By: Hinojosa S.B. No. 1468

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 9.203(j), Business & Commerce Code, is amended to read as follows:

(j) If a secured party holds a security interest that applies under this chapter to minerals, not including oil and gas, upon their extraction and the security interest also qualifies under applicable law as a lien on those minerals before their extraction, the security interest before and after production is a single continuous and uninterrupted lien on the property. This subsection is a statement of the law of this state as it existed before the effective date of this subsection and applies with respect to minerals, not including oil and gas, regardless of when the minerals were extracted.

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

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

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

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

(3) in property subject to a statute, regulation, or

treaty described in Section 9.311(a);

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

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

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

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

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

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

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

[~~(11) in oil or gas production or their proceeds under Section 9.343~~].

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

(b) Subject to Subsection (c) and except as otherwise provided in Subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if

so provided in Section 9.330, and, except as otherwise provided in Section 9.327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

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

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

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

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

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

CHAPTER 67. OIL AND GAS LIENS

Sec. 67.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means any person who:

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

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

(2) "Agreement to sell" means an enforceable agreement

by an interest owner, directly or through a representative, to sell oil or gas on or after severance to a first purchaser. The term includes an agreement that is express or implied, whether oral or written.

(3) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership, by contract, or otherwise.

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

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

(6) "Interest owner" means a person owning an interest of any kind in oil and gas rights before acquisition by a first purchaser. The term includes a transferee interest owner.

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

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

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

(A) oil or gas in place before severance;

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

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

(D) a right acquired under a pooling order relating to:

(i) ownership of oil or gas;

(ii) the right to proceeds; or

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

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

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

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

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

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

lien; or

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

(12) "Pooling order" means an order issued by the Railroad Commission of Texas that requires the owners of the right to drill for oil or gas in a drilling and spacing unit to pool the owner's interests for the development of the drilling and spacing unit.

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

(A) oil or gas on or after severance;

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

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

(D) cash proceeds;

(E) accounts;

(F) chattel paper;

(G) instruments;

(H) documents; or

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

(14) "Purchaser" means a person who:

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

(B) takes, receives, or purchases oil or gas from

a first purchaser.

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

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

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

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

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

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

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

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

Sec. 67.002. OIL AND GAS LIEN. (a) 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. The oil and gas lien exists as part of and incident to the ownership of oil and gas rights.

(b) An oil and gas lien:

(1) exists in and attaches to all oil and gas before

severance;

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

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

(c) 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.

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

(1) 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

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

(f) 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) The validity of an oil and gas lien is not dependent on possession of the oil or gas by an interest owner or representative. 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) 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) 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. 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) 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:

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

(2) 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) 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) 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) 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) 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:

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

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

(c) 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. 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. This chapter does not affect:

(1) when legal title to oil and gas may 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) Except as provided by Subsection

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

(1) 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

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

(b) An interest owner, or representative acting on behalf of an interest owner, may 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:

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

(2) 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) 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) Except as provided by Subsection (b), an action to enforce the interest owner's oil and gas lien must 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) 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 shall 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:

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

(2) 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) An action to enforce the interest owner's oil and gas lien may be brought in a district court or other court of competent jurisdiction in the county in which:

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

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

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

(b) An interest owner may 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) In cases involving oil or gas from the same oil and gas

well or wells:

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

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

Sec. 67.012. PAYMENT DISPUTES. 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:

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

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

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

Sec. 67.013. COSTS; ATTORNEY'S FEES. 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. 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. 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. The rights of the interest owner shall 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. To the extent of a conflict between the provisions of this chapter and other law, this chapter prevails.

SECTION 5. Section 9.343, Business & Commerce Code, is repealed.

SECTION 6. (a) 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) 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. This Act takes effect September 1, 2021.