

1 State of Arkansas *As Engrossed: H3/19/15 S3/25/15*

2 90th General Assembly

A Bill

3 Regular Session, 2015

HOUSE BILL 1553

4

5 By: Representatives Ratliff, Jett

6 By: Senator B. Johnson

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For An Act To Be Entitled

9 AN ACT TO CREATE THE GRAIN, SOYBEAN, AND PEANUT
10 OWNER'S LIEN ACT; AND FOR OTHER PURPOSES.

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12

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Subtitle

14

TO CREATE THE GRAIN, SOYBEAN, AND PEANUT

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OWNER'S LIEN ACT.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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20 SECTION 1. Arkansas Code Title 2, Chapter 15, is amended to add an
21 additional subchapter to read as follows:

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Subchapter 3 – Grain, Soybean, and Peanut Owner's Lien Act

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2-15-301. Title.

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This subchapter shall be known and may be cited as the "Grain, Soybean,
26 and Peanut Owner's Lien Act".

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2-15-302. Definitions.

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As used in this subchapter:

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(1) "Affiliate" means a person that:

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(A) Is directly or indirectly controlled by a first

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purchaser; or

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(B) Directly or indirectly controls a first purchaser;

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(2) "Agreement to sell" means an enforceable oral or written

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agreement by which a grain, soybean, or peanut owner, either directly or

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through a sales agent, agrees to sell grain, soybeans, or peanuts to a first



1 purchaser;

2 (3) "Control" or "controlled by" means the direct or indirect
3 possession of the power to direct or cause the direction of the management
4 and policies of a person through ownership, by contract, or otherwise;

5 (4) "First purchaser" means the first person that purchases
6 grain, soybeans, or peanuts, either directly or indirectly through a sales
7 agent, under an agreement to sell;

8 (5) "Grain, soybean, or peanut owner" means a person owning an
9 interest in grain, soybeans, or peanuts before the acquisition of the grain,
10 soybeans, or peanuts by a first purchaser;

11 (6) "Owner's lender" means a person that has a valid mortgage
12 lien or security interest in a grain, soybean, or peanut owner's grain,
13 soybeans, or peanuts at the time the grain, soybeans, or peanuts are
14 delivered to the first purchaser;

15 (7) "Owner's lien" means a lien granted under this subchapter;

16 (8)(A) "Permitted lien" means the following liens or security
17 interests:

18 (i) A mortgage lien or security interest granted by
19 a first purchaser that:

20 (a) Secures payment under a written instrument
21 of indebtedness signed by the first purchaser and accepted in writing by the
22 payee before the effective date of this subchapter; and

23 (b) Has a principal amount and a fixed
24 maturity stated in the mortgage lien or security interest; and

25 (ii) A validly perfected and enforceable lien
26 created by statute in relation to grain, soybeans, or peanuts purchased under
27 an agreement to sell that secures payment of indebtedness incurred by the
28 first purchaser before the effective date of this subchapter.

29 (B) "Permitted lien" does not include a mortgage lien or
30 security interest that:

31 (i) Secures payment under a written instrument of
32 indebtedness that is modified, amended, or restated from or after the
33 effective date of this subchapter, by a modification, amendment, or
34 restatement that increases the principal amount that is owed at the effective
35 date of this subchapter;

36 (ii) Secures payment under a written instrument of

1 indebtedness that is modified, amended, or restated from or after the
2 effective date of this subchapter by a modification, amendment; or
3 restatement that extends the stated maturity of the written instrument of
4 indebtedness that is in effect at the effective date of this subchapter; or

5 (iii) Is not validly perfected with a first priority
6 against the claims of all persons under applicable law other than a person
7 holding a statutory or regulatory lien as to which first priority is granted
8 by statute or regulation;

9 (9) "Person" means an individual or business entity, including
10 without limitation an executor, administrator, estate, agent, trust, trustee,
11 institution, receiver, business trust, firm, corporation, partnership,
12 limited liability company, cooperative, joint venture, governmental entity or
13 agency, association, and any other legal entity;

14 (10) "Proceeds" means:

15 (A) A right or amount paid or to be paid in consideration
16 of or as a consequence of the sale of grain, soybeans, or peanuts, including
17 without limitation cash proceeds, accounts, chattel paper, instruments, and
18 payment intangibles;

19 (B) A by-product from the processing of grain, soybeans,
20 or peanuts; and

21 (C) A right or amount paid or to be paid in consideration
22 of or as a consequence of the sale of a by-product from the processing of
23 grain, soybeans, or peanuts;

24 (11) "Purchaser" means a person that:

25 (A) Is not an affiliate of a first purchaser; and

26 (B) Takes, receives, or purchases grain, soybeans, or
27 peanuts from a first purchaser;

28 (12) "Sales agent" means a person that is authorized to sell
29 grain, soybeans, or peanuts on behalf of or for the benefit of another
30 person; and

31 (13) "Sales price" means the amount a first purchaser agrees to
32 pay a grain, soybean, or peanut owner or a sales agent under an agreement to
33 sell.

