

- SUBJECT:** Expanding the applicability of agricultural liens
- COMMITTEE:** Agriculture and Livestock — committee substitute recommended
- VOTE:** 6 ayes — T. King, González, C. Anderson, Cyrier, Rinaldi, Stucky
- 0 nays
- 1 absent — Burrows
- WITNESSES:** For — Marc Adams, CoBank; Kody Bessent, Plains Cotton Growers, Inc.; Ben Wible, Texas Farm Bureau; (*Registered, but did not testify:* Gary Holcomb, Ag Producers Coop; Mark Howard, Corn Producers Of Texas; Kara Mayfield, Farm Credit Bank of Texas; Stephen Scurlock, Independent Bankers Association of Texas; Marc Adams and Tommy Engelke, Texas Agricultural Cooperative Council; Dee Vaughan, Texas Grain Producers Indemnity Board; Patrick Wade, Texas Grain Sorghum Association; Steelee Fischbacher, Texas Wheat Producers Association)
- Against — Tara Artho, Texas Grain and Feed Association; Ronnie Felderhoff
- On — (*Registered, but did not testify:* Mike Mann, Texas Department of Agriculture)
- BACKGROUND:** Property Code, ch. 70, subch. E governs the creation and applicability of agricultural liens. Agricultural producers contracting with a purchaser to sell crops automatically have a lien against the crop for the amount of money owed to the producer under the contract. The lien attaches on the date of delivery, or first delivery if multiple deliveries occur.
- The lien is automatically perfected for a period of 90 days after the date of delivery, or last delivery if multiple deliveries have occurred. For perfection to continue, the producer must file a financing statement with the secretary of state. When perfected, these liens have priority over conflicting security interests in or liens on the crop or proceeds created by

the contract purchaser in favor of a third party, regardless of the date of attachment.

An agricultural lien expires on the first anniversary of the date of attachment or is discharged when the lienholder receives full payment for the crop or voluntarily defers payment. Any contract provision between the producer and purchaser waiving the producer's right to seek a remedy provided by this subchapter is void.

Some observers suggest agricultural producers should be able to obtain a superior lien on their own crops, which would protect farmers with crops stored in a warehouse that goes into bankruptcy from going unpaid because other creditors have rights to those crops.

DIGEST:

CSHB 3063 would provide agricultural liens to producers who deliver or transfer their crops to a warehouse. The lien against that crop would be for its market value on the date of delivery, or first delivery if multiple deliveries occurred. These liens would have the same attachment, expiration, and perfection rules as other agricultural liens.

If an open storage crop was commingled with a company-owned crop by a warehouse or contract purchaser, the lien would apply only to the portion of the crop possessed by the warehouse or contract purchaser in an amount equal to the amount that was transferred or delivered by the producer.

Agricultural liens, even if perfected, would not necessarily have priority over conflicting security interests in or liens on crops or proceeds created under a marketing contract.

To the extent of any conflict, Property Code, subch. E would control over any other law, and would not abridge any other protections afforded to producers by other applicable laws. Subch. E would not affect:

- the validity or priority of a security interest or lien created and perfected to secure a loan directly to a producer or to a warehouse

or a contract purchaser on a company-owned crop in favor of a secured lender;

- the validity or priority of a cotton ginner's lien; or
- the rights of a holder of a negotiable warehouse receipt.

This bill would take effect September 1, 2017, and would apply only to an agricultural producer who delivered or transferred an agriculture crop grown, produced, or harvested by the producer to a warehouse or a contract purchaser on or after the effective date of this bill.