

By: Geren

H.B. No. 3794

A BILL TO BE ENTITLED

AN ACT

relating to oil and gas liens.

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

SECTION 1. Section 9.109(d), Business & Commerce Code, is amended to read as follows:

(d) This chapter does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9.333 applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial

1 satisfaction of a preexisting indebtedness;

2 (8) a transfer of an interest in or an assignment of a
3 claim under a policy of insurance, other than an assignment by or to
4 a health care provider of a health-care-insurance receivable and
5 any subsequent assignment of the right to payment, but Sections
6 9.315 and 9.322 apply with respect to proceeds and priorities in
7 proceeds;

8 (9) an assignment of a right represented by a
9 judgment, other than a judgment taken on a right to payment that was
10 collateral;

11 (10) a right of recoupment or set-off, but:

12 (A) Section 9.340 applies with respect to the
13 effectiveness of rights of recoupment or set-off against deposit
14 accounts; and

15 (B) Section 9.404 applies with respect to
16 defenses or claims of an account debtor;

17 (11) the creation or transfer of an interest in or lien
18 on real property, including a lease or rents, as defined by Section
19 64.001, Property Code, the interest of a vendor or vendee in a
20 contract for deed to purchase an interest in real property, or the
21 interest of an optionor or optionee in an option to purchase an
22 interest in real property, except to the extent that provision is
23 made for:

24 (A) liens on real property in Sections 9.203 and
25 9.308;

26 (B) fixtures in Section 9.334;

27 (C) fixture filings in Sections 9.501, 9.502,

1 9.512, 9.516, and 9.519; and

2 (D) security agreements covering personal and
3 real property in Section 9.604;

4 (12) an assignment of a claim arising in tort, other
5 than a commercial tort claim, but Sections 9.315 and 9.322 apply
6 with respect to proceeds and priorities in proceeds; ~~or~~

7 (13) an assignment of a deposit account, other than a
8 nonnegotiable certificate of deposit, in a consumer transaction,
9 but Sections 9.315 and 9.322 apply with respect to proceeds and
10 priorities in proceeds; or

11 (14) an oil and gas lien arising under Chapter 67,
12 Property Code.

13 SECTION 2. Section 9.310(b), Business & Commerce Code, is
14 amended to read as follows:

15 (b) The filing of a financing statement is not necessary to
16 perfect a security interest:

17 (1) that is perfected under Section 9.308(d), (e),
18 (f), or (g);

19 (2) that is perfected under Section 9.309 when it
20 attaches;

21 (3) in property subject to a statute, regulation, or
22 treaty described in Section 9.311(a);

23 (4) in goods in possession of a bailee that is
24 perfected under Section 9.312(d)(1) or (2);

25 (5) in certificated securities, documents, goods, or
26 instruments which is perfected without filing, control or
27 possession under Section 9.312(e), (f), or (g);

1 (6) in collateral in the secured party's possession
2 under Section 9.313;

3 (7) in a certificated security that is perfected by
4 delivery of the security certificate to the secured party under
5 Section 9.313;

6 (8) in deposit accounts, electronic chattel paper,
7 electronic documents, investment property, or letter-of-credit
8 rights that is perfected by control under Section 9.314;

9 (9) in proceeds that is perfected under Section 9.315;

10 or

11 (10) that is perfected under Section 9.316 [~~or~~

12 [~~(11) in oil or gas production or their proceeds under~~
13 ~~Section 9.313]~~.

14 SECTION 3. Section 9.324(b), Business & Commerce Code, is
15 amended to read as follows:

16 (b) Subject to Subsection (c) and except as otherwise
17 provided in Subsection (g), a perfected purchase-money security
18 interest in inventory has priority over a conflicting security
19 interest in the same inventory, has priority over a conflicting
20 security interest in chattel paper or an instrument constituting
21 proceeds of the inventory and in proceeds of the chattel paper, if
22 so provided in Section 9.330, and, except as otherwise provided in
23 Section 9.327, also has priority in identifiable cash proceeds of
24 the inventory to the extent the identifiable cash proceeds are
25 received on or before the delivery of the inventory to a buyer, if:

26 (1) the purchase-money security interest is perfected
27 when the debtor receives possession of the inventory;

1 (2) [~~except where excused by Section 9.343 (oil and~~
2 ~~gas production),~~] the purchase-money secured party sends an
3 authenticated notification to the holder of the conflicting
4 security interest;

5 (3) the holder of the conflicting security interest
6 receives any required notification within five years before the
7 debtor receives possession of the inventory; and

8 (4) the notification states that the person sending
9 the notification has or expects to acquire a purchase-money
10 security interest in inventory of the debtor and describes the
11 inventory.

