

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 779
By: Duncan
Natural Resources
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, Texas law does not provide contracted growers with a secured interest in the matter of bankruptcy cases. C.S.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 crop,” “agricultural producer,” “buyer in ordinary course of business,” and “contract purchaser.”

Sec. 70.402. LIEN CREATED. (a) Provides that an agricultural producer who, under a written contract with a contract purchaser, is to receive consideration for selling an agricultural crop grown, produced, or harvested by the producer has a lien for the amount owed under the contract, or for the reasonable value of the crop on the date of transfer or delivery if there is no provision concerning the amount owed in the agreement.

(b) Provides that a lien created under this subchapter is on every agricultural crop, either in raw or processed form, in the possession of the contract purchaser and on the entire inventory of the contract purchaser with which the agricultural crop may have been commingled.

(c) Provides that an agricultural crop or processed form of an agricultural crop deposited by a contract purchaser with a warehouse, whether or not a warehouse receipt is given as security, is considered to be in the possession of the contract purchaser and subject to the lien.

Sec. 70.403. WHEN LIEN ATTACHES. Provides that a lien created under this subchapter attaches to the agricultural crop on the date on which physical possession of the crop is delivered or transferred by the agricultural producer to the contract purchaser or the purchaser’s agent, or if there is to be a series of deliveries to the contract purchaser or purchaser’s agent, on the date of the last delivery of the agricultural crop to the contract purchaser or purchaser’s agent.

Sec. 70.404. APPLICABILITY OF OTHER LAW. Provides that Chapter 9 (Secured Transactions), Business & Commerce Code, including applicable filing and perfection

requirements, applies to a lien created under this subchapter to the extent Chapter 9 is consistent with this subchapter.

Sec. 70.405. DURATION 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.

Sec. 70.406. EFFECT OF LIEN; RECOVERY. (a) Provides that a buyer in ordinary course of business of an agricultural crop, including a person who buys any portion of an agricultural crop from a contract purchaser, whether or not the agricultural crop has been commingled, takes the agricultural crop free of a lien created under this subchapter, and the lien created by this subchapter does not pass to any subsequent claimant of the agricultural crop.

(b) Provides that an unequal pro rata recovery between agricultural producers is not prohibited under this subchapter if the inequality results from a lien 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 crop. 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. JOINDER OF ACTIONS. Authorizes persons claiming a lien against the same agricultural crop under this subchapter to join in the same action, and if separate actions are commenced, the court is authorized to consolidate them.

Sec. 70.409. 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 and interest. Provides that the judgment interest rate is computed at a certain rate.

Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. Provides that an agricultural producer's agreement with a contract purchaser to waive the producer's right to seek a remedy provided by this subchapter is void.

SECTION 2. Effective date: September 1, 2001.

Makes application of this Act prospective.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Amends As Filed S.B. 779, by amending proposed Chapter 70E, Property Code, regarding AGRICULTURE LIENS.

Sec. 70.401. Adds definitions for "agricultural crop," "buyer in ordinary course of business," and "contract purchaser" and deletes definitions for "agricultural product," "growing or harvesting," and "inventory."

Deletes proposed Sections 70.404 (PERFECTING LIEN), 70.406 (PRIORITY OF LIEN), 70.408 (FILING NOTICE OF DISCHARGE), 70.409 (FORM OF FILING WITH SECRETARY OF STATE; FEES), AND 70.411 (RECOVERY OF COSTS).

Makes further changes to clarify text of bill and make conforming changes.

Adds Sections 70.402(b) and (c), 70.404, and 70.406.

SECTION 2. Makes conforming changes.