

BILL ANALYSIS

C.S.H.B. 3969
By: King, Ken
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report some confusion relating to agriculture liens, particularly in light of recent federal rule changes, and suggest that a central filing system relating to agricultural liens could be beneficial. C.S.H.B. 3969 seeks to address this issue by providing for a study on the feasibility of developing and implementing such a system.

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. 3969 requires the secretary of state 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 Texas that are subject to an agricultural lien. The bill requires the study to evaluate proposals for a central filing system that allows a secured party to file a financing statement in the system that covers farm products and that allows 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. The bill requires the secretary of state, not later than January 8, 2019, to report the results of the study and any recommendations to the legislature and requires the report to include any proposed legislation necessary to implement those recommendations. The bill expires June 1, 2019.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3969 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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 9.302, Business & Commerce Code, is amended to read as follows:

No equivalent provision.

Sec. 9.302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS. (a) Subject to Chapter 606, while ~~[While]~~ farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

(b) Notwithstanding any law to the contrary, to the extent of any conflict between this chapter and Chapter 606, Chapter 606 controls.

No equivalent provision.

SECTION 2. Section 9.501, Business & Commerce Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as otherwise provided in Subsection (b) ~~or (c)~~, if the local law of this state governs perfection of a security interest ~~[or agricultural lien]~~, the office in which to file a financing statement to perfect the security interest ~~[or agricultural lien]~~ is:

(1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) the office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(c) Notwithstanding any other law to the contrary, the office in which to file a financing statement to perfect an agricultural lien is the office of the Secretary of State as provided by Chapter 606.

No equivalent provision. *(But see the following notations.)*

SECTION 3. Title 12, Business & Commerce Code, is amended by adding Chapter 606 to read as follows:

CHAPTER 606. CENTRAL FILING SYSTEM FOR AGRICULTURAL LIENS

Sec. 606.001. DEFINITIONS. In this chapter:

No equivalent provision. *(But see SECTION 1 below.)*

- (1) "Agricultural lien" has the meaning assigned by Section 9.102.
- (2) "Buyer" means a person who, in the ordinary course of business, buys farm products from another person who is engaged in farming operations and who is in the business of selling farm products.
- (3) "Central filing system" means a statewide system that is developed by the secretary of state and certified by the secretary of the United States Department of Agriculture to be used for the filing of an effective financing statement.
- (4) "Commission merchant" means a person engaged in the business of receiving a farm product for the purpose of selling the farm product on commission or on behalf of another person.
- (5) "Debtor" means a person having an interest, other than a security interest or other lien, in a farm product, whether or not the person is an obligor.
- (6) "Effective financing statement" means a financing statement, as defined by Section 9.102, that covers a farm product and that is filed in compliance with this chapter.
- (7) "Farm products" has the meaning assigned by Section 9.102.
- (8) "Selling agent" means a person, other than a commission merchant, who is engaged in the business of negotiating the sale or purchase of a farm product on behalf of a person engaged in farming operations.

Sec. 606.002. RULES. The secretary of state shall adopt rules as necessary to implement this chapter.

No equivalent provision.

Sec. 606.003. FORMS. The secretary of state shall develop and maintain standard forms for an effective financing statement, a statement of continuation, a statement of amendment, and a statement of termination that are consistent with this chapter.

No equivalent provision.

Sec. 606.004. EFFECTIVE FINANCING STATEMENT. (a) An effective financing statement must:

- (1) be signed by the secured party and filed by the secured party with the office of the secretary of state in the central filing system under Section 606.007;
- (2) be signed by the debtor; and
- (3) provide:
 - (A) the name and address of the secured

No equivalent provision.

party;

(B) the name and address of the debtor;

(C) the social security number of the debtor or, if the debtor is not an individual, the tax identification number of the debtor;

(D) the farm product covered by the effective financing statement;

(E) each county in this state where the farm product is produced or will be produced;

(F) a description of the farm product that is subject to an agricultural lien only if a description is needed to distinguish that farm product from other farm products owned by the same person but not subject to the agricultural lien; and

(G) the crop year, unless for the duration of the effective financing statement every crop of the farm product that is subject to an agricultural lien is to be subject to the lien.

