

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 1615

By: Bingman of the Senate

and

Trebilcock of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to oil and gas; creating the Oil and
11 Gas Owners' Lien Act of 2010; providing definitions;
12 granting an oil and gas lien to certain interest
13 owners; describing an oil and gas lien; providing for
14 continuation of an oil and gas lien; making an oil
15 and gas lien valid and not dependent on possession;
16 providing for retention and transfer of certain
17 rights upon transfer of oil and gas rights; providing
18 for the perfection of an oil and gas security
19 interest; providing for continuation of an oil and
20 gas lien after the commingling of the oil or gas;
21 establishing the priority of an oil and gas lien in
22 commingled product; establishing certain rights of an
23 oil and gas purchaser and certain obligations under
24 certain circumstances; establishing the priority of
an oil and gas lien; making certain exception;
limiting the affect of law on the passing of legal
title and certain rights; prohibiting a requirement
for an interest owner to relinquish or release an oil
and gas lien upon certain payment; making certain
relinquishments or releases void; allowing an
interest owner to waive or relinquish an oil and gas
lien under certain conditions; providing for the
expiration of an oil and gas lien; providing for
judicial actions to enforce an oil and gas lien;
requiring the tolling of certain time period if
certain proceedings are commenced; allowing the
joining of actions to enforce oil and gas liens;
specifying certain costs allowed in certain actions;

1 limiting affect of law on certain actions; limiting
2 impairment of certain rights of an operator;
3 providing for operation of a good faith tender of
4 funds under certain circumstances; making certain
5 rights cumulative; providing for construction of the
6 rights of an interest owner; preserving the rights of
7 an interest owner accrued under certain law;
8 repealing 52 O.S. 2001, Sections 548.1, 548.2, 548.3,
9 548.4, 548.5 and 548.6, which relate to the Oil and
10 Gas Owners' Lien Act; providing for codification; and
11 declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 549.1 of Title 52, unless there
is created a duplication in numbering, reads as follows:

SHORT TITLE

This act shall be known and may be cited as the "Oil and Gas
Owners' Lien Act of 2010".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 549.2 of Title 52, unless there
is created a duplication in numbering, reads as follows:

DEFINITIONS

As used in the Oil and Gas Owners' Lien Act of 2010:

1. "Affiliate" means any person:

- a. who is controlled, directly or indirectly, by a first
purchaser, or

1 b. who controls, directly or indirectly, a first
2 purchaser.

3 "Control" or "controlled by" means the possession, directly or
4 indirectly, of the power to direct or cause the direction of the
5 management and policies of a person, whether through ownership, by
6 contract, or otherwise;

7 2. "Agreement to sell" means any enforceable agreement, whether
8 express or implied, whether oral or written, by which an interest
9 owner, either directly or through a representative, agrees to sell
10 or is deemed by applicable contract or law to have agreed to sell
11 oil or gas upon or after severance to a first purchaser;

12 3. "Article 9" means Article 9 of the Oklahoma Uniform
13 Commercial Code in effect as of the relevant date or a comparable
14 article under the uniform commercial code of another state to the
15 extent applicable;

16 4. "First purchaser" means the first person that purchases oil
17 or gas from an interest owner, either directly or through a
18 representative, under an agreement to sell;

19 5. "Gas" means natural gas and casinghead gas and all
20 constituent parts thereof both before and after processing but prior
21 to the time at which a first purchaser transfers title, possession
22 or control thereof to a purchaser;

23 6. "Interest owner" means a person owning an interest of any
24 kind or nature in oil and gas rights before the acquisition thereof

1 by a first purchaser. Interest owner includes a representative and
2 a transferee interest owner;

3 7. "Oil" means oil and condensate and all constituent parts
4 thereof whether before or after processing but prior to the time at
5 which a first purchaser transfers title, possession or control
6 thereto to a purchaser;

7 8. "Oil and gas lien" means the lien granted by this act;

8 9. a. "Oil and gas rights" means, as to any lands within the
9 State of Oklahoma, any right, title or interest,
10 whether legal or equitable, in and to:

11 (1) oil,

12 (2) gas,

13 (3) proceeds,

14 (4) an oil and gas lease,

15 (5) a pooling order, and

16 (6) an agreement to sell.

