

EHB 2055

1 THE STATE SENATE
2 Monday, April 6, 2009

3 ENGROSSED

4 House Bill No. 2055

5 As Amended

6 ENGROSSED HOUSE BILL NO. 2055 - By: Thompson and McMullen of the
7 House and Bingman and Ivester of the Senate.

8 [Uniform Commercial Code - Oil and Gas Owner's Sales
9 Protection Act - codification -

10 emergency]

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

12 PART 8. OIL AND GAS OWNER'S SALES PROTECTION ACT

13 SECTION 1. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-9-801 of Title 12A, unless
15 there is created a duplication in numbering, reads as follows:

16 Definitions.

17 As used in this act, and whether or not capitalized:

18 1. "Agreement to sell" means any agreement, whether express or
19 implied, whether oral or written, by which an interest owner agrees
20 to sell oil or gas production to a first purchaser;

21 2. "Article 9" means revised Article 9, Uniform Commercial Code -
22 Secured Transactions;

23 3. "Debtor" means any person that owes consideration to an
24 interest owner for the sale or receipt of oil or gas to which an oil
25 and gas security interest attaches;

1 4. "First purchaser" means the person that first purchases oil
2 or gas production, whether directly or indirectly, including without
3 limitation through a broker or other arrangement, from an interest
4 owner after the production is severed;

5 5. "Instrument of ownership" means any of the following: deed,
6 mineral deed, reservation in a deed or mineral deed, conveyance, oil
7 or gas lease, assignment, or any other similar instrument recorded
8 in the real property records of a county clerk evidencing a right as
9 an interest owner. The instruments listed in this paragraph are
10 intended to be illustrative and not exhaustive of the type of
11 instruments that will qualify as an instrument of ownership;

12 6. "Interest owner" means a person owning a legal interest of
13 any kind or nature in oil and gas production at the time of
14 severance, or a person that has a legal or equitable right to
15 receive a monetary payment or other consideration under an agreement
16 to sell, including, without limitation, a representative;

17 7. "Oil and gas security interest" means the security interest
18 granted by this act;

19 8. "Operator" means a person engaged in the business of
20 severing oil or gas production from the ground, whether for that
21 person alone, for other persons only, or for that person and others;

22 9. "Person" means a natural person and any entity of any nature
23 including, without limitation, a governmental entity;

1 10. "Proceeds" means any of the following:
2 a. oil or gas production,
3 b. inventory of raw, refined or manufactured oil or gas
4 production,
5 c. rights to or products of any of the foregoing,
6 d. cash proceeds,
7 e. accounts,
8 f. chattel paper,
9 g. instruments,
10 h. documents, or
11 i. payment intangibles with respect to any of the
12 foregoing;

13 11. "Representative" means any person who is authorized, either
14 expressly or by implication, including, without limitation, an
15 operator or a broker, to receive on behalf of an interest owner a
16 monetary payment or other consideration under an agreement to sell;

17 12. "Sales price" means the consideration a first purchaser
18 owes an interest owner under an agreement to sell; and

19 13. "Secured party" means an interest owner granted an oil and
20 gas security interest under this act.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-9-802 of Title 12A, unless
23 there is created a duplication in numbering, reads as follows:

1 Oil and Gas Interests; Security Interest.

2 Each interest owner is hereby granted a security interest, as a
3 secured party, to secure the obligations of a first purchaser, as a
4 debtor, to pay the sales price.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-9-803 of Title 12A, unless
7 there is created a duplication in numbering, reads as follows:

8 Nature, Extent and Duration of Oil and Gas Security Interest.

9 An oil and gas security interest exists in and attaches
10 immediately to all oil and gas on its severance, and in and to all
11 proceeds. Subject only to Section 6 of this act, an oil and gas
12 security interest exists for an unlimited time until the interest
13 owner first entitled to receive the sales price has, in fact,
14 received the sales price in full, without set-off, regardless of
15 whether set-off is permitted by contract or is otherwise lawful.
16 Provided, however, as between an interest owner and a representative
17 or any person claiming adversely to such interest owner by, through
18 or under a representative, such interest owner's oil and gas
19 security interest continues and exists in proceeds in the possession
20 or control of a representative until the interest owner on whose
21 behalf such representative acts receives such proceeds in full,
22 without set-off, regardless of whether set-off is permitted by
23 contract or is otherwise lawful.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-9-804 of Title 12A, unless
3 there is created a duplication in numbering, reads as follows:

