

Regular Session, 2010

HOUSE BILL NO. 484

BY REPRESENTATIVE EDWARDS

(On Recommendation of the Louisiana State Law Institute)

SECURITIES/NEG INSTRUMTS: Provides for the continuous revision of security devices

1 AN ACT

2 To amend and reenact R.S. 3:3652(9) and (15), 3653, 3656(A)(1) and (D), R.S. 9:4770, R.S.
3 10:9-102(d), 9-308(b), 9-309(13), 9-315(a)(introductory paragraph) and (1), 9-
4 322(f)(5), and 9-501, to enact R.S. 10:9-322(g), and to repeal R.S. 9:4521 and 4524
5 and R.S. 10:9-322(f)(6), relative to security devices; to provide definitions; to
6 provide for agricultural liens; to provide for perfection of liens; to provide for
7 conflicts; to provide for rankings; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 3:3652(9) and (15), 3653, 3656(A)(1) and (D) are hereby amended
10 and reenacted to read as follows:

11 §3652. Definitions

12 As used in this Chapter, the following words shall have the following
13 meanings ascribed to them:

14 * * *

15 (9) "Filing officer" means the clerk of court of any parish, ~~or, in the case of~~
16 ~~Orleans Parish, the recorder of mortgages.~~

17 * * *

18 (15) "Security device" ~~is~~ means a written security agreement that establishes
19 a creditor's security interest in farm products, ~~as defined in Paragraph (8) of this~~
20 ~~Section to include standing timber, or any privilege described in R.S. 9:4521, or any~~

1 Section 2. R.S. 9:4770 is hereby amended and reenacted to read as follows:

2 PART XIV. RELATION TO ~~CHAPTER 9 OF THE~~
3 ~~LOUISIANA COMMERCIAL LAWS~~ UNIFORM COMMERCIAL CODE

4 §4770. Conflicts ~~in favor of~~ with Chapter 9 of the ~~Louisiana Commercial Laws~~
5 Uniform Commercial Code

6 A. This Code Title (Code Title XXI of Code Book III, R.S. 9:4501 et seq.),
7 Part 8 of Chapter 7 of the Louisiana Mineral Code (R.S. 31:146 through 148), and
8 Title XXI of Book III of the Louisiana Civil Code (Arts. 3182 through 3277) shall
9 be interpreted and applied in a manner consistent with Chapter 9 of the ~~Louisiana~~
10 ~~Commercial Laws~~ Uniform Commercial Code. ~~Other than as provided in R.S.~~
11 ~~9:4521 or as provided in Subsection B of this Section, any~~ Any conflict between the
12 priority ranking of privileges under this Title, Part 8 of Chapter 7 of the Louisiana
13 Mineral Code, ~~and under or~~ Title XXI of Book III of the Louisiana Civil Code with
14 the priority ranking rules of Chapter 9 of the ~~Louisiana Commercial Laws~~ Uniform
15 Commercial Code shall be resolved ~~in favor of the priority ranking by application~~
16 of the priority rules of Chapter 9 ~~with regard to secured transactions subject thereto~~
17 of the Uniform Commercial Code.

18 B. ~~Whether a sale or lease was entered into before or after January 1, 1990,~~
19 ~~the~~ The rights of a vendor under Civil Code Articles 2561, 3217(7), ~~and~~ 3227, and
20 3229 or of a lessor under Civil Code Article 2707 or Mineral Code Article 146 are
21 subordinate to the rights of a secured party with a security interest under Chapter 9
22 of the ~~Louisiana Commercial Laws~~ Uniform Commercial Code except as otherwise
23 provided by R.S. 10:9-322(g).

24 Section 3. R.S. 10:9-102(d), 9-308(b), 9-309(13), 9-315(a)(introductory paragraph)
25 and (1), 9-322(f)(5), and 9-501 are hereby amended and reenacted and R.S. 10:9-322(g) is
26 hereby enacted to read as follows:

27 §9-102. Definitions and index of definitions

28 * * *

29 (d) Additional definitions. In this Chapter:

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (1) "Agricultural laborer" means an individual holding an agricultural lien
2 securing payment of wages due him for labor he performed as a worker,
3 thresherman, combineman, grain drier, or overseer.

4 (2) "Bailee" means a person having possession of the personal property
5 belonging to another. "Bailor" means the owner of the personal property.

6 (2) (3) "Collateral mortgage note" means an instrument that is secured by a
7 collateral mortgage on real property located in this ~~State~~ state and executed for the
8 purpose of being issued, pledged, or otherwise used as security for another
9 obligation.

