

HOUSE BILL No. 5542

January 11, 2006, Introduced by Reps. Hansen, Wenke, Kathleen Law, Mayes, Palsrok, Elsenheimer, Casperson, Nitz, Jones, Green, Emmons, Proos, Stahl, Pavlov, Schuitmaker, Moolenaar, Moore, Sheltroun, Hummel, Pearce, Farhat, Espinoza, Kooiman and Hildenbrand and referred to the Committee on Agriculture.

A bill to provide for liens on agricultural products delivered to processors in favor of the producers of the products; to provide remedies; to prescribe the powers and duties of certain state officers and agencies; and to impose a fee.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "agricultural producer's lien act".

3 Sec. 2. As used in this act:

4 (a) "Department" means the department of agriculture.

5 (b) "Director" means the director of the department or the
6 director's designee.

7 (c) "Person" means an individual, partnership, corporation,
8 association, governmental entity, or other legal entity.

1 (d) "Producer" includes a cooperative association of
2 producers.

3 (e) "Product" means an agricultural product.

4 Sec. 3. (1) A producer of products that sells a product grown
5 by the producer or, if the producer is a cooperative association of
6 producers, by a producer member of the cooperative association of
7 producers, to a processor under a contract, express or implied, has
8 a lien on the product and on all processed or manufactured forms of
9 the product for the labor, care, and expense of the producer in
10 growing and harvesting the product.

11 (2) The amount of the lien imposed by this act is the agreed
12 price for the product or, if there is no agreed price or agreed
13 method for determining the price, the value of the product as of
14 the date of delivery.

15 (3) Any portion of the product or the processed or
16 manufactured form of the product, in excess of the amount necessary
17 to satisfy the total amount owed to producers, under contract, is
18 not subject to the lien created by this section.

19 (4) A lien imposed by this act is in addition to all other
20 rights and remedies provided by law.

21 Sec. 4. Unless released sooner by payment or by security given
22 as provided in this act, a lien imposed by this act attaches on all
23 of the product delivered by a producer to a processor on the date
24 of delivery of the product or any portion of it.

25 Sec. 5. A lien imposed by this act is a preferred lien and has
26 priority over all other liens, claims, or encumbrances except the
27 following:

1 (a) Labor claims for wages and salaries for personal services
2 rendered by any person to a processor in connection with the
3 processor's business after the delivery of the product for
4 processing.

5 (b) The lien of a warehouseman under article 7 of the uniform
6 commercial code, 1962 PA 174, MCL 440.7101 to 440.7603.

7 Sec. 6. Subject to section 3(3), a lien imposed by this act
8 attaches on every product and any processed or manufactured form of
9 the product that is in the possession of the processor without
10 segregation of the product. For purposes of this act, all products
11 or processed or manufactured forms of products deposited by a
12 processor with a warehouse, whether or not warehouse receipts are
13 given as security to a lender, are in the possession of the
14 processor and subject to the lien.

15 Sec. 7. If a producer commences an action to enforce a lien
16 imposed by this act, the lien remains in effect until 1 of the
17 following occurs:

18 (a) Payment of the agreed price for or the value of the
19 product.

20 (b) Deposit, with the clerk of the court, of the amount of the
21 lien or the amount claimed by the producer.

22 (c) Final determination of the action.

23 Sec. 8. A lien on a product or processed product may be
24 released, to the extent the claim that gives rise to the lien is
25 secured, by giving a surety bond, cash deposit, or other security
26 as provided in this act. A producer may also release a lien on
27 payment of the agreed price or the reasonable value of the product

1 or on arrangements being made for payment that are satisfactory to
2 the producer.

3 Sec. 9. (1) A processor shall not remove from this state or
4 beyond the processor's ownership or control a product delivered to
5 the processor or a processed or manufactured form of the product to
6 which a lien under this act has attached.

7 (2) This section does not apply to a portion of the product or
8 processed or manufactured form of the product that exceeds a
9 quantity of sufficient value to satisfy all existing liens.

10 (3) This section does not prohibit the sale of a product or
11 processed or manufactured form of the product to which a lien has
12 attached if the total proceeds of the sale are used to satisfy
13 obligations to producers that are secured by a lien imposed by this
14 act.

15 Sec. 10. A processor may secure a release of 1 or more of the
16 liens on a product or processed or manufactured form of the product
17 in any of the following ways:

18 (a) By paying the agreed price or actual value of a product
19 purchased by the processor within 20 days after the delivery of the
20 product, unless the date of payment is otherwise agreed to in
21 writing or payment is secured other than by lien.

22 (b) By depositing with the director a surety bond executed by
23 the processor as principal and by a surety company qualified and
24 authorized to do business in this state as surety in an amount that
25 equals the current market value of the product or processed product
26 that the processor intends to sell or otherwise dispose of if the
27 processor makes a sworn statement of that value according to

1 quotations from the federal-state market news service or other
2 evidence satisfactory to the director. The bond shall provide that
3 if the processor fails within 35 days after the date of the bond to
4 pay, up to the amount of the bond, the lawful claims of all
5 producers whose liens are released by the bond, the surety shall be
6 liable to and shall pay to the director on behalf of the claimants
7 all lawful claims covered by the amount of the bond and the costs
8 of suit if an action is filed on the bond.

9 (c) By depositing with the director an amount of money and a
10 written instrument signed by the processor that guarantees, to the
11 extent of the money deposited, payment within 35 days after the
12 date of the deposit of all existing claims of producers whose liens
13 are released by the deposit. The director shall be named in the
14 instrument as trustee to carry out the purpose and intent of the
15 instrument.

