

BILL ANALYSIS

C.S.S.B. 1592
By: Fraser
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

This bill is intended to clarify, rather than change, existing law and bring consistency to the document of title statutes.

C.S.S.B. 1592 adds and amends certain chapters of the Business & Commerce Code, Parks and Wildlife Code, and Transportation Code, to authorize the holders of certain security interests or liens to assign, absolutely or otherwise, the holder's security interests or liens and provides that an assignee's failure to make the application or notify the debtor of the assignment does not create a cause of action against the assignee or the security-interest holder or affect the validity or perfection of the security interest assigned to the 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.S.B. 1592 amends the Business & Commerce Code to provide that the filing with the secretary of state of a utility security instrument executed by a utility and payment of the required filing fee result 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. The bill authorizes a secured party to assign a utility 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 debtor utility, including lien creditors. The bill authorizes an assignee or assignor 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 necessary to retain the validity, perfection, and priority of the utility security interest. The bill specifies that failure to make such application or notify a debtor utility 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.S.B. 1592 amends the Parks and Wildlife Code to provide that, on recordation of a security interest on the certificate of title, the recorded security interest owner in a vessel or outboard motor 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 to assign a recorded security interest without making any filing or giving any notice and specifies that 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 debtor, including lien creditors. The bill authorizes an assignee or assignor 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 necessary to retain the validity, perfection, and priority of the security interest assigned, as evidence of the assignment of the security interest recorded. 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 debtor, including lien creditors.

C.S.S.B. 1592 amends the Transportation Code to provide that, on recordation of a security interest on the certificate of title, the recorded security interest owner in a motor vehicle 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 debtor, including lien creditors. The bill authorizes an assignee or assignor 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 necessary to retain the validity, perfection, and priority of the lien assigned, as evidence of the assignment of a lien recorded. 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 security interest in favor of the assignee against transferees from and creditors of the debtor, including lien creditors. 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 initially recorded regardless of whether the application is made for the assignee to be named as lienholder on the certificate of title. The bill specifies that the assignment of a lien on a motor vehicle does not affect the procedures applicable to the foreclosure of a worker's lien or the rights of the holder of a worker's lien and establishes that notice given to the last known lienholder of record in provisions relating to miscellaneous liens is adequate to allow foreclosure for those purposes. The bill provides that the assignment of a lien on a motor vehicle does not affect the procedures applicable to the release of a holder's lien.

C.S.S.B. 1592 establishes that its provisions are intended to clarify that under existing law, an assignment of a recorded security interest may be recorded on the title, but does not have 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.S.B. 1592 removes specifications in the original making provisions relating to the priority or continued perfection of certain liens applicable to an original debtor utility or an original debtor, making these provisions instead applicable to a debtor utility or debtor.

C.S.S.B. 1592 removes a provision in the original amending 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 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 substitute removes a provision in the original authorizing the holder of a lien on a manufactured home to assign a security interest without making any filing or giving any notice and a provision

specifying 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 substitute removes a provision in the original authorizing an assignee or assignor 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 specifying that this action is not necessary to retain the validity, perfection, and priority of the lien assigned, as evidence of the assignment of the lien. The substitute removes a provision in the original specifying 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.S.B. 1592 clarifies language in the original relating to assignment of a lien on a certificate of title for a motor vehicle.

C.S.S.B. 1592 adds a provision not in the original specifying that the assignment of a lien on a motor vehicle does not affect the procedures applicable to the foreclosure of a worker's lien or the rights of the holder of a worker's lien and establishing that notice given to the last known lienholder of record in provisions relating to miscellaneous liens is adequate to allow foreclosure for those purposes. The substitute adds a provision not in the original specifying that the assignment of a lien on a motor vehicle does not affect the procedures applicable to the release of a holder's lien.