

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 576

By: Lerblance

AS INTRODUCED

An Act relating to oil and gas; amending 52 O.S. 2001, Section 570.1, which relates to the Production Revenue Standards Act; updating statutory references; modifying name of act; stating public policy; amending 52 O.S. 2001, Section 570.2, which relates to definitions; modifying definitions; defining terms; amending 52 O.S. 2001, Section 570.4, which relates to proceeds of royalty interests; requiring interest due on certain proceeds; requiring operators to act in fiduciary capacity; amending 52 O.S. 2001, Section 570.7, which relates to out of balance wells; requiring accounting within certain time period upon depletion of well; amending 52 O.S. 2001, Section 570.10, which relates to proceeds from sales of production; creating certain express trust; stating procedures for unmarketable titles; requiring operators to be liable to royalty owners for payment of certain proceeds; requiring interest to be paid by certain time; providing rebuttable presumption; providing penalty interest on certain late payments; stating penalty for violation of act; providing claim against certain party causing delay in royalty payments; amending 52 O.S. 2001, Section 570.11, which relates to division orders; requiring compliance with certain act; amending 52 O.S. 2001, Section 570.12, which relates to information for interest owners of certain oil and gas sales; modifying required information; requiring action within certain time period; defining term; providing penalty for violation; authorizing removal of operator upon certain willful breach of obligations; stating findings of certain court or jury; requiring relinquishment of rights by certain persons; stating findings by certain court or jury relating to underpayment of royalty proceeds; stating liability; amending 52 O.S. 2001, Section 570.14, which relates to district court jurisdiction; modifying entitlements for certain well owners; stating construction of act; providing for reasonable attorney fees; stating definition; stating factors for consideration of just compensation; authorizing trial judges to take certain actions in class action cases; amending 52 O.S. 2001, Section 570.15, which relates to effective dates of certain acts; modifying statutory references; amending 68 O.S. 2001, Section 1024, which relates to release of information by the Tax Commission; deleting requirement for certain affidavit; providing for certain information to be provided without costs; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 52 O.S. 2001, Section 570.1, is amended to read as follows:

Section 570.1. A. Sections 1 through 15 of this This act shall be known and may be cited as the "Production Revenue Standards and Royalty Owner Protection Act".

B. It is the public policy of this state that royalty owners receive prompt and proper payment from the sales of oil and gas. The Production Revenue Standards and Royalty Owner Protection Act is intended to aid in implementation of that public policy, reduce disputes and litigation in the area of royalty payments, encourage trust and respect between royalty owners, lessees and operators through transparency and proper reporting and payment of oil and gas proceeds, and provide more certainty to oil and gas lessees and payees related to determining whether gathering and marketing services are deductible in determining royalty payments.

SECTION 2. AMENDATORY 52 O.S. 2001, Section 570.2, is amended to read as follows:

Section 570.2 As used in the Production Revenue Standards and Royalty Owner Protection Act:

1. "Owner" means a person or governmental entity with a legal interest in the mineral acreage under a well which entitles that person or entity to oil or gas production or the proceeds or revenues therefrom;

2. "Produce", "producing" and "production" mean the physical act of severance of oil and gas from a well by an owner and includes but is not limited to the sale or other disposition thereof;

3. "Producing owner" means an owner entitled to produce who during a given month produces oil or gas for its own account or the account of subsequently created interests as they burden its interest;

4. "Proportionate production interest" means that interest in production which a working interest owner is entitled to produce in order to adjust for shifting of royalty burdens among working interest owners under the royalty payment provisions of this act, and is equal to the quotient of:

- a. the sum of that working interest owner's net revenue interests plus the net revenue interests of any subsequently created interests as they burden such owner's working interest,
- b. divided by the remainder of one (1) less the royalty share;

5. "Proportionate royalty share" means the percentage of the royalty share owned by a royalty interest owner calculated by dividing such owner's royalty interest in a well by the royalty share;

6. "Royalty interest" means the entirety of the percentage interest in production or proceeds therefrom:

- a. reserved or granted by a mineral interest owner exclusive of any interest defined as a working interest or a subsequently created interest, or
- b. otherwise provided or ascribed to a mineral interest owner by statute, rule, order or operation of law.

