

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1028

By: Bingman

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5
6 AS INTRODUCED

7 An Act relating to the Uniform Commercial Code;
8 defining terms; granting certain security interest;
9 establishing extent and duration of certain security
10 interest; providing for perfection of certain
11 security interest; stating effect of certain security
12 interest commingled with certain other production;
13 stating priority of certain security interest;
14 establishing rights of certain purchasers;
15 establishing priority relative to other security
16 interests; stating effect on certain operator rights;
17 construing provisions; providing for codification;
18 and declaring an emergency.

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

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

23 For the purposes of this act:

24 (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;

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

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

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

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

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

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

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

1 (10) "Proceeds" means any of the following: oil or gas
2 production; inventory of raw, refined or manufactured oil or gas
3 production; rights to or products of any of the foregoing; cash
4 proceeds; accounts; chattel paper; instruments; documents; or
5 payment intangibles with respect to any of the foregoing;

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

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

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

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

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

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

23 An oil and gas security interest exists in and attaches
24 immediately to all oil and gas on its severance, and in and to all

1 proceeds. Subject only to Section 6 of this act, an oil and gas
2 security interest exists for an unlimited time until the interest
3 owner first entitled to receive the sales price has, in fact,
4 received the sales price in full, without set off, regardless of
5 whether set off is permitted by contract or is otherwise lawful.
6 Provided, however, as between an interest owner and a representative
7 or any person claiming adversely to such interest owner by, through
8 or under a representative, such interest owner's oil and gas
9 security interest continues and exists in proceeds in the possession
10 or control of a representative until the interest owner on whose
11 behalf such representative acts receives such proceeds in full,
12 without set off, regardless of whether set off is permitted by
13 contract or is otherwise lawful.

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

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

21 (1) If the interest of an interest owner is evidenced by an
22 instrument of ownership, the instrument of ownership is effective as
23 a filed financing statement for purposes of Article 9 as of the date
24 and time of filing of the instrument of ownership; provided,

1 however, no fee is required except a recording fee otherwise
2 required by law for the instrument of ownership without regard to
3 its status as a financing statement under this act;

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

12 (A) such rights of succession are evidenced by a written
13 document or documents duly executed by the previous
14 owner or owners of such rights; and

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to be the one entitled to the funds, or to a court of competent
2 jurisdiction in the event of litigation or bankruptcy operates as a
3 tender of the funds to both.

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

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

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