(b) A secured party may use one effective financing statement to reflect multiple farm products or farm products in multiple counties.

(c) An effective financing statement may be modified to reflect material changes. An amendment to an effective financing statement must be:

(1) made in writing;

(2) signed by the secured party and the debtor; and

(3) filed not later than the 90th day after the original filing date.

(d) An effective financing statement remains in effect for a period of five years from the date of filing and may be extended for an additional period of five years by filing or refiling a statement of continuation at least 180 days before the expiration date of the current effective period.

(e) The secretary of state shall remove an effective financing statement from the central filing system when the statement expires or when a statement of termination is received from a secured party, whichever occurs first.

(f) The secretary of state may collect a fee of \$10 for each effective financing statement filed under this chapter. An effective financing statement is not filed until the fee authorized by this section is paid.

(g) An effective financing statement is considered satisfactory if it substantially complies with the requirements of this section even though the statement might contain minor errors that are not seriously

misleading as determined by the secretary of state.

Sec. 606.005. PROTECTION OF BUYERS, COMMISSION MERCHANTS, AND SELLING AGENTS. A buyer, a commission merchant, or a selling agent who, in the ordinary course of business, purchases a farm product from a person engaged in farming operations takes the farm product subject to an agricultural lien on the farm product if:

(1) the buyer, commission merchant, or selling agent fails to register with the secretary of state as prescribed by rule before purchasing the farm product and the secured party has filed an effective financing statement in the central filing system under Section 606.007 that covers the farm product being purchased; or

(2) the secured party or the seller of the farm product provides written notice of the agricultural lien to the buyer, commission merchant, or selling agent.

Sec. 606.006. IMMUNITY FROM LIABILITY. A buyer, commission merchant, or selling agent who, in the ordinary course of business, purchases farm products from or sells farm products for a person engaged in farming operations may not be liable for errors or inaccuracies generated by the central filing system developed under Section 606.007 if the buyer, commission merchant, or selling agent has otherwise complied with this chapter.

Sec. 606.007. CENTRAL FILING SYSTEM. (a) The office of the secretary of state shall develop and implement a central filing system for the filing of effective financing statements that comply with Section 606.004 and shall obtain the necessary certification for the system from the United States Department of Agriculture.

(b) The secretary of state shall adopt rules to implement and operate the central filing system developed under this section.

SECTION 4. As soon as practicable after the effective date of this Act, the office of the secretary of state shall adopt rules and forms necessary to implement Chapter 606,

No equivalent provision.

No equivalent provision.

No equivalent provision. (*But see SECTION 2 below.*)

No equivalent provision.

Business & Commerce Code, as added by this Act.

No equivalent provision. (*But see SECTION 3, Sec. 606.001 above.*)

No equivalent provision. (*But see SECTION 3, Sec. 606.007 above.*)

No equivalent provision.

SECTION 1. DEFINITIONS. In this Act:

- (1) "Agricultural lien" has the meaning assigned by Section 9.102, Business & Commerce Code.
- (2) "Buyer" means a person who, in the ordinary course of business, buys farm products from another person who is engaged in farming operations and who is in the business of selling farm products.
- (3) "Commission merchant" means a person engaged in the business of receiving a farm product for the purpose of selling the farm product on commission or on behalf of another person.
- (4) "Farm products" has the meaning assigned by Section 9.102, Business & Commerce Code.
- (5) "Financing statement" has the meaning assigned by Section 9.102, Business & Commerce Code.
- (6) "Selling agent" means a person, other than a commission merchant, who is engaged in the business of negotiating the sale or purchase of a farm product on behalf of a person engaged in farming operations.

SECTION 2. FEASIBILITY STUDY ON CENTRAL FILING SYSTEM. (a) The secretary of state shall 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) The study conducted under this section must 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. Not later than January 8, 2019, the secretary of state shall report the results of the study and any recommendations to the legislature. The

report must include any proposed legislation necessary to implement the recommendations made in the report.

No equivalent provision.

SECTION 5. This Act takes effect September 1, 2017.

SECTION 4. EXPIRATION. This Act expires June 1, 2019.

SECTION 5. Same as introduced version.