

BILL ANALYSIS

Senate Research Center

S.B. 1339
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Agriculture, Water & Rural Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Farmers entrust their crop to a warehouse or processor upon harvest. Because of the nature of the industry, the farmer often does not receive payment until the crop is processed and sold. However, unbeknownst to the farmer, the warehouse or processor might be experiencing financial difficulty, as is the case increasingly across the state. If the warehouse or processor is taken over by a lending institution, that institution can end up owning the farmer's product. In that case, the farmer will not receive payment for the crop, potentially causing the loss of a whole year's investment, which in turn can cause farms, many being multi-generational, to be forced into bankruptcy and sold off.

Current law does not provide for an automatically attaching, perfected agricultural lien for an agricultural crop on the date of delivery that lasts for 90 days, and can be extended upon the filing of a financing statement. Creditors of warehouses or operators are better protected under law to the rights of the companies' assets than are the farmers who planted, grew, harvested, and delivered the crop. S.B. 1339 creates an automatically attaching, perfected agricultural lien for an agricultural crop on the date of delivery that lasts for 90 days and can be extended upon the filing of a financing statement. This would give a farmer a superior security interest to that of a creditor of a warehouse or processor.

S.B. 1339 amends current law relating to the perfection and priority of an agricultural lien on an agricultural crop.

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 Section 70.401(4), Property Code, to redefine "contract purchaser."

SECTION 2. Amends Sections 70.402(a) and (b), Property Code, as follows:

(a) Provides that an agricultural producer who, under a contract, rather than 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 agreement, rather than provision, concerning the amount owed under the contract, rather than 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, that has been transferred or delivered by the agricultural producer and is in the possession of the contract purchaser, and if the contract purchaser sells all or part of the crop, on the proceeds of the sale.

SECTION 3. Amends Section 70.403, Property Code, to provide that a lien created under this subchapter attaches on the date on which physical possession of the agricultural 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 first delivery, rather than last delivery, of the agricultural crop to the contract purchaser or purchaser's agent.

SECTION 4. Amends Section 70.404, Property Code, to provide that Chapter 9 (Secured Transactions), Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter, except as provided by Section 70.4045.

SECTION 5. Amends Subchapter E, Chapter 70, Property Code, by adding Section 70.4045, as follows:

Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON CROPS. (a) Provides that a lien created under this subchapter, notwithstanding Chapter 9, Business & Commerce Code, is perfected at the time the lien attaches under Section 70.403 (When Lien Attaches) and continues to be perfected if a financing statement covering the agricultural crop is filed on or before the 90th day after the date:

(1) the physical possession of the crop is delivered or transferred by the agricultural producer to the contract purchaser or the purchaser's agent, if there is only one delivery under the contract; or

(2) of the last delivery of the crop to the contract purchaser or the purchaser's agent, if there is a series of deliveries under the contract.

(b) Provides that the lien, if a financing statement covering the agricultural crop is not filed within the time prescribed by Subsection (a)(1) or (2), as applicable, is considered unperfected on the date the lien attached until the date the financing statement is filed or the lien is perfected under Chapter 9, Business & Commerce Code.

(c) Provides that a lien created and perfected under this subchapter, notwithstanding Chapter 9, Business & Commerce Code, has priority over a conflicting security interest in or lien on the agricultural crop or the proceeds from the sale of the crop created by the contract purchaser in favor of a third party, other than a cotton ginner's lien created under Section 70.003(d) (providing that a cotton ginner to whom a cotton crop has been delivered for processing or who, under an agreement, is to be paid for harvesting a cotton crop has a lien on the cotton processed or harvested for the amount of the charges for the processing or harvesting), regardless of the date the security interest or lien created by the contract purchaser attached. Provides that this subsection does not affect a security interest or lien created and perfected to secure a loan directly to the agricultural producer.

SECTION 6. Provides that the changes in law made by this Act apply only to a lien that attaches under Section 70.403, Property Code, as amended by this Act, on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2015.