days from the date of delivery of the farm product unless the date of payment is otherwise agreed upon in writing or such payment is secured other than by lien.

2. Posting bond. By depositing with the Commissioner of Agriculture a surety bond which is executed by such processor as principal and a surety company which is qualified and authorized to do business in this State as surety in an amount which equals the current market value of the product or processed product which is intended by such processor to be sold or otherwise disposed of, as such value may appear by the sworn statement of such processor in accordance with quotations from the federal-state market news service or other evidence which is satisfactory to the Commissioner of Agriculture. The bond shall be conditioned that if the processor fails to pay up to the amount of such bond the lawful claims of all producers whose liens have been released by the bond, within 30 days after date of the bond, the surety shall be liable to and shall pay to the State on behalf of such claimants all such lawful claims as may be covered by the amount of the bond, together with costs of suit if an action is filed on the bond.

3. Cash deposit. By depositing with the Commissioner of Agriculture a cash sum in lawful money of the United States which is expressly set apart by an instrument in writing that is signed by the processor for the purpose of guaranteeing to the extent of such sum, payment of all existing claims of producers whose liens are released by the deposit within 30 days from the date of such deposit. The commissioner shall be named in such instrument as trustee to carry out the purpose and intent of the instrument.

4. Cash payment to commissioner. By securing a release from the commissioner after payment in full for such farm product.

**§ 3308. Disposition of product**

If all lawful claims of the producers have been secured as defined in section 3307, any product which is released by such action may be sold, transported or otherwise disposed of.

**§ 3309. Claim payment from bond filed with the Commissioner of Agriculture**

The Commissioner of Agriculture may accept such bond, if approved by him, and such other security. If the claims or any of them are not paid in accordance with the condition of such security, the Commissioner of Agriculture may, on proof being made to his satisfaction of the amounts which are due such claimants, pay all such unpaid claims insofar as possible out of the deposit money or proceeds from any sale made by him of any securities or processed products which are given as security.

1. Default on claims. If a bond has been given as security, the Commissioner of Agriculture shall notify the principal and surety of any default on the part of the principal under the bond, and make demand for payment on behalf of such unpaid claimants. If payment is not made, the commissioner may take any legal action he may deem necessary to enforce payment under such bond.

2. Sale of securities. If the Commissioner of Agriculture has received warehouse receipts for any processed product as security, and the processor giving them has failed to pay the claims in accordance with the terms of such security, the commissioner may sell such security with or without notice, and in such manner as he shall determine.

3. Claim payments. All claims in relation to payment shall be based on the date of delivery and the first delivery shall have priority over the last delivery.

4. Release of product. This chapter does not prevent the commissioner if in his opinion the rights of the claimants are fully protected, as provided by this chapter, from issuing a certificate in the name of the department and signed by him which releases any specific lot or quantity of any product or processed product from all liens of the claimants. No security which is held by the commissioner shall be released by him to any processor unless and until the commissioner is satisfied that all claims have been fully paid or that the rights of all of the claimants are fully protected.

A fee of \$5 shall be paid to the commissioner for issuing any certificate or release which is provided for in this section.

**§ 3310. Personal action to recover debt**

This chapter does not impair or affect the right of any claimant that possesses a lien to maintain a personal action to recover such debt against a processor, either in an action to foreclose his lien or in a separate action. He is not required to state in his affidavit to procure an attachment that his demand is not secured by a lien.

1. Collections credited to claims. The judgment, if any, which is obtained by the plaintiff in such personal action, or personal judgment which is obtained in such lien action, does not impair or merge any lien right or claim which is held by such plaintiff. Any money which is collected on the judgment shall be credited on the amount of such lien or claims in any action which is brought to enforce the lien or an any action which is filed pursuant to this chapter by the commissioner.

2. Posting of bonds. In an action that is filed by any such lien claimant, the defendant processor may file with the court in which the action is pending a surety bond which is approved by such court in an amount that is sufficient to cover the demand of plaintiff's complaint, including the costs, whereupon the court may order the release of a portion or the whole of any product or processed product upon which the lien of plaintiff has attached.

3. Presentation of evidence to court. Such processor may also, on motion duly noticed, introduce evidence to the court before whom any such action is pending to the effect that he has sufficient security or money on deposit with the commissioner to protect the lien or other rights of plaintiff. If he does so, the court may order the release of a portion or the whole of such product upon which the lien of plaintiff is attached, and deny to plaintiff any recovery in such action. Such action by the court does not prejudice any other rights or remedies which are possessed by the plaintiff.

#### § 3311. Request for an injunction

The plaintiff in an action which is brought to foreclose any of the liens which are provided for in this chapter may, in a proper case, and upon proper allegations, secure an injunction against the processor to restrain the doing of any acts on the part of such processor which are designed to or which would, in effect, remove any processed product in his possession or under his control and upon which valid liens exist, beyond the process of the court, to plaintiff's injury.

#### § 3312. Insufficient security

If in a court proceeding to foreclose such lien it is found and determined by the court that there is no cash, bond, or other deposit placed with the commissioner as security for the payment of any of the lien claims as set out in the complaint, the judgment of foreclosure shall be against a sufficient quantity in value of such farm product or processed product in the possession or under the control of the defendant processor, as may be necessary to satisfy such claim or render judgment and declare forfeited any bond which is deposited in the court by such processor to secure the lawful claims of the plaintiff as determined by the court.

#### § 3313. Consolidation of liens

All actions filed by the commissioner or producers against any processor for the foreclosure of the liens or other security which are provided for in this chapter may be consolidated by the court and all persons that are necessary, to a determination of such action may be made parties to such actions. Any judgment which is rendered shall determine the lawfulness of the amount of each claim as represented by the pleadings.

**§ 3314. Violations and penalty**

It is unlawful for any processor to remove any farm product which is delivered to him, or any processed form of the farm product, from this State or beyond his ownership or control upon which such a lien or any of the liens which are provided for in this chapter, are attached, except any of such product or processed product as may be in excess of a quantity which is on hand of a value that is sufficient to satisfy all existing liens.

Any violation of this chapter is a Class E crime as defined in Title 17-A, section 4.

**STATEMENT OF FACT**

The intent of this legislation is to provide limited protection to producers of agricultural raw products grown and harvested on the land who receive no payment or only partial payment for the raw product delivered to a processor. This legislation gives agricultural producers a preferred lien on the inventory of a processor to follow the lien of labor and banking institutions. Processors are limited to 50% of the value of their inventory which can be used as collateral for loans. This limitation will ensure sufficient finished product value to cover producer claims. Presently one processor owes producers more than \$5,000,000 for raw product deliveries, and this legislation will prevent future difficulties in payment.