

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), the heading of
3 Part XIV of Code Title XXI of Title 9 of the Louisiana Revised Statutes of 1950 and
4 R.S. 9:4770, R.S. 10:9-102(d), 9-308(b), 9-309(13), 9-315(a)(introductory
5 paragraph) and (1), 9-322(f)(introductory paragraph) and (5), and 9-
6 501(a)(introductory paragraph) and (1), to enact R.S. 10:9-322(g) and 9-501(a)(4),
7 and to repeal R.S. 9:4521 and 4524 and R.S. 10:9-322(f)(6) and 9-501(a)(2), relative
8 to security devices; to provide definitions; to provide for agricultural liens; to
9 provide for perfection of liens; to provide for conflicts; to provide for rankings; and
10 to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

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

14 §3652. Definitions

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

17 * * *

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

20 * * *

1 (15) "Security device" ~~is~~ means a written security agreement that establishes
2 a creditor's security interest in farm products, ~~as defined in Paragraph (8) of this~~
3 ~~Section to include standing timber, or any privilege described in R.S. 9:4521, or any~~
4 agricultural lien as defined in R.S. 10:9-102(a)(5) whether or not evidenced by a
5 written instrument.

6 * * *

7 §3653. Applicability

8 ~~A.~~ The provisions of this Chapter shall apply to ~~any security device, as that~~
9 ~~term is defined in this Chapter, for which an effective financing statement is filed~~
10 ~~with any filing officer on or after January 1, 1991.~~

11 ~~B.~~ ~~The provisions of this Chapter shall apply to~~ security devices affecting
12 farm products, including timber.

13 * * *

14 §3656. Filing, amendment, assignment, partial release, termination, and cancellation
15 of security devices and effective financing statements; effectiveness against
16 third parties

17 A.(1) The proper place to file effective financing statements is with the clerk
18 of court of any parish, ~~or, in the case of Orleans Parish, with the recorder of~~
19 mortgages.

20 * * *

21 D. The central registry shall reflect the time and date each effective financing
22 statement and other statement is filed. Only a security device with respect to which
23 an effective financing statements and other statements, which are statement has been
24 filed with the filing officer for inclusion in the central registry, as provided in this
25 Chapter, shall be effective against ~~third parties~~ buyers in the ordinary course of
26 business. Except as otherwise provided in this Section, each ~~effective financing~~
27 ~~statement and other statement~~ security device shall become effective against ~~third~~
28 parties buyers in the ordinary course of business on the date and at the time it an

1 effective financing statement with respect to the security device is filed with the
2 filing officer.

3 * * *

4 Section 2. The heading of Part XIV of Code Title XXI of Title 9 of the Louisiana
5 Revised Statutes of 1950 and R.S. 9:4770 is hereby amended and reenacted to read as
6 follows:

7 PART XIV. RELATION TO ~~CHAPTER 9 OF THE~~
8 ~~LOUISIANA COMMERCIAL LAWS~~ UNIFORM COMMERCIAL CODE

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

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

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

1 Section 3. R.S. 10:9-102(d), 9-308(b), 9-309(13), 9-315(a)(introductory paragraph)
2 and (1), 9-322(f)(introductory paragraph) and (5), and 9-501(a)(introductory paragraph) and
3 (1) are hereby amended and reenacted and R.S. 10:9-322(g) and 9-501(a)(4) are hereby
4 enacted to read as follows:

5 §9-102. Definitions and index of definitions

6 * * *

7 (d) Additional definitions. In this Chapter:

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

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

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

17 (4) "Intangible" means incorporeal.

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

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

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

26 (8) "Lessee in ordinary course of business" means a person that becomes
27 a lessee of goods in good faith, without knowledge that the lease violates the rights
28 of another person in the goods, and in the ordinary course from a person, other than
29 a pawnbroker, in the business of selling or leasing goods of that kind. A lessee in the

1 ordinary course of business may lease for cash, or by exchange of other property, or
2 on secured or unsecured credit, and may acquire goods or documents of title under
3 a preexisting lease.

4 ~~(8)~~ (9) "Lessor" means a person that grants a lease. Unless the context
5 clearly indicates otherwise, the term includes a sublessor.

6 ~~(9)~~ (10) "Lien" means a privilege on personal property created by operation
7 of law that entitles the privileged creditor to be preferred before other creditors.

