

SENATE BILL NO. 86

INTRODUCED BY F. MOORE

BY REQUEST OF THE DEPARTMENT OF LIVESTOCK

A BILL FOR AN ACT ENTITLED: "AN ACT DISTINGUISHING AGISTERS' LIENS FROM MECHANICS LIENS AND OTHER LIENS FOR SERVICE; AND AMENDING SECTION 71-3-1201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Agister's lien -- finding -- who may hold lien.** (1) The legislature finds that agisters' liens require expeditious action to protect the welfare of the stock and to ensure that the cost to feed and care for the stock covered by the lien does not exceed the market value of the stock.

(2) (a) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher, farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has an agister's lien upon the stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock.

(b) A person holding an agister's lien pursuant to subsection (2)(a) may retain possession of the stock until the amount due is paid.

NEW SECTION. **Section 2. Priority.** (1) An agister's lien created under [section 1] does not take precedence over perfected security interests under the Uniform Commercial Code--Secured Transactions or other recorded liens on the stock involved unless, within 30 days from the time of receiving the stock, the person desiring to assert a lien upon the stock gives notice in writing to the secured party or other lienholder stating the intention to assert a lien on the stock under the terms of [sections 1 through 4] and stating the nature and approximate amount of the work performed or feed furnished or other services furnished or intended to be performed or furnished.

(2) A new notice is not required for the offspring of the stock covered in the initial notice, but all other additional stock must be noticed separately.

(3) Service may be made either by personal service or by mailing a copy of the notice by certified mail to the secured party or other lienholder at the last-known post-office address. Service is considered complete



1 upon the deposit of the notice in the post office.

2 (4) Within 20 days after the date of mailing or 10 days after personal service, the secured party or other
3 lienholder or the secured party's or other lienholder's representative has the right to take possession of the stock
4 upon payment of the amount of the lien. A failure on the part of the secured party or other lienholder to take
5 possession of the stock constitutes a waiver of the priority of the security interest or other lien over the lien
6 created by [sections 1 through 4].

7
8 **NEW SECTION. Section 3. Enforcement of agister's lien -- sale.** If payment for keeping, feeding,
9 herding, pasturing, or ranching stock is not made within 30 days after the performance of the keeping, feeding,
10 herding, pasturing, or ranching, the person entitled to a lien under the provisions of [sections 1 through 4] may
11 enforce the lien in the following manner:

12 (1) The person shall deliver to the sheriff of the county in which the property is located an affidavit of the
13 amount of the person's claim against the stock and the name of the owner of the stock or of the person at whose
14 request the feed or material was furnished.

15 (2) Upon receipt of the affidavit, the sheriff shall advertise and sell at public auction as much of the stock
16 covered by the lien as will satisfy the lien.

17 (3) Notice of the sale must be provided in the manner prescribed in 25-13-701(1)(b).

18 (4) (a) Before the sheriff sells the stock at public auction, the sheriff shall give notice of the sale to the
19 owner or person at whose request the feed or material was furnished.

20 (b) ~~Notice to the owner or person at whose request the feed or material was furnished~~ must be given
21 at least 10 days before the sale TO THE OWNER OR PERSON AT WHOSE REQUEST THE FEED OR MATERIAL WAS
22 FURNISHED AND TO ANY OTHER PERSON HOLDING A LIEN ON THE ANIMALS.

23 (c) The notice must state:

24 (i) the time and place of the sale;

25 (ii) the amount of the claim against the stock;

26 (iii) a description of the stock;

27 (iv) the name of the owner or person at whose request the feed or material was furnished; and

28 (v) the name of the person claiming the lien.

29 (d) The notice may be given by personal service or by mailing a copy of the notice by certified mail to
30 the last-known post-office address of the owner or person at whose request the feed or material was furnished.

1 (e) If the sheriff is not able to effect personal service or service by mail because the location and mailing
 2 address of the owner or person at whose request the feed or material was furnished is unknown, the sheriff may
 3 give notice by posting notice of the sale in three public places in the county in which the property is located.

4 (5) The sheriff shall apply the proceeds of the sale to the discharge of the lien and the cost of the
 5 proceedings in selling the stock and enforcing the lien. The remainder, if any, or a part that is required to
 6 discharge the claims must be turned over by the sheriff to the holders, in the order of their precedence, of the
 7 chattel mortgages or other lien claimants of record against the stock, and the balance of the proceeds must be
 8 turned over to the owner of the stock.

9 (6) Before seizing stock under the provisions of this section, the sheriff may require an indemnity bond
 10 from the lienor. The indemnity bond may not exceed double the amount of the claim against the stock. The sheriff
 11 shall approve the bond and the surety or sureties on the bond.

12

13 **NEW SECTION. Section 4. Lien not lost by fraudulent taking of property.** (1) The forcible or
 14 fraudulent taking of stock from the person holding an agister's lien pursuant to [sections 1 through 4] does not
 15 extinguish the lien.

16 (2) The person holding the agister's lien may recover possession of the stock by proper action instituted
 17 in court against any person possessing the stock.

18

19 **Section 5.** Section 71-3-1201, MCA, is amended to read:

20 **"71-3-1201. ~~Who may have lien -- agisters' lien -- lien~~ Liens for service -- towing and storage lien**
 21 **-- extension of lien to certain personal property contained in motor vehicle that is subject to lien. ~~(1)(a)~~**
 22 ~~If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a rancher,~~
 23 ~~farmer, agister, herder, hotelkeeper, livery, stablekeeper, or reproductive technology business to whom any~~
 24 ~~horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon the stock for the amount due for~~
 25 ~~keeping, feeding, herding, pasturing, or ranching the stock or for providing a service listed in subsection (1)(b)~~
 26 ~~and may retain possession of the stock until the sum due is paid.~~

27 **(b)(1)** If there is an express or implied contract for collecting, processing, packaging, or storing embryos
 28 or semen from livestock ~~provided for in this subsection (1)~~, a reproductive technology business to whom embryos
 29 or semen is entrusted and who still has possession has a lien upon the embryos or semen for the amount due
 30 for collecting, processing, packaging, or storing the embryos or semen and may retain possession of the embryos

1 or semen until the sum due is paid.

2 (2) (a) ~~Every~~ A person who, while lawfully in possession of an article of personal property, renders any
3 service to the owner or lawful claimant of the article by labor or skill employed for the making, repairing,
4 protection, improvement, safekeeping, carriage, towing, or storage of the article or tows or stores the article as
5 directed under authority of law has a special lien on the article. The lien is dependent on possession and is for
6 the compensation, if any, that is due to the person from the owner or lawful claimant for the service and for
7 material, if any, furnished in connection with the service. If the service is towing or storage, the lien is for the
8 reasonable cost of the towing or storage.

9 (b) Any personal property that is in a motor vehicle that is subject to a lien; as provided in subsection
10 (2)(a); is also subject to the lien, except for the following:

11 (i) food items;

12 (ii) perishable goods;

13 (iii) prescription items;

14 (iv) operators' licenses and other identifying documents;

15 (v) cash, credit cards, debit cards, checks, or checkbooks;

16 (vi) personal records, legal records, and business records;

17 (vii) child safety items; and

18 (viii) wallets, purses, bags, or other containers that contain the items listed in subsections (2)(b)(iv)
19 through (2)(b)(vi)."

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21 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified
22 as an integral part of Title 71, chapter 3, and the provisions of Title 71, chapter 3, apply to [sections 1 through 4].

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