The interest of a participating mineral interest owner shall be designated in part as a royalty interest and in part as a working interest as set forth in Section 87.1 of Title 52 of the Oklahoma Statutes;

7. "Royalty interest in a well" means an owner's royalty interest multiplied by the quotient of:

- a. the gross mineral acres under the well attributable to such interest, divided by
- b. the total mineral acres under the well;

8. "Royalty proceeds" means the share of proceeds or other revenue derived from or attributable to any production of oil and gas attributable to the royalty share, without deduction or reduction for costs of production or marketing unless expressly allowed by contract, but shall not include payments of bonus, delay rentals, shut-in royalties or any additional royalty payable to the Commissioners of the Land Office or other governmental entity, pursuant to and valued according to the terms of its oil and gas lease, which is calculated separately from the royalty portion of actual proceeds from the sale of oil or gas;

9. "Royalty share" means the percentage of the well equal to the sum of all royalty interests in a well;

10. "Subsequently created interest" means any interest carved from a working interest other than a royalty interest. In addition to the royalty interest contained in a lease, a nonparticipatory interest created by a working interest owner for the benefit of a mineral interest owner in excess of a one-eighth (1/8) royalty interest may, by separate agreement other than the oil and gas lease, be a subsequently created interest and thereby not be communitized under the terms of the Production Revenue Standards and Royalty Owner Protection Act only if there is clear and unambiguous language expressing that intent in the creating document. The additional royalty payable to the Commissioners of the Land Office or other governmental entity, pursuant to and valued according to the terms of its oil and gas lease, which is calculated separately from the royalty portion of actual proceeds from the sale of oil or gas shall also be a subsequently created interest and thereby shall not be communitized under the Production Revenue Standards and Royalty Owner Protection Act;

11. "Well" means an oil or gas well, and shall include:

- a. a well having uniform ownership as to all producing zones,

- b. a drilling and spacing unit having uniform ownership wherein multiple wells producing gas are commonly metered, and
- c. each separately metered producing zone within a single wellbore wherein ownership varies by zone; ~~and~~

12. "Working interest" means the interest in a well entitling the owner thereof to drill for and produce oil and gas, including but not limited to the interest of a participating mineral owner to the extent set forth in Section 87.1 of Title 52 of the Oklahoma Statutes;

13. "Proceeds from the sale of oil or gas production" means the proceeds received by working interest owners from the sale of oil or gas production which includes the royalty proceeds and proceeds attributable to the subsequently created interests and the working interests;

14. "Costs of production or marketing" means all costs incurred for exploration, development, production, primary or enhanced recovery, operation, gathering, marketing, and abandonment operations including, but not limited to, lease acquisition, drilling and completion, pumping or lifting, water disposal, separating, recycling, treating, extraction of impurities or diluents, storing or moving the oil to the storage tanks, gathering of natural gas or gas liquids or marketing of oil and gas. Cost of production or marketing does not include the reasonable, necessary, actual and direct costs associated with, and not exceeding the value added by:

- a. transporting the oil from the storage tanks to market,
- b. the transmission of gas after the point of entry into the market pipeline, or
- c. processing of gas in a processing plant to extract a product which is actually sold separately from residue oil or residue natural gas.

Other than the costs associated with marketing, all costs identified herein as costs of production and marketing are deemed to be costs necessary for production and deemed to occur in the vicinity of well;

15. "Market pipeline" means a pipeline connected to the nationwide or statewide natural gas pipeline grid in which natural gas is contained at a pressure and of a quality such that it is fit for market as the commodity natural gas without change of its physical or chemical condition, and has become an interchangeable part of the aggregate gas stream contained in the nationwide or statewide pipeline grid;

16. "Gathering" means the transportation of natural gas through a pipeline for hire, compensation or otherwise, or transporting natural gas through a pipeline, in whole or in part, for such person's own account, whether in connection with the purchase and resale of natural gas, or in connection with the processing of natural gas or otherwise. Gathering includes those activities or processes performed between the delivery points and all redelivery points occurring prior to the gas being delivered into the market pipeline, which shall include, but not be limited to, transportation, measurement, conditioning, compressing, pressure regulation, recompressing, cleaning and treating of such gas and the fuel or gas loss associated with such foregoing activities. The terms "conditioning", "cleaning" and "treating" as used herein shall include those processes of separation, dehydration, removal of all contaminants and inerts and filtering. Gathering specifically shall not include processing or the extraction of natural gas liquids and products;

17. "Gatherer" means any person who performs the activities or processes defined as gathering;

18. "Shipper" means any person who owns or controls natural gas and seeks or receives gathering service from a gatherer;

19. "Delivery point" means the point where the possession or control of the gas stream transfers from a shipper to a gatherer; and

20. "Redelivery point" means the point at which the gatherer relinquishes possession or control of the gas stream.

