Chapter 814

S.B. No. 1592

1 AN ACT
2 relating to the assignment of security interests in certain
3 collateral.
4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
6 SECTION 1. Subsection (a), Section 261.004, Business &
7 Commerce Code, is amended to read as follows:
8 (a) Subject to Subsection (b), the filing with the secretary
9 of state of a utility security instrument executed by a utility and
10 described by Section 261.003(1) and payment of the filing fee
11 prescribed by Section 261.008:
12 (1) constitute perfection of a security interest
13 created by the instrument in any personal property:
14 (A) in which a security interest may be perfected
15 by filing under Chapter 9, including any goods that are or will
16 become a fixture;
17 (B) that is located in this state; and
18 (C) that was owned by the utility when the
19 instrument was executed or is to be acquired by the utility after
20 the instrument is executed; [and]
21 (2) if the instrument is proven, acknowledged, or
22 certified as otherwise required by law for the recording of real
23 property mortgages, serve as notice to all persons of the existence
24 of the instrument and the security interest granted by the
25 instrument in any real property, or in any fixture on or to be

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placed on the property, that:

(A) is located in this state; and

(B) was owned by the utility when the instrument
was executed or is to be acquired by the utility after the
instrument is executed; and

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

SECTION 2. Chapter 261, Business & Commerce Code, is
amended by adding Section 261.012 to read as follows:

Sec. 261.012. ASSIGNMENT OF SECURITY INTEREST. (a) A
secured party may assign a security interest recorded under Section
261.004 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 debtor utility, including lien creditors, as defined by Section
9.102.

(b) 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 Section 261.004, apply to the secretary of state for
the assignee to be reflected as secured party on the utility
security instrument and notify the debtor utility of the
assignment. Failure to make application under this section or
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notify a debtor utility of an assignment does not create a cause of
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 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
recording 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 debtor, including lien creditors, as defined by
Section 9.102, Business & Commerce Code.
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(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 debtor, including lien creditors, as defined by Section 9.102, Business & Commerce Code.

SECTION 4. 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 5. 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 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 [by a lienholder's failure] to make
application under Subsection (b) 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
debtor, including lien creditors, as defined by Section 9.102,
Business & Commerce Code.
(d) [by] An application under Subsection (b) [by] 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) [44] 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) [44] The issuance of a certificate of title under
Subsection (e) [44] 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.

(h) Notwithstanding Subsections (a)-(g) and procedures that
may be conducted under those subsections, the assignment of a lien
does not affect the procedures applicable to the foreclosure of a
worker's lien under Chapter 70, Property Code, or the rights of the
holder of a worker's lien. Notice given to the last known
lienholder of record, as provided by that chapter, is adequate to
allow foreclosure under that chapter.

(i) Notwithstanding Subsections (a)-(g) and the procedures
that may be conducted under those subsections, the assignment of a
lien does not affect the procedures applicable to the release of a
holder's lien under Section 348.408, Finance Code.

SECTION 6. 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 7. 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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David Dewhurst  
President of the Senate

I hereby certify that S.B. No. 1592 passed the Senate on April 16, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 29, 2009, by the following vote: Yeas 31, Nays 0.

Joe Straus  
Speaker of the House

Mary Jane  
Secretary of the Senate

I hereby certify that S.B. No. 1592 passed the House, with amendment, on May 15, 2009, by the following vote: Yeas 144, Nays 0, one present not voting.

Robert Hinojosa  
Chief Clerk of the House

Approved:  
19 JUN '09  
Date

Rick Perry  
Governor

Filed in the Office of the Secretary of State  
2 P.M. O'clock  
JUN 19 2009

Colin Pinkston