12 SECTION 4. Subtitle B, Title 5, Property Code, is amended by
13 adding Chapter 67 to read as follows:

14 CHAPTER 67. OIL AND GAS LIENS

15 Sec. 67.001. DEFINITIONS. In this chapter:

16 (1) "Affiliate" means any person who:

17 (A) is controlled, directly or indirectly, by a
18 first purchaser; or

19 (B) controls, directly or indirectly, a first
20 purchaser.

21 (2) "Agreement to sell" means an enforceable agreement
22 by an interest owner, directly or through a representative, to sell
23 oil or gas on or after severance to a first purchaser. The term
24 includes an agreement that is express or implied, whether oral or
25 written.

26 (3) "Control" means the possession, directly or
27 indirectly, of the power to direct or cause the direction of the

1 management and policies of a person, whether through ownership, by
2 contract, or otherwise.

3 (4) "First purchaser" means the first person that
4 purchases oil or gas from an interest owner, under an agreement to
5 sell.

6 (5) "Gas" means natural gas, casinghead gas, and all
7 constituent parts of natural gas and casinghead gas before and
8 after processing but before a first purchaser transfers title,
9 possession, or control of the gas to a purchaser.

10 (6) "Interest owner" means a person, including a
11 transferee interest owner, owning an interest of any kind in oil and
12 gas rights before acquisition by a first purchaser.

13 (7) "Oil" means oil, condensate, and all constituent
14 parts of the oil, before or after processing but before a first
15 purchaser transfers title, possession, or control of the oil to a
16 purchaser.

17 (8) "Oil and gas lien" means the lien described by
18 Section 67.002.

19 (9) "Oil and gas rights" means any legal or equitable
20 right, title, or interest in or to oil or gas from land in this
21 state. The term includes:

22 (A) oil or gas in place before severance;

23 (B) oil or gas production, or the right to
24 receive a portion of the proceeds, on severance;

25 (C) any interest or estate in, by, through, or
26 under an oil and gas lease;

27 (D) a right acquired under a pooling order

1 relating to:

2 (i) ownership of oil or gas;

3 (ii) the right to proceeds; or

4 (iii) the right to enter into an agreement
5 to sell;

6 (E) a right to receive consideration under an
7 agreement to sell oil or gas; and

8 (F) a mortgage lien or security interest in oil
9 and gas rights.

10 (10) "Operator" means a person engaged in the
11 severance of oil or gas for that person only, for other persons
12 only, or for that person and others.

13 (11) "Permitted lien" means a perfected and
14 enforceable lien created by statute or rule of a governmental
15 agency for storage or transportation charges, including terminal
16 charges, tariffs, demurrage, insurance, labor, or other charges,
17 owed by a first purchaser in relation to oil or gas originally
18 purchased under an agreement to sell. The term does not include a
19 lien that is:

20 (A) in favor of an affiliate of a first purchaser
21 unless the lien is authorized by the statute or rule creating the
22 lien; or

23 (B) for charges incurred after the 90th day after
24 the date the first purchaser delivers the oil or gas for storage or
25 transportation.

26 (12) "Pooling order" means an order issued by the
27 Railroad Commission of Texas that requires the owners of the right

1 to drill for oil or gas in a drilling and spacing unit to pool the
2 owner's interests for the development of the drilling and spacing
3 unit.

4 (13) "Proceeds" means, when paid or to be paid in
5 consideration of, or as a consequence of, the sale of oil or gas
6 under an agreement to sell:

7 (A) oil or gas on or after severance;

8 (B) inventory of raw, refined, or manufactured
9 oil or gas after severance;

10 (C) rights to or products of any of the oil or gas
11 described by Paragraph (A) or inventory described by Paragraph (B);

12 (D) cash proceeds;

13 (E) accounts;

14 (F) chattel paper;

15 (G) instruments;

16 (H) documents; or

17 (I) payment intangibles with respect to any of
18 the preceding.

19 (14) "Purchaser" means a person who:

20 (A) is not an affiliate of a first purchaser; and

21 (B) takes, receives, or purchases oil or gas from
22 a first purchaser.

23 (15) "Representative" means a person who is
24 authorized, expressly or by implication, including an operator or
25 an authorized broker, to:

26 (A) sell oil or gas on behalf of, or for the
27 benefit of, an interest owner under an agreement to sell; or

1 (B) receive on behalf of an interest owner the
2 consideration under an agreement to sell.

