

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 1705

By: Representative Wren
By: Senators Irvin, D. Wyatt

For An Act To Be Entitled

AN ACT TO CREATE THE LIVESTOCK OWNER'S LIEN ACT; TO GRANT A LIVESTOCK OWNER A LIEN ON LIVESTOCK FOR ANY UNPAID PORTION OF THE SALES PRICE FOR THE LIVESTOCK; TO REGULATE LIVESTOCK OWNER'S LIENS; AND FOR OTHER PURPOSES.

Subtitle

TO GRANT A LIVESTOCK OWNER A LIEN ON LIVESTOCK SOLD FOR ANY UNPAID PORTION OF THE SALES PRICE FOR THE LIVESTOCK; AND TO REGULATE LIVESTOCK OWNER'S LIENS.

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

SECTION 1. Arkansas Code Title 2, Chapter 32, is amended to add an additional subchapter to read as follows:

Subchapter 4 – Livestock Owner's Lien Act

2-32-401. Title.

This subchapter shall be known and may be cited as the "Livestock Owner's Lien Act".

2-32-402. Definitions.

As used in this subchapter:

(1) "Affiliate" means a person that:

(A) Is directly or indirectly controlled by a first



purchaser; or

(B) Directly or indirectly controls a first purchaser;

(2) "Agreement to sell" means an enforceable oral or written agreement by which a livestock owner, either directly or through a sales agent, agrees to sell livestock to a first purchaser;

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

(4) "First purchaser" means the first person that purchases livestock, either directly or indirectly through a sales agent, under an agreement to sell;

(5) "Livestock" means cattle, bison, horses, sheep, goats, asses, mules, swine, domesticated rabbits, chickens, turkeys, and other domesticated animals raised primarily for human food consumption;

(6) "Livestock owner" means a person owning an interest in livestock before the acquisition of the livestock by a first purchaser;

(7) "Owner's lender" means a person that has a valid mortgage lien or security interest in a livestock owner's livestock at the time the livestock is delivered to the first purchaser;

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

(9)(A) "Permitted lien" means the following liens or security interests:

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

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

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

(ii) A validly perfected and enforceable lien created by statute in relation to livestock purchased under an agreement to sell that secures payment of indebtedness incurred by the first purchaser before the effective date of this subchapter.

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

(i) Secures payment under a written instrument of

indebtedness that is modified, amended, or restated from or after the effective date of this subchapter by a modification, amendment, or restatement that increases the principal amount that is owed at the effective date of this subchapter;

(ii) Secures payment under a written instrument of indebtedness that is modified, amended, or restated from or after the effective date of this subchapter by a modification, amendment, or restatement that extends the stated maturity of the written instrument of indebtedness that is in effect at the effective date of this subchapter; or

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

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

(11) "Proceeds" means:

(A) A right or amount paid or to be paid in consideration of or as a consequence of the sale of livestock, including without limitation cash proceeds, accounts, chattel paper, instruments, and payment intangibles;

(B) A by-product from the slaughter of livestock; and

(C) A right or amount paid or to be paid in consideration of or as a consequence of the sale of a by-product from the slaughter of livestock;

(12) "Purchaser" means a person that:

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

(B) Takes, receives, or purchases livestock from a first purchaser;

(13)(A) "Sales agent" means a person that is authorized to sell livestock on behalf of or for the benefit of another person.

(B) "Sales agent" includes without limitation a livestock auction, auctioneer, commission company, or broker; and

(14) "Sales price" means the amount a first purchaser agrees to pay a livestock owner or a sales agent under an agreement to sell.

2-32-403. Livestock lien.

(a)(1) To secure the obligations of a first purchaser to pay the sales price, a livestock owner is granted a lien in all livestock sold by the livestock owner for any unpaid portion of the sales price for the livestock.

(2) The lien granted under this section is granted and shall exist as part of and incident to the ownership of livestock.

(b) An owner's lien:

(1) Exists in and attaches immediately to all livestock on the effective date of this subchapter; and

(2) Continues uninterrupted and without lapse:

(A) In all livestock upon and after sale of the livestock;
and

(B) In and to all proceeds.

