

THE HOUSE OF REPRESENTATIVES
Monday, April 5, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 1615

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1615 - By:
BINGMAN of the Senate and TREBILCOCK of the House.

An Act relating to oil and gas; creating the Oil and Gas Owners' Lien Act of 2010; providing definitions; granting an oil and gas lien to certain interest owners; describing an oil and gas lien; providing for continuation of an oil and gas lien; making an oil and gas lien valid and not dependent on possession; providing for retention and transfer of certain rights upon transfer of oil and gas rights; providing for the perfection of an oil and gas security interest; providing for continuation of an oil and gas lien after the commingling of the oil or gas; establishing the priority of an oil and gas lien in commingled product; establishing certain rights of an oil and gas purchaser and certain obligations under 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; limiting affect of law on certain actions; limiting impairment of certain rights of an operator; providing for operation of a good faith tender of funds under certain circumstances; making certain rights cumulative; providing for construction of the rights of an interest owner; preserving the rights of an interest owner accrued under certain law; repealing 52 O.S. 2001, Sections 548.1, 548.2, 548.3, 548.4, 548.5 and 548.6, which relate to the Oil and Gas Owners' Lien Act; providing for codification; and declaring an emergency.

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

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

4 SHORT TITLE

5 This act shall be known and may be cited as the "Oil and Gas Owners' Lien Act of
6 2010".

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

10 DEFINITIONS

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

12 1. "Affiliate" means any person:

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

14 b. who controls, directly or indirectly, a first purchaser.

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

1 2. “Agreement to sell” means any enforceable agreement, whether express or
2 implied, whether oral or written, by which an interest owner, either directly or through a
3 representative, agrees to sell or is deemed by applicable contract or law to have agreed to
4 sell oil or gas upon or after severance to a first purchaser;

5 3. “Article 9” means Article 9 of the Oklahoma Uniform Commercial Code in effect
6 as of the relevant date or a comparable article under the uniform commercial code of
7 another state to the extent applicable;

8 4. “First purchaser” means the first person that purchases oil or gas from an
9 interest owner, either directly or through a representative, under an agreement to sell;

10 5. “Gas” means natural gas and casinghead gas and all constituent parts thereof
11 both before and after processing but prior to the time at which a first purchaser transfers
12 title, possession or control thereof to a purchaser;

13 6. “Interest owner” means a person owning an interest of any kind or nature in oil
14 and gas rights before the acquisition thereof by a first purchaser. Interest owner
15 includes a representative and a transferee interest owner;

16 7. “Oil” means oil and condensate and all constituent parts thereof whether before
17 or after processing but prior to the time at which a first purchaser transfers title,
18 possession or control thereto to a purchaser;

19 8. “Oil and gas lien” means the lien granted by this act;

20 9. a. “Oil and gas rights” means, as to any lands within the State of
21 Oklahoma, any right, title or interest, whether legal or equitable, in
22 and to:

- 1 (1) oil,
- 2 (2) gas,
- 3 (3) proceeds,
- 4 (4) an oil and gas lease,
- 5 (5) a pooling order, and
- 6 (6) an agreement to sell.
- 7 b. By way of illustration and not limitation, oil and gas rights include,
- 8 but are not limited to:
- 9 (1) oil or gas in place prior to severance,
- 10 (2) oil or gas production, or the right to receive a portion of the
- 11 proceeds, upon severance,
- 12 (3) any interest or estate in, by, through or under an oil and gas lease,
- 13 (4) rights acquired under a pooling order insofar as such rights
- 14 relate to: ownership of oil and gas, the right to proceeds, or the
- 15 right to enter into an agreement to sell,
- 16 (5) a legal or equitable right to receive consideration of whatsoever
- 17 nature under an agreement to sell, or
- 18 (6) a mortgage lien or security interest in any of the foregoing;
- 19 10. "Operator" means a person engaged in the severance of oil or gas for that
- 20 person alone, for other persons only, or for that person and others;
- 21 11. "Permitted lien" means any of the following liens or security interests:

- 1 a. a mortgage lien or security interest granted by a first purchaser in
2 favor of a person not an affiliate of the first purchaser which mortgage
3 lien or security interest secures payment under a written instrument
4 of indebtedness signed by the first purchaser and accepted in writing
5 by the payee thereof prior to the effective date of this act with a
6 principal amount and a fixed maturity stated therein; provided,
7 however, a permitted lien does not include a mortgage lien or security
8 interest which:
- 9 (1) secures payment of any indebtedness incurred from and after
10 the effective date of this act,
- 11 (2) secures payment under a written instrument of indebtedness
12 not signed by a first purchaser and accepted in writing by the
13 payee thereof prior to the effective date of this act,
- 14 (3) secures payment under a written instrument of indebtedness
15 modified, amended or restated from or after the effective date of
16 this act which modification, amendment or restatement
17 increases the principal amount which was owing at the effective
18 date of this act,
- 19 (4) secures payment under a written instrument of indebtedness
20 modified, amended or restated from or after the effective date of
21 this act which modification, amendment or restatement extends

1 the stated maturity thereof which was in effect at the effective
2 date of this act, or

3 (5) is not validly perfected with a first priority against the claims of
4 all persons under applicable law other than persons holding a
5 statutory or regulatory lien as to which first priority is granted
6 by statute or regulation, or

7 b. a validly perfected and enforceable lien created by statute or by rule or
8 regulation of a governmental agency for storage or transportation
9 charges, including terminal charges, tariffs, demurrage, insurance,
10 labor or other charges, owed by a first purchaser in relation to oil or
11 gas originally purchased under an agreement to sell; provided,
12 however, a permitted lien does not include any such lien:

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

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

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

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

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

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

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

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

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

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

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

1 21. “Transferee interest owner” means a person that acquires oil and gas rights
2 from a transferor interest owner.