10 (3) (4) "Intangible" means incorporeal.

11 (4) (5) "Lease" means a contract by which one person gives to another the
12 right of enjoyment and use of goods for a term in return for a stipulated price. But
13 a usufruct or a sale, including a sale on approval or a sale or return, or a sale on view
14 or trial, or retention or creation of a security interest, is not a lease. Unless the
15 context clearly indicates otherwise, the term includes a sublease.

16 (5) (6) "Leasehold interest" means the interest of the lessee under a lease.

17 (6) (7) "Lessee" means a person to whom a lease is granted. Unless the
18 context clearly indicates otherwise, the term includes a sublessee.

19 (7) (8) "Lessee in ordinary course of business" means a person that becomes
20 a lessee of goods in good faith, without knowledge that the lease violates the rights
21 of another person in the goods, and in the ordinary course from a person, other than
22 a pawnbroker, in the business of selling or leasing goods of that kind. A lessee in the
23 ordinary course of business may lease for cash, or by exchange of other property, or
24 on secured or unsecured credit, and may acquire goods or documents of title under
25 a preexisting lease.

26 (8) (9) "Lessor" means a person that grants a lease. Unless the context
27 clearly indicates otherwise, the term includes a sublessor.

28 (9) (10) "Lien" means a privilege on personal property created by operation
29 of law that entitles the privileged creditor to be preferred before other creditors.

1 ~~(10)~~ (11) "Lienholder" means a person that holds a lien.

2 ~~(11)~~ (12) "Local law" means the law of a jurisdiction not including that
3 jurisdiction's law of conflict of laws.

4 ~~(12)~~ (13) "Merchant" means a person who deals in goods of the kind, or
5 otherwise by his occupation holds himself out as having knowledge or skill particular
6 to the practices or goods, involved in the transaction, or to whom such knowledge
7 or skill may be attributed by his employment of an agent, broker, or other
8 intermediary who by his occupation holds himself out as having such knowledge or
9 skill.

10 ~~(13)~~ (14) "Mineral rights" means a real right governed by Title 31 of the
11 Louisiana Revised Statutes of 1950, including mineral servitudes, mineral leases,
12 mineral royalties, overriding royalties, production payments, and net profits interests.

13 ~~(14)~~ (15) "Personal property" means movable property.

14 ~~(15)~~ (16) "Real property" means immovable property and real rights therein,
15 including standing timber, mineral rights, and leases of immovables.

16 ~~(16)~~ (17) "Recorded timber conveyance" means a written contract:

17 (A) by which standing timber is conveyed to, or upon cutting will become
18 owned by, an identified person other than an owner of the land upon which the
19 timber is standing;

20 ~~(B)~~ which is executed by a record owner of the land;

21 (C) which has been recorded in the conveyance records of the parish in
22 which the land is situated; and

23 (D) which contains a legal description of the land that would be sufficient
24 for purposes of making a conveyance of the land effective against third persons.

25 ~~(17)~~ (18) "Sale" means a contract whereby a person transfers ownership of
26 property to another person for a price in money.

27 ~~(18)~~ (19) "Tangible" means corporeal.

1 his privilege priority over the security interest. Thus, a crop lender could not rely on
2 the *absence* of a filing by an agricultural laborer at the time the crop lender perfected
3 his security interest. For those reasons, little point is achieved by requiring an
4 agricultural laborer to file an effective financing statement in order to perfect his
5 privilege. However, even though the agricultural laborer's privilege is now perfected
6 under Chapter 9 without the necessity of filing, both R.S. 3:3656 and the federal
7 Food Security Act of 1985, 7 U.S.C. § 1631, allow a buyer in the ordinary course of
8 business to take free of an agricultural laborer's privilege that is not filed in the
9 central agricultural registry.

10 2. The inclusion of the reference to crops in Paragraph (13) is an intended
11 limitation on the scope of the automatic perfection, because the laborer's privilege
12 under Civil Code Article 3217 applies to other movables on the farm as well, and no
13 automatic perfection is intended in the case of those other movables.

14 3. Paragraph (13) extends the automatic perfection of this Section to
15 proceeds of crops, but only insofar as the law creating the agricultural lien provides
16 that it attaches to proceeds. Notably, the rules of Chapter 9 relative to the attachment
17 of a security interest to proceeds do not apply to agricultural liens. See R.S. 10:9-
18 203(f) and 10:9-315.

