

1 ENGROSSED SENATE  
2 BILL NO. 1665

By: Johnson (Rob) and Shortey  
of the Senate

3 and

4 Jordan of the House

5  
6  
7 [ oil and gas - Energy Litigation Reform - limiting  
8 damages - notice requirements - class action -  
codification - effective date ]

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

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

15 This act shall be known and may be cited as the "Energy  
16 Litigation Reform Act".

17 SECTION 2. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 902 of Title 52, unless there is  
19 created a duplication in numbering, reads as follows:

20 The sanctity of private agreements, statutes and governmental  
21 orders being essential to the oil and gas industry, the following  
22 are declared to be paramount rules of construction to be applied by  
23 the courts of this state in the construction of private agreements,  
24 statutes and governmental orders relating to the exploration for,

1 operations for, producing of, or marketing of oil or gas, or  
2 disbursing proceeds of production of oil or gas:

3 1. A person is bound as a reasonably prudent operator to  
4 perform any duties owed to any person under any private agreement,  
5 statute or governmental order relating to the exploration for,  
6 operations for, producing of, or marketing of oil or gas or  
7 disbursing proceeds of production of oil or gas; and

8 2. There shall not be implied in the duties in paragraph 1 of  
9 this section or otherwise any fiduciary duty, quasi-fiduciary duty  
10 or other similar special relationship in any private agreement,  
11 statute or governmental order relating to the exploration for,  
12 operations for, producing of, or marketing of oil or gas or  
13 disbursing proceeds of production of oil or gas, and any contrary or  
14 inconsistent legal authority shall be deemed to be of no effect.  
15 Nothing in this section shall either prohibit the parties to a  
16 private agreement from expressly agreeing in writing otherwise or  
17 prohibit the Legislature from expressly providing otherwise in any  
18 statute subsequently enacted or prohibit any governmental order from  
19 expressly providing otherwise to the extent within the power or  
20 authority of the issuer of such order; provided, however, the  
21 provisions of this subsection shall not apply to Section 287.1 of  
22 Title 52 of the Oklahoma Statutes.

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1           SECTION 3.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 903 of Title 52, unless there is  
3 created a duplication in numbering, reads as follows:

4           The following terms shall apply to any action brought to recover  
5 proceeds and interest or either proceeds or interest under the  
6 Production Revenue Standards Act or otherwise:

7           1. Except the right to enforce lien rights under private  
8 agreement or under Sections 548 through 549.12 of Title 52 of the  
9 Oklahoma Statutes, the Production Revenue Standards Act shall  
10 provide the exclusive remedy to a person entitled to proceeds from  
11 production for failure of a holder to pay the proceeds within the  
12 time periods required for payment. The interest amounts set forth  
13 in paragraph 1 of subsection D of Section 570.10 of Title 52 of the  
14 Oklahoma Statutes are deemed to be an adequate penalty for failure  
15 to pay proceeds within the time periods required for payment and no  
16 other penalty or damages shall be recoverable in any litigation  
17 involving a claim for unpaid or underpaid proceeds from production  
18 including, without limitation, punitive or exemplary damages or  
19 disgorgement damages;

20           2. Any action to recover proceeds and interest or either  
21 proceeds or interest shall be brought within five (5) years from the  
22 date the proceeds become due; and

23           3. Despite any applicable statute of limitations or any tolling  
24 thereof, no action to recover interest shall be brought more than

1 ten (10) years after the corresponding proceeds become due. This  
2 paragraph shall be construed as a statute of repose.

3 SECTION 4. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 904 of Title 52, unless there is  
5 created a duplication in numbering, reads as follows:

6 Notwithstanding any other provision of law, no action described  
7 in this section shall be brought or maintained unless, prior to  
8 filing the action, the party or parties bringing the action shall  
9 comply with the following terms:

10 1. No person may commence a civil action against any person  
11 alleged to be in violation of the Production Revenue Standards Act  
12 to recover either or both of interest or attorney fees unless each  
13 claimant has provided written notice by certified mail of the  
14 alleged violation in accordance with this section;

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

- 17 a. the name and address of the claimant and the name and  
18 address of the claimant's attorney, if any,  
19 b. a concise statement of the factual basis of the claim,  
20 and  
21 c. a statement of the amount of monetary damages sought  
22 by the claimant.

23 In providing a notice of claim, substantial compliance with the  
24 terms and requirements of this paragraph shall constitute valid

1 notice of a claim. The contents of such notice shall not be  
2 admissible in any later action arising out of the claim except to  
3 prove compliance or noncompliance with this section. No person  
4 other than an expressly authorized representative may provide such  
5 notice on behalf of any other person; and

6 3. Once notice of the claim is provided, no action shall be  
7 started until after the claimant has received notice that the claim  
8 has been denied or until thirty (30) days has passed from the date  
9 of the receipt of the notice, whichever occurs first. A claim is  
10 deemed denied if the person receiving the notice fails to agree to  
11 pay the amount of the claim in its entirety, or a lesser amount as  
12 may be negotiated by the parties, within the thirty-day period and  
13 pays such amount within thirty (30) days thereafter. No claimant  
14 may commence an action to recover either or both of interest or  
15 attorney fees unless the claim has been denied in whole or part. If  
16 a claim is denied or deemed denied, in whole or in part, the  
17 commencement of any action thereon shall be deemed to have commenced  
18 upon the date of the receipt of the written notice.

19 SECTION 5. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 905 of Title 52, unless there is  
21 created a duplication in numbering, reads as follows:

22 A. In addition to any applicable requirements contained in  
23 Section 4 of this act, if an action is commenced for any claim under  
24 a private agreement, statute or governmental order relating to the

1 exploration for, operations for, producing of, or marketing of oil  
2 or gas or disbursing proceeds of production of oil or gas, and the  
3 action seeks certification as a class as to all or any claims  
4 therein, the purported class representative shall be required to  
5 present to the court prima facie evidence of the claimant's own  
6 right to the requested relief before any proceedings are maintained  
7 to certify a class.

8 B. In any case involving a claim described in subsection A of  
9 this section which is certified as a class action as to all or any  
10 claims therein, after such notice as the court may direct, the court  
11 will exclude any member from the class that does not affirmatively  
12 request inclusion in the class. The provisions of this subsection  
13 shall govern the procedure thereof notwithstanding any other law,  
14 rule or judicial precedent to the contrary.

15 SECTION 6. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 906 of Title 52, unless there is  
17 created a duplication in numbering, reads as follows:

18 Paragraphs 2 and 3 of Section 3 of this act, and Sections 4 and  
19 5 of this act, shall apply to all litigation filed after January 1,  
20 2013. Sections 1 and 2 and paragraph 1 of Section 3 of this act are  
21 clarifications of the original intent of the Legislature as to  
22 existing law and shall be applied in all pending cases, unless a  
23 trial on the merits has commenced in the case prior to January 1,  
24 2013.

