

## **BILL ANALYSIS**

Senate Research Center  
81R20197 AJA-F

C.S.S.B. 1592  
By: Fraser  
Business & Commerce  
3/31/2009  
Committee Report (Substituted)

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

This bill is intended to clarify rather than change existing law and bring consistency to the document of title statutes.

C.S.S.B. 1592 adds and amends certain chapters of the Business and Commerce Code, Occupations Code, Parks and Wildlife Code, and Transportation Code, to authorize the holders of certain security interests or liens to assign, absolutely or otherwise, the holder's security interests or liens; provides that an assignee's failure to make the application or notify the debtor of the assignment does not create a cause of action against the assignee or the security-interest holder or affect the validity or perfection of the security interest assigned to the assignee; and provides that this Act is intended to clarify rather than change existing law.

### **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 261.004(a), Business and Commerce Code, as effective April, 2009, as follows:

(a) Provides that subject to Subsection (b) (relating to perfection or notice of the filed utility security instrument), the filing with the secretary of state (SOS) of a utility security instrument executed by a utility and described by Section 261.003(1) (relating to filing a utility security instrument) and payment of the filing fee prescribed by Section 261.008 (Endorsement and Filing by Secretary of State; Fees) 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 (Definitions and Index of Definitions), for so long as the lien is recorded on the utility security instrument.

SECTION 2. Amends Chapter 261, Business and Commerce Code, as effective April 1, 2009, by adding Section 261.012, as follows:

Sec. 261.012. ASSIGNMENT OF SECURITY INTEREST. (a) Authorizes a secured party to assign a security interest recorded under Section 261.004 (Filing Utility Security Instrument with Secretary of State: Perfection and Notice) without making any filing or giving any notice under this chapter. Provides that 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 original debtor utility, including lien creditors, as defined by Section 9.102.

(b) Provides that 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 SOS for the assignee to be reflected as secured party on the utility security instrument and notify the debtor utility of the assignment. Provides that failure to make application under this section or 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. Amends Section 1201.219, Occupations Code, by amending Subsection (b) and adding Subsections (d) and (e), as follows:

(b) Provides that except as provided by Subsection (a) (relating to a lien on manufactured homes), a lien on a manufactured home is perfected only by filing with the Texas Department of Housing and Community Affairs (TDHCA), and on such filing, the recorded lienholder and assignees under Subsection (d) obtain priority over the rights of a lien creditor, as defined by Section 9.102, Business and Commerce Code, for so long as the lien is recorded on the statement of ownership and location.

(d) Authorizes a lienholder to assign a security interest recorded under Subsection (b) without making any filing or giving any notice under this chapter. Provides that 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 original debtor, including lien creditors, as defined by Section 9.102, Business and Commerce Code.

(e) Provides that 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 the lien recorded under Subsection (b), apply to TDHCA for the assignee to be named as lienholder on the statement of ownership and location and notify the debtor of the assignment. Provides that failure to make application under this subsection 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 original debtor, including lien creditors, as defined by Section 9.102, Business and Commerce Code.

SECTION 4. Amends Section 31.052, Parks and Wildlife Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Provides that except as provided by this section and Section 31.050(c) (relating to authorizing a security interest in a vessel or outboard motor held as inventory by a person who is in the business of selling or leasing goods of that kind), rather than in Subsection (c) of Section 31.050 (Form of Manufacturer's and Importer's Certificate) of this code, and except for statutory liens, security interests in a vessel or outboard motor are required to be noted on the certificate of title of the vessel or outboard motor to which the security interest applies. Provides that on recordation 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 and Commerce Code, for so long as the security interest is recorded on the certificate of title.

(c) Authorizes a security interest owner to assign a security interest recorded under this chapter without making any filing or giving any notice under this chapter. Provides that 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 original debtor, including lien creditors, as defined by Section 9.102, Business and Commerce Code.

(d) Provides that 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 assignment recorded under this chapter, apply to Texas Parks and Wildlife 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. Provides that failure to make application under this subsection 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 security interest

in favor of the assignee against transferees from and creditors of the original debtor, including lien creditors, as defined by Section 9.102, Business and Commerce Code.

SECTION 5. Amends Section 501.113(b), Transportation Code, to provide that for purposes of Chapter 9 (Secured Transactions), Business and 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 and Commerce Code, for so long as the lien is recorded on the certificate of title.

SECTION 6. Amends Section 501.114, Transportation Code, as follows:

Sec. 501.114. ASSIGNMENT OF LIEN. (a) Authorizes a lienholder to assign a lien recorded under Section 501.113 (Recordation of Security Interest) without making any filing or giving any notice under this chapter. Provides that 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 original debtor, including lien creditors, as defined by Section 9.102, Business and Commerce Code.

(b) Provides that 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, apply to the county assessor-collector for the assignee to be named as lienholder on the certificate of title, rather than assignment of the lien. Makes nonsubstantive changes.

(c) Provides that failure to make application under this section or notify a debtor, rather than a lienholder's failure to notify a debtor, of an assignment under Subsection (b) does not create a cause of action against the recorded lienholder, the assignor, or the assignee or affect the continuation or perfected status of the assigned lien in favor of the assignee against transferees from and creditors of the original debtor, including lien creditors, as defined by Section 9.102, Business and Commerce.

(d) Requires that an application under Subsection (b) be signed by the assignee, rather than the person to whom the lien is assigned.

(e) Authorizes the Texas Department of Transportation (TxDOT), on receipt of the completed application and fee, to amend TxDOT's records to substitute the assignee for the recorded lienholder, rather than the subsequent lienholder for the previous lien.

(f) Makes conforming changes.

(g) Provides that regardless of whether application is made for the assignee to be named as lienholder on the certificate of the title, 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 501.122.

SECTION 7. Provides that this Act is intended to clarify that under existing law an assignment of a recorded security interest is authorized to 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 8. Effective date: upon passage or September 1, 2009.