

## **BILL ANALYSIS**

Senate Research Center

H.B. 3794  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A recent court case, *In re First River Energy, LLC*, resulted in a decision unfavorable to Texas oil and gas interest owners because the court found that the jurisdiction where the first purchaser, as debtor, is located, rather than where the oil and gas, as collateral, is produced, governs the applicable Uniform Commercial Code. Because Texas law commonly known as the first purchaser statute establishes these owners' security interests under the state's Uniform Commercial Code, Texas interest owners cannot take advantage of nonstandard Texas provisions when the debtor is organized outside of Texas. There are concerns that, unless the first purchaser statute is amended, the security interests of Texas oil and gas interest owners are likely to continue to be interpreted as unsecured and subordinate to other perfected security interests in cases where the first purchaser is organized or incorporated out of state.

H.B. 3794 seeks to address this issue by repealing the present first purchaser statute and replacing it with Property Code provisions establishing oil and gas liens based on real property for applicable interest owners.

H.B. 3794 amends current law relating to oil and gas liens.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 9.109(d), Business & Commerce Code, to provide that Chapter 9 (Secured Transactions) does not apply to certain liens, assignments, sales, and transfers, including an oil and gas lien arising under Chapter 67, Property Code. Makes nonsubstantive changes.

SECTION 2. Amends Section 9.310(b), Business & Commerce Code, to delete existing text providing that the filing of a financing statement is not necessary to perfect a security interest in oil or gas production or their proceeds under Section 9.343 (Oil and Gas Interests: Security Interest Perfected Without Filing; Statutory Lien). Makes nonsubstantive changes.

SECTION 3. Amends Section 9.324(b), Business & Commerce Code, to delete existing text creating an exception under Section 9.343 (oil and gas production) to the requirement that the purchase-money secured party send an authenticated notification to the holder of the conflicting security interest in order for a perfected purchase-money security interest in inventory to have priority over certain other interests.

SECTION 4. Amends Subtitle B, Title 5, Property Code, by adding Chapter 67, as follows:

#### **CHAPTER 67. OIL AND GAS LIENS**

Sec. 67.001. DEFINITIONS. Defines "affiliate," "agreement to sell," "control," "first purchaser," "gas," "interest owner," "oil," "oil and gas lien," "oil and gas rights," "operator," "permitted lien," "pooling order," "proceeds," "purchaser," "representative,"

"sales price," "security interest," "severance," "transferee interest owner," and "transferor interest owner."

Sec. 67.002. OIL AND GAS LIEN. (a) Provides that to secure the obligations of a first purchaser to pay the sales price, each interest owner has an oil and gas lien to the extent of the interest owner's interest in oil and gas rights. Provides that the oil and gas lien exists as part of and incident to the ownership of oil and gas rights.

(b) Provides that an oil and gas lien exists in and attaches to all oil and gas before severance, continues uninterrupted and without lapse in all oil and gas on and after severance, and continues uninterrupted and without lapse in and to all proceeds from the sale of the oil or gas.

(c) Provides that, except as provided by Subsection (d), an oil and gas lien exists until the interest owner or representative first entitled to receive the sales price has received the sales price for the oil or gas production, but the lien does not continue to attach to the production after the production is sold by the first purchaser, unless the first subsequent purchaser is an affiliate of the first purchaser, or has actual knowledge, not constructive notice or inquiry notice, that the first purchaser has not paid the interest owner or representative first entitled to receive the sales price.

(d) Provides that, as between an interest owner and a representative of an interest owner or any person claiming adversely to the interest owner or representative, the interest owner's oil and gas lien continues uninterrupted and without lapse in proceeds in the possession or control of a representative until the interest owner on whose behalf the representative acts receives the proceeds in full.

(e) Provides that, except as provided by Subsection (f), a first purchaser takes free of an oil and gas lien if the first purchaser in good faith, paid the sales price for the oil or gas to an interest owner or representative otherwise apparently entitled to receive the sales price and is without actual knowledge that the interest owner or representative is not entitled to receive the sales price paid.

(f) Provides that, notwithstanding Subsection (e), the oil and gas lien continues uninterrupted in the proceeds paid to or otherwise due the interest owner or representative.

Sec. 67.003. TRANSFER OF OIL AND GAS RIGHTS. (a) Provides that the validity of an oil and gas lien is not dependent on possession of the oil or gas by an interest owner or representative. Provides that an oil and gas lien is not void or expired because of a change or transfer of the actual or constructive possession of or title to the oil or gas from the interest owner or representative to a first purchaser or other purchaser.

