

## **BILL ANALYSIS**

C.S.H.B. 1848  
By: Burrows  
Agriculture & Livestock  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There is concern that the law does not adequately address the priority of certain agricultural liens on crops grown by Texas farmers. Those concerned have reported the risk that a farmer will deliver crops to a warehouse or facility that, unknown to the farmer, is facing financial difficulty and in the event the warehouse or facility declares bankruptcy, the farmer will have lower payment priority than the warehouse's or facility's lending bank. C.S.H.B. 1848 seeks to ensure that Texas farmers receive payment for their hard work and investment.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1848 amends the Property Code to establish that an agricultural lien is perfected at the time the 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 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 if the financing statement is filed on or before the 90th day after the date 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. The bill establishes that an agricultural lien for which a financing statement covering the agricultural crop is not filed within the applicable time is considered unperfected on the date the lien attached until the date the financing statement is filed or the lien is perfected under the Uniform Commercial Code--Secured Transactions. The bill grants a lien created and perfected under Property Code provisions governing agricultural liens 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, regardless of the date the security interest or lien created by the contract purchaser attached. The bill specifies that such granting of priority does not affect a security interest or lien created and perfected to secure a loan directly to the agricultural producer.

C.S.H.B. 1848 removes the specifications in the definition of "contract purchaser" applicable to agricultural liens that such a person agreeing under a contract to purchase an agricultural crop has agreed before the planting of the crop and that such a contract be a written contract. The bill establishes that an agricultural lien exists on the proceeds of the sale of a crop if the contract purchaser sells all or part of the crop. The bill changes from the date of the last delivery of an

agricultural crop to the contract purchaser or purchaser's agent to the date of the first such delivery the date on which an agricultural lien attaches if there is a series of deliveries to the contract purchaser or purchaser's agent.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1848 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

No equivalent provision.

No equivalent provision.

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 70.401(4), Property Code, is amended to read as follows:

(4) "Contract purchaser" means a person who ~~[, before the planting of an agricultural crop,]~~ has agreed under a ~~[written]~~ contract to purchase an agricultural ~~[the]~~ crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. The term does not include a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

SECTION 2. Sections 70.402(a) and (b), Property Code, are amended to read as follows:

(a) 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 agreement ~~[provision]~~ concerning the amount owed under the contract ~~[in the agreement]~~.

(b) 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. If the agricultural crop is commingled 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.

No equivalent provision.

SECTION 3. Section 70.403, Property Code, is amended to read as follows:

Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this subchapter attaches ~~[to the agricultural crop]~~ 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 ~~[last]~~ delivery of the agricultural crop to the contract purchaser or purchaser's agent.

No equivalent provision.

SECTION 4. Section 70.404, Property Code, is amended to read as follows:

Sec. 70.404. APPLICABILITY OF OTHER LAW. Except as provided by Section 70.4045, Chapter 9, Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter.

SECTION 1. Subchapter E, Chapter 70, Property Code, is amended by adding Section 70.4045 to read as follows:

Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON AN AGRICULTURAL CROP. (a) Notwithstanding Chapter 9, Business & Commerce Code, an agricultural lien on an agricultural crop 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 the lien attaches under that section.

SECTION 5. Subchapter E, Chapter 70, Property Code, is amended by adding Section 70.4045 to read as follows:

Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON CROPS. (a) 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 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) If a financing statement covering the agricultural crop is not filed on or before the 90th day after the date the lien attaches under Section 70.403, the lien is considered unperfected on the date the lien attached

(b) If a financing statement covering the agricultural crop is not filed within the time prescribed by Subsection (a)(1) or (2), as applicable, 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) Notwithstanding Chapter 9, Business & Commerce Code, an agricultural lien on an agricultural crop created and perfected under this subchapter has priority over a conflicting security interest in an agricultural lien on the agricultural crop.

SECTION 2. Section 70.4045, Property Code, as added by this Act, applies only to a lien that attaches on or after the effective date of this Act. A lien that attaches before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

until the date the financing statement is filed or the lien is perfected under Chapter 9, Business & Commerce Code.

(c) Notwithstanding Chapter 9, Business & Commerce Code, 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 contract purchaser in favor of a third party, other than a cotton ginner's lien created under Section 70.003(d), regardless of the date the security interest or lien created by the contract purchaser attached. This subsection does not affect a security interest or lien created and perfected to secure a loan directly to the agricultural producer.

SECTION 6. 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. A lien that attaches before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 7. Same as introduced version.