

STORAGE NAME: h0375.ag

DATE: February 26, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
AGRICULTURE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 375

RELATING TO: Liens/Bulk Feed

SPONSOR(S): Representative Bronson

STATUTE(S) AFFECTED: Chapter 713, Florida Statutes

COMPANION BILL(S): SB 22 (i) by Senator Bronson

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE
- (2) CIVIL JUSTICE & CLAIMS
- (3)
- (4)
- (5)

I. SUMMARY:

Frequently, farmers facing financial trouble or ultimate insolvency have their livestock as their only asset to pay creditors. Livestock feed is needed to maintain the farmers' assets. Under existing law, bulk or commercial feed dealers (dealers) are unsecured creditors. As unsecured creditors, dealers must stand behind many other creditors. Such dealers are unlikely to satisfy their claims against the farmers' assets, even though it is their feed that makes it possible for other creditors to satisfy their claims against the farmer. This bill addresses this concern.

This bill grants a lien in favor of the dealer for the unpaid portion of the price of the bulk feed consumed by the livestock, thereby, giving dealers secured creditor status, placing them in a better position to protect their financial interests. The lien does not attach for adulterated feed if the farmer can prove the feed was adulterated.

Dealers have up to one year to enforce a lien by filing a lien notice with the clerk of the circuit court. If dealers fail to file a lien notice within a year, they lose their right to that lien. Also, the bill requires dealers to provide notice to farmers that a lien would attach to the livestock or proceeds from the sale of the livestock for which the bulk feed was used, products derived from such livestock, and offspring born to the females of such livestock when feed is acquired on credit.

In the case of feeder lots, the bill requires a "feed bond" of not less than \$25,000. If the feeder fails to pay the feed bill, then a lien would attach to the bond and not the livestock.

This bill does not have a fiscal impact on the Department of Agriculture and Consumer Services. It does not have a significant fiscal impact on the clerk of the circuit court.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 713, F.S., establishes the lien laws in the state. The chapter is divided into four parts. Part II laws deal with a wide range of miscellaneous liens. These liens range from liens on property to liens on feed for racehorses, polo ponies, and race dogs. The chapter does not include provisions governing liens in favor of registered commercial feed dealers.

Frequently, farmers facing financial trouble or ultimate insolvency have their livestock as their only asset to pay creditors. Livestock feed is needed to maintain these assets. Under existing law, feed dealers are unsecured creditors even though they provide the feed that sustains the livestock. Consequently, feed dealers generally do not get paid for the feed that helped other secured creditors obtain the livestock assets of the farmers. Also, feed dealers face customers who do not pay for reasons other than insolvency. Dealers selling feed, on credit, by the truck load, rather than by the individual bag, are mostly affected by this bill. For these reasons, and that feed is not recoverable once consumed, dealers and their representatives believe that a bill creating a livestock lien law is necessary.

Of the potentially affected farmers, dairy farmers appear to be the most vocal in opposing the use of liens as a remedy. Dairy industry representatives believe that there are already remedies that adequately address dealers' nonpayment concerns.

Specifically, the dairy industry believes that dealers could: (1) operate on a "cash on delivery" basis, (2) use existing Uniform Commercial Code provisions that would allow farmers and dealers to enter into a mutually signed lien agreement as a condition of sale, or (3) require a "milk assignment." Milk assignments are agreements between dairy farmers and their cooperatives. The agreement ensures that the cooperatives deduct the amount owed on a feed bill from the farmers' milk proceeds before issuing the proceeds to the farmers. The deducted amount is then paid to the dealer for the feed purchased by the farmer. Furthermore, the dairy industry suggests that dealers assume the risk of nonpayment if they refuse to follow any of these three payment methods for the sale of their feed.

B. EFFECT OF PROPOSED CHANGES:

The bill provides for liens in favor of registered bulk feed dealers for the unpaid portion of the price of the bulk feed furnished. The bill defines bulk feed as commercial feed and feedstuff as defined in chapter 580, F.S., which is sold in lots of not less than one ton. Such a definition effectively exempts small livestock owners from the lien provisions in this bill.

Under this bill, dealers could obtain a lien by providing notice, before or at the time of purchase, to farmers that a lien would attach to the livestock or proceeds from the sale of the livestock for which the bulk feed was used, products derived from such livestock, or offspring born to females of that livestock when bulk feed is acquired on credit.

However, a lien would not attach to bulk feed that the farmer can demonstrate is adulterated in violation of s. 580.131, F.S. This provision gives the farmer an

opportunity to dispute the claim prior to the imposition of a lien. Also, a lien would not attach to the livestock in the case of feeder lots. In such cases, the feeder must obtain a "feed bond" of not less than \$25,000. If the feeder fails to pay the feed bill, then a lien would attach to the bond and not the livestock.

