

SUBJECT: Liens by agricultural input suppliers

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 9 ayes — Patterson, R. Cuellar, Finnell, Hawley, King, Rabuck, Rusling, Swinford, Walker

0 nays

WITNESSES: *(On original bill)*

For — Harry Bauerschlag, Patrick Miller, Jon Fisher, Texas Ag Industries Association; Robert H. Putz, Texas Agricultural Aviation Association; Ben Boerner, Texas Grain and Feed Association; Ronald Felderhoff, Muenster Milling Company, Inc., and Texas Grain and Feed Association; Tommy Engelke, Texas Agricultural Cooperative Council; Fred Bursey, Jr., Morrison Milling Company and Texas Grain and Feed Association; Tobias Hlavinka; George Mitchell; Kim Coker

Against — None

DIGEST: CSHB 1463 would allow suppliers of some agricultural inputs to attach a lien on the proceeds of crops and livestock produced with the inputs if credit had been extended to purchase the inputs. CSHB 1463 would apply to suppliers who provide seed, chemicals or labor connected with their delivery, application or preparation and to livestock feed and labor connected with its delivery or preparation. Failure to pay the agreed or reasonable charges for the inputs could result in the attachment of the lien.

Liens could be filed for the unpaid agreed or reasonable charges for agricultural chemicals and labor supplied within the 60 days before a lien is attached, for seed, labor and animal feed supplied within the 45 days before a lien is attached and for lien filing fees. No more than four liens could be filed against the same agricultural proceeds.

Suppliers would have to provide notice to debtors before any purchase that failure to pay the agreed or reasonable charges could result in the attachment of a lien. Notice could be provided generally as a part of

normal business practices or specifically to individuals. Notice could be provided by writing the information on credit applications, invoices or statements.

Before a lien could be claimed, a supplier would have to notify the debtor that payment is over 30 days overdue and that the debtor has three options: allowing the lien to be filed, granting a security interest in the debtor's proceeds or paying the overdue amount. The debtor would have 10 days after receiving the notice of the overdue account to act on one of the alternatives or the supplier could file a claim of lien notice.

The claim of lien notice would be filed with the secretary of state in the same manner as a financing statement (an instrument filed by secured party creditor to perfect a security interest in specified collateral). The debtor would have to be notified of the claim filing within 10 days. The liens would have the same priority as a security interest but would not have priority over employee claims for wages and salaries in connection with the crops or livestock. Liens would be perfected when the claim of lien notice is filed with the secretary of state.

At least 30 days before a lien is enforced a supplier would have to notify the debtor's secured creditors. If a debt was paid off, the supplier would have to file a termination statement with the secretary of state and send a copy to the debtor. If a termination statement was not filed, the supplier would be liable for actual damages suffered by the debtor.

The agriculture commissioner would be required to establish procedures to settle disputes between suppliers and debtors. A claim of lien could not be filed if the arbitration or settlement of a dispute between the supplier and the debtor had not been resolved. The public would be able to obtain information about liens on file and notices of claim of liens.

CSHB 1463 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

CSHB 1463 would allow agricultural input suppliers to secure a lien against crops or livestock if farmers or ranchers did not pay the supplier for inputs sold on credit. This would help the suppliers recover bad debts, and

could increase the credit available for farmers and ranchers if some suppliers that currently operate on a cash-only basis begin to extend credit.

Farmers and ranchers sometimes need to purchase agricultural inputs on credit because they have not received their government operating loan checks or because unexpected expenses arise before a crop or livestock are ready to sell. For example, farmers may need additional agricultural chemicals to battle a pest or ranchers may need more feed than they had estimated. They often turn to feed, seed and agricultural chemical suppliers who extend credit to purchase the supplies and agree to repay the debt by a certain date or after the crop or livestock have been sold. If a farmer or rancher does not pay a debt, the supplier is an unsecured creditor with little recourse. CSHB 1463 would set up a mechanism for the supplier to place a lien on the proceeds from the crop or livestock and to recover the debt.