SECTION 3. AMENDATORY 52 O.S. 2001, Section 570.4, is amended to read as follows:

Section 570.4 A. In each month, each royalty interest owner shall share in all proceeds derived from the sale of gas production from a well to the extent of such owner's royalty interest in that well without regard to the identity of the producing owners during that period.

B. Each producing owner shall pay or cause to be paid to the operator the royalty share of its gas sales proceeds, valued according to such producing owner's lease terms or Corporation Commission forced pooling order, from all gas produced from the well by such owner during any month. The operator shall thereupon pay or cause to be paid such royalty proceeds to each royalty interest owner in the well in accordance with the proportionate royalty share owned by each royalty interest owner. The payment of such proceeds by the operator shall be accompanied by any interest due on the royalty proceeds pursuant to Section 570.10 of this title and by the information set out in Section ~~42~~ 570.12 of this ~~act~~ title.

C. The operator shall act ~~solely in a ministerial~~ in a fiduciary capacity when performing functions ~~on behalf of others pursuant to~~ required by this act. The operator shall have discharged its fiduciary duties to pay royalty proceeds and interest under this act when it remits to the royalty interest owner such royalty proceeds ~~that the operator has received from an owner pursuant to this act~~ due on all production, together with all interest due pursuant to this act, and provides the royalty owner with all information required pursuant to Section 570.12 of this

title. In the absence of a division order signed by a royalty interest owner, an operator in distributing or causing to be distributed the royalty proceeds on gas production to that royalty interest owner shall be entitled to rely on royalty ownership and remittance information provided by the working interest owner burdened by such royalty interest. Working interest owners shall be ~~solely~~ liable for mispayments caused by their errors in or omissions of royalty ownership and remittance information on the royalty interests burdening them. When collecting and disbursing royalty funds and reporting pursuant to Section ~~42~~ 570.12 of this ~~act~~ title, the operator shall be entitled to rely on information provided to it by or on behalf of another producing owner.

D. As an alternative to the royalty disbursement procedure set forth in subsection B of this section, a producing owner shall have the right to pay or cause to be paid the royalty share of its gas sales from gas produced by such owner during any month directly to all royalty interest owners according to their proportionate royalty shares in such well, contingent upon the following:

1. Such producing owner shall be solely liable for all errors in and omissions of payment that it makes of royalty proceeds;

2. Such producing owner shall make written report to the operator within thirty (30) days of the date of such payment of all information relating to such payments, including the information specified by Section ~~42~~ 570.12 of this ~~act~~ title;

3. Such producing owner shall give to the operator not less than sixty (60) days' written notice prior to initiating or terminating this alternate royalty disbursement procedure; provided, however, any owner terminating this alternate royalty disbursement procedure may not reinitiate such procedure for twelve (12) months from the effective date of such termination;

4. Such producing owner shall solely bear all additional costs incurred by the operator or itself because of its initiation,

utilization or termination of this alternative royalty payment procedure; and

5. Such producing owner shall provide or cause to be provided to the royalty interest owners for each month such producing owner's proportionate production interest, accompanied by any interest due on the royalty proceeds pursuant to Section 570.10 of this title, and the information required under Section ~~42~~ 570.12 of this ~~act~~ title; and

6. Such producing owner shall act in a fiduciary capacity when performing functions required by this act.

SECTION 4. AMENDATORY 52 O.S. 2001, Section 570.7, is amended to read as follows:

Section 570.7 A. For purposes of the Production Revenue Standards and Royalty Owner Protection Act a well is out of balance when cumulative gas sales on a volumetric basis for the account of all owners in a well have not been made in proportion to the respective net revenue interest of each owner.

B. In a well wherein the cumulative gas production accounts of royalty interest owners are out of balance, producing owners in that well may agree to have the distribution of gas royalty proceeds among the royalty interest owners made in a manner other than according to their proportionate royalty shares, provided that:

1. Such variance shall only be permitted to the extent required to balance the cumulative gas production accounts of the royalty interest owners; and

2. Prior notice thereof is given to the royalty interest owners affected thereby, and to the operator along with any ongoing information necessary for the operator to discharge its duties.

C. Upon the depletion of a well, or producing formation within a well, the operator shall within sixty (60) days provide all owners an accounting, covering both volumes and values, for production imbalances in the well, including any imbalances that may exist

related to the royalty interests. The operator shall facilitate payment and distribution of any required cash balancing within ninety (90) days of depletion of the well or producing formation within the well, whichever occurs first.

