

BILL ANALYSIS

Senate Research Center

S.B. 2037
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Agriculture
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1985, Congress enacted the Food Security Act, which addressed the concerns of the buyers of agricultural products. Under Article 9 of the Uniform Commercial Code, as it read at that time, these buyers were not considered to be “buyers in the ordinary course of business” since they bought most or all of a producer’s crop or livestock that were sold. By contrast, the typical buyer in the ordinary course of business would be a consumer who bought a single car or refrigerator. Because these buyers were held to be subject to the “buyer in the ordinary course” rule, any prior filed lien on the product continued on such product after sale. This created the risk that the buyer might have to pay twice for the same crop or livestock if the producer did not use the proceeds to pay on his loan.

The Food Security Act changed that rule and provided that the Article 9 lien did not apply when farm products were sold unless the secured creditor provided appropriate notice to the buyer. This notice could either be through actual notice to all potential buyers or through a central notification system that satisfies the explicit requirements in the Food Security Act. Currently, Texas secured creditors send the pre-notice in a variety of unregulated ways including simple notice, certified letter, or notice with acknowledgement.

A central notification system would eliminate the confusion currently resulting from the multiplicity of notice forms and greater certainty for creditors. Right now, a creditor (such as a community bank) does not have any way to be sure that it has sent its pre-notice to the actual ultimate purchaser. For the buyers, the system would be simpler to manage with clear, electronic reports (readily searchable) provided to them by the secretary of state. This would be significantly more efficient than the current receipt of inconsistent paper documents from various banks and other creditors.

S.B. 2037 directs the secretary of state to study the feasibility of creating a central filing system.

As proposed, S.B. 2037 amends current law relating to a study regarding the feasibility of implementing a central filing system for the filing of financing statements for 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. Defines "agricultural lien," "buyer," "commission merchant," "farm products," "financing statement," and "selling agent" for purposes of this Act.

SECTION 2. FEASIBILITY STUDY ON CENTRAL FILING SYSTEM. (a) Requires the secretary of state (SOS) to conduct a study on the feasibility of developing and implementing a central filing system to be used for the filing of all financing statements that cover farm products being sold and purchased in this state that are subject to an agricultural lien.

(b) Requires the study conducted under this section to evaluate proposals for a central filing system that allows:

(1) a secured party to file a financing statement in the system that covers farm products; and

(2) a buyer, commission merchant, selling agent, or other person to search the system to determine whether the farm product is subject to an agricultural lien based on the information contained in a financing statement that is filed in the system.

SECTION 3. REPORT. Requires SOS, not later than January 12, 2021, to report the results of the study and any recommendations to the legislature. Requires the report to include any proposed legislation necessary to implement the recommendations made in the report.

SECTION 4. EXPIRATION. Provides that this Act expires June 1, 2021.

SECTION 5. EFFECTIVE DATE. Effective date: September 1, 2019.