

1 ENGROSSED SENATE
2 BILL NO. 1615

By: Bingman of the Senate

3 and

4 Trebilcock of the House

5
6 [oil and gas- creating the Oil and Gas Owners' Lien Act
7 of 2010 - codification - repealer -
8 emergency]

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

14 SHORT TITLE

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

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

20 DEFINITIONS

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

22 1. "Affiliate" means any person:

- 23 a. who is controlled, directly or indirectly, by a first
24 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 agreement, whether express or
8 implied, whether oral or written, by which an interest owner, either
9 directly or through a representative, agrees to sell or is deemed by
10 applicable contract or law to have agreed to sell oil or gas upon or
11 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 under an agreement to sell;

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

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

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,
24

- 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, or
- 22 b. a validly perfected and enforceable lien for storage
23 or transportation charges, including terminal charges
24 but excluding demurrage, insurance, labor or other

1 charges, owed by a first purchaser in relation to
2 commingled oil or gas originally purchased under an
3 agreement to sell; provided, however, a permitted lien
4 does not include any such lien which is in favor an
5 affiliate of a first purchaser or which is for
6 charges in excess of ninety (90) days from the time
7 the first purchaser delivers such commingled oil or
8 gas for such storage or transportation;

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

14 13. "Pooling order" means an order issued by the Corporation
15 Commission that requires the owners of the right to drill for oil or
16 gas in a drilling and spacing unit to pool their interests for the
17 development of such drilling and spacing unit;

18 14. "Proceeds" means any of the following when paid or to be
19 paid in consideration of, or as a consequence of, the sale of oil or
20 gas under an agreement to sell: oil or gas on or after severance;
21 inventory of raw, refined or manufactured oil or gas after
22 severance; rights to or products of any of the foregoing; cash
23 proceeds; accounts; chattel paper; instruments; documents; or
24 payment intangibles with respect to any of the foregoing;

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

4 16. "Representative" means any person who is authorized, either
5 expressly or by implication, including, without limitation, an
6 operator or a broker so authorized, to sell oil or gas on behalf of,
7 or for the benefit of, an interest owner under an agreement to sell
8 or to receive on behalf of an interest owner the consideration under
9 an agreement to sell;

10 17. "Sales price" means the proceeds a first purchaser agrees
11 to pay an interest owner or representative under an agreement to
12 sell;

13 18. "Security interest" means a security interest governed by
14 Article 9 of the Oklahoma Uniform Commercial Code;

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

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

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

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

1 NATURE, EXTENT AND DURATION OF OIL AND GAS LIEN

2 A. To secure the obligations of a first purchaser to pay the
3 sales price, each interest owner is hereby granted an oil and gas
4 lien to the extent of the interest owner's interest in oil and gas
5 rights. The oil and gas lien granted by this act is granted and
6 shall exist as part of and incident to the ownership of oil and gas
7 rights.

8 B. An oil and gas lien:

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

11 2. Continues uninterrupted and without lapse in all oil and gas
12 upon and after severance; and

13 3. Continues uninterrupted and without lapse in and to all
14 proceeds.

15 C. An oil and gas lien exists until the interest owner or
16 representative first entitled to receive the sales price has
17 received the sales price. Notwithstanding the immediately preceding
18 sentence, as between an interest owner and a representative of an
19 interest owner or any person claiming adversely to such interest
20 owner or representative, such interest owner's oil and gas lien
21 continues uninterrupted and without lapse in proceeds in the
22 possession or control of a representative until the interest owner
23 on whose behalf such representative acts receives such proceeds in
24 full.

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

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

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

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

23 PERFECTIOIN OF OIL AND GAS SECURITY INTEREST
24

1 An oil and gas lien is granted and exists as part of and
2 incident to the ownership of oil and gas rights and is perfected
3 automatically without the need to file a financing statement or any
4 other type of documentation. An oil and gas lien exists and is
5 perfected from the effective date of this act.

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

9 COMMINGLING

10 If oil or gas in which there exists more than one oil and gas
11 lien is commingled with other oil or gas in such a manner that the
12 identity of the specific oil or gas is lost, then the oil and gas
13 lien continues without interruption into and attaches to any such
14 resulting commingled product and is perfected automatically as of
15 the date of its original perfection but only as to the volumes to
16 which the oil and gas lien originally attached. In such event, the
17 oil and gas lien in the commingled product has priority over any
18 other lien that is not an oil and gas lien or security interest,
19 whether or not the other lien or security interest has been properly
20 perfected. If more than one oil and gas lien attaches to the
21 commingled product, then the oil and gas liens rank equally in the
22 proportion that the respective sales prices secured by each oil and
23 gas lien bears as a percentage of the total of the sales prices

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1 secured by all oil and gas liens applicable to the production at the
2 time the production was commingled.

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

6 RIGHTS OF PURCHASERS

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

- 12 1. The purchaser is deemed to be a buyer in the ordinary course
13 of the first purchaser's business as defined in Article 9; and
- 14 2. The purchaser has paid the first purchaser in accordance
15 with all applicable written contracts in existence at the time of
16 the payment.

