

BILL ANALYSIS

C.S.H.B. 3077
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.H.B. 3077 clarifies that certain assignments of security interests perfected under the law to be made by assignors without any filing or notice and specifies that an application for the issuance of a revised document reflecting assignee interest holders is not necessary to continue the perfected status of an assignor to an assignee.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3077 amends the Business & Commerce Code to provide that the filing with the secretary of state of certain utility security instruments executed by a utility and the payment of the prescribed filing fee result in priority of the secured party reflected on the instrument and assignees of security interest over the rights of a lien creditor for so long as the lien is recorded on the instrument.

C.S.H.B. 3077 authorizes a secured party to assign a utility security interest recorded under this provision without making any filing or giving any notice and specifies that the security interest assigned remains valid and perfected and retains its priority, securing the obligation assigned to assignee, against transferees from and creditors of the original debtor utility, including lien creditors. The bill authorizes an assignee or assignor, as evidence of the assignment of the security interest recorded, to apply to the secretary of state for the assignee to be reflected as secured party on the instrument and notify the debtor utility of the assignment and specifies that this action is not required to retain the validity, perfection, and priority of the security interest assigned. The bill establishes that failure to make such application or notify a debtor utility of an assignment does not create a cause of action against the secured party reflected on the utility security instrument, the assignor, or the assignee or affect the continuation of the perfected status of the assigned security interest in favor of the assignee against transferees from and creditors of the debtor utility, including lien creditors.

C.S.H.B. 3077 amends the Occupations Code to provide that, on filing a notice of lien on a manufactured home with the Texas Department of Housing and Community Affairs, the recorded lienholder and assignees obtain priority over the rights of a lien creditor for so long as the lien is recorded on the statement of ownership and location. The bill authorizes the lienholder to assign the recorded security interest without making any filing or giving any notice and specifies that the lien assigned remains valid and perfected and retains its priority, securing the obligation assigned to the assignee, against transferees from and creditors of the original debtor, including lien creditors. The bill authorizes an assignee or assignor, as evidence of the assignment of the lien recorded, to apply to the department for the assignee to be named as lienholder on the statement of ownership and location and notify the debtor of the assignment and specifies that this action is not required to retain the validity, perfection, and priority of the lien assigned. The bill specifies that failure to make such application or notify a debtor of an

assignment does not create a cause of action against the recorded lienholder, the assignor, or the assignee or affect the continuation of the perfected status of the assigned lien in favor of the assignee against transferees from and creditors of the original debtor, including lien creditors.

C.S.H.B. 3077 amends the Parks and Wildlife Code to provide that, on recordation of a security interest on the certificate of title for a vessel or outboard motor, the recorded security interest owner and assignees obtain priority over the rights of a lien creditor for so long as the security interest is recorded on the certificate of title. The bill authorizes a security interest owner in a vessel or outboard motor to assign a recorded security interest without making any filing or giving any notice and specifies that the security interest assigned remains valid and perfected and retains its priority, securing the obligation assigned to the assignee, against transferees from and creditors of the original debtor, including lien creditors. The bill authorizes an assignee or assignor, as evidence of the assignment of the security interest recorded, to apply to the Parks and Wildlife Department or a county assessor-collector for the assignee to be named as security interest owner on the certificate of title and notify the debtor of the assignment and specifies that this action is not required to retain the validity, perfection, and priority of the security interest assigned. The bill specifies that failure to make such application or notify a debtor of an assignment does not create a cause of action against the recorded security interest owner, the assignor, or the assignee or affect the continuation of the perfected status of the assigned security interest in favor of the assignee against transferees from and creditors of the original debtor, including lien creditors.

C.S.H.B. 3077 amends the Transportation Code to provide that, on recordation of a security interest on the certificate of title of a motor vehicle, the recorded lienholder and assignees obtain priority over the rights of a lien creditor for so long as the security interest is recorded on the certificate of title. The bill authorizes a lienholder to assign such a lien without making any filing or giving any notice and specifies that the lien assigned remains valid and perfected and retains its priority, securing the obligation assigned to the assignee, against transferees from and creditors of the original debtor, including lien creditors. The bill authorizes an assignee or assignor, as evidence of the assignment of a lien recorded, to apply to the county assessor-collector for the assignee to be named as lienholder on the certificate of title and notify the debtor of the assignment and specifies that this action is not required to retain the validity, perfection, and priority of the lien assigned. The bill specifies that failure to make such application or notify a debtor of an assignment does not create a cause of action against the recorded security interest owner, the assignor, or the assignee or affect the continuation of the perfected status of the assigned security interest in favor of the assignee against transferees from and creditors of the original debtor, including lien creditors. The bill removes provisions that require a lienholder in order to assign a recorded lien to apply to the county assessor-collector for the assignment of the lien and to notify the debtor of the assignment, and provisions that establish that a lienholder's failure to perform that notification does not create a cause of action against the lienholder. The bill specifies that, on receipt of the completed application and fee, the Texas Department of Transportation is authorized to amend its records to substitute the assignee for the recorded lienholder, rather than the subsequent lienholder for the previous lienholder. The bill specifies that the time of the recordation of a lien assigned is considered to be the time the lien was initially recorded regardless of whether the application is made for the assignee to be named as lienholder on the certificate of title.

C.S.H.B. 3077 establishes that its provisions are intended to clarify that under existing law an assignment of a recorded security interest is authorized to be recorded on the title, but is not required to be recorded on the title, to retain the validity, perfection, and priority of the security interest securing the obligation assigned to the assignee.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3077 adds a provision not in the original specifying that the filing with the secretary of state of a utility security instrument executed by a utility and the payment of the required filing fee results in priority of the secured party reflected on the instrument and assignees over the rights of a lien creditor for so long as the lien is recorded on the instrument.

C.S.H.B. 3077 adds provisions not in the original specifying that on filing a notice of lien on a manufactured home, or on recording a security interest on the certificate of title of a vessel, outboard motor, or motor vehicle, the holder of such a lien or security interest and the assignees obtain priority over the rights of a lien creditor for so long as the lien or security interest is recorded on the statement of ownership and location or other document of title.

C.S.H.B. 3077 differs from the original by clarifying that the assignor is a person who may apply to the secretary of state for the assignee to be reflected as a secured party on a utility interest, as a person who may apply to the Texas Department of Housing and Community Affairs for the assignee to be named as a lienholder on the on the statement of ownership of a manufactured home, as a person who may apply to the Texas Parks and Wildlife Department or the county assessor-collector for the assignee to be named as security interest owner of the certificate of title for a vessel or outboard motor, and as a person who may apply to the county-assessor collector for the assignee to be named as lienholder on the certificate of title of a motor vehicle, as applicable. The substitute makes changes conforming to the clarification of the assignor as a person who can apply as described above.

C.S.H.B. 3077 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.

C.S.H.B. 3077 differs from the original by specifying that its provisions are intended to clarify that under current law an assignment of a recorded security interest is authorized to be recorded on the title, but is not required to be recorded on the title, to retain the validity, perfection, and priority of the security interest securing the obligation assigned to the assignee, whereas the original specifies that the bill is intended to clarify, rather than change existing law as in the original.