

1-1 By: Kacal (Senate Sponsor - Perry) H.B. No. 3063
 1-2 (In the Senate - Received from the House May 3, 2017;
 1-3 May 8, 2017, read first time and referred to Committee on
 1-4 Agriculture, Water & Rural Affairs; May 16, 2017, reported
 1-5 favorably by the following vote: Yeas 7, Nays 0; May 16, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 A BILL TO BE ENTITLED
 1-17 AN ACT

1-18 relating to agricultural liens.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Section 70.401, Property Code, is amended by
 1-21 amending Subdivision (4) and adding Subdivisions (5), (6), (7), and
 1-22 (8) to read as follows:

1-23 (4) "Company-owned crop" means an agricultural crop:
 1-24 (A) that is in the possession of a warehouse or
 1-25 contract purchaser located in this state and for which the
 1-26 agricultural producer has received full payment;

1-27 (B) that is not an open storage crop; or
 1-28 (C) for which the warehouse or the contract
 1-29 purchaser tenders payment and the agricultural producer, without
 1-30 coercion, defers payment.

1-31 (5) "Contract purchaser" means a person who has agreed
 1-32 under a contract to purchase an agricultural crop or otherwise pay
 1-33 the agricultural producer for growing, producing, or harvesting the
 1-34 agricultural crop. The term includes ~~does not include~~ a person
 1-35 who, as to the transaction in question, is licensed and bonded under
 1-36 Chapter 14, Agriculture Code, or the United States Warehouse Act (7
 1-37 U.S.C. Section 241 et seq.).

1-38 (6) "Open storage crop" means an agricultural crop
 1-39 that:

1-40 (A) an agricultural producer delivers or
 1-41 transfers to:

1-42 (i) a warehouse for storage; or
 1-43 (ii) a contract purchaser located in this
 1-44 state;

1-45 (B) is not covered by a warehouse receipt; and
 1-46 (C) is not owned by the lessee, owner, or
 1-47 operator of the warehouse in which the crop is stored or the
 1-48 contract purchaser to which the crop is delivered or transferred.

1-49 (7) "Secured lender" means a person that:

1-50 (A) has loaned money to a warehouse or a contract
 1-51 purchaser; and

1-52 (B) holds a perfected secured lien against a
 1-53 company-owned crop.

1-54 (8) "Warehouse" means a facility that stores or
 1-55 handles any agricultural crop after the crop is harvested,
 1-56 including a facility operated by a person who, as to the transaction
 1-57 in question, is licensed and bonded under Chapter 14, Agriculture
 1-58 Code, or the United States Warehouse Act (7 U.S.C. Section 241 et
 1-59 seq.). The term includes a person engaged in the business of
 1-60 operating a warehouse.

1-61 SECTION 2. Section 70.402, Property Code, is amended to

2-1 read as follows:

2-2 Sec. 70.402. LIEN CREATED. (a) An agricultural producer
2-3 who, under a contract with a contract purchaser, is to receive
2-4 consideration for selling an agricultural crop grown, produced, or
2-5 harvested by the producer has a lien against that crop for the
2-6 amount owed under the contract, or for the market [reasonable]
2-7 value of the crop on the date of transfer or delivery if there is no
2-8 agreement concerning the amount owed under the contract.

2-9 (b) An agricultural producer who delivers or transfers an
2-10 agricultural crop grown, produced, or harvested by the producer to
2-11 a warehouse has a lien against that agricultural crop for the market
2-12 value of the agricultural crop:

2-13 (1) on the date of delivery or transfer; or

2-14 (2) if there is to be a series of deliveries to the
2-15 warehouse, on the date of the first delivery of the agricultural
2-16 crop to the warehouse.

2-17 (c) A lien created under this subchapter is on every
2-18 agricultural crop, either in raw or processed form, that has been
2-19 transferred or delivered by the agricultural producer and is in the
2-20 possession of the warehouse or the contract purchaser, and if the
2-21 warehouse or the contract purchaser sells all or part of the crop,
2-22 on the proceeds of the sale. If an open storage [the agricultural]
2-23 crop is commingled with a company-owned crop by a warehouse or a
2-24 contract purchaser after the crop has been transferred or
2-25 delivered, a lien created under this subchapter applies only to
2-26 that portion of the agricultural crop in the possession of the
2-27 warehouse or the contract purchaser [~~purchaser's inventory~~] in an
2-28 amount that is equal to the amount of the crop transferred or
2-29 delivered by the agricultural producer.

2-30 (d) [~~(c)~~] For purposes of this subchapter, an agricultural
2-31 crop or processed form of an agricultural crop deposited by a
2-32 contract purchaser with a warehouse, whether or not a warehouse
2-33 receipt is given as security, is considered to be in the possession
2-34 of the contract purchaser and subject to the lien created by this
2-35 subchapter.

2-36 SECTION 3. Section 70.403, Property Code, is amended to
2-37 read as follows:

2-38 Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this
2-39 subchapter attaches on the date on which physical possession of the
2-40 agricultural crop is delivered or transferred by the agricultural
2-41 producer to the warehouse or to the contract purchaser or the
2-42 purchaser's agent, or if there is to be a series of deliveries [~~to~~
2-43 ~~the contract purchaser or purchaser's agent~~], on the date of the
2-44 first delivery of the agricultural crop [~~to the contract purchaser~~
2-45 ~~or purchaser's agent~~].

