

AGRICULTURE CODE

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE H. HORTICULTURAL LIENS

CHAPTER 128. AGRICULTURAL CHEMICAL AND SEED LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 128.001. DEFINITIONS. In this chapter:

(1) "Agricultural chemical" includes fertilizer material as defined under Section 63.001, pesticides as defined under Section 76.001, plant regulators as defined under Section 76.001, lime, plant and soil amendments, plant food, herbicides, and chemical compounds that are applied to crops or to land used for growing crops.

(2) "Agricultural seed" has the meaning assigned under Section 61.001.

(3) "Labor" means labor or services performed in the application, delivery, or preparation of an agricultural chemical or agricultural seed.

(4) "Reasonable or agreed charges" means:

(A) any agreed price for agricultural chemicals, agricultural seeds, or labor sold or provided to a lien debtor at the lien debtor's request; or

(B) the reasonable value of agricultural chemicals, agricultural seeds, or labor, as of the date of application, delivery, or preparation, if there is not an agreed price or an agreed method for determining price.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.002. PROCEEDS. (a) For the purposes of this chapter, proceeds are the amounts received by a lien debtor, before a deduction for taxes, fees, or assessments or a deduction made under a court order, from the sale of:

(1) the crop that existed at the time of application on the land of the agricultural chemical sold by the lien claimant or applied, delivered, or prepared by the lien claimant;

(2) the first crop produced on the land after the

agricultural chemical sold by the lien claimant or applied, delivered, or prepared by the lien claimant was applied, if crops did not exist on the land at the time the agricultural chemical was applied; or

(3) the crop produced from the agricultural seed supplied by the lien claimant or applied, delivered, or prepared by the lien claimant.

(b) For the purposes of this chapter, the following are not included as proceeds:

(1) amounts due or owing to a cooperative association under Chapter 51 or 52; or

(2) amounts retained by a cooperative association under Chapter 51 or 52.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. AGRICULTURAL CHEMICAL AND SEED LIEN

Sec. 128.006. NOTICE BEFORE PURCHASE; REQUIRED NOTICE BEFORE CLAIMING LIEN. (a) A person claiming a lien under this chapter must have provided notice of the provisions of this chapter, before purchase, either generally to purchasers of agricultural chemicals, agricultural seeds, or labor as part of the lien claimant's normal business practices or specifically to the lien debtor. Notice provided under this subsection must read, to the extent applicable, substantially as follows: "The sale of agricultural chemicals or agricultural seed on credit and the provision of labor related to agricultural chemicals or agricultural seed is subject to Chapter 128, Agriculture Code. Failure to pay the agreed or reasonable charges for the chemicals, seed, or labor may result in the attachment of a lien to the proceeds of the agricultural products produced with the aid of the chemicals, seed, or labor." A potential lien claimant may satisfy the requirements of this subsection:

(1) by printing or stamping the notice on credit applications filled out by purchasers; and

(2) for future purchases by purchasers who are not notified on the credit application, by printing or stamping the

notice on an invoice or on a statement sent by separate cover.

(b) Before a person may claim a lien under this chapter, the person must send to the debtor by certified mail written notice that states:

(1) that the payment of the reasonable or agreed charges is more than 30 days overdue;

(2) the amount that is overdue;

(3) that the debtor has the following three alternatives:

(A) to allow the lien to be filed;

(B) to enter into an agreement granting a security interest in the proceeds described by Section 128.002 under the Business & Commerce Code; or

(C) to pay the reasonable or agreed charges; and

(4) in at least 10-point type, that:

(A) the debtor has until the 10th day after the date on which the notice is received to select an alternative under Subdivision (3), notify the claimant of the alternative selected, and satisfy all the requirements of the selected alternative; and

(B) the claimant may file the notice of claim of lien at any time after the 10th day after the date on which the debtor receives the notice if the debtor does not comply with the requirements of Paragraph (A).

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.007. ATTACHMENT OF LIEN. (a) A lien established under this chapter attaches to the proceeds described by Section 128.002.

(b) A lien established under this chapter attaches on the first day agricultural chemicals, labor, or both are furnished to the lien debtor. A lien that has attached under this section is removed if the lien claimant does not satisfy the notice and filing requirements of this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 292, Sec. 1, eff. Sept. 1, 1997.

Sec. 128.008. AMOUNT OF LIEN. The amount of a lien under this chapter is equal to the sum of:

(1) the amount of the unpaid reasonable or agreed charges for:

(A) agricultural chemicals, labor, or both, as appropriate, furnished within the 180-day period immediately preceding the day the notice of claim of lien is filed with the secretary of state as provided by this chapter; and

(B) agricultural seeds, labor, or both, as appropriate, furnished within the 180-day period immediately preceding the day the notice of claim of lien is filed with the secretary of state as provided by this chapter; and

(2) the filing fees for the lien as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 292, Sec. 2, eff. Sept. 1, 1997.