16 (d) By designating, setting apart, and depositing in a public
17 warehouse a quantity of processed or manufactured products and
18 endorsing over to the director and delivering to the director the
19 warehouse receipt for the products for the purpose of guaranteeing,
20 to the extent of the value of the products deposited, payment
21 within 35 days from the date of the deposit of all existing claims
22 of producers and labor claimants whose liens are released by the
23 deposit.

24 (e) By securing a release from the director after payment in
25 full for the product.

26 Sec. 11. If all lawful claims of producers have been paid by a
27 processor in accordance with this act, any product that is released

1 from lien by the payment may be sold, transported, or otherwise
2 disposed of.

3 Sec. 12. If a bond, money deposit, or warehouse receipt is
4 given to the director by a processor as provided in this act, the
5 processor may sell, transport, or otherwise dispose of the product
6 or processed or manufactured form of the product up to a value
7 determined as follows:

8 (a) The value stated in the sworn statement of the processor
9 in accordance with quotations from the federal-state market news
10 service or other evidence satisfactory to the director.

11 (b) The amount of money deposited.

12 (c) The value of the product deposited in the warehouse and
13 represented in the warehouse receipt.

14 Sec. 13. If a bond is given as security, the director shall
15 notify the principal and surety of any default by the principal
16 under the bond and demand payment on behalf of the unpaid
17 claimants. If payment is not made, the director may take any legal
18 action the director deems necessary to enforce payment under the
19 bond.

20 Sec. 14. If payment of claims as guaranteed in a written
21 instrument accompanying the deposit of money with the director is
22 not made in accordance with the terms of the instrument, the
23 director may, on proof being made to the director's satisfaction of
24 the amount due to the claimants, pay the unpaid claims to the
25 extent possible from the deposited money or the proceeds from the
26 sale by the director of processed or manufactured products given as
27 security.

1 Sec. 15. If the director receives a warehouse receipt for a
2 processed or manufactured form of a product as security and the
3 processor fails to pay the claims secured in accordance with the
4 terms of the security, the director may sell the product with or
5 without notice and in the manner the director determines is best.

6 Sec. 16. All claims for payment that are secured by a lien
7 under this act have equal standing, and payment shall be prorated
8 if necessary among the claimants.

9 Sec. 17. (1) If in the director's opinion the rights of all
10 claimants are fully protected as provided for in this act, the
11 director may issue a certificate in the name of the department and
12 signed by the director releasing any specific lot or quantity of a
13 product or processed or manufactured form of a product from all
14 liens of the claimants. The director shall not release any form of
15 security held by the director to a processor unless the director is
16 satisfied that all claims secured have been fully paid or that the
17 rights of all claimants are fully protected.

18 (2) A fee of \$5.00 shall be paid to the director for issuing a
19 certificate or release under this section.

20 Sec. 18. (1) This act does not affect the right of a lien
21 claimant to bring an action against a processor to collect the
22 claim, either as part of an action to foreclose the lien or as a
23 separate action.

24 (2) A money judgment for a lien claimant against a processor
25 for a claim does not impair or merge the right of the claimant to a
26 lien under this act. Any money collected on the judgment shall be
27 credited on the amount of the lien or of the claim in an action

1 brought to enforce the lien, or filed under this act by the
2 director.

3 Sec. 19. In an action filed by a lien claimant, a defendant
4 processor may file with the court a surety bond sufficient to cover
5 the amount requested in the complaint, including costs. If a bond
6 is filed under this section, the court may order the release of a
7 portion or the whole of any product or processed or manufactured
8 form of the product subject to the lien.

9 Sec. 20. If the court in an action to foreclose a lien under
10 this act, on motion by a defendant processor, finds from the
11 evidence presented that the processor has sufficient security or
12 money on deposit with the director to protect the lien or other
13 rights of the plaintiff, the court may order the release of a
14 portion or all of the product subject to the lien and deny
15 plaintiff any recovery in the action. Such an order by the court
16 does not prejudice any other rights or remedies of the plaintiff.

17 Sec. 21. The plaintiff in an action to foreclose a lien
18 imposed by this act may, in a proper case and on proper
19 allegations, secure an injunction against the defendant processor
20 in accordance with Michigan court rules to restrain the processor
21 from doing any acts designed to or that would, in effect, remove
22 any processed or manufactured form of the product in the
23 processor's possession or under the processor's control that is
24 subject to the lien beyond the process of the court to the
25 plaintiff's injury.

26 Sec. 22. If the court in an action to foreclose a lien under
27 this act determines that a bond, money, warehouse receipt, or

1 another form of security has not been deposited with the director
2 as security for the payment of claims that are secured by the lien,
3 the court shall enter a judgment of foreclosure against a
4 sufficient quantity in value of the product or processed or
5 manufactured form of the product in the possession or under the
6 control of the defendant processor that is necessary to satisfy the
7 claims, or enter a judgment declaring any bond deposited with the
8 court by the processor to secure the claims forfeited.

9 Sec. 23. (1) A court may consolidate all actions filed by the
10 director or producers against a processor for the foreclosure of a
11 lien or other security provided for in this act. A judgment entered
12 in a consolidated action shall determine the lawfulness and the
13 amount of each claim contained in the pleadings.

14 (2) A court may order that any person that is necessary to the
15 determination of an action for the foreclosure of a lien or other
16 security provided for in this act be joined as a party to the
17 action.