

BILL ANALYSIS

Senate Research Center

H.B. 3063
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Agriculture, Water & Rural Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3063 amends the Property Code to specify that an agricultural lien for the amount owned under a contract is a lien against the applicable crop and, for purposes of an agricultural lien for the value of a crop for which there is no agreement concerning the amount owed under a contract, to change the value of the crop from the reasonable value of the crop on the date of transfer or delivery to the market value of the crop on such date.

H.B. 3063 establishes that an agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien against the agricultural crop for the market value of the agricultural crop on the date of delivery or transfer or, if there is to be a series of deliveries to the warehouse, on the date of the first delivery of the agricultural crop to the warehouse. The bill grants control to agricultural lien provisions over any other law to the extent of a conflict, but establishes that such provisions do not abridge the protections afforded by any applicable law.

H.B. 3063 removes the specified period during which an agricultural lien is considered unperfected if a financing statement covering the agricultural crop is not filed within the applicable timeframe. H.B. 3063 establishes that provisions relating to an agricultural lien's priority expressly do not affect the validity or priority of a security interest or lien created and perfected under the Uniform Commercial Code—Secured Transactions to secure a loan to a warehouse or a contract purchaser on a company-owned crop in favor of a secured lender or affect the rights of a holder of a negotiable warehouse receipt. H.B. 3063 makes provisions relating to an agricultural lien's priority inapplicable to a contract purchaser who purchases an agricultural crop from an agricultural producer under a marketing contract created under statutory provisions relating to cooperative marketing associations or under certain regulations adopted by the United States Department of Agriculture. (Original Author's / Sponsor's Statement of Intent)

H.B. 3063 amends current law relating to agricultural liens.

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, Property Code, by amending Subdivision (4) and adding Subdivisions (5), (6), (7), and (8) to define "company-owned crop," "open storage crop," "secured lender," and "warehouse" and redefine "contract purchaser."

SECTION 2. Amends Section 70.402, Property Code, as follows:

Sec. 70.402. LIEN CREATED. (a) Provides that an agricultural producer who, under a contract with a contract purchaser, is to receive consideration for selling an agricultural crop grown, produced, or harvested by the producer has a lien against that crop for the amount owed under the contract, or for the market, rather than reasonable, value of the

crop on the date of transfer or delivery if there is no agreement concerning the amount owed under the contract.

(b) Provides that an agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien against that agricultural crop for the market value of the agricultural crop on the date of delivery or transfer, or, if there is to be a series of deliveries to the warehouse, on the date of the first delivery of the agricultural crop to the warehouse.

(c) Creates this subsection from existing text. Provides that a lien created under this subchapter (Agricultural Liens) 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 warehouse or the contract purchaser, and if the warehouse or the contract purchaser sells all or part of the crop, on the proceeds of the sale. Provides that if an open storage, rather than the agricultural, crop is commingled with a company-owned crop by a warehouse or a contract purchaser after the crop has been transferred or delivered, a lien created under this subchapter applies only to that portion of the agricultural crop in the possession of the warehouse or the contract purchaser, rather than comingled after the crop has been transferred or delivered, a lien created under this subchapter applies only to that portion of the contract purchaser's inventory, in an amount that is equal to the amount of the crop transferred or delivered by the agricultural producer.

(d) Redesignates existing Subsection (c) as Subsection (d). Provides that, for purposes of this subchapter, 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 created by this subchapter.

SECTION 3. Amends Section 70.403, Property Code, as follows:

Sec. 70.403. WHEN LIEN ATTACHES. Provides 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 warehouse or to the contract purchaser or the purchaser's agent, or if there is to be a series of deliveries, on the date of the first delivery of the agricultural crop, rather than, if there is to be a series of deliveries to the contract purchaser or purchaser's agent, on the date of the first delivery of the agricultural crop to the contract purchaser or purchaser's agent.

SECTION 4. Amends Section 70.404, Property Code, as follows:

Sec. 70.404. New heading: APPLICABILITY OF OTHER LAW; EFFECT ON OTHER LAW. (a) Creates this subsection from existing text. Provides that, except as provided by Section 70.4045 of this code, Chapter 9 (Secured Transactions), Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter.

(b) Provides that, except as provided by Subsection (c), to the extent of a conflict, this subchapter controls over any other law.

(c) Provides that this subchapter does not abridge the protections afforded by certain applicable laws.

SECTION 5. Amends Section 70.4045, Property Code, as follows:

Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON CROPS. (a) Provides that, notwithstanding Chapter 9, Business & Commerce Code, a lien created under this subchapter is perfected at the time the lien attaches under Section

70.403 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 warehouse or the contract purchaser or the purchaser's agent, if there is only one delivery, rather than only one delivery under the contract; or

(2) makes conforming changes.

(b) Provides that if a financing statement covering the agricultural crop is not filed within the time prescribed by Subsection (a)(1) or (2) (relating to the perfection of a lien being determined based on the date of last delivery of the crop), as applicable, the lien is considered unperfected, rather than the lien 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, notwithstanding Chapter 9, Business & Commerce Code, and except as provided by Subsection (d), a lien created and perfected under this subchapter 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 warehouse or the contract purchaser in favor of a third party, rather than in favor of a third party, other than a cotton ginner's lien under Section 70.003(d) (relating to proving that a cotton ginner who has a cotton crop for certain uses has a lien on that crop), regardless of the date the security interest or lien created by the warehouse or the contract purchaser attached. Provides that this subsection does not affect:

(1) the validity or priority of a security interest or lien created and perfected under Chapter 9, Business & Commerce Code, to secure a loan to a warehouse or a contract purchaser on a company-owned crop in favor of a secured lender. Makes nonsubstantive changes;

(2) the validity or priority of a cotton ginner's lien created under Section 70.003(d); or

(3) the rights of a holder of a negotiable warehouse receipt.

(d) Provides that Subsection (c) does not apply to a contract purchaser who purchases an agricultural crop from an agricultural producer under a marketing contract created under certain statutes.

SECTION 6. Amends Section 70.406(a), Property Code, as follows:

(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 warehouse or 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.

SECTION 7. Amends Section 70.407(a), Property Code, to provide that a lien created under this subchapter is discharged when payment is tendered by the warehouse or the contract purchaser, as applicable, and the lienholder, without coercion, defers payment.

SECTION 8. Amends Section 70.410, Property Code, to provide that an agricultural producer's agreement with a warehouse or a contract purchaser to waive the producer's right to seek a remedy provided by this subchapter is void.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2017.