3 (16) "Sales price" means the proceeds a first
4 purchaser agrees to pay an interest owner or representative under
5 an agreement to sell.

6 (17) "Security interest" means a security interest
7 governed by Chapter 9, Business & Commerce Code.

8 (18) "Severance" means the point in time oil or gas is
9 possessed at the mouth of the wellbore of an oil and gas well.

10 (19) "Transferee interest owner" means a person that
11 acquires oil and gas rights from a transferor interest owner.

12 (20) "Transferor interest owner" means an interest
13 owner that transfers or conveys oil and gas rights, wholly or
14 partly.

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

20 (b) An oil and gas lien:

21 (1) exists in and attaches to all oil and gas before
22 severance;

23 (2) continues uninterrupted and without lapse in all
24 oil and gas on and after severance; and

25 (3) continues uninterrupted and without lapse in and
26 to all proceeds from the sale of the oil or gas.

27 (c) Except as provided by Subsection (d), an oil and gas

1 lien exists until the interest owner or representative first
2 entitled to receive the sales price has received the sales price for
3 the oil or gas production, but the lien does not continue to attach
4 to the production after the production is sold by the first
5 purchaser, unless the first subsequent purchaser:

6 (1) is an affiliate of the first purchaser; or

7 (2) has actual knowledge, not constructive notice or
8 inquiry notice, that the first purchaser has not paid the interest
9 owner or representative first entitled to receive the sales price.

10 (d) As between an interest owner and a representative of an
11 interest owner or any person claiming adversely to the interest
12 owner or representative, the interest owner's oil and gas lien
13 continues uninterrupted and without lapse in proceeds in the
14 possession or control of a representative until the interest owner
15 on whose behalf the representative acts receives the proceeds in
16 full.

17 (e) Except as provided by Subsection (f), a first purchaser
18 takes free of an oil and gas lien if the first purchaser:

19 (1) in good faith, paid the sales price for the oil or
20 gas to an interest owner or representative otherwise apparently
21 entitled to receive the sales price; and

22 (2) is without actual knowledge that the interest
23 owner or representative is not entitled to receive the sales price
24 paid.

25 (f) Notwithstanding Subsection (e), the oil and gas lien
26 continues uninterrupted in the proceeds paid to or otherwise due
27 the interest owner or representative.

1 Sec. 67.003. TRANSFER OF OIL AND GAS RIGHTS. (a) The
2 validity of an oil and gas lien is not dependent on possession of
3 the oil or gas by an interest owner or representative. An oil and
4 gas lien is not void or expired because of a change or transfer of
5 the actual or constructive possession of or title to the oil or gas
6 from the interest owner or representative to a first purchaser or
7 other purchaser.

8 (b) On the conveyance or transfer of any oil and gas rights
9 by a transferor interest owner, the oil and gas lien vested in the
10 transferor interest owner immediately before the conveyance or
11 transfer remains with the transferor interest owner to the extent
12 of any oil and gas rights retained by the transferor interest owner.

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

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

24 Sec. 67.005. COMMINGLING. (a) If oil or gas in which there
25 exists more than one oil and gas lien is commingled with other oil
26 or gas in a manner that the identity of the specific oil or gas is
27 lost, the oil and gas lien:

1 (1) continues without interruption into and attaches
2 to any resulting commingled product; and

3 (2) is perfected automatically on the date of the oil
4 and gas lien's original perfection but only for the volume of the
5 commingled product that is equal to the volume of product to which
6 the oil and gas lien originally attached.

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

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

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

27 Sec. 67.006. RIGHTS OF PURCHASERS. (a) Except as provided

1 by Subsection (b), a purchaser takes free of any oil and gas lien
2 otherwise applicable to the oil or gas purchased if the purchaser:

3 (1) is a buyer in the ordinary course of the first
4 purchaser's business under Chapter 9, Business & Commerce Code; or

5 (2) has paid all of the consideration due to the first
6 purchaser, including by exchange of oil or gas, net-out, or
7 set-off, under all applicable enforceable contracts in existence at
8 the time of the payment.

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

11 (c) Except as provided by this section, an oil and gas lien
12 has priority over the rights of any purchaser.

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

17 Sec. 67.008. TITLE NOT AFFECTED. This chapter does not
18 affect:

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

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

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

27 Sec. 67.009. WAIVER. (a) Except as provided by Subsection

1 (b), an interest owner may not be required, as a condition or term
2 of an agreement to sell or otherwise, to:

3 (1) waive or release any oil and gas lien or a right
4 under this chapter, other than on payment in full of the sales
5 price; or

6 (2) agree to a provision that would apply the law of
7 another state to a right granted under this chapter.

