

## CHAPTER 914

## H.B. No. 1741

An Act relating to security interests; providing a penalty.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Section 9.307(a), Business & Commerce Code, is amended to read as follows:

(a) *Except as provided by Subsection (d) of this section, a [A] buyer in ordinary course of business (Subdivision (9) of Section 1.201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.*

**SECTION 2.** Section 9.307, Business & Commerce Code, is amended by adding Subsection (d) to read as follows:

*(d) A secured party, including a secured party under a security interest covered by Section 9.312(b) of this code, may not enforce a security interest in farm products against a person who has purchased the farm products from a person engaged in farming operations unless the secured party gives notice of the security interest to the buyer by certified mail, return receipt requested, not later than the 90th day after the date of purchase. The notice must state the terms of the security interest and the amount claimed to be owed to the secured party.*

**SECTION 3.** Section 9.401(a), Business & Commerce Code, is amended to read as follows:

(a) The proper place to file in order to perfect a security interest is as follows:

(1) when the collateral is ~~[equipment used in farming operations; or farm products; or accounts or general intangibles arising from or relating to the sale of farm products by a farmer; or]~~ consumer goods, then in the office of the County Clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the County Clerk in the county where the goods are kept [~~; and in addition when the collateral is crops growing or to be grown in the office of the County Clerk in the county where the land is located];~~

(2) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or when the financing statement is filed as a fixture filing (Section 9.313) and the collateral is goods which are or are to become fixtures, then in the office of the County Clerk in the county where a mortgage on the real estate would be filed or recorded;

(3) in all other cases, in the office of the Secretary of State.

**SECTION 4.** Section 9.401, Business & Commerce Code, is amended by adding Subsection (f) to read as follows:

*(f) A continuation statement filed to continue a security interest perfected before September 1, 1985, in collateral that is equipment used in farming operations, farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer must be filed in the office of the Secretary of State, and must contain the information contained in the original financing statement, in addition to the information required for a continuation statement under Section 9.403 of this code. The priority of such a security interest is not affected by the fact that a continuation statement filed according to this subsection is filed at a different place than the original financing statement.*

**SECTION 5.** Section 32.33(f), Penal Code, is amended to read as follows:

*(f) A person who is a debtor under a security agreement, and who does not have a right to sell or dispose of the secured property or is required to account to the secured party for the proceeds of a permitted sale or disposition, commits an offense if the person sells ~~(he transfers)~~ or otherwise disposes of the secured property, or does not account to the secured party for the proceeds of a sale or other disposition as required, ~~[without the effective consent of the secured party and]~~ with intent to appropriate (as defined in Chapter 31 of this code) the proceeds or value of the secured property ~~[interest of the secured party]. A person is presumed to have intended to appropriate proceeds if the person does not deliver the proceeds to the secured party or account to the secured party for the proceeds before the 11th day after the day that the secured party makes a lawful demand for the proceeds or account. An offense under this subsection is:~~*

*(1) a Class A misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of ~~[unpaid balance remaining on the secured indebtedness is]~~ less than \$10,000;*

*(2) a felony of the third degree if the proceeds obtained from the sale or other disposition are money or goods having a value of ~~[unpaid balance remaining on the secured indebtedness is]~~ \$10,000 or more.*

**SECTION 6.** (a) Sections 1 and 2 of this Act apply only to a sale occurring on or after the effective date of this Act.

(b) Sections 3 and 4 of this Act apply only to a filing occurring on or after the effective date of this Act.

(c) Section 5 of this Act applies only to a sale or other disposition occurring on or after the effective date of this Act.

(d) A sale, filing, or disposition occurring before the effective date of this Act is governed by the law in effect when the sale, filing, or disposition occurred, and that law is continued in effect for that purpose.

**SECTION 7.** This Act takes effect September 1, 1985.

**SECTION 8.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 13, 1985, by a non-record vote; passed by the Senate on May 21, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 15, 1985

Effective: September 1, 1985