17 b. By way of illustration and not limitation, oil and gas
18 rights include, but are not limited to:

19 (1) oil or gas in place prior to severance,

20 (2) oil or gas production, or the right to receive a
21 portion of the proceeds, upon severance,

22 (3) any interest or estate in, by, through or under an
23 oil and gas lease,
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- 1 (4) rights acquired under a pooling order insofar as
2 such rights relate to: ownership of oil and gas,
3 the right to proceeds, or the right to enter into
4 an agreement to sell,
5 (5) a legal or equitable right to receive
6 consideration of whatsoever nature under an
7 agreement to sell, or
8 (6) a mortgage lien or security interest in any of
9 the foregoing;

10 10. "Operator" means a person engaged in the severance of oil
11 or gas for that person alone, for other persons only, or for that
12 person and others;

13 11. "Permitted lien" means any of the following liens or
14 security interests:

- 15 a. a mortgage lien or security interest granted by a
16 first purchaser in favor of a person not an affiliate
17 of the first purchaser which mortgage lien or security
18 interest secures payment under a written instrument of
19 indebtedness signed by the first purchaser and
20 accepted in writing by the payee thereof prior to the
21 effective date of this act with a principal amount and
22 a fixed maturity stated therein; provided, however, a
23 permitted lien does not include a mortgage lien or
24 security interest which:

- 1 (1) secures payment of any indebtedness incurred from
2 and after the effective date of this act,
- 3 (2) secures payment under a written instrument of
4 indebtedness not signed by a first purchaser and
5 accepted in writing by the payee thereof prior to
6 the effective date of this act,
- 7 (3) secures payment under a written instrument of
8 indebtedness modified, amended or restated from
9 or after the effective date of this act which
10 modification, amendment or restatement increases
11 the principal amount which was owing at the
12 effective date of this act,
- 13 (4) secures payment under a written instrument of
14 indebtedness modified, amended or restated from
15 or after the effective date of this act which
16 modification, amendment or restatement extends
17 the stated maturity thereof which was in effect
18 at the effective date of this act, or
- 19 (5) is not validly perfected with a first priority
20 against the claims of all persons under
21 applicable law other than persons holding a
22 statutory or regulatory lien as to which first
23 priority is granted by statute or regulation, or
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1 b. a validly perfected and enforceable lien created by
2 statute or by rule or regulation of a governmental
3 agency for storage or transportation charges,
4 including terminal charges, tariffs, demurrage,
5 insurance, labor or other charges, owed by a first
6 purchaser in relation to oil or gas originally
7 purchased under an agreement to sell; provided,
8 however, a permitted lien does not include any such
9 lien:

10 (1) which is in favor of an affiliate of a first
11 purchaser unless such lien is authorized by the
12 statute, rule or regulation creating such lien,
13 or

14 (2) which is for charges in excess of ninety (90)
15 days from the time the first purchaser delivers
16 such oil or gas for such storage or
17 transportation;

18 12. "Person" means any individual, executor, administrator,
19 estate, agent, trust, trustee, institution, receiver, business
20 trust, firm, corporation, partnership, limited liability company,
21 cooperative, joint venture, governmental entity or agency,
22 association or any other group or combination acting as a unit;

23 13. "Pooling order" means an order issued by the Corporation
24 Commission that requires the owners of the right to drill for oil or

1 gas in a drilling and spacing unit to pool their interests for the
2 development of such drilling and spacing unit;

3 14. "Proceeds" means any of the following when paid or to be
4 paid in consideration of, or as a consequence of, the sale of oil or
5 gas under an agreement to sell: oil or gas on or after severance;
6 inventory of raw, refined or manufactured oil or gas after
7 severance; rights to or products of any of the foregoing; cash
8 proceeds; accounts; chattel paper; instruments; documents; or
9 payment intangibles with respect to any of the foregoing;