8 (b) An interest owner, or representative acting on behalf of
9 an interest owner, may waive or release any oil and gas lien or any
10 rights under this chapter or agree to apply the law of another state
11 to the interest owner's oil and gas rights granted under this
12 chapter, if the first purchaser:

13 (1) posts a letter of credit in a form and amount
14 satisfactory to the interest owner; or

15 (2) agrees to prepay or escrow the sales price under an
16 agreement to sell with the interest owner and performs all of the
17 first purchaser's obligations under the agreement.

18 (c) Unless waived or released under Subsection (b), a
19 condition or term described by Subsection (a) is void.

20 Sec. 67.010. LIMITATION ON FILING ACTION TO ENFORCE LIEN.

21 (a) Except as provided by Subsection (b), an action to enforce the
22 interest owner's oil and gas lien must be brought not later than the
23 first anniversary of the last day of the month after the date
24 proceeds from the sale of oil or gas subject to the lien are
25 required by law or contract to be paid to the interest owner, but
26 only as to the oil or gas sold during that month.

27 (b) The commencement of a proceeding by or against any

1 person claiming an interest in any property subject to the oil and
2 gas lien seeking to adjudicate the person as bankrupt or insolvent,
3 or seeking relief of the person's debts under any law relating to
4 bankruptcy, insolvency, reorganization, or relief of debtors, or
5 seeking the entry of an order for relief or the appointment of a
6 receiver, trustee, or other similar official for the person or for
7 any substantial part of the person's property shall toll the
8 one-year period prescribed by Subsection (a) in which to bring an
9 action to enforce the oil and gas lien for an additional period of
10 90 days after the earlier of the date:

11 (1) the proceeding is dismissed or otherwise finally
12 concluded; or

13 (2) final relief is obtained from the appropriate
14 tribunal authorizing the commencement of the action to enforce the
15 oil and gas lien.

16 Sec. 67.011. VENUE; JURISDICTION. (a) An action to enforce
17 the interest owner's oil and gas lien may be brought in a district
18 court or other court of competent jurisdiction in the county in
19 which:

20 (1) the oil and gas well from which the oil or gas is
21 produced is located;

22 (2) the unpaid for oil or gas is located; or

23 (3) the proceeds for the oil or gas are located.

24 (b) An interest owner may join multiple proceedings to
25 enforce oil and gas liens involving more than one oil and gas well
26 in one county in the same action.

27 (c) In cases involving oil or gas from the same oil and gas

1 well or wells:

2 (1) any persons claiming oil and gas liens in the oil
3 or gas may join in the same action; or

4 (2) a district court may consolidate separate actions
5 related to the oil or gas.

6 Sec. 67.012. PAYMENT DISPUTES. In the case of a payment
7 dispute between an operator and another interest owner, a
8 good-faith tender of money in satisfaction of a debt or security
9 interest by one person operates as a tender of the money to both if
10 tender is made:

11 (1) to the person who the operator and other interest
12 owner jointly directed the first purchaser in writing to pay;

13 (2) to a person who otherwise shows the person is
14 entitled to the money; or

15 (3) to a court of competent jurisdiction in the event
16 of litigation or bankruptcy.

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

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

24 Sec. 67.015. INTEREST OWNER RIGHTS CUMULATIVE. The
25 provisions of this chapter and the rights granted under this
26 chapter are intended to be cumulative with all other rights an
27 interest owner may otherwise have at law or in equity, including the

1 right of any interest owner to maintain a personal action to recover
2 the debt against any person liable for payment of the sales price of
3 the oil or gas.

4 Sec. 67.016. LIBERAL CONSTRUCTION OF INTEREST OWNER RIGHTS.
5 The rights of the interest owner shall be liberally construed to
6 give the interest owner the most comprehensive protection to secure
7 the receipt by the interest owner of the sales price.

8 Sec. 67.017. CONFLICT OF LAWS. To the extent of a conflict
9 between the provisions of this chapter and other law, this chapter
10 prevails.

11 SECTION 5. Sections 9.203(j) and 9.343, Business & Commerce
12 Code, are repealed.

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

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

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

25 (2) secures payment under a written instrument of
26 indebtedness signed by the first purchaser and accepted in writing
27 by the payee before the effective date of this Act with a principal

1 amount and a fixed maturity stated in the instrument, unless:

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

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

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

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

13 SECTION 7. This Act takes effect September 1, 2021.