

SB 1028

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THE STATE SENATE
Monday, February 23, 2009

Senate Bill No. 1028
As Amended

SENATE BILL NO. 1028 - By: Bingman of the Senate and Thompson of the House.

[Uniform Commercial Code - security interest -
codification -
emergency]

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 1-9-801 of Title 12A, unless there is created a duplication in numbering, reads as follows:

For the purposes of this act:

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

(2) "Article 9" means Article 9 of the Uniform Commercial Code;

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

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

1 (5) "Instrument of Ownership" includes, but is not limited to,
2 a deed, mineral deed, reservation in a deed or mineral deed,
3 conveyance, oil or gas lease, assignment, or any other similar
4 instrument recorded in the real property records of a county clerk
5 evidencing a right as an interest owner;

6 (6) "Interest Owner" means a person owning a legal interest of
7 any kind or nature in oil and gas production at the time of
8 severance, or a person that has a legal or equitable right to
9 receive a monetary payment or other consideration under an agreement
10 to sell, including, without limitation, a representative;

11 (7) "Oil and Gas Security Interest" means the security interest
12 granted by this act;

13 (8) "Operator" means a person engaged in the business of
14 severing oil or gas production from the ground, whether for that
15 person alone, for other persons only, or for that person and others;

16 (9) "Person" means a natural person and any entity of any
17 nature including, without limitation, a governmental entity;

18 (10) "Proceeds" means any of the following: oil or gas
19 production; inventory of raw, refined or manufactured oil or gas
20 production; rights to or products of any of the foregoing; cash
21 proceeds; accounts; chattel paper; instruments; documents; or
22 payment intangibles with respect to any of the foregoing;

1 (11) "Representative" means any person who is authorized,
2 either expressly or by implication, including, without limitation,
3 an operator or a broker, to receive on behalf of an interest owner a
4 monetary payment or other consideration under an agreement to sell;

5 (12) "Sales Price" means the consideration a first purchaser
6 owes an interest owner under an agreement to sell; and

7 (13) "Secured Party" means an interest owner granted an oil and
8 gas security interest under this act.

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

12 Each interest owner shall be granted a security interest, as a
13 secured party, to secure the obligations of a first purchaser, as a
14 debtor, to pay the sales price.

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

18 An oil and gas security interest exists in and attaches
19 immediately to all oil and gas on its severance, and in and to all
20 proceeds. Subject only to Section 6 of this act, an oil and gas
21 security interest exists for an unlimited time until the interest
22 owner first entitled to receive the sales price has, in fact,
23 received the sales price in full, without set off, regardless of

1 whether set off is permitted by contract or is otherwise lawful.
2 Provided, however, as between an interest owner and a representative
3 or any person claiming adversely to such interest owner by, through
4 or under a representative, such interest owner's oil and gas
5 security interest continues and exists in proceeds in the possession
6 or control of a representative until the interest owner on whose
7 behalf such representative acts receives such proceeds in full,
8 without set off, regardless of whether set off is permitted by
9 contract or is otherwise lawful.

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

13 An oil and gas security interest is perfected automatically
14 without the need to file a financing statement or any other type of
15 documentation. An oil and gas security interest shall be deemed
16 perfected on the earliest to occur of the following:

17 (1) If the interest of an interest owner is evidenced by an
18 instrument of ownership, the instrument of ownership is effective as
19 a filed financing statement for purposes of Article 9 as of the date
20 and time of filing of the instrument of ownership; provided,
21 however, no fee is required except a recording fee otherwise
22 required by law for the instrument of ownership without regard to
23 its status as a financing statement under this act;

1 (2) A person who succeeds to rights under an instrument of
2 ownership by any lawful means, whether by acquisition, merger,
3 conveyance or otherwise, also succeeds to the rights and priorities
4 of any interest owner previously claiming rights under such
5 instrument of ownership to the extent of the rights so acquired
6 regardless of whether the document by which the successor claims
7 such rights is recorded in the real property records of a county
8 clerk so long as:

9 (A) such rights of succession are evidenced by a written
10 document or documents duly executed by the previous
11 owner or owners of such rights; and

12 (B) the written document or documents evidencing such
13 rights of succession are sufficient to vest in the
14 successor the rights and priorities otherwise accorded
15 by the instrument of ownership; or

16 (3) When the agreement to sell is entered into.

17 Notwithstanding any provision in Article 9 requiring a refiling
18 of a financing statement, there is no requirement of refiling an
19 instrument of ownership to maintain the effectiveness of the filing.

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

1 If oil or gas production in which there exists more than one oil
2 and gas security interests is commingled with other oil and gas
3 production in such a manner that the identity of the specific
4 production is lost, then the oil and gas security interest continues
5 without interruption into and attaches to any such resulting
6 commingled product and is perfected automatically as of the date of
7 its original perfection. In such event, the oil and gas security
8 interest has priority over any other security interest in the
9 commingled product, whether or not the other security interest has
10 been properly perfected. If more than one oil and gas security
11 interest attaches to the commingled product, then the oil and gas
12 security interests rank equally in proportion to the respective
13 sales prices applicable to the production at the time the production
14 was commingled.

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

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

1 (1) The person is buying in the ordinary course of the first
2 purchaser's business from the first purchaser; and

3 (2) The person has paid the first purchaser an amount at least
4 equal to the sales price, in full, without set off, regardless of
5 whether set off is permitted by contract or is otherwise lawful;
6 provided that the oil and gas security interest will continue in the
7 proceeds of the sale paid to the first purchaser.

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

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

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

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

1 jurisdiction in the event of litigation or bankruptcy operates as a
2 tender of the funds to both.

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

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-17-09 - DO
20 PASS, As Amended and Coauthored.