17 Notwithstanding the foregoing, the oil and gas lien will
18 continue uninterrupted in the proceeds paid to or otherwise due the
19 first purchaser.

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

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

1 PRIORITY RELATIVE TO OTHER LIENS OR SECURITY INTERESTS

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

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

8 TITLE

9 The provisions of this act shall not affect:

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

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

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

19 SECTION 9. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 549.9 of Title 52, unless there
21 is created a duplication in numbering, reads as follows:

22 WAIVER

23 No interest owner shall be required, as a condition or term of
24 an agreement to sell or otherwise, to waive, relinquish or release

1 any oil and gas lien or any rights under this act other than upon
2 payment in full of the sales price or agree to any provision that
3 would apply the law of any state other than the State of Oklahoma
4 insofar as the same relates to rights under this act, and any such
5 purported waiver, relinquishment, release, or provision shall be
6 void as a matter of the public policy of this state.

7 Notwithstanding the preceding sentence, any interest owner may
8 waive, relinquish or release any oil and gas lien or any rights
9 under this act or agree to a provision that would apply the law of
10 any state other than the State of Oklahoma insofar as the same
11 relates to rights under this act only as to such interest owner's
12 oil and gas rights provided the first purchaser either posts a
13 letter of credit in form and amount satisfactory to the interest
14 owner or agrees to a binding contractual arrangement satisfactory in
15 form and content to prepay or escrow the sales price under an
16 agreement to sell in form and substance satisfactory to the interest
17 owner and performs all of the first purchaser's obligations
18 thereunder.

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

22 EXPIRATION OF LIEN - ENFORCEMENT - JOINDER AND CONSOLIDATION -
23 COSTS - PERSONAL ACTIONS - OTHER RIGHTS AND REMEDIES

24

1 A. An oil and gas lien shall expire, as to an interest owner,
2 one (1) year after the last day of the month following the date
3 proceeds from the sale of oil or gas subject to such lien are
4 required by law or contract to be paid to such interest owner but
5 only as to the oil or gas sold during such month, unless an action
6 to enforce the oil and gas lien is commenced within such time in a
7 court of competent jurisdiction. In addition to any other court of
8 competent jurisdiction, an action to enforce the oil and gas lien
9 may be commenced in the district court of the county in which there
10 is located the oil and gas well from which the oil or gas is
11 produced, or wherever the oil or gas unpaid for or the proceeds may
12 be found. Notwithstanding the foregoing, the commencement of any
13 proceeding by or against any person claiming an interest in any
14 property subject to the oil and gas lien seeking to adjudicate such
15 person as bankrupt or insolvent, or seeking liquidation, winding up,
16 reorganization, arrangement, adjustment, protection, relief, or
17 composition of such person or such person's debts under any law
18 relating to bankruptcy, insolvency or reorganization or relief of
19 debtors, or seeking the entry of an order for relief or the
20 appointment of a receiver, trustee or other similar official for
21 such person or for any substantial part of such person's property
22 shall toll the foregoing one (1) year period in which to commence an
23 action to enforce the oil and gas lien for an additional period of
24 ninety (90) days from the earlier of:

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

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

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

14 B. Nothing in this act shall be construed to impair or affect
15 the right of any interest owner to maintain a personal action to
16 recover the debt against any person liable for payment of the sales
17 price or to exercise any other rights and remedies available at law
18 or in equity.

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

22 RIGHTS OF OPERATOR NOT IMPAIRED

23 This act does not impair an operator's right to be paid, set-off
24 or withhold funds from another interest owner as security for or in

1 satisfaction of any debt or security interest. In case of a dispute
2 between an operator and another interest owner, a good faith tender
3 of funds by anyone operates as a tender of the funds to both in any
4 of the following circumstances:

5 1. To the person who the operator and other interest owner
6 jointly direct the first purchaser in writing to pay;

7 2. To a person who otherwise shows himself or herself to be the
8 one entitled to the funds; or

9 3. To a court of competent jurisdiction in the event litigation
10 or bankruptcy.

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

14 RIGHTS CUMULATIVE

15 A. The provisions of this act and the rights granted under this
16 act are intended to be cumulative with all other rights an interest
17 owner may otherwise have at law or in equity. To the extent that
18 there is a conflict between the provisions of this act and any other
19 rights an interest owner has at law or in equity, then the rights of
20 the interest owner are to be liberally construed to the end that
21 those rights which afford the interest owner the most comprehensive
22 protection to secure the receipt by the interest owner of the sales
23 price shall be given preference.

24

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

5 SECTION 13. REPEALER 52 O.S. 2001, Sections 548.1,
6 548.2, 548.3, 548.4, 548.5 and 548.6, are hereby repealed.

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

11 Passed the Senate the 10th day of March, 2010.

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Presiding Officer of the Senate

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15 Passed the House of Representatives the ____ day of _____,
16 2010.

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Presiding Officer of the House
of Representatives

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