8 ~~(10)~~ (11) "Lienholder" means a person that holds a lien.

9 ~~(11)~~ (12) "Local law" means the law of a jurisdiction not including that
10 jurisdiction's law of conflict of laws.

11 ~~(12)~~ (13) "Merchant" means a person who deals in goods of the kind, or
12 otherwise by his occupation holds himself out as having knowledge or skill particular
13 to the practices or goods, involved in the transaction, or to whom such knowledge
14 or skill may be attributed by his employment of an agent, broker, or other
15 intermediary who by his occupation holds himself out as having such knowledge or
16 skill.

17 ~~(13)~~ (14) "Mineral rights" means a real right governed by Title 31 of the
18 Louisiana Revised Statutes of 1950, including mineral servitudes, mineral leases,
19 mineral royalties, overriding royalties, production payments, and net profits interests.

20 ~~(14)~~ (15) "Personal property" means movable property.

21 ~~(15)~~ (16) "Real property" means immovable property and real rights therein,
22 including standing timber, mineral rights, and leases of immovables.

23 ~~(16)~~ (17) "Recorded timber conveyance" means a written contract:

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

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

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

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

3 ~~(17)~~ (18) "Sale" means a contract whereby a person transfers ownership of
4 property to another person for a price in money.

5 ~~(18)~~ (19) "Tangible" means corporeal.

6 ~~(19)~~ (20) "Titled motor vehicle" means a vehicle subject to R.S. 32:701, et
7 seq., which is required to have a certificate of title issued by the Department of
8 Public Safety and Corrections, office of motor vehicles.

9 Comments - 2010

10 The 2010 revision to Paragraph (d) of this Section adds a definition for
11 "agricultural laborer", a term which is used in the perfection upon attachment rules
12 of Section 9-309 and the crop ranking rules of Section 9-322(g), as revised in 2010.
13 In this definition, the use of the word "individual" (which is used elsewhere in
14 Chapter 9, e.g. Section 9-102(a)(24), to denote a natural person) is intentional, for
15 only a natural person is entitled to claim an agricultural laborer's privilege, as the
16 courts have held. See *Bayou Pierre Farms v. Bat Farms Partners, III*, 693 So. 2d
17 1158 (La. 1997). The *Bat Farms* opinion twice placed the word "wages" in italics,
18 and that word is also used in the definition to signal that no change in the law is
19 intended as to the scope of persons entitled to the agricultural laborer's privilege or
20 the debts secured thereby.

21 * * *

22 §9-308. When security interest or agricultural lien is perfected; continuity of
23 perfection

24 * * *

25 (b) Perfection of agricultural lien. An agricultural lien is perfected if it has
26 become effective and all of the applicable requirements for perfection in R.S. 10:9-
27 309 or ~~10:9-310~~ have been satisfied. An agricultural lien is perfected when it
28 becomes effective if the applicable requirements are satisfied before the agricultural
29 lien becomes effective.

30 * * *

31 §9-309. Security interest perfected upon attachment

32 The following security interests are perfected when they attach:

33 * * *

1 (13) An agricultural lien in favor of an agricultural laborer upon crops and
 2 upon their proceeds to the extent subject to the agricultural lien.

3 Comments - 2010

4 1. The 2010 revision to this Section causes the agricultural laborer's privilege
 5 to be perfected upon attachment without the necessity of any filing. Agricultural
 6 laborer's privileges are usually small in amount and in any event attach only to the
 7 current year crop. Moreover, even under previous law, filing by an agricultural
 8 laborer after a Chapter 9 security interest had already been perfected still afforded
 9 his privilege priority over the security interest. Thus, a crop lender could not rely on
 10 the *absence* of a filing by an agricultural laborer at the time the crop lender perfected
 11 his security interest. For those reasons, little point is achieved by requiring an
 12 agricultural laborer to file an effective financing statement in order to perfect his
 13 privilege. However, even though the agricultural laborer's privilege is now perfected
 14 under Chapter 9 without the necessity of filing, both R.S. 3:3656 and the federal
 15 Food Security Act of 1985, 7 U.S.C. § 1631, allow a buyer in the ordinary course of
 16 business to take free of an agricultural laborer's privilege that is not the subject of a
 17 filing in the central agricultural registry.

