

BILL ANALYSIS

C.S.H.B. 3063
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Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that while a farmer's harvested crops are held in storage in a warehouse, the warehouse might go into bankruptcy, leaving the farmer unpaid because the warehouse's lenders may obtain rights to the stored crop. C.S.H.B. 3063 seeks to avoid such a situation by allowing an agricultural producer to obtain an agricultural lien under certain conditions.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3063 amends the Property Code to specify that an agricultural lien for the amount owned under a contract is a lien against the applicable crop and, for purposes of an agricultural lien for the value of a crop for which there is no agreement concerning the amount owed under a contract, to change the value of the crop from the reasonable value of the crop on the date of transfer or delivery to the market value of the crop on such date. The bill establishes that an agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien against the agricultural crop for the market value of the agricultural crop on the date of delivery or transfer or, if there is to be a series of deliveries to the warehouse, on the date of the first delivery of the agricultural crop to the warehouse. The bill grants control to agricultural lien provisions over any other law to the extent of a conflict but establishes that such provisions do not abridge the protections afforded by any applicable law.

C.S.H.B. 3063 removes the specified period during which an agricultural lien is considered unperfected if a financing statement covering the agricultural crop is not filed within the applicable timeframe. The bill establishes that provisions relating to an agricultural lien's priority expressly do not affect the validity or priority of a security interest or lien created and perfected under the Uniform Commercial Code--Secured Transactions to secure a loan to a warehouse or a contract purchaser on a company-owned crop in favor of a secured lender or affect the rights of a holder of a negotiable warehouse receipt. The bill makes provisions relating to an agricultural lien's priority inapplicable to a contract purchaser who purchases an agricultural crop from an agricultural producer under a marketing contract created under statutory provisions relating to cooperative marketing associations or under certain regulations adopted by the U.S. Department of Agriculture.

C.S.H.B. 3063 removes the exclusion from the term "contract purchaser" of a person who, as to the transaction in question, is licensed and bonded under statutory provisions relating to the regulation of public grain warehouse operators or under the federal United States Warehouse Act and instead specifies that the term includes such a person. The bill revises a provision relating to the lien on a commingled crop.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3063 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 70.401, Property Code, is amended by amending Subdivisions (1) and (4) and adding Subdivisions (3-a), (5), (6), and (7) to read as follows:

(1) "Agricultural crop" means a plant product that is grown, produced, or harvested as a result of an agricultural producer's farm operation and includes a processed product of an agricultural crop.

(3-a) "Company-owned crop" means an agricultural crop:

(A) that is received for storage by a warehouse or delivered or transferred to a contract purchaser located in this state;

(B) that is not an open storage crop; and

(C) for which the agricultural producer has been fully and finally paid.

(4) "Contract purchaser" means a person who has agreed under a contract to purchase an agricultural crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. ~~[The term does not include a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).]~~

(5) "Open storage crop" means an agricultural crop that:

(A) an agricultural producer delivers or transfers to:

(i) a warehouse for storage; or

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 70.401, Property Code, is amended by amending Subdivision (4) and adding Subdivisions (5), (6), (7), and (8) to read as follows:

(4) "Company-owned crop" means an agricultural crop:

(A) that is in the possession of a warehouse or contract purchaser located in this state and for which the agricultural producer has received full payment;

(B) that is not an open storage crop; or

(C) for which the warehouse or the contract purchaser tenders payment and the agricultural producer, without coercion, defers payment.

(5) "Contract purchaser" means a person who has agreed under a contract to purchase an agricultural crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. The term includes ~~[does not include]~~ a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

(6) "Open storage crop" means an agricultural crop that:

(A) an agricultural producer delivers or transfers to:

(i) a warehouse for storage; or

(ii) a contract purchaser located in this state;
(B) is not covered by a negotiable or nonnegotiable warehouse receipt; and
(C) is not owned by the lessee, owner, or operator of the warehouse in which the crop is stored or the contract purchaser to which the crop is delivered or transferred.

(6) "Warehouse" means a facility that stores or handles any agricultural crop after the crop is harvested, including a facility operated by a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

(7) "Warehouse operator" means a person engaged in the business of operating a warehouse.

SECTION 2. Section 70.402, Property Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien for the reasonable value of the crop on the date of delivery or transfer:

(1) whether or not a negotiable or nonnegotiable warehouse receipt is issued by the warehouse; and

(2) whether or not the crop is placed in open storage.