2-46 SECTION 4. Section 70.404, Property Code, is amended to
2-47 read as follows:

2-48 Sec. 70.404. APPLICABILITY OF OTHER LAW; EFFECT ON OTHER
2-49 LAW. (a) Except as provided by Section 70.4045 of this code,
2-50 Chapter 9, Business & Commerce Code, including applicable filing
2-51 and perfection requirements, applies to a lien created under this
2-52 subchapter.

2-53 (b) Except as provided by Subsection (c), to the extent of a
2-54 conflict, this subchapter controls over any other law.

2-55 (c) This subchapter does not abridge the protections
2-56 afforded by any applicable law, including:

2-57 (1) Chapter 14, Agriculture Code;

2-58 (2) Chapter 7, Business & Commerce Code;

2-59 (3) the United States Warehouse Act (7 U.S.C. Section
2-60 241 et seq.); or

2-61 (4) common law, including the law of bailment.

2-62 SECTION 5. Section 70.4045, Property Code, is amended to
2-63 read as follows:

2-64 Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN
2-65 ON CROPS. (a) Notwithstanding Chapter 9, Business & Commerce Code,
2-66 a lien created under this subchapter is perfected at the time the
2-67 lien attaches under Section 70.403 and continues to be perfected if
2-68 a financing statement covering the agricultural crop is filed on or
2-69 before the 90th day after the date:

3-1 (1) the physical possession of the crop is delivered
 3-2 or transferred by the agricultural producer to the warehouse or the
 3-3 contract purchaser or the purchaser's agent, if there is only one
 3-4 delivery [~~under the contract~~]; or

3-5 (2) of the last delivery of the crop to the warehouse
 3-6 or the contract purchaser or the purchaser's agent, if there is a
 3-7 series of deliveries [~~under the contract~~].

3-8 (b) If a financing statement covering the agricultural crop
 3-9 is not filed within the time prescribed by Subsection (a)(1) or (2),
 3-10 as applicable, the lien is considered unperfected [~~on the date the~~
 3-11 ~~lien attached until the date the financing statement is filed or the~~
 3-12 ~~lien is perfected under Chapter 9, Business & Commerce Code].~~

3-13 (c) Notwithstanding Chapter 9, Business & Commerce Code,
 3-14 and except as provided by Subsection (d), a lien created and
 3-15 perfected under this subchapter has priority over a conflicting
 3-16 security interest in or lien on the agricultural crop or the
 3-17 proceeds from the sale of the crop created by the warehouse or the
 3-18 contract purchaser in favor of a third party, [~~other than a cotton~~
 3-19 ~~ginner's lien created under Section 70.003(d),]~~ regardless of the
 3-20 date the security interest or lien created by the warehouse or the
 3-21 contract purchaser attached. This subsection does not affect:

3-22 (1) the validity or priority of a security interest or
 3-23 lien:

3-24 (A) created and perfected to secure a loan
 3-25 directly to the agricultural producer; or

3-26 (B) created and perfected under Chapter 9,
 3-27 Business & Commerce Code, to secure a loan to a warehouse or a
 3-28 contract purchaser on a company-owned crop in favor of a secured
 3-29 lender;

3-30 (2) the validity or priority of a cotton ginner's lien
 3-31 created under Section 70.003(d); or

3-32 (3) the rights of a holder of a negotiable warehouse
 3-33 receipt.

3-34 (d) Subsection (c) does not apply to a contract purchaser
 3-35 who purchases an agricultural crop from an agricultural producer
 3-36 under a marketing contract created under:

3-37 (1) Section 52.016, Agriculture Code; or

3-38 (2) regulations adopted by the United States
 3-39 Department of Agriculture under Title 7 of the United States Code.

3-40 SECTION 6. Section 70.406(a), Property Code, is amended to
 3-41 read as follows:

3-42 (a) A buyer in ordinary course of business of an
 3-43 agricultural crop, including a person who buys any portion of an
 3-44 agricultural crop from a warehouse or a contract purchaser, whether
 3-45 or not the agricultural crop has been commingled, takes the
 3-46 agricultural crop free of a lien created under this subchapter, and
 3-47 the lien created by this subchapter does not pass to any subsequent
 3-48 claimant of the agricultural crop.

3-49 SECTION 7. Section 70.407(a), Property Code, is amended to
 3-50 read as follows:

3-51 (a) A lien created under this subchapter is discharged when:

3-52 (1) the lienholder receives full payment for the
 3-53 agricultural crop; or

3-54 (2) payment is tendered by the warehouse or the
 3-55 contract purchaser, as applicable, and the lienholder, without
 3-56 coercion, defers payment.

3-57 SECTION 8. Section 70.410, Property Code, is amended to
 3-58 read as follows:

3-59 Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. An
 3-60 agricultural producer's agreement with a warehouse or a contract
 3-61 purchaser to waive the producer's right to seek a remedy provided by
 3-62 this subchapter is void.

3-63 SECTION 9. The changes in law made by this Act apply only to
 3-64 an agricultural producer who delivers or transfers an agricultural
 3-65 crop grown, produced, or harvested by the producer to a warehouse or
 3-66 a contract purchaser on or after the effective date of this Act. An
 3-67 agricultural producer who delivers or transfers an agricultural
 3-68 crop grown, produced, or harvested by the producer to a warehouse or
 3-69 a contract purchaser before the effective date of this Act is

4-1 governed by the law as it existed immediately before that date, and
4-2 that law is continued in effect for that purpose.

4-3 SECTION 10. This Act takes effect September 1, 2017.

4-4

* * * * *