

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2654

By: Jordan

4  
5  
6 AS INTRODUCED

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

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

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

Sections 1 through 10 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 500.15 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 an 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.

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

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

17 1. Except the right to enforce lien rights under private  
18 agreement or under Sections 548 through 549.12 of Title 52 of the  
19 Oklahoma Statutes, the Production Revenue Standards Act shall  
20 provide the exclusive remedy to a person entitled to proceeds from  
21 production for failure of a holder to pay the proceeds within the  
22 time periods required for payment. The interest amounts set forth  
23 in paragraph 1 of subsection D of Section 570.10 of Title 52 of the  
24 Oklahoma Statutes are deemed to be an adequate penalty for failure

1 to pay proceeds within the time periods required for payment and no  
2 other penalty or damages shall be recoverable in any litigation  
3 involving a claim for unpaid or underpaid proceeds from production  
4 including, without limitation, punitive or exemplary damages or  
5 disgorgement damages;

6 2. Any action to recover proceeds and interest or either  
7 proceeds or interest must be brought within five (5) years if  
8 arising under a written contract and within three (3) years if not  
9 arising under a written contract, in each case from the date the  
10 proceeds become due;

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

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

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

23 Despite any other provision of law, no action described in this  
24 section shall be brought or maintained unless before filing the

1 action the party or parties bringing the action shall have complied  
2 with the following terms of this section:

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

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

- 10 a. the name and address of the claimant and the name and  
11 address of the claimant's attorney, if any,  
12 b. a concise statement of the factual basis of the claim,  
13 and  
14 c. a statement of the amount of monetary damages sought  
15 by the claimant.

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

23 3. Once notice of the claim is provided, no action shall be  
24 started until after the claimant has received notice that the claim

1 has been denied or until thirty (30) days has passed from the date  
2 of the receipt of the notice, whichever occurs first. A claim is  
3 deemed denied if the person receiving the notice fails to agree to  
4 pay the amount of the claim in its entirety, or a lesser amount as  
5 may be negotiated by the parties, within the thirty-day period and  
6 pays such amount within thirty (30) days thereafter. No claimant  
7 may start an action to recover either or both of interest or  
8 attorney fees unless the claim has been denied in whole or part. If  
9 a claim is denied or deemed denied, in whole or in part, then the  
10 commencement of any action thereon shall be deemed to have commenced  
11 upon the date of the receipt of the written notice.

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

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

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

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

11 Sections 4, 5 and 6 of this act shall apply to all litigation  
12 filed after January 1, 2013. The remainder of this act is a  
13 clarification of the original intent of the Legislature as to  
14 existing law and shall be applied in all pending cases, unless a  
15 trial on the merits has commenced in the case prior to January 1,  
16 2013.

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

18

19 53-2-9129 CJB 01/17/12

20

21

22

23

24