

By: Fraser

S.B. No. 1592

Substitute the following for S.B. No. 1592:

By: Elkins

C.S.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. Section 261.004(a), Business & Commerce Code, 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

1 placed on the property, that:

2 (A) is located in this state; and

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

6 (3) result in priority of the secured party reflected
7 on the utility security instrument and assignees under Section
8 261.012 over the rights of a lien creditor, as defined by Section
9 9.102, for so long as the lien is recorded on the utility security
10 instrument.

11 SECTION 2. Chapter 261, Business & Commerce Code, is
12 amended by adding Section 261.012 to read as follows:

13 Sec. 261.012. ASSIGNMENT OF SECURITY INTEREST. (a) A
14 secured party may assign a security interest recorded under Section
15 261.004 without making any filing or giving any notice under this
16 chapter. The security interest assigned remains valid and
17 perfected and retains its priority, securing the obligation
18 assigned to the assignee, against transferees from and creditors of
19 the debtor utility, including lien creditors, as defined by Section
20 9.102.

21 (b) An assignee or assignor may, but need not to retain the
22 validity, perfection, and priority of the security interest
23 assigned, as evidence of the assignment of the security interest
24 recorded under Section 261.004, apply to the secretary of state for
25 the assignee to be reflected as secured party on the utility
26 security instrument and notify the debtor utility of the
27 assignment. Failure to make application under this section or

1 notify a debtor utility of an assignment does not create a cause of
2 action against the secured party reflected on the utility security
3 instrument, the assignor, or the assignee or affect the
4 continuation of the perfected status of the assigned security
5 interest in favor of the assignee against transferees from and
6 creditors of the debtor utility, including lien creditors, as
7 defined by Section 9.102.

8 SECTION 3. Section 31.052, Parks and Wildlife Code, is
9 amended by amending Subsection (a) and adding Subsections (c) and
10 (d) to read as follows:

11 (a) Except as provided by this section and Section
12 31.050(c), [~~in Subsection (c) of Section 31.050 of this code~~] and
13 except for statutory liens, security interests in a vessel or
14 outboard motor shall be noted on the certificate of title of the
15 vessel or outboard motor to which the security interest applies. On
16 recordation of a security interest on the certificate of title, the
17 recorded security interest owner and assignees under Subsection (c)
18 obtain priority over the rights of a lien creditor, as defined by
19 Section 9.102, Business & Commerce Code, for so long as the security
20 interest is recorded on the certificate of title.

21 (c) A security interest owner may assign a security interest
22 recorded under this chapter without making any filing or giving any
23 notice under this chapter. The security interest assigned remains
24 valid and perfected and retains its priority, securing the
25 obligation assigned to the assignee, against transferees from and
26 creditors of the debtor, including lien creditors, as defined by
27 Section 9.102, Business & Commerce Code.

1 (d) An assignee or assignor may, but need not to retain the
2 validity, perfection, and priority of the security interest
3 assigned, as evidence of the assignment of the security interest
4 recorded under this chapter, apply to the department or a county
5 assessor-collector for the assignee to be named as security
6 interest owner on the certificate of title and notify the debtor of
7 the assignment. Failure to make application under this subsection
8 or notify a debtor of an assignment does not create a cause of
9 action against the recorded security interest owner, the assignor,
10 or the assignee or affect the continuation of the perfected status
11 of the assigned security interest in favor of the assignee against
12 transferees from and creditors of the debtor, including lien
13 creditors, as defined by Section 9.102, Business & Commerce Code.

14 SECTION 4. Section 501.113(b), Transportation Code, is
15 amended to read as follows:

16 (b) For purposes of Chapter 9, Business & Commerce Code, the
17 time of recording a lien under this chapter is considered to be the
18 time of filing the security interest, and on such recordation, the
19 recorded lienholder and assignees under Section 501.114 obtain
20 priority over the rights of a lien creditor, as defined by Section
21 9.102, Business & Commerce Code, for so long as the lien is recorded
22 on the certificate of title.

23 SECTION 5. Section 501.114, Transportation Code, is amended
24 to read as follows:

25 Sec. 501.114. ASSIGNMENT OF LIEN. (a) A lienholder may
26 assign a lien recorded under Section 501.113 without making any
27 filing or giving any notice under this chapter. The lien assigned

1 remains valid and perfected and retains its priority, securing the
2 obligation assigned to the assignee, against transferees from and
3 creditors of the debtor, including lien creditors, as defined by
4 Section 9.102, Business & Commerce Code.

5 (b) An assignee or assignor may, but need not to retain the
6 validity, perfection, and priority of the lien assigned, as
7 evidence of the assignment of a lien recorded under Section 501.113
8 [by]:

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

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

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

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

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

25 (2) accompanied by:

26 (A) the applicable fee;

27 (B) a copy of the assignment agreement executed

1 by the parties; and

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

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

6 (1) may amend the department's records to substitute
7 the assignee [~~subsequent lienholder~~] for the recorded [~~previous~~]
8 lienholder; and

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

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

13 (g) Regardless of whether application is made for the
14 assignee to be named as lienholder on the certificate of title, the
15 [The] time of the recordation of a lien assigned under this section
16 is considered to be the time the lien was initially recorded under
17 Section 501.113.

18 (h) Notwithstanding Subsections (a) through (g), and
19 procedures that may be conducted under those subsections, the
20 assignment of a lien does not affect the procedures applicable to
21 the foreclosure of a worker's lien under Chapter 70, Property Code,
22 or the rights of the holder of a worker's lien. Notice given to the
23 last known lienholder of record, as provided by that chapter, is
24 adequate to allow foreclosure under that chapter.

25 (i) Notwithstanding Subsections (a) through (g), and the
26 procedures that may be conducted under those subsections, the
27 assignment of a lien does not affect the procedures applicable to

1 the release of a holder's lien under Section 348.408, Finance Code.

2 SECTION 6. This Act is intended to clarify that under
3 existing law, an assignment of a recorded security interest may be
4 recorded on the title, but does not have to be recorded on the title
5 to retain the validity, perfection, and priority of the security
6 interest securing the obligation assigned to the assignee.

7 SECTION 7. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.