(c)(1) An owner's lien exists until the livestock owner or the sales agent entitled to receive the sales price has received the full amount of the sales price.

(2) A security interest or mortgage lien of an owner's lender attaches to the livestock owner's right to an owner's lien in livestock or in proceeds from the sale of the livestock.

(3) An owner's lender does not waive its security interest or mortgage lien or right in an owner's lien by approving or authorizing the livestock owner to sell the livestock under a sales agreement.

(d)(1) The validity of an owner's lien is not dependent on possession of the livestock by a livestock owner or sales agent.

(2) An owner's lien is not void or expired by reason of a change or transfer of the actual or constructive possession of or title to the livestock from the livestock owner or sales agent to a first purchaser or subsequent purchaser.

2-32-404. Perfection of livestock lien.

An owner's lien is perfected automatically from the effective date of this subchapter or the date a sales agreement is executed after the effective date of this subchapter without the need to file a financing statement or other type of documentation.

2-32-405. Commingled livestock – Priority.

(a) If livestock subject to an owner's lien are commingled with other livestock in a manner that the identity of the specific livestock subject to the owner's lien cannot be determined by reasonable means, the owner's lien continues without interruption into and attaches to the commingled livestock and is perfected automatically as of the date of its original perfection but only as to the percentage of the commingled livestock equal to the number of livestock to which the owner's lien originally attached.

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

(c) If more than one owner's lien attaches to commingled livestock, the owners' liens rank equally in the proportion that the respective sales prices secured by each owner's lien bear as a percentage of the total of the sales prices secured by all owners' liens applicable at the time the livestock were commingled.

2-32-406. Transfer of lien – Priority.

(a)(1) A purchaser or sales agent takes free of an owner's lien otherwise applicable to the livestock purchased and is relieved of any obligations created under § 2-32-403 if the purchaser or sales agent pays the full amount of required consideration for the livestock under a good faith, noncollusive agreement to purchase the livestock.

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

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

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

2-32-407. 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.

2-37-408. Applicability.

This subchapter does not affect the time at which legal title to livestock may pass by agreement or operation of law subject to an owner's lien.

2-37-409. Waiver, relinquishment, or release of lien prohibited.

(a)(1) A livestock 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 livestock owner or a sales agent acting on behalf of a livestock 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 to the livestock owner or sales agent; or

(2) Both:

(A) Executes a contract that is satisfactory to the livestock owner or sales agent to prepay or escrow the sales price under an agreement to sell that is satisfactory to the livestock owner; and

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

2-37-410. Lien expiration – Action on an owner's lien.

(a) An owner's lien expires one (1) year after the last day of the month following the date the sales price from the sale of livestock subject to the lien is required by law or contract to be paid to the livestock owner

but only as to the particular livestock sold during the month unless an action to enforce the owner's lien is commenced in a court of competent jurisdiction during that time .

(b) If a sales agent advances the sales price for livestock to the livestock owner before the first purchaser pays the sales price in full to the livestock owner or sales agent, the sales agent shall assume and may enforce all rights of the livestock owner under this subchapter as to the livestock or the proceeds from the sale of the livestock.

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

(A) Agreement to sell is executed;

(B) Sales price is to be paid;

(C) The livestock that have not been paid for are located;

or

(D) Proceeds may be found.

(2) The commencement of one (1) or more of the following proceedings by or against a person claiming an interest in property subject to an owner's lien tolls the one-year period in which to commence an action to enforce the owner's lien under subsection (a) of this section for an additional period of ninety (90) days from the earlier of the final conclusion or dismissal of the proceedings or the date final relief is obtained from the applicable tribunal authorizing the commencement of the action:

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

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

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

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

(e) This subchapter does not impair or affect the right of a livestock

owner or a sales agent to maintain a personal action to recover the debt against a person liable for payment of the sales price or to exercise any other available rights and remedies.

2-32-411. Preference.

If this subchapter conflicts with other rights a livestock owner may have, the livestock owner's right to receive the sales price shall be given preference.

APPROVED: 03/25/2013