10 15. "Purchaser" means a person which is not an affiliate of a
11 first purchaser and which takes, receives or purchases oil or gas
12 from a first purchaser;

13 16. "Representative" means any person who is authorized, either
14 expressly or by implication, including, without limitation, an
15 operator or a broker so authorized, to sell oil or gas on behalf of,
16 or for the benefit of, an interest owner under an agreement to sell
17 or to receive on behalf of an interest owner the consideration under
18 an agreement to sell;

19 17. "Sales price" means the proceeds a first purchaser agrees
20 to pay an interest owner or representative under an agreement to
21 sell;

22 18. "Security interest" means a security interest governed by
23 Article 9;

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1 19. "Severance" means that point in time at which oil or gas is
2 reduced to possession at the mouth of the wellbore of an oil and gas
3 well;

4 20. "Transferor interest owner" means an interest owner that
5 transfers or conveys oil and gas rights, in whole or in part; and

6 21. "Transferee interest owner" means a person that acquires
7 oil and gas rights from a transferor interest owner.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 549.3 of Title 52, unless there
10 is created a duplication in numbering, reads as follows:

11 NATURE, EXTENT AND DURATION OF OIL AND GAS LIEN

12 A. To secure the obligations of a first purchaser to pay the
13 sales price, each interest owner is hereby granted an oil and gas
14 lien to the extent of the interest owner's interest in oil and gas
15 rights. The oil and gas lien granted by this act is granted and
16 shall exist as part of and incident to the ownership of oil and gas
17 rights.

18 B. An oil and gas lien:

19 1. Exists in and attaches immediately to all oil and gas on the
20 effective date of this act;

21 2. Continues uninterrupted and without lapse in all oil and gas
22 upon and after severance; and

23 3. Continues uninterrupted and without lapse in and to all
24 proceeds.

1 C. An oil and gas lien exists until the interest owner or
2 representative first entitled to receive the sales price has
3 received the sales price. Notwithstanding the immediately preceding
4 sentence, as between an interest owner and a representative of an
5 interest owner or any person claiming adversely to such interest
6 owner or representative, such interest owner's oil and gas lien
7 continues uninterrupted and without lapse in proceeds in the
8 possession or control of a representative until the interest owner
9 on whose behalf such representative acts receives such proceeds in
10 full. When a first purchaser, in good faith, pays the sales price
11 to an interest owner or a representative otherwise apparently
12 entitled to receive the sales price and the first purchaser is
13 without actual knowledge that such interest owner or representative
14 is not entitled to receive the sales price so paid, then such first
15 purchaser takes free of the oil and gas lien otherwise applicable to
16 the oil or gas for which such payment was made. Notwithstanding the
17 immediately preceding sentence, the oil and gas lien will continue
18 uninterrupted in the proceeds paid to or otherwise due the interest
19 owner or representative.

20 D. The validity of an oil and gas lien shall not be dependent
21 on possession of the oil or gas by an interest owner or
22 representative. No oil and gas lien shall become or be deemed to be
23 void or expired by reason of a change or transfer of the actual or
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1 constructive possession of or title to the oil or gas from the
2 interest owner or representative to a first purchaser or purchaser.

3 E. On the conveyance or transfer of any oil and gas rights by a
4 transferor interest owner, the oil and gas lien vested in the
5 transferor interest owner immediately before the conveyance or
6 transfer shall remain with the transferor interest owner to the
7 extent of any oil and gas rights retained by the transferor interest
8 owner.

9 F. On the conveyance or transfer of any oil and gas rights by a
10 transferor interest owner, the oil and gas lien vested in the
11 transferor interest owner immediately before the conveyance or
12 transfer shall be transferred to and attach automatically to the oil
13 and gas rights acquired by the transferee interest owner
14 uninterrupted and without lapse and as part of and incident to the
15 oil and gas rights so transferred or conveyed.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 549.4 of Title 52, unless there
18 is created a duplication in numbering, reads as follows:

19 PERFECTON OF OIL AND GAS SECURITY INTEREST

20 An oil and gas lien is granted and exists as part of and
21 incident to the ownership of oil and gas rights and is perfected
22 automatically without the need to file a financing statement or any
23 other type of documentation. An oil and gas lien exists and is
24 perfected from the effective date of this act.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 549.5 of Title 52, unless there
3 is created a duplication in numbering, reads as follows:

4 COMMINGLING

5 If oil or gas in which there exists more than one oil and gas
6 lien is commingled with other oil or gas in such a manner that the
7 identity of the specific oil or gas is lost, then the oil and gas
8 lien continues without interruption into and attaches to any such
9 resulting commingled product and is perfected automatically as of
10 the date of its original perfection but only as to volumes out of
11 the commingled product equal to the volume of product to which the
12 oil and gas lien originally attached. In such event, the oil and
13 gas lien in the commingled product has priority over any security
14 interest or other lien that is not an oil and gas lien or permitted
15 lien, whether or not the security interest or other lien has been
16 properly perfected. If more than one oil and gas lien attaches to
17 the commingled product, then the oil and gas liens rank equally in
18 the proportion that the respective sales prices secured by each oil
19 and gas lien bears as a percentage of the total of the sales prices
20 secured by all oil and gas liens applicable to the production at the
21 time the production was commingled. This section is intended to
22 recognize the continuation of oil and gas lien rights of an interest
23 owner in the commingled product stream only as to a volume of oil or
24 gas proportionate to the volume of oil or gas that originated from

1 such interest owner, with that volume of the commingled product
2 being considered to have maintained a distinct identity as being
3 available for sale or transportation under the specific contractual
4 arrangements applicable to the production at the time it entered the
5 commingled product stream.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 549.6 of Title 52, unless there
8 is created a duplication in numbering, reads as follows:

9 RIGHTS OF PURCHASERS

10 A purchaser takes free of any oil and gas lien otherwise
11 applicable to the oil or gas so purchased, and shall be relieved of
12 any obligations created by subsection A of Section 570.10 of Title
13 52 of the Oklahoma Statutes, only in the event that either of the
14 following occur:

15 1. The purchaser is deemed to be a buyer in the ordinary course
16 of the first purchaser's business as defined in Article 9; or

17 2. The purchaser has paid all of the consideration due the
18 first purchaser, including by exchange of oil or gas, net-out or
19 set-off, under all applicable enforceable contracts in existence at
20 the time of the payment.

21 Notwithstanding the foregoing, the oil and gas lien will
22 continue uninterrupted in the proceeds paid to or otherwise due the
23 first purchaser.

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1 Except as specifically set forth in this section, an oil and gas
2 lien has priority over the rights of any purchaser.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 549.7 of Title 52, unless there
5 is created a duplication in numbering, reads as follows:

6 PRIORITY RELATIVE TO OTHER LIENS OR SECURITY INTERESTS

7 Except for a permitted lien, an oil and gas lien is a lien that
8 takes priority over any other lien, whether arising by contract,
9 law, equity or otherwise, or any security interest.

10 SECTION 8. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 549.8 of Title 52, unless there
12 is created a duplication in numbering, reads as follows:

13 TITLE

14 The provisions of this act shall not affect:

15 1. The time at which legal title to oil and gas may pass by
16 agreement or operation of law subject to an oil and gas lien;

17 2. The right of a first purchaser to take or receive oil and
18 gas under the terms of a division order, provided that such division
19 order shall not modify, waive or abrogate in any respect the rights
20 of an interest owner under this act; or

21 3. Subject to the provisions of Section 9 of this act, the
22 right of a first purchaser to take or receive oil and gas under an
23 agreement to sell.

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1 on behalf of an interest owner to prepay or escrow the sales price
2 under an agreement to sell in form and substance satisfactory to the
3 interest owner and performs all of the first purchaser's obligations
4 thereunder.