D. Nothing in this section shall be construed to impair any rights to balancing which may exist by contract or law.

SECTION 5. AMENDATORY 52 O.S. 2001, Section 570.10, is amended to read as follows:

Section 570.10 A. All proceeds from the sale of production shall be regarded as separate and distinct from all other funds of any person receiving or holding the same until such time as such proceeds are paid to the owners legally entitled thereto. Any person holding revenue or proceeds from the sale of production shall hold such revenue or proceeds for the benefit of the owners legally entitled thereto. ~~Nothing in this subsection~~ This act shall create an express trust between the persons holding the proceeds and those owners who are legally entitled thereto.

B. Except as otherwise provided in this section:

1. Proceeds from the sale of oil or gas production from an oil or gas well shall be paid to persons legally entitled thereto:

- a. commencing not later than six (6) months after the date of first sale, and
- b. thereafter not later than the last day of the second succeeding month after the end of the month within which such production is sold.

2. Notwithstanding paragraph 1 above, royalty proceeds from the sale of gas production from an oil or gas well remitted to the operator pursuant to subsection B of Section 570.4 of this title shall be paid to persons legally entitled thereto:

- a. commencing not later than six (6) months after the date of first sale, and

- b. thereafter not later than the last day of the third succeeding month after the end of the month within which such production is sold; provided, however, when proceeds are received by the operator in its capacity as a producing owner, the operator may pay the royalty share of such proceeds to the royalty interest owners legally entitled thereto at the same time that it pays the royalty proceeds received from other producing owners for the same production month, but not later than the last day of the third succeeding month after the end of the month within which such production was sold.
3. a. Proceeds from production may be remitted to the persons entitled to such proceeds annually for the twelve (12) months accumulation of proceeds totaling at least Ten Dollars (\$10.00) but less than One Hundred Dollars (\$100.00). Amounts less than Ten Dollars (\$10.00) may be held but shall be remitted when production ceases or by the payor upon relinquishment of payment responsibility.
- b. Proceeds totaling less than One Hundred Dollars (\$100.00) but more than Twenty-five Dollars (\$25.00) shall be remitted monthly if requested by the person entitled to the proceeds. Amounts less than Ten Dollars (\$10.00) shall be remitted annually if requested by the person entitled to the proceeds.
 - c. Before proceeds greater than Twenty-five Dollars (\$25.00) may be accumulated, payor shall provide notice to the person owning interest as defined in Section 570.2 of this title, entitled to such proceeds that there is an option to be paid monthly for proceeds greater than Twenty-five Dollars (\$25.00).

Such notice to the person shall also provide directions for requesting monthly payment, and constitutes notice to all heirs, successors, representatives, and assigns of the person.

4. Any delay in determining the persons legally entitled to proceeds from production caused by unmarketable title shall not affect payments to persons whose title is marketable. If an owner has both marketable and unmarketable title, any delay in determining the person legally entitled to the proceeds from production caused by that portion of the title that is unmarketable shall not affect payments to that person for the portion of title that is marketable.

C. 1. A first purchaser that pays or causes to be paid proceeds from production to the producing owner of such production or, at the direction of the producing owner, pays or causes to be paid royalty proceeds from production to:

- a. the royalty interest owners legally entitled thereto,
or
- b. the operator of the well,

shall not thereafter be liable for such proceeds so paid and shall have thereby discharged its duty to pay those proceeds on such production.

2. A working interest owner that pays or causes to be paid royalty proceeds from production to:

- a. the royalty interest owners legally entitled thereto,
or
- b. the operator of the well,

shall not thereafter be liable for such proceeds so paid and shall have thereby discharged its duty to pay those proceeds on such production.

3. An operator that pays or causes to be paid royalty proceeds from production, received by it as operator, to the royalty interest owners legally entitled thereto shall not thereafter be liable for

such proceeds so paid and shall have thereby discharged its duty to pay those proceeds on such production.

4. The operator shall be liable to the royalty owners for the proper payment of royalty proceeds. Where royalty proceeds are paid incorrectly as a result of an error or omission, the party whose error or omission caused the incorrect royalty payments shall also be liable to the royalty owners and the operator for the additional royalty proceeds on such production and all resulting costs or damages incurred by the party making the incorrect payment.

