

SENATE BILL REPORT

SB 6156

As of March 9, 2012

Title: An act relating to wine producer liens.

Brief Description: Regarding wine producer liens.

Sponsors: Senators Delvin, Hatfield, Schoesler, Honeyford, Hewitt, Shin and Parlette.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 1/24/12.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Diane Smith (786-7410)

Background: In a bankruptcy proceeding, creditors with secured claims properly filed with the bankruptcy court are paid by first, reducing the amount of the debtor's assets available for satisfying the claims of creditors with unsecured interests. A secured interest may be derived from: (1) a judicial lien obtained by judgment or other equitable process; (2) a lien created by statute; or (3) a lien created by a contractual agreement with the debtor.

An agricultural producer has a lien on agricultural products delivered to a processor or conditioner, and a commercial fisherman has a lien on fish delivered to a processor. These liens are first priority statutory liens called processor liens and are for the contract price or the fair market value of the products delivered. Agricultural products are defined for purposes of the processor lien as: (1) horticultural, viticultural, aquacultural, or berry products; (2) hay and straw, milk and milk products, or turf, forage; and (3) vegetable seed when these products are delivered in unprocessed form.

A processor lien attaches to the agricultural products or fish, the processor's inventory and the accounts receivable. The lien attaches on the date of delivery and continues without filing until 20 days after payment is due and remains unpaid. The payment due date is deemed to be the date specified in the contract or 30 days after delivery.

A producer of grain, hay, or straw has a first priority statutory lien, called a preparer lien, on these types of agricultural products from the date of delivery to a preparer until 20 days after payment is due and remains unpaid. The preparer lien is for the contract price or fair market

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value of the product. The preparer lien attaches to both the agricultural products and the preparer's accounts receivable.

A producer or commercial fisherman claiming a processor or preparer lien may file a statement with the Department of Licensing (DOL) evidencing that the lien is due and remains unpaid. In addition to other required information, the statement must include a true statement of the amount due after deductions are made for credits and offsets. If the statement is filed within 20 days of the payment due date, the lien has priority over all other liens or security interests except liens for taxes or labor perfected before the processor or preparer lien is filed. If not filed within the 20-day period, the processor or preparer lien is subordinate to a previously attached lien and to a perfected security interest.

A processor lien terminates six months after the attachment of the lien or the filing of the statement. A preparer lien terminates 50 days after the date of attachment or filing. These dates do not apply if a suit has been filed to foreclose the lien according to statutory requirements.

Vinifera grapes form the basis of most wines produced around the world. Native to Europe, the vinifera variety is now grown on all continents other than Antarctica and in all major wine growing regions.

Summary of Bill: A new statutory lien is created known as the wine producer lien. This lien gives the grower of vinifera grapes a first priority lien against the value of the delivered grapes, the inventory of the receiving wine producer, and to the wine producer's accounts receivable. The wine producers lien is established on the day that the grapes are delivered and continues, without the grape provider having to file a notice of lien, for 60 days or until the wine producer makes all due payments. The value of the lien equals either the agreed-to price in a contract, or in absence of a contract, the fair market value of the grapes delivered.

The grape producer may choose to file notice of the lien with the DOL. If notice is filed with DOL within 60 days of grape delivery, then the lien continues in priority over all other liens or security interests other than liens for taxes and labor. If the grape producer chooses not to file notice with the DOL, then after 60 days, the wine producers lien becomes subordinate to any liens attached prior to the initiation of the 60-day wine producers lien and any other perfected security interest.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is consistent with a 1985 precedent that protects the supplier of agricultural products. The long harvest season of the various varieties of vinafera grapes grown in modern vineyards means the grower is still harvesting while the current 20-day period has expired for the first of his deliveries. The typical grower

has many small lots of grapes going to many different buyers. The bill mimics exactly the existing processor lien except it changes the 20-day period to 60 days for filing to preserve the lien. The grower wants the winery to succeed more than anybody. The 60-day period is in-line with the realities of a five to nine week harvest season.

Persons Testifying: PRO: Mike Schwisow, WA Assn. of Wine Grape Growers.