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

6 NATURE, EXTENT AND DURATION OF OIL AND GAS LIEN

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

11 B. An oil and gas lien:

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

14 2. Continues uninterrupted and without lapse in all oil and gas upon and after
15 severance; and

16 3. Continues uninterrupted and without lapse in and to all proceeds.

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

1 such representative acts receives such proceeds in full. When a first purchaser, in good
2 faith, pays the sales price to an interest owner or a representative otherwise apparently
3 entitled to receive the sales price and the first purchaser is without actual knowledge
4 that such interest owner or representative is not entitled to receive the sales price so
5 paid, then such first purchaser takes free of the oil and gas lien otherwise applicable to
6 the oil or gas for which such payment was made. Notwithstanding the immediately
7 preceding sentence, the oil and gas lien will continue uninterrupted in the proceeds paid
8 to or otherwise due the interest owner or representative.

9 D. The validity of an oil and gas lien shall not be dependent on possession of the oil
10 or gas by an interest owner or representative. No oil and gas lien shall become or be
11 deemed to be void or expired by reason of a change or transfer of the actual or
12 constructive possession of or title to the oil or gas from the interest owner or
13 representative to a first purchaser or purchaser.

14 E. On the conveyance or transfer of any oil and gas rights by a transferor interest
15 owner, the oil and gas lien vested in the transferor interest owner immediately before the
16 conveyance or transfer shall remain with the transferor interest owner to the extent of
17 any oil and gas rights retained by the transferor interest owner.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

4 PERFECTON OF OIL AND GAS SECURITY INTEREST

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

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

12 COMMINGLING

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

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

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

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

8 PRIORITY RELATIVE TO OTHER LIENS OR SECURITY INTERESTS

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

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

14 TITLE

15 The provisions of this act shall not affect:

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

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

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

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

4 WAIVER

5 No interest owner shall be required, as a condition or term of an agreement to sell
6 or otherwise, to waive, relinquish or release any oil and gas lien or any rights under this
7 act other than upon payment in full of the sales price or agree to any provision that
8 would apply the law of any state other than the State of Oklahoma insofar as the same
9 relates to rights under this act, and any such purported waiver, relinquishment, release,
10 or provision shall be void as a matter of the public policy of this state. Notwithstanding
11 the preceding sentence, any interest owner or a representative acting on behalf of an
12 interest owner, may waive, relinquish or release any oil and gas lien or any rights under
13 this act or agree to a provision that would apply the law of any state other than the State
14 of Oklahoma insofar as the same relates to rights under this act only as to such interest
15 owner's oil and gas rights provided the first purchaser either:

- 16 1. Posts a letter of credit in form and amount satisfactory to the interest owner, or
17 a representative acting on behalf of an interest owner; or
18 2. Agrees to a binding contractual arrangement satisfactory in form and substance
19 to the interest owner, or a representative acting on behalf of an interest owner to prepay
20 or escrow the sales price under an agreement to sell in form and substance satisfactory to
21 the interest owner and performs all of the first purchaser's obligations thereunder.

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

4 EXPIRATION OF LIEN - ENFORCEMENT - JOINDER AND CONSOLIDATION -
5 COSTS - PERSONAL ACTIONS - OTHER RIGHTS AND REMEDIES

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

1 in which to commence an action to enforce the oil and gas lien for an additional period of
2 ninety (90) days from the earlier of:

- 3 1. The final conclusion or dismissal of such proceedings; or
- 4 2. The date final relief is obtained from the applicable tribunal authorizing the
5 commencement of such action.

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

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

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

20 RIGHTS OF OPERATOR NOT IMPAIRED

21 This act does not impair an operator's right to be paid, set-off or withhold funds
22 from another interest owner as security for or in satisfaction of any debt or security

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

- 4 1. To the person who the operator and other interest owner jointly direct the first
5 purchaser in writing to pay;
- 6 2. To a person who otherwise shows himself or herself to be the one entitled to the
7 funds; or
- 8 3. To a court of competent jurisdiction in the event litigation or bankruptcy.

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

12 RIGHTS CUMULATIVE

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

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

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1 SECTION 13. REPEALER 52 O.S. 2001, Sections 548.1, 548.2, 548.3, 548.4,
2 548.5 and 548.6, are hereby repealed.

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

6 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND UTILITY
7 REGULATION, dated 04-01-10 - DO PASS, As Amended.