(b) Provides that on the conveyance or transfer of any oil and gas rights by a transferor interest owner, the oil and gas lien vested in the transferor interest owner immediately before the conveyance or transfer remains with the transferor interest owner to the extent of any oil and gas rights retained by the transferor interest owner.

(c) Provides that on the conveyance or transfer of any oil and gas rights by a transferor interest owner, the oil and gas lien vested in the transferor interest owner immediately before the conveyance or transfer is transferred to and attaches automatically to the oil and gas rights acquired by the transferee interest owner uninterrupted and without lapse and as part of and incident to the oil and gas rights that are conveyed or transferred.

Sec. 67.004. AUTOMATIC PERFECTION OF LIEN. Provides that an oil and gas lien of an interest owner is perfected automatically without the need to file a financing statement or any other type of documentation.

Sec. 67.005. COMMINGLING. (a) Provides that if oil or gas in which there exists more than one oil and gas lien is commingled with other oil or gas in a manner that the identity of the specific oil or gas is lost, the oil and gas lien continues without interruption into and attaches to any resulting commingled product, and is perfected automatically on the date of the oil and gas lien's original perfection but only for the volume of the commingled product that is equal to the volume of product to which the oil and gas lien originally attached.

(b) Provides that if commingling described by Subsection (a) occurs, the oil and gas lien in the commingled product has priority over any security interest or other lien that is not an oil and gas lien or permitted lien, regardless of whether the security interest or other lien has been properly perfected.

(c) Provides that if more than one oil and gas lien attaches to the commingled product, the oil and gas liens rank equally in the proportion that the respective sales prices secured by each oil and gas lien bears as a percentage of the total of the sales prices secured by all oil and gas liens applicable to the production at the time the production was commingled.

(d) Provides that this section is intended to recognize the continuation of oil and gas lien rights of an interest owner in the commingled product stream only as to a volume of oil or gas proportionate to the volume of oil or gas that originated from the interest owner, with that volume of the commingled product being considered to have maintained a distinct identity as being available for sale or transportation under the specific contractual arrangements applicable to the production at the time the oil or gas entered the commingled product stream.

Sec. 67.006. RIGHTS OF PURCHASERS. (a) Provides that, except as provided by Subsection (b), a purchaser takes free of any oil and gas lien otherwise applicable to the oil or gas purchased if the purchaser is a buyer in the ordinary course of the first purchaser's business under Chapter 9, Business & Commerce Code, or has paid all of the consideration due to the first purchaser, including by exchange of oil or gas, net-out, or set-off, under all applicable enforceable contracts in existence at the time of the payment.

(b) Provides that the oil and gas lien continues uninterrupted in the proceeds paid to or otherwise due the first purchaser.

(c) Provides that, except as provided by this section, an oil and gas lien has priority over the rights of any purchaser.

Sec. 67.007. PRIORITY IN RELATION TO OTHER LIENS OR SECURITY INTERESTS. Provides that, except for a permitted lien, an oil and gas lien takes priority over any other lien, whether arising by contract, law, equity, or otherwise, or any security interest.

Sec. 67.008. TITLE NOT AFFECTED. Provides that this chapter does not affect:

(1) when legal title to oil and gas is authorized to pass by agreement or operation of law subject to an oil and gas lien;

(2) the right of a first purchaser to take or receive oil and gas under the terms of a division order, provided that the division order does not modify, waive, or abrogate in any respect the rights of an interest owner under this chapter; or

(3) subject to Section 67.009, the right of a first purchaser to take or receive oil and gas under an agreement to sell.

Sec. 67.009. WAIVER. (a) Prohibits an interest owner, except as provided by Subsection (b), from being required, as a condition or term of an agreement to sell or otherwise,

to waive or release any oil and gas lien or a right under this chapter, other than on payment in full of the sales price, or to agree to a provision that would apply the law of another state to a right granted under this chapter.

(b) Authorizes an interest owner, or representative acting on behalf of an interest owner, to waive or release any oil and gas lien or any rights under this chapter or agree to apply the law of another state to the interest owner's oil and gas rights granted under this chapter, if the first purchaser posts a letter of credit in a form and amount satisfactory to the interest owner, or agrees to prepay or escrow the sales price under an agreement to sell with the interest owner and performs all of the first purchaser's obligations under the agreement.

(c) Provides that, unless waived or released under Subsection (b), a condition or term described by Subsection (a) is void.

