

Regular Session, 2010

HOUSE BILL NO. 484

BY REPRESENTATIVE EDWARDS

(On Recommendation of the Louisiana State Law Institute)

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

21 (15) "Security device" ~~is~~ means a written security agreement that establishes
22 a creditor's security interest in farm products, ~~as defined in Paragraph (8) of this~~

1 ~~Section to include standing timber, or any privilege described in R.S. 9:4521, or any~~
2 ~~agricultural lien as defined in R.S. 10:9-102(a)(5) whether or not evidenced by a~~
3 ~~written instrument.~~

4 * * *

5 §3653. Applicability

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

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

11 * * *

12 §3656. Filing, amendment, assignment, partial release, termination, and cancellation
13 of security devices and effective financing statements; effectiveness against
14 third parties

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

18 * * *

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

29 * * *

1 Section 2. The heading of Part XIV of Chapter 1 of Code Title XXI of Code Book
 2 III of Title 9 of the Louisiana Revised Statutes of 1950 and R.S. 9:4770 are hereby amended
 3 and reenacted to read as follows:

4 PART XIV. ~~RELATION TO CHAPTER 9 OF THE~~
 5 ~~LOUISIANA COMMERCIAL LAWS~~ UNIFORM COMMERCIAL CODE

6 §4770. Conflicts ~~in favor of~~ with Chapter 9 of the ~~Louisiana Commercial Laws~~
 7 Uniform Commercial Code

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

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

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

1 §9-102. Definitions and index of definitions

2 * * *

3 (d) Additional definitions. In this Chapter:

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

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

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

13 ~~(3)~~ (4) "Intangible" means incorporeal.

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

19 ~~(5)~~ (6) "Leasehold interest" means the interest of the lessee under a lease.

20 ~~(6)~~ (7) "Lessee" means a person to whom a lease is granted. Unless the
 21 context clearly indicates otherwise, the term includes a sublessee.

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

29 ~~(8)~~ (9) "Lessor" means a person that grants a lease. Unless the context
 30 clearly indicates otherwise, the term includes a sublessor.

1 ~~(9)~~ (10) "Lien" means a privilege on personal property created by operation
 2 of law that entitles the privileged creditor to be preferred before other creditors.

3 ~~(10)~~ (11) "Lienholder" means a person that holds a lien.

4 ~~(11)~~ (12) "Local law" means the law of a jurisdiction not including that
 5 jurisdiction's law of conflict of laws.

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

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

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

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

18 ~~(16)~~ (17) "Recorded timber conveyance" means a written contract:

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

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

23 (C) which has been recorded in the conveyance records of the parish in
 24 which the land is situated; ~~and~~.

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

27 ~~(17)~~ (18) "Sale" means a contract whereby a person transfers ownership of
 28 property to another person for a price in money.

29 ~~(18)~~ (19) "Tangible" means corporeal.

1 (~~19~~) (20) "Titled motor vehicle" means a vehicle subject to R.S. 32:701, et
 2 seq., which is required to have a certificate of title issued by the Department of
 3 Public Safety and Corrections, office of motor vehicles.

4 Comments - 2010

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

16 * * *

17 §9-308. When security interest or agricultural lien is perfected; continuity of
 18 perfection

19 * * *

20 (b) Perfection of agricultural lien. An agricultural lien is perfected if it has
 21 become effective and all of the applicable requirements for perfection in R.S. 10:9-
 22 309 or ~~10:9-310~~ have been satisfied. An agricultural lien is perfected when it
 23 becomes effective if the applicable requirements are satisfied before the agricultural
 24 lien becomes effective.

25 * * *

26 §9-309. Security interest perfected upon attachment

27 The following security interests are perfected when they attach:

28 * * *

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

31 Comments - 2010

32 1. The 2010 revision to this Section causes the agricultural laborer's privilege
 33 to be perfected upon attachment without the necessity of any filing. Agricultural
 34 laborer's privileges are usually small in amount and in any event attach only to the
 35 current year crop. Moreover, even under previous law, filing by an agricultural
 36 laborer after a Chapter 9 security interest had already been perfected still afforded
 37 his privilege priority over the security interest. Thus, a crop lender could not rely on

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

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

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

18 * * *

19 §9-315. Secured party's rights on disposition of collateral and in proceeds

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

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

26 * * *

27 Comments - 2010

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

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

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.

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Comments - 2010

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 other agricultural liens except for 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.

* * *

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

4 (b) [Reserved.]

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____