

- SUBJECT:** Establishing an agricultural lien
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 5 ayes — Swinford, Hardcastle, Miller, Hupp, Kolkhorst
0 nays
4 absent — McReynolds, Christian, Brown, Green
- SENATE VOTE:** On final passage, May 3 — 30-0, on Local and Uncontested Calendar
- WITNESSES:** (*On House companion bill, HB 1829:*)
For — Karen Neeley, Independent Bankers Association of Texas; Scott Hicks, Hicks Farm; David Block, Texas Farm Bureau

Against — None
- BACKGROUND:** Under Agriculture Code, chapter 128, suppliers of agricultural chemicals and seed have liens against farmers or producers who use their products and services. A lien attaches to the proceeds from sale of crops that existed at the time of application of the agricultural chemical, from sale of the first crop produced on the land after application of the chemical, or from sale of the crop produced from the seed supplied.
- DIGEST:** CSSB 779 would allow agricultural producers to have liens for amounts owed to them under contract. An agricultural producer would have to have entered into a written contract for the purchase of a crop grown, produced, or harvested by the producer. If the agreement did not state the amount owed, the producer would have a lien for the reasonable value of the crop on the date of delivery to the purchaser.

An agricultural lien would apply to every crop, either in raw or processed form, delivered by the producer and in possession of the purchaser. If the crop was commingled after delivery, the lien would apply only to that portion of the purchaser's inventory in an amount equal to the amount of the crop delivered by the producer.

A crop or processed form of a crop deposited by a purchaser with a warehouse would be considered in possession of the purchaser and subject to a lien. This would apply regardless of whether a warehouse receipt was given as security.

An agricultural lien would attach on the date when the purchaser took physical possession of the crop. If there was to be a series of deliveries, the lien would attach on the date of the last delivery.

Filing and perfection requirements under Business and Commerce Code, chapter 9 would apply to an agricultural lien. An agricultural lien would expire on the first anniversary of the date of attachment.

A buyer in the ordinary course of business would take the crop free of a lien, and the lien would not pass to any subsequent claimant of the crop. The bill would not prohibit an unequal pro-rata recovery between producers if the inequality resulted from a lien on accounts receivable.

An agricultural lien would be discharged when the lien holder received full payment for the crop or when the purchaser tendered payment and the lien holder, without coercion, deferred it. If payment was received in the form of a negotiable instrument, full payment would be considered received when the instrument cleared all financial institutions.

People claiming a lien against the same crop could join in the same action, and if separate actions were filed, a court could consolidate them. A producer who prevailed in an action to enforce a lien could recover attorney's fees, court costs, and interest on funds subject to the lien. A producer's agreement with a contract purchaser to waive the producer's right to seek a remedy would be void.

The bill would take effect September 1, 2001, and would apply only to contracts entered into on or after that date.

**SUPPORTERS
SAY:**

SB 779 would provide protection for farmers and producers. Under current law, farmers and producers who enter into "contract to grow" agreements with a contract purchaser are considered unsecured creditors. This bill would allow farmers and producers to become secured creditors. Producers would

have to follow all existing rules to perfect a lien. The priority of the lien would be determined under the current guidelines of first-to-file. Allowing farmers and producers to have liens would give them a mechanism to force contract purchasers who did not pay for delivered crops to pay the farmers and producers.

CSSB 779 would bring Texas into line with 16 other states that already have similar laws. Without this legislation, Texas farmers are at a disadvantage compared to other states' farmers in multistate proceedings. For example, in fall 1999, 28 Texas farmers delivered \$2.2 million worth of seed to AgriBio Tech immediately before its bankruptcy. The Texas farmers were considered unsecured creditors, while some farmers from other states were considered secured creditors. The Texas seed was sold to raise proceeds to pay the company's debts. Only enough money was raised to pay secured creditors a portion of what they were owed. Farmers from California and Iowa received some of the proceeds. Unsecured creditors, including the Texas farmers, receive none of the proceeds.

CSSB 779 would conform with existing law. Two years ago, Texas adopted the revised Uniform Commercial Code, which requires the Legislature to create a statute specific to agricultural liens if protection for farmers and producers is deemed necessary.

OPPONENTS
SAY:

CSSB 779 would not go far enough in protecting agricultural producers. The bill not only should give them liens on their crops but should give them priority in obtaining proceeds raised from the sale of those crops. In the AgriBio Tech case, if the farmers or producers had not provided the bankrupt purchasers with the crops, the purchasers would not have been able to sell the crops to raise proceeds for the payment of creditors.

NOTES:

The committee substitute modified the definition of "contract purchaser" in the Senate-passed bill to specify that it would not apply to a person bonded and licensed under current warehouse regulations. The substitute added the provisions that if the crop was commingled after delivery, a lien would apply only to that portion of the purchaser's inventory in an amount equal to the amount of the crop delivered by the producer and that a lien would be discharged if the purchaser tendered payment and the lienholder, without coercion, deferred payment.

The House companion bill, HB 1829 by Walker, would have made an agricultural lien created under the new provisions superior to all other liens on the same property. Rather than applying the requirements for filing and perfecting a lien under the Business and Commerce Code, it would not have required a producer to file notice to perfect a lien but would have allowed the producer to extend a lien for an additional year by filing an affidavit and a notice of lien. The House Agriculture and Livestock Committee considered HB 1829 in a public hearing on April 26, but took no action.