

**SUBJECT:** Relating to the priority assigned agricultural liens on future crops.

**COMMITTEE:** Agriculture and Livestock — favorable, without amendment

**VOTE:** 8 ayes — Swinford, McReynolds, Hardcastle, Miller, Brown, Green, Hupp, Kolkhorst

0 nays

1 absent — Christian

**WITNESSES:** For — Randy Hale, Self; Lowell R. Hicks, Texas Agriculture Aviation Association; Roger Horan, Self; Pat Kornegay, Texas Agriculture Aviation Association

Against — Karen Neeley, Independent Bankers Association of Texas

**BACKGROUND:** Agriculture Code, chapter 128, enacted in 1995, allows agricultural chemical and seed suppliers to secure a lien for repayment on certain proceeds of the crop produced as a result of the service they provide. As defined in sec. 128.002(a), proceeds subject to the lien include any monies received from the sale of the crop that existed at the time of application of the chemical; from the first crop produced after the chemical was applied, if the crop did not exist on the land at the time the chemical was applied; or from the crop produced from the seed supplied by the lien claimant. The proceed amounts are figured before any deduction for taxes, fees, or assessments or deductions by a court order, but do not include amounts due to, owing to, or retained by cooperative associations under Agriculture Code, chapter 51 or 52.

**DIGEST:** HB 1262 would amend Agriculture Code, sec. 128.002 to expand the definition of what are considered proceeds for agricultural chemical and seed liens. Included as proceeds would be any monies received by the lien debtor from sale of the debtor's next crop on the same land as the original secured crop. A lien on the subsequent crops would attach at the same time the lien attached to the proceeds described by Agriculture Code, sec. 128.002(a).

HB 1262 would apply only to agricultural chemical and seed liens made on or after September 1, 2001. The law that existed at the time a lien was

attached before the effective date of September 1, 2001 would continue to apply.

**SUPPORTERS  
SAY:**

HB 1262 would assist farmers in obtaining credit to obtain agricultural chemical and seed supplies and help ensure that those suppliers are repaid. Banks usually are the primary lien holders on agricultural crops. This leaves chemical and seed lenders as secondary lien holders whose security interest takes a back seat to bank lien holders even if the chemical and seed lenders' liens are older. As a result, the chemical and seed lenders often are left with no effective recourse for nonpayment for services rendered. When farmers secure financing on subsequent crops, the new financing once again takes priority over any new or previously existing credit extended by the chemical and seed suppliers. HB 1262 would keep the secondary lien holders' security interest alive by allowing them to be paid from the proceeds of a second harvest before newer-obtained loans.

When interest rates were high, banks were willing to loan farmers all the money they required. Now, with lower interest rates, banks are loaning farmers only part of the money they need to harvest their crops and requiring them to finance the remaining amounts they need with the chemical and seed suppliers. However, any liens for unpaid credit extended by a chemical or seed supplier is secondary to that of a bank. If a crop yields enough proceeds to repay the bank but not the secondary lenders, the secondary lenders will not get repaid in full and are left with very little recourse. HB 1262 would ensure that everyone gets paid in full, but in priority order by when a lien attached and not by the type of lender. Thus, if not paid by this year's crop, a chemical or seed supplier would have first claim on the proceeds from next year's crop, before any new primary lender.

By authorizing attachment of a registered lien on the next crop for the unpaid portion of agricultural chemicals or seed, HB 1262 would provide notice to banks and other lenders of a prior lien on that crop. Now, banks may be unaware that farmers have outstanding debt to chemical or seed suppliers because their liens cannot carry over to the next crop. Farmers cannot again retain the chemical and seed services they need if they do not pay for past services or ensure payment for future services. Therefore, the farmers request a loan from the bank and use part of the amount to pay their last year's debts to the secondary lien holders first. This creates a cycle in which many farmers always are a year behind in their debt.

By allowing a registered chemical or seed lien to attach to the next crop, HB 1262 merely would legitimize what already is occurring and allow full disclosure of all outstanding debt. It would allow the banks to make a better informed decision concerning the amount of credit they are willing to extend. Banks can spend weeks processing a loan only to discover information about undisclosed outstanding debt.

HB 1262 would bring Texas in line with roughly a dozen other states that have similar kinds of provisions and have not suffered any negative repercussions from doing so.

OPPONENTS  
SAY:

By giving agricultural chemical and seed suppliers a lien superior to other lenders on the next crop, HB 1262 could make it more difficult for farmers to obtain bank loans. Banks will be reluctant to make loans if they are not in the primary lienholder position. Banks likely would change their lending analysis process and downgrade loan applications due to the presence of these liens.

Agricultural loans are made primarily by local independent banks, rather than by larger national banks, because these loans are high risk and labor intensive and require agricultural knowledge. By making their liens secondary to liens by agricultural chemical and seed supplies, HB 1262 would make it more difficult for community banks to justify high amounts of credit given to farmers who already have outstanding debts.

Secondary liens by agricultural chemical and seed suppliers could be carried over to apply to a subsequent crop to help facilitate extension of additional services, but these liens should not take priority over newly-obtained primary loans.