

1-1 By: Fraser S.B. No. 1592
1-2 (In the Senate - Filed March 10, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 2, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 2, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1592 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the assignment of security interests in certain
1-11 collateral.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 261.004, Business &
1-14 Commerce Code, as effective April 1, 2009, is amended to read as
1-15 follows:

1-16 (a) Subject to Subsection (b), the filing with the secretary
1-17 of state of a utility security instrument executed by a utility and
1-18 described by Section 261.003(1) and payment of the filing fee
1-19 prescribed by Section 261.008:

1-20 (1) constitute perfection of a security interest
1-21 created by the instrument in any personal property:

1-22 (A) in which a security interest may be perfected
1-23 by filing under Chapter 9, including any goods that are or will
1-24 become a fixture;

1-25 (B) that is located in this state; and

1-26 (C) that was owned by the utility when the
1-27 instrument was executed or is to be acquired by the utility after
1-28 the instrument is executed; ~~and~~

1-29 (2) if the instrument is proven, acknowledged, or
1-30 certified as otherwise required by law for the recording of real
1-31 property mortgages, serve as notice to all persons of the existence
1-32 of the instrument and the security interest granted by the
1-33 instrument in any real property, or in any fixture on or to be
1-34 placed on the property, that:

1-35 (A) is located in this state; and

1-36 (B) was owned by the utility when the instrument
1-37 was executed or is to be acquired by the utility after the
1-38 instrument is executed; and

1-39 (3) result in priority of the secured party reflected
1-40 on the utility security instrument and assignees under Section
1-41 261.012 over the rights of a lien creditor, as defined by Section
1-42 9.102, for so long as the lien is recorded on the utility security
1-43 instrument.

1-44 SECTION 2. Chapter 261, Business & Commerce Code, as
1-45 effective April 1, 2009, is amended by adding Section 261.012 to
1-46 read as follows:

1-47 Sec. 261.012. ASSIGNMENT OF SECURITY INTEREST. (a) A
1-48 secured party may assign a security interest recorded under Section
1-49 261.004 without making any filing or giving any notice under this
1-50 chapter. The security interest assigned remains valid and
1-51 perfected and retains its priority, securing the obligation
1-52 assigned to the assignee, against transferees from and creditors of
1-53 the original debtor utility, including lien creditors, as defined
1-54 by Section 9.102.

1-55 (b) An assignee or assignor may, but need not to retain the
1-56 validity, perfection, and priority of the security interest
1-57 assigned, as evidence of the assignment of the security interest
1-58 recorded under Section 261.004, apply to the secretary of state for
1-59 the assignee to be reflected as secured party on the utility
1-60 security instrument and notify the debtor utility of the
1-61 assignment. Failure to make application under this section or
1-62 notify a debtor utility of an assignment does not create a cause of
1-63 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 exists. Except as expressly provided by Chapter 32, Tax Code, a lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home. Tax liens shall be filed by the tax collector for any taxing unit having the power to tax the manufactured home. A single filing by a tax collector is a filing for all the taxing units for which the tax collector is empowered to collect.

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

(e) An assignee or assignor may, but need not to retain the validity, perfection, and priority of the lien assigned, as evidence of the assignment of the lien recorded under Subsection (b), 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. Failure to make application under this subsection 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, as 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 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, as defined by Section 9.102, Business & Commerce Code.

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

(b) For purposes of Chapter 9, Business & Commerce Code, the time of recording a lien under this chapter is considered to be the time of filing the security interest, and on such recordation, the recorded lienholder and assignees under Section 501.114 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 certificate of title.

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

Sec. 501.114. ASSIGNMENT OF LIEN. (a) A lienholder may assign a lien recorded under Section 501.113 without making any filing or giving any notice under this chapter. 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, as defined by Section 9.102, Business & Commerce Code.

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

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

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

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

(d) [(e)] An application under Subsection (b) [(a)] must be:

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

(2) accompanied by:

(A) the applicable fee;

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

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

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

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

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

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

(g) Regardless of whether application is made for the

assignee to be named as lienholder on the certificate of title, the
[The] time of the recordation of a lien assigned under this section
is considered to be the time the lien was initially recorded under
Section 501.113.

SECTION 7. This Act is 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.

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

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