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

22 3. Paragraph (13) extends the automatic perfection of this Section to
 23 proceeds of crops, but only insofar as the law creating the agricultural lien provides
 24 that it attaches to proceeds. Notably, the rules of Chapter 9 relative to the attachment
 25 of a security interest to proceeds do not apply to agricultural liens. See R.S. 10:9-
 26 203(f) and 10:9-315.

27 * * *

28 §9-315. Secured party's rights on disposition of collateral and in proceeds

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

31 (1) a security interest ~~or agricultural lien~~ continues in collateral
 32 notwithstanding sale, lease, license, exchange, or other disposition thereof unless the
 33 secured party authorized the disposition free of the security interest ~~or agricultural~~
 34 ~~lien~~;

35 * * *

36 Comments - 2010

37 The inclusion of agricultural liens within the scope of Section 9-315(a),
 38 which came about in the 2001 nationwide revision of Article 9 of the Uniform
 39 Commercial Code, appeared to have elevated agricultural privileges to the status of
 40 real rights, contrary to pre-existing Louisiana jurisprudence that severely limited the
 41 ability of privileged creditors to follow crops into the hands of third persons. *See*
 42 *Loeb v. Collier*, 59 So. 816 (La. 1912), in which the court held that allowing the

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

1 privileged creditor to pursue the crop against third persons *ad infinitum* would
2 "practically paralyze our entire commerce." As a general rule in Louisiana,
3 privileges on movables are mere rights of preference that do not carry with them any
4 right of pursuit. The 2010 revision is intended to restore Louisiana's longstanding
5 jurisprudence limiting the right of pursuit of a creditor holding a privilege on crops.
6 There is no need for national uniformity on a policy permitting a privileged creditor
7 to enforce his privilege after the crop has left the hands of the producer.

8 The inclusion of agricultural liens within the rule of this Section was
9 somewhat hollow anyway, because both R.S. 3:3656 and the federal Food Security
10 Act of 1985, 7 U.S.C. § 1631, limit the ability of unfiled interests to survive a sale
11 to a buyer in the ordinary course of business.

12 * * *

13 §9-322. Priorities among conflicting security interests in and agricultural liens on
14 same collateral

15 * * *

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

18 * * *

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

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

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

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

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

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

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

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

4 * * *

5 Comments - 2010

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

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

28 3. Unlike former R.S. 9:4521, the crop ranking rules of Subsection (g) focus
29 upon perfection, not simply filing. Under Chapter 9, the possible means of perfecting
30 security interests in harvested crops is not limited to filing. They can be perfected
31 by possession of the crops themselves or negotiation of a negotiable warehouse
32 receipt representing the stored crops. See R.S. 10:9-312 and 10:9-313. Moreover,
33 proceeds of harvested crops may be subject to conflicting secured claims that did not
34 involve the crops themselves. For instance, amounts due to a farmer from the sale
35 of his crop, while constituting proceeds of the crop, also constitute accounts. Chapter
36 9 has a rule to rank conflicting security interests in the two types of collateral against
37 one another. See R.S. 10:9-322(a) and (b), and Example 5 in Official Comment 6.

38 * * *

39 §9-501. Filing office

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

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are additions.

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

4 * * *

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

8 (b) [Reserved.]

9 Section 4. R.S. 9:4521 and 4524 and R.S. 10:9-322(f)(6) and 9-501(a)(2) are hereby
10 repealed in their entirety.

11 Section 5. The provisions of R.S. 10:9-501 as provided in this Act shall become
12 effective on January 1, 2011.

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 Title 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 repeals special language referencing the recorder of mortgages of Orleans Parish.

The provisions of R.S. 10:9-501 shall become effective on Jan. 1, 2011.

(Amends R.S. 3:3652(9) and (15), 3653, 3656(A)(1) and (D), the heading of Part XIV of Code Title XXI of Title 9 of the L.R.S. and 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)(intro. para.) and (5) and 9-501(a)(intro. para.) and (1); Adds R.S. 10:9-322(g) and 9-501(a)(4); Repeals R.S. 9:4521 and 4524 and R.S. 10:9-322(f)(6) and 9-501(a)(2))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Deleted unnecessary references and made other technical corrections.
2. Provided a special effective date for the provisions of R.S. 10:9-501.