Currently, the only way for agricultural suppliers to become secured creditors is for them to ask farmers and ranchers to sign financing statements when they issue the credit. Suppliers are reluctant to do this because it could put them at a competitive disadvantage with other suppliers who do not require the agreements. In addition, the agricultural industry would like to continue to seal transactions "with a handshake" instead of requiring all customers, even ones with a good credit history, to sign financing agreements.

CSHB 1463 would allow suppliers to take action only against the very small number of debtors who do not pay their bills and would allow suppliers to deal with the vast majority of their customers without requiring them to sign legal documents. While the number of debtors who do not pay their bills is small, the financial loss to suppliers can be serious, especially for small businesses. It would be an unnecessary burden on agricultural input suppliers to have all customers sign a notice up front and to file all the notices with the secretary of state, especially when it would be unnecessary for over 90 percent of their customers.

Input suppliers would use the authority in CSHB 1463 judiciously because they would not want to go through the lengthy lien process unless it was necessary and because they would want to keep good relations with their customers. Just the threat of filing a lien would spur some debtors into

paying their bills. In California, where a similar process exists, only about 30 liens were filed in 1994.

CSHB 1463 contains numerous safeguards to protect debtors and suppliers. Liens could be filed only against the proceeds of the crop or livestock that the supplies went towards, not against a farmer or rancher's land. Debtors would have to be given notice of the possibility of a lien before purchase, the opportunity to make arrangements to pay an overdue debt, notification when the notice of claim of lien is filed and procedures for resolving disputes with suppliers. In addition, secured creditors would have to be notified before a lien is enforced and a limit of four liens could be enforced against the same proceeds. CSHB 1463 treats agricultural liens like other liens such as mechanics or contractors liens in which debtors do not have to sign a document up front acknowledging the possibility of a lien.

CSHB 1463 would allow suppliers to receive payment in the same way as other secured creditors. Because banks routinely file financing statements and check for the presence of other liens, they would be first in line to receive payment, or make other arrangements, if a foreclosure was necessary.

The filing process, the fees imposed under this bill and public access to lien information would treat the agricultural liens like standard financing statements used for secure creditors.

**OPPONENTS
SAY:**

It is unnecessary to set up a special procedure for agricultural liens. Under current law agricultural suppliers could require customers to whom they extend credit to sign financing statements and file them with the Secretary of State just as other secured creditors must do. The reluctance of some agricultural input suppliers to do this does not justify the creation of a special category of liens.

CSHB 1463 would not solve the problem of some input suppliers being at a competitive disadvantage to others. Since use of the liens is optional, those suppliers that decide to use the process and notify their customers that they can file a claim of lien would be at a disadvantage compared to suppliers that do not chose to use the system.

CSHB 1463 could lead an to undesirable situation of a agricultural input supplier causing a foreclosure sale on a farmer's or rancher's crops or livestock to satisfy a small loan.

OTHER
OPPONENTS
SAY:

The notice provisions in this bill that require notice either *generally or specifically* are inadequate. Debtors should have to signal their understanding of the possibilities of a claim of lien by signing a document, just like they would have to do at a bank. It is easy to overlook a statement stamped on an invoice, especially when it is a general announcement that the debtor's proceeds could possibly be subject a lien. Notice requirements are especially important with agricultural input suppliers, who traditionally have not used this practice.

NOTES:

Among other changes, the committee substitute added the requirements that debtors be given notice before purchase that a lien could be attached to their proceeds and that the uniform filing fee used for financing statements would apply to liens under the bill. The substitute replaced a provision that would have allowed the cost of enforcing the lien to be added to the amount of the lien with one that would allow filing fees to be included.

A similar bill, SB 941 by Haywood, which would allow liens for agricultural chemicals and seeds sold on credit, has been referred to the Senate Natural Resources Committee.