4 Perfection of Oil and Gas Security Interest.

5 A. An oil and gas security interest is perfected automatically
6 without the need to file a financing statement or any other type of
7 documentation. An oil and gas security interest shall be deemed
8 perfected on the earliest to occur of the following:

9 1. If the interest of an interest owner is evidenced by an
10 instrument of ownership, the instrument of ownership is effective as
11 a filed financing statement for purposes of Article 9 as of the date
12 and time of filing of the instrument of ownership; provided,
13 however, no fee is required except a recording fee otherwise
14 required by law for the instrument of ownership without regard to
15 its status as a financing statement under this act;

16 2. A person who succeeds to rights under an instrument of
17 ownership by any lawful means, whether by acquisition, merger,
18 conveyance or otherwise, also succeeds to the rights and priorities
19 of any interest owner previously claiming rights under such
20 instrument of ownership to the extent of the rights so acquired
21 regardless of whether the document by which the successor claims
22 such rights is recorded in the real property records of a county
23 clerk so long as:

- 1 a. such rights of succession are evidenced by a written
2 document or documents duly executed by the previous
3 owner or owners of such rights, and
4 b. the written document or documents evidencing such
5 rights of succession are sufficient to vest in the
6 successor the rights and priorities otherwise accorded
7 by the instrument of ownership; or

8 3. When the agreement to sell is entered into.

9 B. Notwithstanding any provision in Article 9 requiring a
10 refiling of a financing statement, there is no requirement of
11 refiling an instrument of ownership to maintain the effectiveness of
12 the filing.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-9-805 of Title 12A, unless
15 there is created a duplication in numbering, reads as follows:

16 Commingling.

17 If oil or gas production in which there exists more than one oil
18 and gas security interest is commingled with other oil and gas
19 production in such a manner that the identity of the specific
20 production is lost, then the oil and gas security interest continues
21 without interruption into and attaches to any such resulting
22 commingled product and is perfected automatically as of the date of
23 its original perfection. In such event, the oil and gas security

1 interest has priority over any other security interest in the
2 commingled product, whether or not the other security interest has
3 been properly perfected. If more than one oil and gas security
4 interest attaches to the commingled product, then the oil and gas
5 security interests rank equally in proportion to the respective
6 sales prices applicable to the production at the time the production
7 was commingled.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-9-806 of Title 12A, unless
10 there is created a duplication in numbering, reads as follows:

11 Rights of First Purchasers and Buyers in The Ordinary Course of
12 Business.

13 Except as specifically set forth in this section, an oil and gas
14 security interest has priority over the rights of any person
15 claiming by, through, or under a first purchaser. A person who buys
16 from a first purchaser takes free of any oil and gas security
17 interest, provided that both of the following occur:

18 1. The person is buying in the ordinary course of the first
19 purchaser's business from the first purchaser; and

20 2. The person has paid the first purchaser an amount at least
21 equal to the sales price, in full, without set-off, regardless of
22 whether set-off is permitted by contract or is otherwise lawful;

1 provided, that the oil and gas security interest will continue in
2 the proceeds of the sale paid to the first purchaser.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-9-807 of Title 12A, unless
5 there is created a duplication in numbering, reads as follows:

6 Priority Relative to Other Security Interests Under Article 9.

7 An oil and gas security interest is a purchase money security
8 interest with the priorities set forth in this act without regard to
9 any other provisions in Article 9.

10 SECTION 8. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-9-808 of Title 12A, unless
12 there is created a duplication in numbering, reads as follows:

13 Rights of Operator Not Impaired.

14 This act does not impair an operator's right to set-off or
15 withhold funds from another interest owner as security for or in
16 satisfaction of any debt or security interest. In case of a dispute
17 between an operator and another interest owner, a good-faith tender
18 of funds by anyone to the person whom the operator and other
19 interest owner agree on, to a person who otherwise shows himself or
20 herself to be the one entitled to the funds, or to a court of
21 competent jurisdiction in the event of litigation or bankruptcy,
22 operates as a tender of the funds to both.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-9-809 of Title 12A, unless
3 there is created a duplication in numbering, reads as follows:

4 Rights Cumulative.

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated 4-2-09
19 - DO PASS, As Amended and Coauthored.