

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 2055

By: Thompson

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5
6 AS INTRODUCED

7 An Act relating to the Uniform Commercial Code;
8 creating the Oil and Gas Owner's Sales Protection
9 Act; providing definitions; granting a security
10 interest to certain interest owners; providing for
11 the nature, extent, and duration of an oil and gas
12 security interest; providing for the perfection of an
13 oil and gas security interest; providing for the
14 continuation of an oil and gas security interest when
15 commingled with other production; establishing
16 priority of an oil and gas security interest over
17 first purchasers and buyers; making an oil and gas
18 security interest a purchase money security interest;
19 specifying the rights of an operator are not impaired
20 in certain circumstances; making certain rights
21 cumulative; providing for codification; and providing
22 an effective date.

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

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

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

33 Definitions.

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

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

4 2. "Article 9" means revised Article 9, Uniform Commercial Code
5 - Secured Transactions;

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

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

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

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

1 7. "Oil and gas security interest" means the security interest
2 granted by this act;

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

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

8 10. "Proceeds" means any of the following:

- 9 a. oil or gas production,
- 10 b. inventory of raw, refined or manufactured oil or gas
11 production,
- 12 c. rights to or products of any of the foregoing,
- 13 d. cash proceeds,
- 14 e. accounts,
- 15 f. chattel paper,
- 16 g. instruments,
- 17 h. documents, or
- 18 i. payment intangibles with respect to any of the
19 foregoing;

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

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

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

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

8 Oil and Gas Interests; Security Interest.

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

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

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

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

1 or under a representative, such interest owner's oil and gas
2 security interest continues and exists in proceeds in the possession
3 or control of a representative until the interest owner on whose
4 behalf such representative acts receives such proceeds in full,
5 without set-off, regardless of whether set-off is permitted by
6 contract or is otherwise lawful.

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

10 Perfection of Oil and Gas Security Interest.

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

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

22 2. A person who succeeds to rights under an instrument of
23 ownership by any lawful means, whether by acquisition, merger,
24 conveyance or otherwise, also succeeds to the rights and priorities

1 of any interest owner previously claiming rights under such
2 instrument of ownership to the extent of the rights so acquired
3 regardless of whether the document by which the successor claims
4 such rights is recorded in the real property records of a county
5 clerk so long as:

6 a. such rights of succession are evidenced by a written
7 document or documents duly executed by the previous
8 owner or owners of such rights, and

9 b. the written document or documents evidencing such
10 rights of succession are sufficient to vest in the
11 successor the rights and priorities otherwise accorded
12 by the instrument of ownership; or

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

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

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

21 Commingling.

22 If oil or gas production in which there exists more than one oil
23 and gas security interest is commingled with other oil and gas
24 production in such a manner that the identity of the specific

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

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

15 Rights of First Purchasers and Buyers in The Ordinary Course of
16 Business.

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

22 1. The person is buying in the ordinary course of the first
23 purchaser's business from the first purchaser; and
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1 2. The person has paid the first purchaser an amount at least
2 equal to the sales price, in full, without set-off, regardless of
3 whether set-off is permitted by contract or is otherwise lawful;
4 provided, that the oil and gas security interest will continue in
5 the proceeds of the sale paid to the first purchaser.

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

9 Priority Relative to Other Security Interests Under Article 9.
10 An oil and gas security interest is a purchase money security
11 interest with the priorities set forth in this act without regard to
12 any other provisions in Article 9.

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

16 Rights of Operator Not Impaired.
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 whom the operator and other
22 interest owner agree on, to a person who otherwise shows himself or
23 herself to be the one entitled to the funds, or to a court of
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1 competent jurisdiction in the event of litigation or bankruptcy,
2 operates as a 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 Rights Cumulative.

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

16 SECTION 10. This act shall become effective November 1, 2009.

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