19 * * *

20 §9-315. Secured party's rights on disposition of collateral and in proceeds

21 (a) Disposition of collateral: continuation of security interest ~~or agricultural~~
22 ~~lien~~; proceeds. Except as otherwise provided in this Chapter:

23 (1) a security interest ~~or agricultural lien~~ continues in collateral
24 notwithstanding sale, lease, license, exchange, or other disposition thereof unless the
25 secured party authorized the disposition free of the security interest ~~or agricultural~~
26 ~~lien~~;

27 * * *

28 Comments - 2010

29 The inclusion of agricultural liens within the scope of Section 9-315(a),
30 which came about in the 2001 nationwide revision of Article 9 of the Uniform
31 Commercial Code, appeared to have elevated agricultural privileges to the status of
32 real rights, contrary to pre-existing Louisiana jurisprudence that severely limited the
33 ability of privileged creditors to follow crops into the hands of third persons. *See*
34 *Loeb v. Collier*, 59 So. 816 (La. 1912), in which the court held that allowing the
35 privileged creditor to pursue the crop against third persons *ad infinitum* would
36 "practically paralyze our entire commerce." As a general rule in Louisiana,
37 privileges on movables are mere rights of preference that do not carry with them any
38 right of pursuit. The 2010 revision is intended to restore Louisiana's longstanding
39 jurisprudence limiting the right of pursuit of a creditor holding a privilege on crops.
40 There is no need for national uniformity on a policy permitting a privileged creditor
41 to enforce his privilege after the crop has left the hands of the producer.

42 The inclusion of agricultural liens within the rule of this Section was
43 somewhat hollow anyway, because both R.S. 3:3656 and the federal Food Security

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1 Act of 1985, 7 U.S.C. § 1631, limit the ability of unfiled interests to survive a sale
2 to a buyer in the ordinary course of business.

3 * * *

4 §9-322. Priorities among conflicting security interests in and agricultural liens on
5 same collateral

6 * * *

7 (f) Limitations on ~~subsections~~ Subsections (a) through (e). Subsections (a)
8 through (e) are subject to all of the following:

9 * * *

10 (5) ~~R.S. 9:4521 with respect to a security interest or an agricultural lien~~
11 ~~affecting unharvested crops; and~~

12 ~~(6) R.S. 9:5551 with respect to collateral mortgages.~~

13 (g) Priority of agricultural liens and security interests affecting crops.
14 Agricultural liens and security interests affecting crops and their proceeds rank
15 according to the following order of priority:

16 (1) Agricultural liens in favor of agricultural laborers, with equal rank among
17 themselves.

18 (2) Perfected agricultural liens securing payment of rent due to a person that
19 has leased real property on which the crops are growing or from which they were
20 produced.

21 (3) Other perfected agricultural liens and perfected security interests, with
22 priority among themselves as provided in this Section and Part.

23 (4) Unperfected agricultural liens securing payment of rent due to a person
24 who has leased real property on which the crops are growing or from which they
25 were produced.

26 (5) Other unperfected agricultural liens and unperfected security interests,
27 with priority among themselves in the order in which they become effective or
28 attach.

29 * * *

Comments - 2010

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1. The 2010 revision places the ranking rules on crops within Chapter 9 and changes in a number of important respects the ranking rules that were previously in R.S. 9:4521. Under Subsection (g) of this Section, (1) agricultural liens in favor of agricultural laborers outrank all other security interests and agricultural liens, without the necessity of any filing; (2) the crop ranking rules of Subsection (g) recognize and give ranking to security interests in crops that are properly perfected under the local laws of other states, in cases in which Chapter 9 provides that the issue of perfection is governed by the law of another state (*e.g.* when the debtor is located in another state); (3) the crop ranking rules of Subsection (g) apply to unharvested and harvested crops alike, and are not limited to unharvested crops as the literal wording of R.S. 9:4521 suggested; (4) unperfected liens and security interests in crops are given effect against unsecured creditors and a specified ranking among themselves; and (5) perfected agricultural liens inuring to the furnisher of supplies or money are no longer relegated to a position behind all security interests, even those perfected later.

2. Under former R.S. 9:4521, an agricultural laborer who made a filing in the central agricultural registry was given priority over all other secured claimants. With this revision, the same favored treatment is given to all agricultural laborers, without the necessity of filing. As under former R.S. 9:4521, the lien of the lessor of real estate, if perfected, has priority over all agricultural liens other than those in favor of laborers and over all conflicting security interests in crops and their proceeds, regardless of the order of filing.