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35 2-15-303. Grain, soybeans, or peanuts lien.

36 (a)(1) To secure the obligations of a first purchaser to pay the sales

1 price, a grain, soybean, or peanut owner is granted a lien in all grain,
2 soybeans, or peanuts sold by the grain, soybean, or peanut owner for any
3 unpaid portion of the sales price for the grain, soybeans, or peanuts.

4 (2) The lien granted under this section is granted and shall
5 exist as part of and incident to the ownership of grain, soybeans, or
6 peanuts.

7 (b) An owner's lien:

8 (1) Exists in and attaches immediately to all grain, soybeans,
9 or peanuts on the effective date of this subchapter; and

10 (2) Continues uninterrupted and without lapse:

11 (A) In all grain, soybeans, or peanuts upon and after sale
12 of the grain, soybeans, or peanuts; and

13 (B) In and to all proceeds.

14 (c)(1) An owner's lien exists until the grain, soybean, or peanut
15 owner or the sales agent entitled to receive the sales price has received the
16 full amount of the sales price.

17 (2) A security interest or mortgage lien of an owner's lender
18 attaches to the grain, soybean, or peanut owner's right to an owner's lien in
19 grain, soybeans, or peanuts or in proceeds from the sale of the grain,
20 soybeans, or peanuts.

21 (3) An owner's lender does not waive its security interest or
22 mortgage lien or right in an owner's lien by approving or authorizing the
23 grain, soybean, or peanut owner to sell the grain, soybeans, or peanuts under
24 a sales agreement.

25 (d)(1) The validity of an owner's lien is not dependent on possession
26 of the grain, soybeans, or peanuts by a grain, soybean, or peanut owner or
27 sales agent.

28 (2) An owner's lien is not void or expired by reason of a change
29 or transfer of the actual or constructive possession of or title to the
30 grain, soybeans, or peanuts from the grain, soybean, or peanut owner or sales
31 agent to a first purchaser or subsequent purchaser.

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33 2-15-304. Perfection of grain, soybean, or peanut lien.

34 An owner's lien is perfected automatically from the effective date of
35 this subchapter or the date a sales agreement is executed after the effective
36 date of this subchapter without the need to file a financing statement or

1 other type of documentation.

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3 2-15-305. Commingled grain, soybeans, or peanuts— Priority.

4 (a) If grain, soybeans, or peanuts subject to an owner's lien are
5 commingled with other grain, soybeans, or peanuts in a manner that the
6 identity of the specific grain, soybeans, or peanuts subject to the owner's
7 lien cannot be determined by reasonable means, the owner's lien continues
8 without interruption into and attaches to the commingled grain, soybeans, or
9 peanuts and is perfected automatically as of the date of its original
10 perfection but only as to the percentage of the commingled grain, soybeans,
11 or peanuts equal to the amount of grain, soybeans, or peanuts to which the
12 owner's lien originally attached.

13 (b) An owner's lien in commingled grain, soybeans, or peanuts under
14 subsection (a) of this section has priority over any security interest or
15 other lien that is not an owner's lien or permitted lien regardless of
16 whether the security interest or other lien has been properly perfected.

17 (c) If more than one (1) owner's lien attaches to commingled grain,
18 soybeans, or peanuts, the owners' liens rank equally in the proportion that
19 the respective sales prices secured by each owner's lien bear as a percentage
20 of the total of the sales prices secured by all owners' liens applicable at
21 the time the grain, soybeans, or peanuts were commingled.

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23 2-15-306. Transfer of lien – Priority.

24 (a)(1) A purchaser or sales agent takes free of an owner's lien
25 otherwise applicable to the grain, soybeans, or peanuts purchased and is
26 relieved of any obligations created under § 2-15-303 if the purchaser or
27 sales agent pays the full amount of required consideration for the grain,
28 soybeans, or peanuts under a good faith, noncollusive agreement to purchase
29 the grain, soybeans, or peanuts.

30 (2) If a purchaser or sales agent pays the full amount of
31 consideration under subdivision (a)(1) of this section, the owner's lien
32 transfers to the proceeds paid by the purchaser or sales agent.

33 (b) An owner's lien shall continue uninterrupted in the proceeds paid
34 to or otherwise due the first purchaser.

35 (c) Except as specifically provided in this section, an owner's lien
36 has priority over the rights of a purchaser or sales agent.

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2-15-307. Lien priority generally.