D. 1. Except as otherwise provided in paragraph 2 of this subsection, where proceeds from the sale of oil or gas production or some portion of such proceeds are not paid prior to the end of the applicable time periods provided in this section, that portion not timely paid shall earn interest at the rate of twelve percent (12%) per annum, to be compounded annually, calculated from the end of the month in which such production is sold until the day paid. Interest due pursuant to this section shall be paid to the owner by the operator, or other royalty distributor, at the time the production proceeds are paid. There shall be a rebuttable presumption that any payment of production proceeds not made within ninety (90) days after the date such payment was due pursuant to this section, or any interest payment due pursuant to this section that was not made at the time that a late production proceeds payment was made, was unreasonably withheld. Any payment of production proceeds, or interest payment due pursuant to this section, that is unreasonably withheld shall earn interest at the rate of eighteen percent (18%) per annum, to be compounded annually, calculated, in the case of payment of production proceeds, from the end of the month in which the production is sold until the date paid, and in the case of interest payments, from the date the production payment was made until the date the interest is paid. The applicable interest rate

determined in this subsection shall also apply to any judgment for damages for violation of this act.

2. a. Where such proceeds are not paid because the title thereto is not marketable, such proceeds shall earn interest at the rate of six percent (6%) per annum, to be compounded annually, calculated from the end of the month in which such production was sold until such time as the title to such interest becomes marketable. Marketability of title shall be determined in accordance with the then current title examination standards of the Oklahoma Bar Association.

b. Where marketability has remained uncured for a period of one hundred twenty (120) days from the date payment is due under this section, any person claiming to own the right to receive proceeds which have not been paid because of unmarketable title may require the holder of such proceeds to interplead the proceeds and all accrued interest into court for a determination of the persons legally entitled thereto. Upon payment into court the holder of such proceeds shall be relieved of any further liability for the proper payment of such proceeds and interest thereon.

E. 1. The operator shall be liable to the persons legally entitled to proceeds from production for the payment of interest due pursuant to the provisions of this section.

2. Except as provided in paragraph ~~2~~ 3 of this subsection, a first purchaser or holder of proceeds who fails to remit proceeds from the sale of oil or gas production to owners legally entitled thereto within the time limitations set forth in paragraph 1 of subsection B of this section shall be liable to such owners and the operator for interest as provided in subsection D of this section on that portion of the proceeds not timely paid. When two or more

persons fail to remit within such time limitations, liability to the owners and operator for such interest shall be shared by those persons holding said proceeds in proportion to the time each person held such proceeds.

~~2.~~ 3. When royalty proceeds on gas production are remitted pursuant to subsection B of Section 570.4 of this title:

- a. A first purchaser that causes such proceeds to be received by the operator or by a producing owner in the well for distribution to the royalty interest owner legally entitled thereto within the first month following the month in which such production was sold shall not be liable for interest on such proceeds.
- b. A producing owner receiving royalty proceeds that causes such proceeds to be received by the royalty interest owner legally entitled thereto or by the operator for distribution to the royalty interest owner legally entitled thereto not later than the end of the first month following the month in which proceeds for such production was received by the producing owner from the purchaser shall not be liable for interest on such proceeds.
- c. An operator receiving royalty proceeds that causes such proceeds to be received by the royalty interest owner legally entitled thereto, not later than the end of the first month following the month in which proceeds for such production was received by the operator from the purchaser or producing owner shall ~~not be liable for interest on such proceeds~~ have a claim against any party causing the delay in royalty payments for the full amount of interest paid by the operator pursuant to paragraph 1 of this subsection.

d. Liability to the operator for interest provided in subsection D of this section shall be borne solely by the person, or persons, failing to remit royalty proceeds within the time limitations set forth in subsection B of this section. When two or more persons fail to remit within such time limitations, liability for such interest shall be shared by such persons in proportion to the time each person held such proceeds.

F. Nothing in this section shall be construed to impair or amend existing or future contractual rights provided for in gas balancing agreements or other written agreements which expressly provide for the taking, sharing, marketing or balancing of gas or the proceeds therefrom. Any proceeds to be paid pursuant to any such agreement shall not commence to earn interest until the sooner of the time provided in such agreement for the payment of such proceeds or ninety (90) days from the date of the depletion of the well. Nothing herein shall be deemed to alter or limit the payment of royalty proceeds as provided in the Production Revenue Standards and Royalty Owner Protection Act.