Sec. 128.009. PERSON ENTITLED TO FILE; EXCEPTION. (a) Except as provided by Subsection (b) or by Section [128.047](#), a person who provides an agricultural chemical, agricultural seed, or labor may file a notice of claim of lien as provided by this chapter.

(b) A claimant may not file a notice of claim of lien if the settlement of a dispute between the claimant and the debtor has been submitted to the department and is pending.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 292, Sec. 3, eff. Sept. 1, 1997.

Sec. 128.010. PERFECTION OF LIEN. A lien created under this chapter is perfected on the filing of a notice of claim of lien with the secretary of state as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.011. DURATION OF NOTICE OF CLAIM OF LIEN. (a) Except as otherwise provided by this chapter, the notice of claim of lien is effective, and a new notice of claim of lien is not required

to maintain the lien, as long as the person who provides the agricultural chemical, agricultural seed, or labor either:

(1) remains unpaid for the amount secured by the lien;

or

(2) continues to provide an agricultural chemical, agricultural seed, or labor on a regular basis to the lien debtor.

(b) For purposes of this section, providing an agricultural chemical, agricultural seed, or labor is not considered to be made on a regular basis if a period of more than 45 days elapses between applications, deliveries, or preparations.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.012. PROCEDURES FOR SETTLEMENT OF DISPUTES. (a) The commissioner of agriculture by rule shall establish a procedure to settle a dispute between a claimant supplying agricultural chemicals or labor in the application, delivery, or preparation of agricultural chemicals and a debtor. The procedures must provide:

(1) a time requirement for submitting the dispute to the department;

(2) a time requirement within which a notice of the dispute must be submitted to each party; and

(3) a process for evaluating the dispute.

(b) Each party to the dispute is equally liable for the reasonable costs incurred by the department in carrying out this section.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.013. CONTENTS OF NOTICE OF CLAIM OF LIEN. The notice of claim of lien must include:

(1) the name and address of the lien claimant;

(2) the name and address of the lien debtor;

(3) the location of the property to which the agricultural chemical, agricultural seed, or labor was provided;

(4) a statement that the payment of the reasonable or agreed charges is more than 30 days overdue;

(5) the amount that is overdue;

(6) a statement, signed under penalty of perjury,

that:

(A) the lien claimant provided notice of the provisions of this chapter, before purchase, either generally to purchasers of agricultural chemicals, agricultural seeds, or labor as part of the lien claimant's normal business practices or specifically to the lien debtor, in the manner required by Section 128.006(a);

(B) the lien claimant sent to the lien debtor the notice required by Section 128.006(b);

(C) more than 10 days have elapsed since the date on which the notice was received by the lien debtor; and

(D) the lien debtor has not complied with the requirements of an alternative set out by Section 128.006(b); and

(7) a statement that the lien claimant has an agricultural chemical or agricultural seed lien under this chapter. Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.014. SIGNATURE. The notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.015. FORM. (a) The notice of claim of lien must be filed on a form that satisfies the requirements of a financing statement under Sections 9.502-9.504, Business & Commerce Code, except that:

(1) the lien claimant may be identified either as a lien claimant or as a secured party;

(2) the form must be signed by the lien claimant and is not required to be signed by the lien debtor; and

(3) in the space for the description of the collateral, the information specified in Sections 128.013(3), (4), (5), and (7) must be entered.

(b) A separately signed statement containing the information specified in Section 128.013(6) shall be attached to the form required under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.01, eff. July 1, 2001.

Sec. 128.016. FILING AND MARKING IN OFFICE OF SECRETARY OF STATE; FEE. (a) The notice of claim of lien shall be filed and marked in the office of the secretary of state in the same manner as a financing statement is filed and marked under Section 9.519, Business & Commerce Code.

(b) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party is the same as the fee assessed under Section 9.525, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.02, eff. July 1, 2001.

Sec. 128.017. TIME OF WRITTEN NOTICE. The lien claimant shall provide written notice of the claim of lien to the lien debtor not later than the 10th day after the date the notice of claim of lien is filed with the office of the secretary of state.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.018. RECOGNITION OF NOTICE AS FINANCING STATEMENT. The secretary of state shall recognize a notice of claim of lien under this subchapter as a financing statement under Subchapter E, Chapter 9, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.03, eff. July 1, 2001.