5 SECTION 10. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 549.10 of Title 52, unless there
7 is created a duplication in numbering, reads as follows:

8 EXPIRATION OF LIEN - ENFORCEMENT - JOINDER AND CONSOLIDATION -
9 COSTS - PERSONAL ACTIONS - OTHER RIGHTS AND REMEDIES

10 A. An oil and gas lien shall expire, as to an interest owner,
11 one (1) year after the last day of the month following the date
12 proceeds from the sale of oil or gas subject to such lien are
13 required by law or contract to be paid to such interest owner but
14 only as to the oil or gas sold during such month, unless an action
15 to enforce the oil and gas lien is commenced within such time in a
16 court of competent jurisdiction. In addition to any other court of
17 competent jurisdiction, an action to enforce the oil and gas lien
18 may be commenced in the district court of the county in which there
19 is located the oil and gas well from which the oil or gas is
20 produced, or wherever the oil or gas unpaid for or the proceeds may
21 be found. Notwithstanding the foregoing, the commencement of any
22 proceeding by or against any person claiming an interest in any
23 property subject to the oil and gas lien seeking to adjudicate such
24 person as bankrupt or insolvent, or seeking liquidation, winding up,

1 reorganization, arrangement, adjustment, protection, relief, or
2 composition of such person or such person's debts under any law
3 relating to bankruptcy, insolvency or reorganization or relief of
4 debtors, or seeking the entry of an order for relief or the
5 appointment of a receiver, trustee or other similar official for
6 such person or for any substantial part of such person's property
7 shall toll the foregoing one (1) year period in which to commence an
8 action to enforce the oil and gas lien for an additional period of
9 ninety (90) days from the earlier of:

10 1. The final conclusion or dismissal of such proceedings; or

11 2. The date final relief is obtained from the applicable
12 tribunal authorizing the commencement of such action.

13 Proceedings to enforce oil and gas liens involving more than one (1)
14 oil and gas well in one (1) county can be joined by an interest
15 owner in the same action. Any number of persons claiming oil and
16 gas liens with respect to the oil or gas from the same oil and gas
17 well or wells may join in the same action and where separate actions
18 are commenced, the district court may consolidate them. The
19 District Court shall allow as part of the costs of the action all
20 costs of collection including, without limitation, reasonable
21 attorneys fees for the prevailing party in the trial and appellate
22 tribunals.

23 B. Nothing in this act shall be construed to impair or affect
24 the right of any interest owner to maintain a personal action to

1 recover the debt against any person liable for payment of the sales
2 price or to exercise any other rights and remedies available at law
3 or in equity.

4 SECTION 11. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 549.11 of Title 52, unless there
6 is created a duplication in numbering, reads as follows:

7 RIGHTS OF OPERATOR NOT IMPAIRED

8 This act does not impair an operator's right to be paid, set-off
9 or withhold funds from another interest owner as security for or in
10 satisfaction of any debt or security interest. In case of a dispute
11 between an operator and another interest owner, a good faith tender
12 of funds by anyone operates as a tender of the funds to both in any
13 of the following circumstances:

- 14 1. To the person who the operator and other interest owner
15 jointly direct the first purchaser in writing to pay;
- 16 2. To a person who otherwise shows himself or herself to be the
17 one entitled to the funds; or
- 18 3. To a court of competent jurisdiction in the event litigation
19 or bankruptcy.

20 SECTION 12. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 549.12 of Title 52, unless there
22 is created a duplication in numbering, reads as follows:

23 RIGHTS CUMULATIVE

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1 A. The provisions of this act and the rights granted under this
2 act are intended to be cumulative with all other rights an interest
3 owner may otherwise have at law or in equity. To the extent that
4 there is a conflict between the provisions of this act and any other
5 rights an interest owner has at law or in equity, then the rights of
6 the interest owner are to be liberally construed to the end that
7 those rights which afford the interest owner the most comprehensive
8 protection to secure the receipt by the interest owner of the sales
9 price shall be given preference.

10 B. The rights of any interest owner accrued under the
11 provisions of Section 548.1 et seq. of Title 52 of the Oklahoma
12 Statutes prior to the effective date of this act shall be preserved
13 to the extent not in conflict with the provisions of this act.

14 SECTION 13. REPEALER 52 O.S. 2001, Sections 548.1,
15 548.2, 548.3, 548.4, 548.5 and 548.6, are hereby repealed.

16 SECTION 14. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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