

BILL ANALYSIS

Senate Research Center
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S.B. 779
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Natural Resources
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DIGEST AND PURPOSE

Currently, Texas law does not provide contracted growers with a secured interest in the matter of bankruptcy cases. As proposed, S.B. 779 provides for an agricultural lien on the proceeds of grown crops produced on contract with a buyer.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 70, Property Code, by adding Subchapter E, as follows:

SUBCHAPTER E. AGRICULTURE LIENS

Sec. 70.401. DEFINITIONS. Defines “agricultural product,” “agricultural producer,” “growing or harvesting,” and “inventory.”

Sec. 70.402. LIEN CREATED. Provides that an agricultural producer who, under an agreement, is to receive consideration for producing, growing, or harvesting an agricultural product has a lien on certain property for the amount owed under the agreement, or for the reasonable value of the product on the date of transfer or delivery if there is no agreement.

Sec. 70.403. WHEN LIEN ATTACHES. Provides that a lien created under this subchapter attaches to the property described by Section 70.402 on the date on which physical possession of the agricultural product is delivered or transferred by the agricultural producer to the purchaser or the purchaser’s agent. Provides that if the agricultural producer delivers or transfers agricultural products for cleaning or storage to a person other than the purchaser, the lien attaches at the first time when the agricultural product is both sold and physically delivered to the purchaser or the purchaser’s agent.

Sec. 70.404. PERFECTING LIEN. Provides that an agricultural producer is not required to file notice to perfect a lien created under this subchapter.

Sec. 70.405. DURATION OF LIEN; NOTICE OF LIEN. Provides that a lien under this subchapter, except as provided by this section, expires on the first anniversary of the date of attachment. Provides that a lien created under this subchapter is extended for a period of one year if an affidavit and a written notice of lien, on a form prescribed by the secretary of state, are filed with the secretary of state by the agricultural producer before the date the lien is otherwise to expire. Requires the notice of lien to include certain information.

Sec. 70.406. PRIORITY OF LIEN. Provides that a lien under this subchapter is superior to all other liens on the same property, regardless of when the creditor’s lien or security interest

attaches to property described by Section 70.402. Provides that all liens created under this subchapter, regardless of the date of attachment or date of notice of lien, are of equal priority and payable pro rata in proportion to the size of the lien. Provides that this section does not prohibit an unequal pro rata recovery between agricultural producers if the inequality results from alien on accounts receivable.

Sec. 70.407. DISCHARGE OF LIEN. Provides that a lien created under this subchapter is discharged when the lien holder receives full payment for the agricultural product. Provides that if full payment is in the form of a negotiable instrument, full payment is received when the negotiable instrument clears all financial institutions.

Sec. 70.408. FILING NOTICE OF DISCHARGE. Requires the lien holder, if a notice of lien is filed under Section 70.405(b) for extension of a lien and the lienholder subsequently receives full payment, to file with the secretary of state a notice of discharge, signed by the lienholder, stating that full payment has been received and the lien is discharged. Provides that if the lienholder who has filed a notice of lien and subsequently received full payment does not file a notice of discharge of the lien not later than the 30th day after receiving s written request to discharge the lien, the lienholder is liable to the purchaser of the agricultural product for damages in the amount of \$300.

Sec. 70.409. FORM OF FILING WITH THE SECRETARY OF STATE; FEES. Requires the secretary of state to prescribe the forms necessary for filing a notice of lien and notice of discharge under this subchapter. Requires the lienholder to submit to the secretary of state a \$10 fee for filing a notice of lien under Section 70.405. Prohibits the secretary of state from charging a fee for filing a notice of discharge under Section 70.408.

Sec. 70.410. JOINDER OF ACTIONS. Authorizes persons claiming a lien against the same property under this chapter to join in the same action, and if separate actions are commenced, the court is authorized to consolidate them.

Sec. 70.411. RECOVERY OF COSTS. Provides that an agricultural producer who prevails in an action brought to enforce a lien created under this subchapter is entitled to recover certain fees, costs, and interest. Provides that the judgment interest rate is computed at a certain rate.

Sec. 70.413. CONFLICT OF LAW. Provides that to the extent of any conflict between this subchapter and Chapter 9 (Secured Transaction; Sales of Accounts and Chattel Paper), Business & Commerce Code, Chapter 128 (Agricultural Chemical and Seed Liens), Agriculture Code, or any other law, this subchapter prevails.

SECTION 2. Effective date: September 1, 2001.

Makes application of this Act prospective.