Sec. 67.010. LIMITATION ON FILING ACTION TO ENFORCE LIEN. (a) Requires that an action to enforce the interest owner's oil and gas lien, except as provided by Subsection (b), be brought not later than the first anniversary of the last day of the month after the date proceeds from the sale of oil or gas subject to the lien are required by law or contract to be paid to the interest owner, but only as to the oil or gas sold during that month.

(b) Requires that the commencement of a proceeding by or against any person claiming an interest in any property subject to the oil and gas lien seeking to adjudicate the person as bankrupt or insolvent, or seeking relief of the person's debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for the person or for any substantial part of the person's property toll the one-year period prescribed by Subsection (a) in which to bring an action to enforce the oil and gas lien for an additional period of 90 days after the earlier of the date the proceeding is dismissed or otherwise finally concluded, or final relief is obtained from the appropriate tribunal authorizing the commencement of the action to enforce the oil and gas lien.

Sec. 67.011. VENUE; JURISDICTION. (a) Authorizes an action to enforce the interest owner's oil and gas lien to be brought in a district court or other court of competent jurisdiction in the county in which the oil and gas well from which the oil or gas is produced is located, the unpaid for oil or gas is located, or the proceeds for the oil or gas are located.

(b) Authorizes an interest owner to join multiple proceedings to enforce oil and gas liens involving more than one oil and gas well in one county in the same action.

(c) Provides that in cases involving oil or gas from the same oil and gas well or wells, any persons claiming oil and gas liens in the oil or gas are authorized to join in the same action or a district court is authorized to consolidate separate actions related to the oil or gas.

Sec. 67.012. PAYMENT DISPUTES. Provides that in the case of a payment dispute between an operator and another interest owner, a good-faith tender of money in satisfaction of a debt or security interest by one person operates as a tender of the money to both if tender is made to the person who the operator and other interest owner jointly directed the first purchaser in writing to pay, to a person who otherwise shows the person is entitled to the money, or to a court of competent jurisdiction in the event of litigation or bankruptcy.

Sec. 67.013. COSTS; ATTORNEY'S FEES. Provides that the prevailing party in an action brought under this chapter is entitled to court costs and reasonable attorney's fees.

Sec. 67.014. CERTAIN RIGHTS OF OPERATOR NOT IMPAIRED. Provides that this chapter does not impair an operator's right to be paid, set-off, or withhold funds from another interest owner as security for or in satisfaction of a debt or security interest.

Sec. 67.015. INTEREST OWNER RIGHTS CUMULATIVE. Provides that the provisions of this chapter and the rights granted under this chapter are intended to be cumulative with all other rights an interest owner may otherwise have at law or in equity, including the right of any interest owner to maintain a personal action to recover the debt against any person liable for payment of the sales price of the oil or gas.

Sec. 67.016. LIBERAL CONSTRUCTION OF INTEREST OWNER RIGHTS. Requires that the rights of the interest owner be liberally construed to give the interest owner the most comprehensive protection to secure the receipt by the interest owner of the sales price.

Sec. 67.017. CONFLICT OF LAWS. Provides that to the extent of a conflict between the provisions of this chapter and other law, this chapter prevails.

SECTION 5. Repealer: Section 9.203(j) (relating to certain security interests being a single continuous and uninterrupted lien on a property), Business & Commerce Code.

Repealer: Section 9.343 (Oil and Gas Interests: Security Interest Perfected Without Filing; Statutory Lien), Business & Commerce Code.

SECTION 6. (a) Provides that the changes in law made by this Act do not affect the rights of any interest owner that accrued before the effective date of this Act to the extent those rights are not in conflict with the provisions of Chapter 67, Property Code, as added by this Act, and the former law is continued in effect to preserve those rights.

(b) Provides that for purposes of Sections 67.005 and 67.007, Property Code, as added by this Act, a "permitted lien" includes a mortgage lien or security interest in oil or gas that:

(1) is granted before the effective date of this Act by a first purchaser in favor of a person who is not an affiliate of the first purchaser; and

(2) secures payment under a written instrument of indebtedness signed by the first purchaser and accepted in writing by the payee before the effective date of this Act with a principal amount and a fixed maturity stated in the instrument, unless:

(A) the instrument of indebtedness is modified, amended, or restated on or after the effective date of this Act to:

(i) increase the principal amount that was owed before the effective date of this Act; or

(ii) extend the stated maturity of the debt that was in effect before the effective date of this Act; or

(B) the mortgage lien or security interest is not validly perfected with a first priority against the claims of all persons under applicable law other than persons holding a statutory or regulatory lien for which first priority is granted by statute or rule.

SECTION 7. Effective date: September 1, 2021.