

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2654

By: Jordan

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7 COMMITTEE SUBSTITUTE

8 An Act relating to oil and gas; enacting the Energy  
9 Litigation Reform Act; defining terms; providing  
10 rules of construction for certain oil and gas  
11 agreements; allowing exceptions; limiting damages in  
12 certain actions for failure to pay proceeds; setting  
13 damages; limiting the filing of actions to certain  
14 time periods; limiting time period on interest that  
15 may be collected; defining term; providing certain  
16 actions prerequisite to litigation; providing notice  
17 requirements; requiring claimant have interest;  
18 requiring affirmative request in class action;  
19 excluding certain parties; clarifying difference in  
20 effective timing; providing for codification; and  
21 providing an effective date.

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

23 SECTION 1. NEW LAW A new section of law to be codified  
24 in the Oklahoma Statutes as Section 900 of Title 52, unless there is  
created a duplication in numbering, reads as follows:

Sections 1 through 8 of this act shall be known and cited as the  
"Energy Litigation Reform Act".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 901 of Title 52, unless there is  
3 created a duplication in numbering, reads as follows:

4 As used this act:

5 1. "Production Revenue Standards Act" means Sections 570.1  
6 through 570.15 of Title 52 of the Oklahoma Statutes.

7 SECTION 3. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 902 of Title 52, unless there is  
9 created a duplication in numbering, reads as follows:

10 The sanctity of private agreements, statutes and governmental  
11 orders being essential to the oil and gas industry, the following  
12 are declared to be paramount rules of construction to be applied by  
13 the courts of Oklahoma in the construction of private agreements,  
14 statutes and governmental orders relating to the exploration for,  
15 operations for, producing of, or marketing oil or gas, or disbursing  
16 proceeds of production of oil or gas:

17 1. A person is bound as a reasonably prudent operator to  
18 perform any duties owed to any person under any private agreement,  
19 statute or governmental order relating to the exploration for,  
20 operations for, producing of, or marketing oil or gas or disbursing  
21 proceeds of production of oil or gas; and

22 2. There shall not be implied in the duties in paragraph 1 of  
23 this section or otherwise any fiduciary duty, quasi-fiduciary duty  
24 or other similar special relationship in any private agreement,

1 statute or governmental order relating to the exploration for,  
2 operations for, producing of, or marketing oil or gas or disbursing  
3 proceeds of production of oil or gas, and any contrary or  
4 inconsistent legal authority shall be deemed to be of no effect.  
5 Nothing in this section shall either prohibit the parties to a  
6 private agreement from expressly agreeing in writing otherwise or  
7 prohibit the Legislature from expressly providing otherwise in any  
8 statute subsequently enacted or prohibit any governmental order from  
9 expressly providing otherwise to the extent within the power or  
10 authority of the issuer of such order. However, the provisions of  
11 this paragraph shall not apply to Section 287.1 of Title 52 of the  
12 Oklahoma Statutes.

13 SECTION 4. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 903 of Title 52, unless there is  
15 created a duplication in numbering, reads as follows:

16 The following terms shall apply to any action brought to recover  
17 proceeds and interest or either proceeds or interest under the  
18 Production Revenue Standards Act or otherwise:

19 1. Except the right to enforce lien rights under private  
20 agreement or under Sections 548 through 549.12 of Title 52 of the  
21 Oklahoma Statutes, the Production Revenue Standards Act shall  
22 provide the exclusive remedy to a person entitled to proceeds from  
23 production for failure of a holder to pay the proceeds within the  
24 time periods required for payment. The interest amounts set forth

1 in paragraph 1 of subsection D of Section 570.10 of Title 52 of the  
2 Oklahoma Statutes are deemed to be an adequate penalty for failure  
3 to pay proceeds within the time periods required for payment and no  
4 other penalty or damages shall be recoverable in any litigation  
5 involving a claim for unpaid or underpaid proceeds from production  
6 including, without limitation, punitive or exemplary damages or  
7 disgorgement damages;

8 2. Any action to recover proceeds and interest or either  
9 proceeds or interest must be brought within five (5) years from the  
10 date the proceeds become due; and

11 3. Despite any applicable statute of limitations or any tolling  
12 thereof, no action to recover interest shall be brought more than  
13 ten (10) years after the corresponding proceeds become due. This  
14 paragraph is a statute of repose.