3. Unlike former R.S. 9:4521, the crop ranking rules of Subsection (g) focus upon perfection, not simply filing. Under Chapter 9, the possible means of perfecting security interests in harvested crops is not limited to filing. They can be perfected by possession of the crops themselves or negotiation of a negotiable warehouse receipt representing the stored crops. See R.S. 10:9-312 and 10:9-313. Moreover, proceeds of harvested crops may be subject to conflicting secured claims that did not involve the crops themselves. For instance, amounts due to a farmer from the sale of his crop, while constituting proceeds of the crop, also constitute accounts. Chapter 9 has a rule to rank conflicting security interests in the two types of collateral against one another. See R.S. 10:9-322(a) and (b), and Example 5 in Official Comment 6.

* * *

§9-501. Filing office

(a) Filing offices. If the local law of this state governs perfection of a security interest ~~or agricultural lien~~, the office in which to file a financing statement to perfect the security interest ~~or agricultural lien~~ is:

(1) ~~the~~ The Department of Public Safety and Corrections, office of motor vehicles, if the collateral is a titled motor vehicle not held as inventory for sale or lease.

~~(2) the recorder of mortgages of Orleans Parish or the clerk of court of any other parish, in all other cases, including a case in which the collateral is as-extracted~~

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1 collateral, standing timber that constitute goods, or goods that are to become fixtures
2 and the financing statement is filed as a fixture filing.

3 ~~(2)~~ (2) The Department of Wildlife and Fisheries, if the collateral is a titled
4 vessel valued in excess of two thousand five hundred dollars, to be principally
5 operated on the waters of this state, ~~required to be numbered~~, not held as inventory
6 for sale or lease, and transferred for the first time on or after July 1, 2008.

7 (3) The clerk of court of any parish, in all other cases, including when the
8 collateral is as-extracted collateral or goods that are to become fixtures and the
9 financing statement is filed as a fixture filing.

10 (b) [Reserved.]

11 Section 4. R.S. 9:4521 and 4524 and R.S. 10:9-322(f)(6) are hereby repealed in their
12 entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Edwards

HB No. 484

Abstract: In accordance with HCR 122 of the 2008 R.S., amends laws relating to farm laborers, security interest and agricultural liens, priorities among conflicting security interests, filing requirements for perfection and conflicts.

Present law (R.S. 3:3652(9)) provides that in situations involving filing requirements for security devices affecting farm products, the filing officer, in the case of Orleans Parish, is the recorder of mortgages.

Proposed law changes the law by providing that the filing officer in Orleans Parish, as in every other parish, is the clerk of court.

Present law (R.S. 3:3652(15)) provides a definition of "security devices".

Proposed law retains present law and adds "agricultural lien" to the definition.

Present law (R.S. 3:3653) provides that Chapter 22-A of R.S. 3 applies to security devices affecting farm products as to which an effective financing statement has been filed.

Proposed law provides that Chapter 22-A applies to all security devices affecting farm products, regardless of filing.

Present law (R.S. 3:3656) provides that an unfiled security device is ineffective against third persons.

Proposed law changes the law by providing that an unfiled financing statement is ineffective against buyers in the ordinary course of business.

Present law (R.S. 9:4770) provides rules for the resolution of conflicts between Chapter 9 of the Uniform Commercial Code and La. law.

Proposed law makes several technical corrections and eliminates unnecessary references.

Present law (R.S. 10:9-102) provides definitions.

Proposed law adds a definition for "agricultural laborer".

Present law (R.S. 10:9-309) provides a list of security interests that are perfected upon attachment.

Proposed law changes present law by adding an agricultural laborer's privilege to the security interests that are perfected upon attachment which allows the agricultural laborer's privilege to be perfected without the necessity of any filing.

Present law (R.S. 10:9-315(a)) includes agricultural liens among the interests that continue notwithstanding sale or other disposition of the collateral.

Proposed law changes present law by deleting agricultural liens and restricting the ability of privileged creditors to follow crops into the hands of third persons.

Present law (R.S. 10:9-322) provides for priorities among conflicting security interests in, and agricultural liens on, the same collateral.

Proposed law places the ranking rules on crops within Chapter 9 of the UCC and places emphasis for crop ranking rules upon perfection, not simply filing.

Present law (R.S. 10:9-501) provides for the proper filing offices in which to file a financing statement to perfect a security interest.

Proposed law deletes special language referencing the recorder of mortgages of Orleans Parish.

(Amends R.S. 3:3652(9) and (15), 3653, 3656(A)(1) and (D), R.S. 9:4770, R.S. 10:9-102(d), 9-308(b), 9-309(13), 9-315(a)(intro. para.) and (1), 9-322(f)(5) and 9-501; Adds R.S. 10:9-322(g); Repeals R.S. 9:4521 and 4524 and R.S. 10:9-322(f)(6))