

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1705

5 By: Representative Wren
6 By: Senators Irvin, D. Wyatt
7

For An Act To Be Entitled

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

16 TO GRANT A LIVESTOCK OWNER A LIEN ON
17 LIVESTOCK SOLD FOR ANY UNPAID PORTION OF
18 THE SALES PRICE FOR THE LIVESTOCK; AND TO
19 REGULATE LIVESTOCK OWNER'S LIENS.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code Title 2, Chapter 32, is amended to add an
26 additional subchapter to read as follows:

Subchapter 4 – Livestock Owner's Lien Act

2-32-401. Title.

29 This subchapter shall be known and may be cited as the "Livestock
30 Owner's Lien Act".
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2-32-402. Definitions.

33 As used in this subchapter:
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35 (1) "Affiliate" means a person that:

36 (A) Is directly or indirectly controlled by a first



1 purchaser; or

2 (B) Directly or indirectly controls a first purchaser;

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) 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 increases the principal amount that is owed at the effective
4 date of this subchapter;

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

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

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

19 (11) "Proceeds" means:

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

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

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

27 (12) "Purchaser" means a person that:

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

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

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

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

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

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2 2-32-403. Livestock lien.

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

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

8 (b) An owner's lien:

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

11 (2) Continues uninterrupted and without lapse:

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

14 (B) In and to all proceeds.

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

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

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 livestock owner to sell the livestock under a sales agreement.

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

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

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31 2-32-404. Perfection of livestock lien.

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

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1 2-32-405. Commingled livestock – Priority.

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

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

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

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19 2-32-406. Transfer of lien – Priority.

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

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

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

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

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33 2-32-407. Lien priority generally.

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

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2 2-37-408. Applicability.

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

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7 2-37-409. Waiver, relinquishment, or release of lien prohibited.

8 (a)(1) A livestock owner shall not be required as a condition or term
9 of an agreement to sell or otherwise to:

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

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

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

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

24 (1) Posts a letter of credit in a form and amount satisfactory
25 to the livestock owner or sales agent; or

26 (2) Both:

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

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

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33 2-37-410. Lien expiration – Action on an owner's lien.

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

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

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

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

12 (A) Agreement to sell is executed;

13 (B) Sales price is to be paid;

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

15 or

16 (D) Proceeds may be found.

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

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

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

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

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

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

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

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5 2-32-411. Preference.

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

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