SECTION 6. AMENDATORY 52 O.S. 2001, Section 570.11, is amended to read as follows:

Section 570.11 A division order is an instrument for the purpose of directing the distribution of proceeds from the sale of oil, gas, casinghead gas or other related hydrocarbons which warrants in writing the division of interest and the name, address and tax identification number of each interest owner with a provision requiring notice of change of ownership. A division order is executed to enable the first purchaser of the production or holder of proceeds to make remittance of proceeds directly to the owners legally entitled thereto and does not relieve the lessee of any liabilities or obligations under the oil and gas lease or the provisions of this act. Terms of a division order which conflict

with the terms of any oil and gas lease or the provisions of this act are invalid, unless previously agreed to by the affected parties. This subsection shall only apply to division orders executed on or after July 1, 1989.

SECTION 7. AMENDATORY 52 O.S. 2001, Section 570.12, is amended to read as follows:

Section 570.12 A. The following information for each property and month of sale shall be included with each payment made to an interest owner from the sale of oil or gas:

1. Lease or well identification;
2. Month and year of sales included in the payment;
3. Total barrels or MCF produced which are attributed to such payment before any reduction for fuel, shrinkage or any other type of reduction;
4. Price per barrel or MCF, including British Thermal Unit adjustment of gas sold, from the first arms-length sale to a non-affiliated purchaser, such price to be prior to any reductions for costs of any kind;
5. Total gross value received from the first arms-length sale to a non-affiliated purchaser, such gross price to be prior to any reductions in the value for costs of any kind;
6. A specific listing of the amount and purpose of each deduction from the total gross value received from the first arms-length sale to a non-affiliated purchaser for costs of any kind;
- ~~5.~~ 7. Total amount attributed to such payment of severance and other production taxes, ~~with the exception of windfall profit tax;~~
- ~~6.~~ 8. Net value of total sales attributed to such payment ~~after taxes are deducted;~~
- ~~7.~~ 9. Owner's interest, expressed as a decimal, in production from the property;
- ~~8.~~ Owner's share of the total value of sales attributed to such payment prior to any deductions;

~~9. Owner's share of the sales value attributed to such payment less owner's share of the production and severance taxes; and~~

~~10. A specific listing of the amount and purpose of any other deductions from the proceeds attributed to such payment due to the owner upon request by the owner~~ A specific listing of the owner's share of each item set forth in paragraphs 3 through 9 of this subsection.

B. For purposes of the Production Revenue Standards and Royalty Owner Protection Act:

1. All revenue decimals shall be calculated to not less than the nearest sixth decimal place, which is the nearest part in one million; and

2. Gas volumes reported to any owner shall be measured as required by Section 474 of ~~Title 52 of the Oklahoma Statutes~~ this title.

C. Within sixty (60) days of receiving a written request from any royalty owner, or owner of a subsequently created interest, a producing owner shall provide a copy of all gas purchase contracts, gas gathering contracts, gas processing contracts or any other contract which may impact the timely or proper disclosure and payment of production proceeds to said royalty owner or owner of a subsequently created interest. Any confidentiality provision, or any other provision which hinders the free flow of information to the royalty owner or owner of a subsequent interest, contained in any agreement described herein, shall be against the public policy of this state and thus unenforceable.

D. If a court or jury finds that the operator or royalty distributor intentionally violated this section, it may assess against the operator or royalty distributor penalties in an amount not to exceed One Hundred Dollars (\$100.00) per violation of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 570.12.1 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. Any willful breach by the operator, designated royalty distributor, producing owner or working interest owner, of the obligations set forth in the Production Revenue Standards and Royalty Owner Protection Act shall authorize, among all other available relief and remedies, removal of the operator or designated royalty distributor and cancellation of the lease or Corporation Commission pooling order where determined, by a court or jury, that the willful breach warrants removal or cancellation.

B. If a court or jury finds that any operator, producing owner or working interest owner contracted for the sale of gas or oil to any pipeline company or other purchaser with the intent and result that:

1. The operator, producing owner or working interest owner received a greater amount or value than the owners of the royalty interest, in proportion to their respective interests therein; or

2. The operator, producing owner or working interest owner received a bonus or fee from the pipeline company or purchaser upon which royalties were not paid; or

3. The operator, producing owner or working interest owner received cost of production or marketing related services from the pipeline company or purchaser in exchange for reducing the price paid for production, and the lower price resulted in the operator, producing owner or working interest owner inappropriately shifting a portion of the cost of production and marketing services to the royalty owner; or

4. The operator, producing owner or working interest owner, by any other means, conspires with the pipeline company or purchaser to receive from the sale of the oil and gas more than his just

proportionate share of value therefrom, as compared to the owners of the royalty interest;

then in that event, the operator, producing owner or working interest owner shall relinquish his rights as the operator of the unit and his rights in and to the leasehold premises and unit.

