

By: Kacal

H.B. No. 3063

A BILL TO BE ENTITLED

AN ACT

relating to agricultural liens.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 70.401, Property Code, is amended by amending Subdivisions (1) and (4) and adding Subdivisions (3-a), (5), (6), and (7) to read as follows:

(1) "Agricultural crop" means a plant product that is grown, produced, or harvested as a result of an agricultural producer's farm operation and includes a processed product of an agricultural crop.

(3-a) "Company-owned crop" means an agricultural crop:

(A) that is received for storage by a warehouse or delivered or transferred to a contract purchaser located in this state;

(B) that is not an open storage crop; and

(C) for which the agricultural producer has been fully and finally paid.

(4) "Contract purchaser" means a person who has agreed under a contract to purchase an agricultural 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.).]~~

(5) "Open storage crop" means an agricultural crop that:

(A) an agricultural producer delivers or transfers to:

(i) a warehouse for storage; or

(ii) a contract purchaser located in this state;

(B) is not covered by a negotiable or nonnegotiable warehouse receipt; and

(C) is not owned by the lessee, owner, or operator of the warehouse in which the crop is stored or the contract purchaser to which the crop is delivered or transferred.

(6) "Warehouse" means a facility that stores or handles any agricultural crop after the crop is harvested, including a facility operated by 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.).

(7) "Warehouse operator" means a person engaged in the business of operating a warehouse.

SECTION 2. Section 70.402, Property Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien for the reasonable value of the crop on the

1 date of delivery or transfer:

2 (1) whether or not a negotiable or nonnegotiable
3 warehouse receipt is issued by the warehouse; and

4 (2) whether or not the crop is placed in open storage.

5 (c) A lien created under this subchapter is on every
6 agricultural crop, either in raw or processed form, that has been
7 transferred or delivered by the agricultural producer and is in the
8 possession of the warehouse or contract purchaser, and if the
9 warehouse or contract purchaser sells all or part of the crop, on
10 the proceeds of the sale. If an open storage [~~the agricultural~~]
11 crop is commingled with a company-owned crop by a warehouse or
12 contract purchaser after the crop has been transferred or
13 delivered, a lien created under this subchapter applies only to
14 that portion of the contract purchaser's inventory in an amount
15 that is equal to the amount of the crop transferred or delivered by
16 the agricultural producer.

17 (d) [~~(e)~~] For purposes of this subchapter, an agricultural
18 crop or processed form of an agricultural crop deposited by a
19 contract purchaser with a warehouse, whether or not a warehouse
20 receipt is given as security, is considered to be in the possession
21 of the contract purchaser and subject to the lien created by this
22 subchapter.

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

25 Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this
26 subchapter attaches on the date on which physical possession of the
27 agricultural crop is delivered or transferred by the agricultural

1 producer to the warehouse or to the contract purchaser or the
2 purchaser's agent, or if there is to be a series of deliveries [~~to~~
3 ~~the contract purchaser or purchaser's agent~~], on the date of the
4 first delivery of the agricultural crop [~~to the contract purchaser~~
5 ~~or purchaser's agent~~].

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

8 Sec. 70.404. APPLICABILITY OF OTHER LAW; EFFECT ON OTHER
9 LAW. (a) Except as provided by Section 70.4045 of this code,
10 Chapter 9, Business & Commerce Code, including applicable filing
11 and perfection requirements, applies to a lien created under this
12 subchapter.

13 (b) This subchapter does not diminish or abridge any
14 protections afforded to an agricultural producer by:

- 15 (1) Chapter 14, Agriculture Code;
16 (2) Chapter 7, Business & Commerce Code; or
17 (3) the United States Warehouse Act (7 U.S.C. Section
18 241 et seq.)).

19 SECTION 5. Sections 70.4045(a) and (c), Property Code, are
20 amended to read as follows:

21 (a) Notwithstanding Chapter 9, Business & Commerce Code, a
22 lien created under this subchapter is perfected at the time the lien
23 attaches under Section 70.403 and continues to be perfected if a
24 financing statement covering the agricultural crop is filed on or
25 before the 90th day after the date:

- 26 (1) the physical possession of the crop is delivered
27 or transferred by the agricultural producer to the warehouse or the

1 contract purchaser or the purchaser's agent, if there is only one
2 delivery [~~under the contract~~]; or

3 (2) of the last delivery of the crop to the warehouse
4 or the contract purchaser or the purchaser's agent, if there is a
5 series of deliveries [~~under the contract~~].

6 (c) Notwithstanding Chapter 9, Business & Commerce Code, a
7 lien created and perfected under this subchapter has priority over
8 a conflicting security interest in or lien on the agricultural crop
9 or the proceeds from the sale of the crop created by the warehouse
10 operator or contract purchaser in favor of a third party, other than
11 a cotton ginner's lien created under Section 70.003(d) or a
12 marketing pool contract agreement with an agricultural producer,
13 regardless of the date the security interest or lien created by the
14 warehouse operator or contract purchaser attached. This
15 subsection does not affect a security interest or lien created and
16 perfected to secure a loan directly to the agricultural producer.

17 SECTION 6. Section 70.406(a), Property Code, is amended to
18 read as follows:

19 (a) A buyer in ordinary course of business of an
20 agricultural crop, including a person who buys any portion of an
21 agricultural crop from a warehouse operator or contract purchaser,
22 whether or not the agricultural crop has been commingled, takes the
23 agricultural crop free of a lien created under this subchapter, and
24 the lien created by this subchapter does not pass to any subsequent
25 claimant of the agricultural crop.

26 SECTION 7. Section 70.407(a), Property Code, is amended to
27 read as follows:

(a) A lien created under this subchapter is discharged when:

(1) the lienholder receives full payment for the agricultural crop; or

(2) payment is tendered by the warehouse operator or contract purchaser, as applicable, and the lienholder, without coercion, defers payment.

SECTION 8. Section 70.410, Property Code, is amended to read as follows:

Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. An agricultural producer's agreement with a warehouse operator or contract purchaser to waive the producer's right to seek a remedy provided by this subchapter is void.

SECTION 9. The changes in law made by this Act apply only to an agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse on or after the effective date of this Act. An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse 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 10. This Act takes effect September 1, 2017.