15 SECTION 5. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 904 of Title 52, unless there is  
17 created a duplication in numbering, reads as follows:

18 Despite any other provision of law, no action described in this  
19 section shall be brought or maintained unless before filing the  
20 action the party or parties bringing the action shall have complied  
21 with the following terms of this section:

22 1. No person may start a civil action against any person  
23 alleged to be in violation of the Production Revenue Standards Act  
24 to recover either or both of interest or attorney fees unless each

1 claimant has provided written notice by certified mail of the  
2 alleged violation in accordance with this section;

3 2. The notice required under paragraph 1 of this section shall  
4 contain the following:

5 a. the name and address of the claimant and the name and  
6 address of the claimant's attorney, if any,

7 b. a concise statement of the factual basis of the claim,  
8 and

9 c. a statement of the amount of monetary damages sought  
10 by the claimant.

11 In providing a notice of claim, substantial compliance with the  
12 terms and requirements of this paragraph shall constitute valid  
13 notice of a claim. The contents of such notice shall not be  
14 admissible in any later action arising out of the claim except to  
15 prove compliance or noncompliance with this section. No person  
16 other than an expressly authorized representative may provide such  
17 notice on behalf of any other person; and

18 3. Once notice of the claim is provided, no action shall be  
19 started until after the claimant has received notice that the claim  
20 has been denied or until thirty (30) days has passed from the date  
21 of the receipt of the notice, whichever occurs first. A claim is  
22 deemed denied if the person receiving the notice fails to agree to  
23 pay the amount of the claim in its entirety, or a lesser amount as  
24 may be negotiated by the parties, within the thirty-day period and

1 pays such amount within thirty (30) days thereafter. No claimant  
2 may start an action to recover either or both of interest or  
3 attorney fees unless the claim has been denied in whole or part. If  
4 a claim is denied or deemed denied, in whole or in part, then the  
5 commencement of any action thereon shall be deemed to have commenced  
6 upon the date of the receipt of the written notice.

7 SECTION 6. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 905 of Title 52, unless there is  
9 created a duplication in numbering, reads as follows:

10 A. In addition to any applicable requirements contained in  
11 Section 5 of this act, if an action is commenced for any claim under  
12 a private agreement, statute or governmental order relating to the  
13 exploration for, operations for, producing of, or marketing oil or  
14 gas or disbursing proceeds of production of oil or gas, and the  
15 action seeks certification as a class as to all or any claims  
16 therein, the purported class representative shall be required to  
17 present to the court prima facie evidence of the claimant's own  
18 right to the requested relief before any proceedings are maintained  
19 to certify a class.

20 B. In any case involving a claim described in subsection A of  
21 this section which is certified as a class action as to all or any  
22 claims therein, after such notice as the court may direct, the court  
23 will exclude any member from the class that does not affirmatively  
24 request inclusion in the class. The provisions of this subsection

1 shall govern the procedure thereof notwithstanding any other law,  
2 rule or judicial precedent to the contrary.

3 SECTION 7. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 906 of Title 52, unless there is  
5 created a duplication in numbering, reads as follows:

6 Sections 4, 5 and 6 of this act shall apply to all litigation  
7 filed after January 1, 2013. The remainder of this act is a  
8 clarification of the original intent of the Legislature as to  
9 existing law and shall be applied in all pending cases, unless a  
10 trial on the merits has commenced in the case prior to January 1,  
11 2013.

12 SECTION 8. This act shall become effective January 1, 2013.

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