

By: Hinojosa

S.B. No. 1094

A BILL TO BE ENTITLED

AN ACT

relating to security interests in oil and gas production and its proceeds.

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

SECTION 1. Section 9.301, Business & Commerce Code, is amended to read as follows:

Sec. 9.301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. In this section, "first purchaser" and "oil and gas production" have the meanings assigned by Section 9.343(r).

Except as otherwise provided in Sections 9.303 through 9.306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in Subdivision (4), while tangible negotiable documents, goods, instruments, money, or

1 tangible chattel paper is located in a jurisdiction, the local law
2 of that jurisdiction governs:

3 (A) perfection of a security interest in the
4 goods by filing a fixture filing;

5 (B) perfection of a security interest in timber
6 to be cut; and

7 (C) the effect of perfection or nonperfection and
8 the priority of a nonpossessory security interest in the
9 collateral.

10 (4) The local law of the jurisdiction in which the
11 wellhead or minehead is located governs perfection, the effect of
12 perfection or nonperfection, and the priority of a security
13 interest in as-extracted collateral. The local law of the
14 jurisdiction in which the wellhead or minehead is located,
15 including, if applicable, the provisions of Section 9.343(b) that
16 provide for the automatic perfection of a security interest, govern
17 the perfection of a security interest against the first purchaser,
18 regardless of the jurisdiction in which the first purchaser is
19 organized, for oil and gas production owned by, received by, or due
20 to the first purchaser and in the identifiable proceeds of that
21 production owned by, received by, or due to the first purchaser, if
22 the proceeds are oil or gas production, inventory of raw, refined,
23 or manufactured oil or gas production, or rights to or products of
24 any of those.

25 (5) For a purchase-money security interest against the
26 first purchaser of oil and gas production or its proceeds, Sections
27 9.324(b) and 9.343(f) govern the priority of the purchase-money

1 security interest, regardless of:

2 (A) the jurisdiction in which the first purchaser
3 is organized; or

4 (B) whether the purchase-money security interest
5 was perfected by filing a financing statement, if the
6 purchase-money security interest was also perfected automatically
7 under Section 9.343(b).

8 SECTION 2. Sections 9.324(b) and (c), Business & Commerce
9 Code, are amended to read as follows:

10 (b) In this subsection, "first purchaser," "oil and gas
11 production," and "subsequent purchaser" have the meanings assigned
12 by Section 9.343(r). The provisions of this subsection apply
13 regardless of the jurisdiction in which the first purchaser is
14 organized. Subject to Subsection (c) and except as otherwise
15 provided in Subsection (g), a perfected purchase-money security
16 interest in inventory has priority over a conflicting security
17 interest in the same inventory, has priority over a conflicting
18 security interest in chattel paper or an instrument constituting
19 proceeds of the inventory and in proceeds of the chattel paper, if
20 so provided in Section 9.330, and, except as otherwise provided in
21 Section 9.327, also has priority in identifiable cash proceeds of
22 the inventory to the extent the identifiable cash proceeds are
23 received on or before the delivery of the inventory to a buyer or,
24 in the case of identifiable cash proceeds from oil and gas
25 production or its proceeds, to the extent the identifiable cash
26 proceeds are owned by, received by, or due to the first purchaser on
27 or before the delivery of the inventory to a subsequent purchaser,

1 if:

2 (1) the purchase-money security interest is perfected
3 automatically under Section 9.343(b) or in another authorized
4 manner when the debtor receives possession of the inventory;

5 (2) except where excused by Section 9.343 (oil and gas
6 production), the purchase-money secured party sends an
7 authenticated notification to the holder of the conflicting
8 security interest;

9 (3) the holder of the conflicting security interest
10 receives any required notification within five years before the
11 debtor receives possession of the inventory; and

12 (4) the notification, if notification is required,
13 states that the person sending the notification has or expects to
14 acquire a purchase-money security interest in inventory of the
15 debtor and describes the inventory.

16 (c) Subsections (b)(2)-(4) apply only if the holder of the
17 conflicting security interest had filed a financing statement
18 covering the same types of inventory:

19 (1) before the date of the filing, if the
20 purchase-money security interest is perfected only by filing, and
21 is not also perfected automatically under Section 9.343(b) [before
22 ~~the date of the filing]~~; or

23 (2) if the purchase-money security interest is
24 temporarily perfected without filing or possession under Section
25 9.312(f), before the beginning of the 20-day period under that
26 subsection.

27 SECTION 3. Section 9.343, Business & Commerce Code, is

1 amended by amending Subsections (c), (f), and (g) and adding
2 Subsection (k-1) to read as follows:

3 (c) The security interest exists in oil and gas production
4 owned by, received by, or due to the first purchaser [7] and [also]
5 in the identifiable proceeds of that production owned by, received
6 by, or due to the first purchaser:

7 (1) for an unlimited time if:

8 (A) the proceeds are oil or gas production,
9 inventory of raw, refined, or manufactured oil or gas production,
10 or rights to or products of any of those, although the sale of those
11 proceeds to a subsequent [by a first] purchaser [to a buyer in the
12 ordinary course of business as provided in Subsection (e)] cuts off
13 the security interest in those proceeds;

14 (B) the proceeds are accounts, chattel paper,
15 instruments, documents, or payment intangibles; or

16 (C) the proceeds are cash proceeds, as defined in
17 Section 9.102; and

18 (2) for the length of time provided in Section 9.315
19 for all other proceeds.

