

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 678
HOUSE BILL 1151

AN ACT TO ALLOW PRODUCERS TO OBTAIN LIENS AGAINST ASSETS OF
THE DISTRIBUTOR FOR FAILURE TO PAY FOR MILK SOLD OR
CONSIGNED.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 44 of the General Statutes is amended by adding a new section to read:

"§ 44-69.3. **Liens on tangible and intangible assets of milk distributors.** – (a) A producer, or an association of producers who supplies milk either through an agreement of sale or on consignment to a distributor shall, upon complying with the provisions of this section, have a lien upon the tangible and intangible assets, including but not limited to the accounts receivable of the distributor to secure payment for such milk. For purposes of this section the term 'milk' is as defined in Article 28B of Chapter 106 of the General Statutes.

(b) The lien claimed by the producer or association of producers must be filed in the office of the clerk of court for the county of the distributor's principal place of business. Provided that if the distributor is not a resident of the State a filing must be made with the clerk of superior court for the county in which the distributor's registered office is located. The clerk shall note the claim of lien on the judgment docket and index the same under the name of the distributor at the time the claim is filed.

(c) A producer or association of producers claiming nonpayment for milk sold to a distributor shall file with the clerk a notarized statement of nonpayment. The statement shall contain at a minimum the following information:

- (1) The name of the distributor who received the milk;
- (2) The date and quantity of milk shipped for which payment has not been received; and
- (3) A statement from the North Carolina Milk Commission certifying the amount due from the distributor, and the date payment was due.

The producer or association of producers shall furnish a copy of the statement as provided by this subsection to the distributor, which shall constitute a notice of claim of lien. The notice shall be served personally by a person authorized by law to serve process or by certified mail. The lien granted by this section shall be effective as of the time it is filed with the clerk of court. Provided the distributor shall have the right to contest the validity of such lien by filing, with the clerk of court and serving on the producer within 10 days after he receives notice that the producer has filed a claim of lien, a notice that the distributor contest the amount due thereunder. In the event the

distributor fails to contest the lien or is unsuccessful in obtaining a discharge of the lien, the lien shall be perfected as of the date of filing with the clerk of court.

(d) The lien created by this section may be discharged in any of the following manner:

- (1) By filing with the clerk of superior court a receipt of acknowledgment signed by the chairman of the North Carolina Milk Commission or his designee, that the lien has been discharged;
- (2) By depositing with the clerk of superior court money equal to the amount of the claim, which money shall be held for the benefit of the producer; or
- (3) By an entry in the lien docket that the action on the part of the lien claimant to enforce the lien has been dismissed or a judgment has been rendered against the claimant in such action.
- (4) By filing with the clerk a sworn statement signed by the producer or an official of an association of producers that the lien or claim of lien has been satisfied.

(e) Action to enforce the lien created by this section may be instituted in any court of competent jurisdiction in the county where the lien was filed not later than 90 days following the maturity of the distributor's obligation to pay for the milk. In the event no action to enforce the lien is commenced within the 90-day period the lien created hereby shall no longer be valid. Nothing herein shall prohibit the North Carolina Milk Commission from acting as a mediator or an arbitrator between the distributor and producer or association of producers when there is a claim of nonpayment at any time before or after claim of lien is filed but before a judgment is rendered."

Sec. 2. This act shall become effective October 1, 1985.

In the General Assembly read three times and ratified, this the 10th day of July, 1985.