

By: Fraser

S.B. No. 1592

A BILL TO BE ENTITLED

AN ACT

relating to the assignment of security interests in certain collateral.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 261.004, Business & Commerce Code, as effective April 1, 2009, is amended to read as follows:

(a) Subject to Subsection (b), the filing with the secretary of state of a utility security instrument executed by a utility and described by Section 261.003(1) and payment of the filing fee prescribed by Section 261.008:

(1) constitute perfection of a security interest created by the instrument in any personal property:

(A) in which a security interest may be perfected by filing under Chapter 9, including any goods that are or will become a fixture;

(B) that is located in this state; and

(C) that was owned by the utility when the instrument was executed or is to be acquired by the utility after the instrument is executed; ~~and~~

(2) if the instrument is proven, acknowledged, or certified as otherwise required by law for the recording of real property mortgages, serve as notice to all persons of the existence of the instrument and the security interest granted by the

instrument in any real property, or in any fixture on or to be placed on the property, that:

(A) is located in this state; and

(B) was owned by the utility when the instrument was executed or is to be acquired by the utility after the instrument is executed; and

(3) result in priority of the secured party reflected on the utility security instrument and assignees under Section 261.012 over the rights of a lien creditor, as defined by Section 9.102, for so long as the lien is recorded on the utility security instrument.

SECTION 2. Chapter 261, Business & Commerce Code, as effective April 1, 2009, is amended by adding Section 261.012 to read as follows:

Sec. 261.012. ASSIGNMENT OF SECURITY INTEREST. (a) A secured party may assign a security interest recorded under Section 261.004 without making any filing or giving any notice under this chapter. 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 utility, including lien creditors, as defined by Section 9.102.

(b) An assignee or assignor may, but need not to retain the validity, perfection, and priority of the security interest assigned, as evidence of the assignment of the security interest recorded under Section 261.004, apply to the secretary of state for the assignee to be reflected as secured party on the utility

security instrument and notify the debtor utility of the assignment. Failure to make application under this section 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, as defined by Section 9.102.

SECTION 3. Section 1201.219, Occupations Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(b) Except as provided by Subsection (a), a lien on a manufactured home is perfected only by filing with the department the notice of lien on a form provided by the department, and on such filing, the recorded lienholder and assignees under Subsection (d) obtain priority over the rights of a lien creditor, as defined by Section 9.102, Business & Commerce Code, for so long as the lien is recorded on the statement of ownership and location. The form shall require the disclosure of the original dollar amount of the lien and, if a tax lien, the name and address of the person in whose name the manufactured home is listed on the tax roll. The department shall disclose on its website the date of each lien filing, the original amount of the lien claimed by each filing, and the fact that the amount shown does not include additional sums including interest, penalties, and attorney's fees. The statement required by Section 1201.205(7) is notice to all persons that the tax lien

1 exists. Except as expressly provided by Chapter 32, Tax Code, a  
2 lien recorded with the department has priority, according to the  
3 chronological order of recordation, over another lien or claim  
4 against the manufactured home. Tax liens shall be filed by the tax  
5 collector for any taxing unit having the power to tax the  
6 manufactured home. A single filing by a tax collector is a filing  
7 for all the taxing units for which the tax collector is empowered to  
8 collect.

9 (d) A lienholder may assign a security interest recorded  
10 under Subsection (b) without making any filing or giving any notice  
11 under this chapter. The lien assigned remains valid and perfected  
12 and retains its priority, securing the obligation assigned to the  
13 assignee, against transferees from and creditors of the original  
14 debtor, including lien creditors, as defined by Section 9.102,  
15 Business & Commerce Code.

16 (e) An assignee or assignor may, but need not to retain the  
17 validity, perfection, and priority of the lien assigned, as  
18 evidence of the assignment of the lien recorded under Subsection  
19 (b), apply to the department for the assignee to be named as  
20 lienholder on the statement of ownership and location and notify  
21 the debtor of the assignment. Failure to make application under  
22 this subsection or notify a debtor of an assignment does not create  
23 a cause of action against the recorded lienholder, the assignor, or  
24 the assignee or affect the continuation of the perfected status of  
25 the assigned lien in favor of the assignee against transferees from  
26 and creditors of the original debtor, including lien creditors, as  
27 defined by Section 9.102, Business & Commerce Code.