20 (f) The security interests and all liens created by this
21 section have the following priorities over other Chapter 9 security
22 interests:

23 (1) A security interest created by this section,
24 whether perfected automatically under Subsection (b) or perfected
25 by the filing of the optional financing statement authorized by
26 Section 9.5055, is treated as a purchase-money security interest
27 for purposes of determining its relative priority under Section

1 9.324 over other security interests not provided for by this
2 section. A holder of a security interest created under this section
3 is not required to give the written notice every five years as
4 provided in Section 9.324(b)(3) to have purchase-money priority
5 over a security interest with a prior financing statement covering
6 inventory.

7 (2) A statutory lien is subordinate to all other
8 perfected Chapter 9 security interests and has priority over
9 unperfected Chapter 9 security interests and the lien creditors,
10 buyers, and transferees mentioned in Section 9.317.

11 (g) The security interests and liens created by this section
12 have the following priorities among themselves:

13 (1) Regardless of whether the optional financing
14 statement authorized by Section 9.5055 was filed to perfect those
15 security interests, if [~~if~~] a record effective as a filed financing
16 statement under Subsection (b) exists, the security interests
17 perfected by that record have priority over a security interest
18 automatically perfected without filing under Subsection (b). If
19 several security interests perfected by records exist, they have
20 the same priority among themselves as established by real property
21 law for interests in oil and gas in place. If real property law
22 establishes no priority among them, they share priority pro rata.

23 (2) A security interest perfected automatically
24 without filing under Subsection (b), or for which the optional
25 financing statement authorized by Section 9.5055 was filed, if the
26 security interest was also perfected automatically without filing
27 under Subsection (b), has priority over a lien created under

1 Subsection (d).

2 (3) A nontax lien under Subsection (d) has priority
3 over a lien created under that subsection that secures the payment
4 of taxes.

5 (k-1) The sale to a subsequent purchaser by the first
6 purchaser of oil and gas production or the proceeds of that
7 production, if the proceeds are oil or gas production, inventory of
8 raw, refined, or manufactured oil or gas production, or rights to or
9 products of any of those, cuts off the liens and security interests
10 created by this section in the oil and gas production and its
11 proceeds. The security interests and liens created by this section
12 are subject to and do not impair or impact in any manner the
13 exercise or enforcement by a subsequent purchaser of any rights,
14 including rights of a secured creditor and rights of set-off,
15 net-out, exchange, recoupment, or withholding of funds, provided
16 under any enforceable contract or applicable law that governs the
17 relationship between a subsequent purchaser and the first purchaser
18 or an affiliate or representative of the first purchaser.

19 SECTION 4. Section 9.343(r), Business & Commerce Code, is
20 amended by adding Subdivision (5) to read as follows:

21 (5) "Subsequent purchaser" means a person who is not
22 an affiliate of the first purchaser and who purchases from the first
23 purchaser or affiliate or representative of the first purchaser oil
24 and gas production or the proceeds of that production, if the
25 proceeds are oil or gas production, inventory of raw, refined, or
26 manufactured oil or gas production, or rights to or products of any
27 of those.

1 SECTION 5. Subchapter E, Chapter 9, Business & Commerce
2 Code, is amended by adding Section 9.5055 to read as follows:

3 Sec. 9.5055. OPTIONAL FINANCING STATEMENT FOR SECURITY
4 INTEREST IN OIL AND GAS PRODUCTION AND ITS PROCEEDS. (a) In this
5 section, "first purchaser," "interest owner," "operator," and "oil
6 and gas production" have the meanings assigned by Section 9.343(r).

7 (b) To the extent of a conflict between this section and
8 another provision of this subchapter, this section prevails.

9 (c) If a security interest in oil and gas production or its
10 proceeds is perfected automatically under Section 9.343(b), an
11 interest owner or an operator acting on behalf of one or more
12 interest owners may also, but is not required to, file a financing
13 statement against the first purchaser in the jurisdiction in which
14 the first purchaser is organized.

15 (d) A financing statement filed pursuant to this section is
16 sufficient if it:

17 (1) provides the name of the debtor;

18 (2) provides the name of the secured party or a
19 representative of the secured party; and

20 (3) indicates the collateral covered by the financing
21 statement.

22 SECTION 6. Sections 9.343(e), (m), and (n), Business &
23 Commerce Code, are repealed.

24 SECTION 7. The changes in law made by this Act apply only to
25 a civil action commenced on or after the effective date of this Act.
26 A civil action commenced before the effective date of this Act is
27 governed by the law in effect immediately before the effective date

1 of this Act, and that law is continued in effect for that purpose.

2 SECTION 8. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2013.