(c) A lien created under this subchapter is on every agricultural crop, either in raw or processed form, that has been transferred or delivered by the agricultural producer and is in the possession of the warehouse or

(ii) a contract purchaser located in this state;
(B) is not covered by a warehouse receipt; and

(C) is not owned by the lessee, owner, or operator of the warehouse in which the crop is stored or the contract purchaser to which the crop is delivered or transferred.

(7) "Secured lender" means a person that:

(A) has loaned money to a warehouse or a contract purchaser; and

(B) holds a perfected secured lien against a company-owned crop.

(8) "Warehouse" means a facility that stores or handles any agricultural crop after the crop is harvested, including a facility operated by a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

The term includes a person engaged in the business of operating a warehouse.

SECTION 2. Section 70.402, Property Code, is amended to read as follows:

Sec. 70.402. LIEN CREATED. (a) An agricultural producer who, under a contract with a contract purchaser, is to receive consideration for selling an agricultural crop grown, produced, or harvested by the producer has a lien against that crop for the amount owed under the contract, or for the market [reasonable] value of the crop on the date of transfer or delivery if there is no agreement concerning the amount owed under the contract.

(b) An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien against that agricultural crop for the market value of the agricultural crop:

(1) on the date of delivery or transfer; or

(2) if there is to be a series of deliveries to the warehouse, on the date of the first delivery of the agricultural crop to the warehouse.

(c) A lien created under this subchapter is on every agricultural crop, either in raw or processed form, that has been transferred or delivered by the agricultural producer and is in the possession of the warehouse or the

contract purchaser, and if the warehouse or contract purchaser sells all or part of the crop, on the proceeds of the sale. If an open storage [the—agricultural] crop is commingled with a company-owned crop by a warehouse or contract purchaser after the crop has been transferred or delivered, a lien created under this subchapter applies only to that portion of the contract purchaser's inventory in an amount that is equal to the amount of the crop transferred or delivered by the agricultural producer.

(d) [(e)] For purposes of this subchapter, an agricultural crop or processed form of an agricultural crop deposited by a contract purchaser with a warehouse, whether or not a warehouse receipt is given as security, is considered to be in the possession of the contract purchaser and subject to the lien created by this subchapter.

SECTION 3. Section 70.403, Property Code, is amended.

SECTION 4. Section 70.404, Property Code, is amended to read as follows:

Sec. 70.404. APPLICABILITY OF OTHER LAW; EFFECT ON OTHER LAW. (a) Except as provided by Section 70.4045 of this code, Chapter 9, Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter.

(b) This subchapter does not diminish or abridge any protections afforded to an agricultural producer by:

- (1) Chapter 14, Agriculture Code;
- (2) Chapter 7, Business & Commerce Code; or
- (3) the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

SECTION 5. Sections 70.4045(a) and (c), Property Code, are amended to read as follows:

contract purchaser, and if the warehouse or the contract purchaser sells all or part of the crop, on the proceeds of the sale. If an open storage [the—agricultural] crop is commingled with a company-owned crop by a warehouse or a contract purchaser after the crop has been transferred or delivered, a lien created under this subchapter applies only to that portion of the agricultural crop in the possession of the warehouse or the contract purchaser [purchaser's—inventory] in an amount that is equal to the amount of the crop transferred or delivered by the agricultural producer.

(d) [(e)] For purposes of this subchapter, an agricultural crop or processed form of an agricultural crop deposited by a contract purchaser with a warehouse, whether or not a warehouse receipt is given as security, is considered to be in the possession of the contract purchaser and subject to the lien created by this subchapter.

SECTION 3. Same as introduced version.

SECTION 4. Section 70.404, Property Code, is amended to read as follows:

Sec. 70.404. APPLICABILITY OF OTHER LAW; EFFECT ON OTHER LAW. (a) Except as provided by Section 70.4045 of this code, Chapter 9, Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter.

(b) Except as provided by Subsection (c), to the extent of a conflict, this subchapter controls over any other law.

(c) This subchapter does not abridge the protections afforded by any applicable law, including:

- (1) Chapter 14, Agriculture Code;
- (2) Chapter 7, Business & Commerce Code;
- (3) the United States Warehouse Act (7 U.S.C. Section 241 et seq.); or
- (4) common law, including the law of bailment.

SECTION 5. Section 70.4045, Property Code, is amended to read as follows:
Sec. 70.4045. PERFECTION AND

PRIORITY OF AGRICULTURAL LIEN ON CROPS.