SECTION 4. Section 31.052, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Except as provided by this section and Section 31.050(c), ~~[in Subsection (c) of Section 31.050 of this code]~~ and except for statutory liens, security interests in a vessel or outboard motor shall be noted on the certificate of title of the vessel or outboard motor to which the security interest applies. On recordation of a security interest on the certificate of title, the recorded security interest owner and assignees under Subsection (c) obtain priority over the rights of a lien creditor, as defined by Section 9.102, Business & Commerce Code, for so long as the security interest is recorded on the certificate of title.

(c) A security interest owner may assign a security interest recorded under this chapter without making any filing or giving any notice under this chapter. 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, as defined by Section 9.102, Business & Commerce Code.

(d) An assignee or assignor may, but need not to retain the validity, perfection, and priority of the security interest assigned, as evidence of the assignment of the security interest recorded under this chapter, apply to the 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. Failure to make application under this subsection

1 or notify a debtor of an assignment does not create a cause of  
2 action against the recorded security interest owner, the assignor,  
3 or the assignee or affect the continuation of the perfected status  
4 of the assigned security interest in favor of the assignee against  
5 transferees from and creditors of the original debtor, including  
6 lien creditors, as defined by Section 9.102, Business & Commerce  
7 Code.

8 SECTION 5. Subsection (b), Section 501.113, Transportation  
9 Code, is amended to read as follows:

10 (b) For purposes of Chapter 9, Business & Commerce Code, the  
11 time of recording a lien under this chapter is considered to be the  
12 time of filing the security interest, and on such recordation, the  
13 recorded lienholder and assignees under Section 501.114 obtain  
14 priority over the rights of a lien creditor, as defined by Section  
15 9.102, Business & Commerce Code, for so long as the lien is recorded  
16 on the certificate of title.

17 SECTION 6. Section 501.114, Transportation Code, is amended  
18 to read as follows:

19 Sec. 501.114. ASSIGNMENT OF LIEN. (a) A lienholder may  
20 assign a lien recorded under Section 501.113 without making any  
21 filing or giving any notice under this chapter. The lien assigned  
22 remains valid and perfected and retains its priority, securing the  
23 obligation assigned to the assignee, against transferees from and  
24 creditors of the original debtor, including lien creditors, as  
25 defined by Section 9.102, Business & Commerce Code.

26 (b) An assignee or assignor may, but need not to retain the  
27 validity, perfection, and priority of the lien assigned, as

1 evidence of the assignment of a lien recorded under Section 501.113  
2 [by]:

3 (1) apply ~~[applying]~~ to the county assessor-collector  
4 for the assignee to be named as lienholder on the certificate of  
5 title ~~[assignment of the lien]~~; and

6 (2) notify ~~[notifying]~~ the debtor of the assignment.

7 (c) Failure ~~[(b) A lienholder's failure]~~ to make  
8 application under this section or notify a debtor of an assignment  
9 under Subsection (b) does not create a cause of action against the  
10 recorded lienholder, the assignor, or the assignee or affect the  
11 continuation or perfected status of the assigned lien in favor of  
12 the assignee against transferees from and creditors of the original  
13 debtor, including lien creditors, as defined by Section 9.102,  
14 Business & Commerce Code.

15 (d) ~~[(c)]~~ An application under Subsection (b) ~~[(a)]~~ must  
16 be:

17 (1) signed by the assignee ~~[person to whom the lien is~~  
18 ~~assigned]~~; and

19 (2) accompanied by:

20 (A) the applicable fee;

21 (B) a copy of the assignment agreement executed  
22 by the parties; and

23 (C) the certificate of title on which the lien to  
24 be assigned is recorded.

25 (e) ~~[(d)]~~ On receipt of the completed application and fee,  
26 the department:

27 (1) may amend the department's records to substitute

1 the assignee [~~subsequent lienholder~~] for the recorded [~~previous~~]  
2 lienholder; and

3 (2) shall issue a new certificate of title as provided  
4 by Section 501.027.

5 (f) [~~(e)~~] The issuance of a certificate of title under  
6 Subsection (e) [~~(d)~~] is recordation of the assignment.

7 (g) Regardless of whether application is made for the  
8 assignee to be named as lienholder on the certificate of title, the  
9 [The] time of the recordation of a lien assigned under this section  
10 is considered to be the time the lien was initially recorded under  
11 Section 501.113.

12 SECTION 7. This Act is intended to clarify that under  
13 existing law, an assignment of a recorded security interest may be  
14 recorded on the title, but does not have to be recorded on the  
15 title, to retain the validity, perfection, and priority of the  
16 security interest securing the obligation assigned to the assignee.

17 SECTION 8. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2009.