C. If the court or jury finds that any pipeline company or other purchaser contracts to purchase or gather gas, oil or other hydrocarbons, with any operator, producing owner or working interest owner, as set out in subsection B of this section, with the intent to aid the operator, producing owner or working interest owner to underpay the royalty share of production, the pipeline company or purchaser shall be liable to the royalty owners for treble value of the amount of oil or gas production proceeds thus wrongfully deprived from the royalty owners.

SECTION 9. AMENDATORY 52 O.S. 2001, Section 570.14, is amended to read as follows:

Section 570.14 A. The district courts within this state shall have the sole and exclusive jurisdiction to determine the entitlement of any owner in a well to:

1. Its share of proceeds from production; ~~or~~
2. Damages ~~interest, court,~~ including interest set forth in this act;
3. Removal of the operator or designated royalty distributor;
4. Cancellation or forfeiture of the lease, pooling order or interest in the unit, pursuant to Section 570.14 of this title; and
5. Court costs, attorneys' fees or allowable litigation expenses incurred as a result of the violation of this act.

B. Any rulemaking power granted to the Corporation Commission by the Production Revenue Standards and Royalty Owners Protection Act shall neither preclude nor impair the right of any owner to obtain through the district courts remedies available under existing law or additional remedies herein granted to any owner injured in

business or property by reason of any action in violation of the provisions of the Production Revenue Standards and Royalty Owners Protection Act.

C. Any owner injured in business or property by reason of any action in violation of the provisions of the Production Revenue Standards and Royalty Owners Protection Act shall have the right to:

1. Recover actual damages so sustained; ~~and~~

2. Obtain removal of the operator or designated royalty distributor and seek cancellation or a determination of forfeiture of the lease, pooling order or interest in the well, pursuant to Section 570.14 of this title; and

3. Obtain specific performance where equitable. Nothing in this act shall be construed as limiting or precluding any claims or remedies provided by contract or existing law.

D. The prevailing party in any court proceeding brought pursuant to the Production Revenue Standards and Royalty Owner Protection Act shall be entitled to recover the costs of the suit, including but not limited to reasonable attorney and expert witness fees. A reasonable attorney fee pursuant to this subsection may be determined, in the district court's discretion, based upon either the lodestar method or the percentage of fund method. Lodestar method means the number of hours reasonably expended, multiplied by the prevailing hourly rate in the community and then adjusted for other factors as set forth in subsection E of this section. The percentage of fund method means a percentage of the total recovery for the prevailing party.

E. In arriving at just compensation, the court shall consider the risk of litigation and the following factors:

1. Time and labor required;

2. The novelty and difficulty of the case;

3. The skill required to perform the legal service properly;

4. The preclusion of other employment by the attorney due to acceptance of the case;

5. The customary fee;

6. Whether the fee is fixed or contingent;

7. Time limitations imposed by the client or the circumstances;

8. The amount in controversy and the results obtained;

9. The experience, reputation and ability of the attorney;

10. Whether or not the case is an undesirable case;

11. The nature and length of the professional relationship with the client; and

12. Awards in similar cases.

F. In any class action brought pursuant to Section 2023 of Title 12 of the Oklahoma Statutes to enforce the terms of the Production Revenue Standards and Royalty Owner Protection Act, the trial judge:

1. Shall conduct an evidentiary hearing to determine a fair and reasonable fee for class counsel;

2. Shall act as an adversary for, and in a fiduciary capacity on behalf of, the class when determining a fair and reasonable attorney fee for class counsel;

3. Shall award class counsel a base attorney fee in the range of thirty to forty percent (30% to 40%) of the total common fund; and

4. May adjust the base attorneys fee, either higher or lower, based upon an analysis of the factors set forth in subsection E of this section.

~~D.~~ G. For purposes of the Production Revenue Standards and Royalty Owner Protection Act, the statute of limitations on actions brought pursuant to the provisions of the Production Revenue Standards and Royalty Owner Protection Act shall be five (5) years from the date the cause of action shall have accrued, a well depletes and the operator complies with Section 570.7 of this title;

provided however, nothing shall create, limit or expand any statute of limitations applicable to production occurring prior to September 1, 1992.