(a) Notwithstanding Chapter 9, Business & Commerce Code, a lien created under this subchapter is perfected at the time the lien attaches under Section 70.403 and continues to be perfected if a financing statement covering the agricultural crop is filed on or before the 90th day after the date:

- (1) the physical possession of the crop is delivered or transferred by the agricultural producer to the warehouse or the contract purchaser or the purchaser's agent, if there is only one delivery [~~under the contract~~]; or
- (2) of the last delivery of the crop to the warehouse or the contract purchaser or the purchaser's agent, if there is a series of deliveries [~~under the contract~~].

(c) Notwithstanding Chapter 9, Business & Commerce Code, a lien created and perfected under this subchapter has priority over a conflicting security interest in or lien on the agricultural crop or the proceeds from the sale of the crop created by the warehouse operator or contract purchaser in favor of a third party,

~~other than a cotton ginner's lien created under Section 70.003(d) or a marketing pool contract agreement with an agricultural producer,~~

regardless of the date the security interest or lien created by the warehouse operator or contract purchaser attached.

This subsection does not affect a security interest or lien created and perfected to secure a loan directly to the agricultural producer.

(a) Notwithstanding Chapter 9, Business & Commerce Code, a lien created under this subchapter is perfected at the time the lien attaches under Section 70.403 and continues to be perfected if a financing statement covering the agricultural crop is filed on or before the 90th day after the date:

- (1) the physical possession of the crop is delivered or transferred by the agricultural producer to the warehouse or the contract purchaser or the purchaser's agent, if there is only one delivery [~~under the contract~~]; or
- (2) of the last delivery of the crop to the warehouse or the contract purchaser or the purchaser's agent, if there is a series of deliveries [~~under the contract~~].

~~(b) If a financing statement covering the agricultural crop is not filed within the time prescribed by Subsection (a)(1) or (2), as applicable, the lien is considered unperfected [on the date the lien attached until the date the financing statement is filed or the lien is perfected under Chapter 9, Business & Commerce Code].~~

(c) Notwithstanding Chapter 9, Business & Commerce Code, and except as provided by Subsection (d), a lien created and perfected under this subchapter has priority over a conflicting security interest in or lien on the agricultural crop or the proceeds from the sale of the crop created by the warehouse or the contract purchaser in favor of a third party,

~~[other than a cotton ginner's lien created under Section 70.003(d),]~~

regardless of the date the security interest or lien created by the warehouse or the contract purchaser attached.

This subsection does not affect:

(1) the validity or priority of a security interest or lien;

(A) created and perfected to secure a loan directly to the agricultural producer; or

(B) created and perfected under Chapter 9, Business & Commerce Code, to secure a loan to a warehouse or a contract purchaser on a company-owned crop in favor of a secured lender;

(2) the validity or priority of a cotton ginner's lien created under Section 70.003(d); or

(3) the rights of a holder of a negotiable warehouse receipt.

(d) Subsection (c) does not apply to a contract purchaser who purchases an agricultural crop from an agricultural producer under a marketing contract created under:

(1) Section 52.016, Agriculture Code; or

(2) regulations adopted by the United States Department of Agriculture under Title 7 of the United States Code.

SECTION 6. Section 70.406(a), Property Code, is amended to read as follows:

(a) A buyer in ordinary course of business of an agricultural crop, including a person who buys any portion of an agricultural crop from a warehouse operator or contract purchaser, whether or not the agricultural crop has been commingled, takes the agricultural crop free of a lien created under this subchapter, and the lien created by this subchapter does not pass to any subsequent claimant of the agricultural crop.

SECTION 7. Section 70.407(a), Property Code, is amended to read as follows:

(a) A lien created under this subchapter is discharged when:

(1) the lienholder receives full payment for the agricultural crop; or

(2) payment is tendered by the warehouse operator or contract purchaser, as applicable, and the lienholder, without coercion, defers payment.

SECTION 8. Section 70.410, Property Code, is amended to read as follows:

Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. An agricultural producer's agreement with a warehouse operator or contract purchaser to waive the producer's right to seek a remedy provided by this subchapter is void.

SECTION 9. The changes in law made by this Act apply only to an agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse on or after the effective date of this Act. An

SECTION 6. Section 70.406(a), Property Code, is amended to read as follows:

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SECTION 7. Section 70.407(a), Property Code, is amended to read as follows:

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(1) the lienholder receives full payment for the agricultural crop; or

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SECTION 9. The changes in law made by this Act apply only to an agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse or a contract purchaser on or after the effective

agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2017.

date of this Act. An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse or a contract purchaser before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 10. Same as introduced version.