SUBCHAPTER C. PRIORITY OF LIEN

Sec. 128.026. TIME OF FILING. (a) A lien created under this chapter has the same priority as a security interest perfected by the filing of a financing statement on the date the notice of claim of lien was filed.

(b) A lien created under this chapter does not have priority over labor claims for wages and salaries for personal services that

are provided by an employee to a lien debtor in connection with the production of agricultural products, the proceeds of which are subject to the lien.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER D. INFORMATION CONCERNING LIEN

Sec. 128.031. ISSUANCE OF CERTIFICATE TO MEMBER OF PUBLIC; FEE. (a) A person may obtain a certificate identifying any lien on file and any notice of claim of lien naming a particular debtor and stating the date and time of filing of each notice and the names and addresses of each lienholder in the certificate.

(b) The amount of the fee for a certificate under Subsection (a) is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 6, eff. September 1, 2009.

Sec. 128.032. COPIES OF NOTICES OF CLAIM OF LIEN AND OTHER NOTICES; FEE. (a) A person may obtain a copy of any notice of claim of an agricultural chemical or seed lien filed.

(b) The fee for a copy of a notice of claim of lien obtained under Subsection (a) is in the amount provided by Section 405.031, Government Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 7, eff. September 1, 2009.

SUBCHAPTER E. ENFORCEMENT OF LIEN

Sec. 128.036. WRITTEN NOTICE TO SECURED CREDITORS BY LIEN CLAIMANT. (a) A lien claimant shall provide written notice to any secured creditor at least 30 days before the date the lien claimant enforces a claim of lien.

(b) For purposes of this section, "secured creditor" means any entity named as a secured party in a financing statement that is filed regarding the debtor and that covers:

(1) a farm product, an account, or a crop subject to the lien;

(2) a crop growing or grown on the land on which the agricultural chemical was applied or for which the agricultural seed was supplied; or

(3) the next crop to be grown on that land, if a crop is not planted.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.037. FORECLOSURE IN ACTION TO RECOVER REASONABLE OR AGREED CHARGES. The lien claimant may foreclose on a lien under this chapter only in an action to recover the reasonable or agreed charges.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.038. TERMINATION STATEMENT. (a) If a lien claimant receives payment for the total amount secured by a lien under this chapter and the lien claimant has not furnished an agricultural chemical, agricultural seed, or labor during the 45-day period before the date on which payment is received, the lien claimant shall file a termination statement with the secretary of state and shall send the lien debtor a copy of the statement as provided by this section. The statement shall state that the lien claimant no longer claims a security interest under the notice of claim of lien.

(b) The notice of claim of lien must be identified in the statement under Subsection (a) by the date, names of parties to the agreement, and file number of the original lien.

(c) If the lien claimant does not send the termination statement required by this section before the 11th day after the date on which the lien claimant received payment, the lien claimant is liable to the lien debtor for actual damages suffered by the lien debtor as a result of the failure. If the lien claimant acts in bad faith in failing to send the statement, the lien claimant is liable

for an additional penalty of \$100.

(d) The filing officer in the secretary of state's office shall mark each termination statement with the date and time of filing and shall index the statement under the name of the lien debtor and under the file number of the original lien. If the filing officer has a microfilm or other photographic record of the lien and related filings, the filing officer may destroy the filed notice of claim of lien at any time after receiving the termination statement. If the filing officer does not have a photographic record, the filing officer may destroy the filed notice of claim of lien at any time after the first anniversary of the date on which the filing officer received the termination statement.

(e) The uniform filing fee for filing and indexing the termination statement is the same as the fee assessed under Section 9.525, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.04, eff. July 1, 2001.

Sec. 128.039. RIGHT OF ASSIGNMENT OR TRANSFER; FILING OF STATEMENT. (a) A lien created under this chapter may be assigned by the holder of the lien, with full rights of enforcement.

(b) The lienholder shall file a statement of assignment with the secretary of state as provided by Section 9.514, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.05, eff. July 1, 2001.

SUBCHAPTER F. MISCELLANEOUS

Sec. 128.046. RULES. The secretary of state may adopt rules necessary to carry out the secretary's duties under this chapter, including prescribing necessary forms.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.047. MAXIMUM NUMBER OF LIENS. Not more than four

liens may be enforced under this chapter against the same proceeds of a lien debtor even if the liens are filed by different lien claimants.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.

Sec. 128.048. APPLICABILITY OF OTHER LAW. Chapter 9, Business & Commerce Code, applies to a lien created under this chapter to the extent Chapter 9 is consistent with this chapter.

Added by Acts 1995, 74th Leg., ch. 197, Sec. 1, eff. Sept. 1, 1995.