SECTION 10. AMENDATORY 52 O.S. 2001, Section 570.15, is amended to read as follows:

Section 570.15 Notwithstanding the effective dates of various provisions of the Production Revenue Standards and Royalty Owner Protection Act, performance under the terms of the Production Revenue Standards and Royalty Owner Protection Act which causes proper payment of proceeds to owners legally entitled thereto for sales of gas production subsequent to the date of enactment but prior to the effective date of the Production Revenue Standards and Royalty Owner Protection Act will satisfy duties or obligations pertaining to such sales under Sections 87.1 and 540 of Title 52 of the Oklahoma Statutes in effect on or before the effective date of the Production Revenue Standards and Royalty Owner Protection Act.

SECTION 11. AMENDATORY 68 O.S. 2001, Section 1024, is amended to read as follows:

Section 1024. A. The Tax Commission may upon written request, release to any person the volume of production, during any specified available period of time, of any substance taxable pursuant to the provisions of this article from any lease lawfully plugged, pursuant to the laws of this state after certification of said plugging by the Oklahoma Corporation Commission.

B. The Tax Commission may, upon oral or written request, release the lease name, legal description, Oklahoma Tax Commission assigned production unit number for any lease or unit in this state and the Oklahoma Tax Commission assigned purchaser or producer reporting number and purchaser or producer name to any person.

C. The Tax Commission may, upon written request, release the volume of production, producing formation and well classification, active or inactive, on a lease by lease basis to any person.

D. The Tax Commission shall, upon written request, release information provided in the Reclaimer's and Transporters Monthly Tax Report of Lease Production Stored and Sold, OTC Form 323A-7-81, or any form succeeding this form, to any person.

E. The Tax Commission shall, upon written request, release the following information to any person executing an affidavit, under penalty of perjury, declaring that they are an interest owner in the well, lease or unit for which the information is requested:

1. The gross, exempt and net volumes and values of production, tax reimbursements, additional values and taxes remitted thereon, during any available period of time of any substance taxable pursuant to the provisions of this article or the Petroleum Excise Tax of this state.

2. The lease name, legal description, industry or company well or lease unique number, Oklahoma Tax Commission assigned production unit number for any lease or unit in this state and the Oklahoma Tax Commission assigned purchaser or producer reporting number and purchaser or producer name.

3. The producing formation and well classification, active or inactive, on a lease by lease basis and if available, on a well by well basis, and British Thermal Unit content, NGPA classification, gas code, gravity, tier, category and oil class.

F. It is specifically provided that:

1. The Tax Commission shall establish a schedule of costs for the furnishing of the information in accordance with the provisions of subsections A, ~~and B,~~ and E of this section and shall collect said costs; provided however, that a person requesting information pursuant to subsection E who executed an affidavit, under penalty of perjury, declaring that the person is an interest owner in the well, lease or unit for which the information is requested, shall be provided the information without cost;

2. No civil or criminal liability shall attach to any member of the Tax Commission, or to any agents, servants, or employees of the Tax Commission for any error or omission in the preparation and publication of the requested information;

3. No costs shall be charged to the ~~Oklahoma~~ Corporation Commission Oil and Gas Conservation Division or Energy Conservation Services Division or to the Oklahoma Geological Survey for examination of the files and records of the Tax Commission; and

4. All funds collected pursuant to the provisions of this section shall be paid to the State Treasury and deposited to the credit of the Tax Commission Revolving Fund.

G. A duly authorized agent of the ~~Oklahoma~~ Corporation Commission Oil and Gas Conservation Division or Energy Conservation Services Division or of the Oklahoma Geological Survey may examine necessary records and files of the Tax Commission relating to the gross production tax for the purpose of estimating or forecasting reserves or production of oil or gas. Such examination shall be limited to information of volume of production, producing formation and well classification, active or inactive, on a lease by lease basis.

H. A duly authorized agent of the Commissioners of the Land Office may examine necessary records and files of the Tax Commission relating to the gross production tax for the purpose of determining the amount of erroneous payment of gross production tax made to the ~~Oklahoma~~ Tax Commission after January 1, 1978.

I. The provisions of this section shall be exceptions to the provisions of Sections 205 and 205.1 of this title and said sections shall be strictly construed against the disclosure of any other information contained in the records and files of the Tax Commission except as otherwise provided by law.

J. Any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable as provided for in Section 205 of this title.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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MJM

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