Dealers have only one year from the time of delivery to activate (or perfect) the lien by filing a notice of lien with the clerk of the court. Also, the bill requires the dealer's signature to file the lien notice, but not the farmer's.

When a lien is properly filed, it has priority over unperfected claims, liens or security interests that are perfected only after the dealers file a lien notice; thus, the dealers are placed in a better position to get their lien satisfied. Once a lien is satisfied, dealers have 30 days to terminate it.

The bill requires that a lien be enforced in the manner specified in the bill and the Uniform Commercial Code at part V of chapter 679, F.S., with the exception of s. 679.503, F.S. Basically, this means that judicial procedures are required for enforcing a lien.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The clerk of circuit the court is currently the place to file in order to perfect security interests in general under s. 679.401, F.S. However, the clerk of the circuit court may experience an increase in filings due to dealers filing feed liens pursuant to this bill. Present filing charges by the clerk of the circuit court have been found sufficient to cover the costs of filing any additional liens from the feed industry (See Fiscal Comments).

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced: **Not Applicable.**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Under the bill, individual feed dealers have the option of becoming secured creditors when bulk feed consumers do not pay their bills.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment: **Not Applicable.**

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creating s. 713.656, F.S.;

- Defining the terms “livestock”, “bulk feed”, “cooperative”, “proceeds”, and feeder;
- Granting a lien in favor of registered commercial bulk animal feed dealers for the unpaid portion of the price of the bulk feed from the livestock that consumed the feed and upon the proceeds of the livestock;
- Establishing prima facie proof that the livestock subject to a lien actually consumed the feed in question;
- Providing that the lien does not attach for bulk feed found in violation of s. 580.041, F.S., if the farmer notifies the feed dealer in writing within 10 days of the delivery that the feed has been or will be tested by a certified laboratory;
- Requiring feeders to obtain a “feed bond” of not less than \$25,000 to cover the cost of the bulk feed and, as such, the lien granted under this section must attach to the bond and not to the livestock;
- Providing that dealers have up to one year from the date of the respective commercial feed delivery to perfect a lien and that the lien is enforceable under Part V of the Uniform Commercial Code with the exception of s. 679.503, F.S.;
- Providing that the liens under this section are perfected by filing a notice of lien with the clerk of the circuit court according to s. 679.401, F.S., and that such a lien must be superior in priority to unperfected claims, liens, and security interests or to those perfected liens filed after the notice of lien established in this section;
- Setting forth the requirements for noticing purchasers of bulk feed on credit;

- Requiring notice of lien to be filed on a form that satisfies the requirements of a financing statement pursuant to s. 679.402, F.S., with certain exceptions;
- Requiring the clerk of the circuit court to note the date and time of filing and index such notices of liens with the financing statements and authorizing the clerk of the circuit court to charge a fee for the filing of the lien notice; and
- Requiring dealers to terminate a lien within 30 days of it being satisfied.

Section 2: Providing an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Dealers would incur minimum administrative costs of filing lien notices.

2. Direct Private Sector Benefits:

The bill would not put dealers in front of the line of claims against insolvent farmers or farmers not paying their feed bills, but it would put them in an improved position to protect their financial interests.

3. Effects on Competition, Private Enterprise and Employment Markets:

Some farmers may decide not to do business with dealers who prescribe to the provisions of this bill.

Additionally, if the Legislature believes that the protection provided in this bill is needed, the dairy industry concludes that the bill should be expanded to include milk marketing cooperatives. The industry claims that milk processors over the years have gone bankrupt and left the milk marketing cooperatives without payment for their product. The dairy industry further claims that over \$1 million in raw milk sales have been lost this way.

Small livestock owners are effectively exempted from the lien provisions of this bill. By definition, small livestock owners typically do not purchase commercial feed, and the provisions of this bill apply to commercial feed.

D. FISCAL COMMENTS:

The bill authorizes the clerk of the circuit court to apply the existing statutory fees for recording liens to the type of lien described in the bill. The existing fees are sufficient to defray the additional incremental cost of recording the proposed liens. Therefore, the potential of increased liens filed with the clerk of the circuit court is projected to have an insignificant positive fiscal impact for FY 1997-98.

There is no fiscal impact to the Department of Agriculture and Consumer Services in implementing this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

V. COMMENTS:

Parties affected by this bill continue to meet to work out, if possible, any differences in the provisions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

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