Except for a permitted lien, an owner's lien takes priority over any other lien regardless of whether the lien arises by contract, law, equity, or otherwise.

2-15-308. Applicability.

(a) This subchapter does not affect the time at which legal title to grain, soybeans, or peanuts may pass by agreement or operation of law subject to an owner's lien.

(b) This subchapter does not apply to:

(1) A farm-owned cooperative; or

(2) An entity licensed under the:

(A) United States Warehouse Act, 7 U.S.C. § 241 et seq.;

or

(B) Arkansas Public Grain Warehouse Law, § 2-17-201 et

seq.

2-15-309. Waiver, relinquishment, or release of lien prohibited.

(a)(1) A grain, soybean, or peanut owner shall not be required as a condition or term of an agreement to sell or otherwise to:

(A) Waive, relinquish, or release an owner's lien or any rights under this subchapter other than upon payment in full of the sales price; or

(B) Agree to a provision that would apply the law of a state other than the State of Arkansas with respect to the rights granted under this subchapter.

(2) A waiver, relinquishment, release, or provision that violates subdivision (a)(1) of this section is void as a matter of the public policy of this state.

(b) A grain, soybean, or peanut owner or a sales agent acting on behalf of a grain, soybean, or peanut owner may waive, relinquish, or release an owner's lien or any rights under this subchapter or agree to a provision that would apply the law of a state other than the State of Arkansas with respect to the rights granted under this subchapter if the first purchaser:

(1) Posts a letter of credit in a form and amount satisfactory

1 to the grain, soybean, or peanut owner or sales agent; or

2 (2) Both:

3 (A) Executes a contract that is satisfactory to the grain,
4 soybean, or peanut owner or sales agent to prepay or escrow the sales price
5 under an agreement to sell that is satisfactory to the grain, soybean, or
6 peanut owner; and

7 (B) Performs all of the first purchaser's obligations
8 under the contract.

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10 2-15-310. Lien expiration – Action on an owner's lien.

11 (a) An owner's lien expires one (1) year after the last day of the
12 month following the date the sales price from the sale of grain, soybeans, or
13 peanuts subject to the lien is required by law or contract to be paid to the
14 grain, soybean, or peanut owner but only as to the particular grain,
15 soybeans, or peanuts sold during the month unless an action to enforce the
16 owner's lien is commenced in a court of competent jurisdiction during that
17 time.

18 (b) If a sales agent advances the sales price for grain, soybeans, or
19 peanuts to the grain, soybean, or peanut owner before the first purchaser
20 pays the sales price in full to the grain, soybean, or peanut owner or sales
21 agent, the sales agent shall assume and may enforce all rights of the grain,
22 soybean, or peanut owner under this subchapter as to the grain, soybeans, or
23 peanuts or the proceeds from the sale of the grain, soybeans, or peanuts.

24 (c)(1) In addition to any other court of competent jurisdiction, an
25 action to enforce an owner's lien may be commenced in the district court of
26 the county in which the:

27 (A) Agreement to sell is executed;

28 (B) Sales price is to be paid;

29 (C) The grain, soybeans, or peanuts that have not been
30 paid for are located; or

31 (D) Proceeds may be found.

32 (2) The commencement of one (1) or more of the following
33 proceedings by or against a person claiming an interest in property subject
34 to an owner's lien tolls the one-year period in which to commence an action
35 to enforce the owner's lien under subsection (a) of this section for an
36 additional period of ninety (90) days from the earlier of the final

1 conclusion or dismissal of the proceedings or the date final relief is
2 obtained from the applicable tribunal authorizing the commencement of the
3 action:

4 (A) An action seeking to adjudicate the person as bankrupt
5 or insolvent;

6 (B) An action seeking liquidation, winding up,
7 reorganization, arrangement, adjustment, protection, relief, or composition
8 of the person or the person's debts under any law relating to bankruptcy,
9 insolvency, or reorganization or relief of debtors; or

10 (C) An action seeking the entry of an order for relief or
11 the appointment of a receiver, trustee, or other similar official for the
12 person or for a substantial part of the person's property.

13 (d) The prevailing party in an action to enforce this subchapter may
14 recover costs and reasonable attorney's fees in any legal proceeding.

15 (e) This subchapter does not impair or affect the right of a grain,
16 soybean, or peanut owner or a sales agent to maintain a personal action to
17 recover the debt against a person liable for payment of the sales price or to
18 exercise any other available rights and remedies.

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20 2-15-311. Preference.

21 If this subchapter conflicts with other rights a grain, soybean, or
22 peanut owner may have, the grain, soybean, or peanut owner's right to receive
23 the sales price shall be given preference.

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25 */s/Ratliff*

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28 **APPROVED: 04/06/2015**