

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 As Amended

4 SENATE BILL NO. 1665

By: Johnson (Rob) of the Senate

5 and

6 Jordan of the House

7
8 **[oil and gas - Energy Litigation Reform Act -**
9 **codification - effective date]**

10
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 900 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 901 of Title 52, unless there is
19 created a duplication in numbering, reads as follows:

20 As used the Energy Litigation Reform Act "Production Revenue
21 Standards Act" means Sections 570.1 through 500.15 of Title 52 of
22 the Oklahoma Statutes.

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

4 The sanctity of private agreements, statutes and governmental
5 orders being essential to the oil and gas industry, the following
6 are declared to be paramount rules of construction to be applied by
7 the courts of Oklahoma in the construction of private agreements,
8 statutes and governmental orders relating to the exploration for,
9 operations for, producing of, or marketing oil or gas, or disbursing
10 proceeds of production of oil or gas:

11 1. A person is bound as a reasonably prudent operator to
12 perform any duties owed to any person under a private agreement,
13 statute or governmental order relating to the exploration for,
14 operations for, producing of, or marketing oil or gas or disbursing
15 proceeds of production of oil or gas; and

16 2. There shall not be implied in the duties in paragraph 1 of
17 this section or otherwise any fiduciary duty, quasi-fiduciary duty
18 or other similar special relationship in 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 any contrary or
22 inconsistent legal authority shall be deemed to be of no effect.
23 Nothing in this section shall either prohibit the parties to a
24 private agreement from expressly agreeing in writing otherwise or

1 prohibit the Legislature from expressly providing otherwise in any
2 statute subsequently enacted or prohibit any governmental order from
3 expressly providing otherwise to the extent within the power or
4 authority of the issuer of such order.

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

8 The following terms shall apply to any action brought to recover
9 proceeds and interest or either proceeds or interest under the
10 Production Revenue Standards Act or otherwise:

11 1. Except the right to enforce lien rights under private
12 agreement or under the Oil and Gas Owners' Lien Act of 2010, the
13 Production Revenue Standards Act shall provide the exclusive remedy
14 to a person entitled to proceeds from production for failure of a
15 holder to pay the proceeds within the time periods required for
16 payment. The interest amounts set forth in paragraph 1 of
17 subsection D of Section 570.10 of Title 52 of the Oklahoma Statutes
18 are deemed to be an adequate penalty for failure to pay proceeds
19 within the time periods required for payment and no other penalty or
20 damages shall be recoverable in any litigation involving a claim for
21 unpaid or underpaid proceeds from production including, without
22 limitation, punitive or exemplary damages or disgorgement damages;

23 2. Any action to recover proceeds and interest or either
24 proceeds or interest must be brought within five (5) years if

1 arising under a written contract and within three (3) years if not
2 arising under a written contract, in each case from the date the
3 proceeds become due;

4 3. Despite any applicable statute of limitations or any tolling
5 thereof, no action to recover interest shall be brought more than
6 seven (7) years after the corresponding proceeds become due. This
7 paragraph is a statute of repose; and

8 4. For purposes of calculating and paying proceeds from
9 production to an owner, including but not limited to a royalty owner
10 and a working interest owner, natural gas, including its
11 constituents, shall be deemed to be marketable when it is in a
12 physical condition acceptable for sale to a buyer.

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

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

20 1. No person may start a civil action against any person
21 alleged to be in violation of the Production Revenue Standards Act
22 to recover either or both of interest or attorney fees unless each
23 claimant has provided written notice by certified mail of the
24 alleged violation in accordance with this section;

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

- 3 a. the name and address of the claimant and the name and
4 address of the claimant's attorney, if any,
- 5 b. a concise statement of the factual basis of the claim,
6 and
- 7 c. a statement of the amount of monetary damages sought
8 by the claimant.

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

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

1 attorney fees unless the claim has been denied in whole or in part.
2 If a claim is denied or deemed denied, in whole or in part, then the
3 commencement of any action thereon shall be deemed to have commenced
4 upon the date of the receipt of the written notice.

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

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

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

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

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON ENERGY, dated 2-22-12 - DO PASS,
12 As Amended and Coauthored.

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