

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1665

By: Johnson (Rob)

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6 AS INTRODUCED

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

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

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

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

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

1 As used the Energy Litigation Reform Act "Production Revenue
2 Standards Act" means Sections 570.1 through 500.15 of Title 52 of
3 the Oklahoma Statutes.

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

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

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

19 2. There shall not be implied in the duties in paragraph 1 of
20 this section or otherwise any fiduciary duty, quasi-fiduciary duty
21 or other similar special relationship in any private agreement,
22 statute or governmental order relating to the exploration for,
23 operations for, producing of, or marketing oil or gas or disbursing
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1 proceeds of production of oil or gas, and any contrary or
2 inconsistent legal authority shall be deemed to be of no effect.
3 Nothing in this section shall either prohibit the parties to a
4 private agreement from expressly agreeing in writing otherwise or
5 prohibit the Legislature from expressly providing otherwise in any
6 statute subsequently enacted or prohibit any governmental order from
7 expressly providing otherwise to the extent within the power or
8 authority of the issuer of such order.

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

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

15 1. Except the right to enforce lien rights under private
16 agreement or under the Oil and Gas Owners' Lien Act of 2010, the
17 Production Revenue Standards Act shall provide the exclusive remedy
18 to a person entitled to proceeds from production for failure of a
19 holder to pay the proceeds within the time periods required for
20 payment. The interest amounts set forth in paragraph 1 of
21 subsection D of Section 570.10 of Title 52 of the Oklahoma Statutes
22 are deemed to be an adequate penalty for failure to pay proceeds
23 within the time periods required for payment and no other penalty or
24 damages shall be recoverable in any litigation involving a claim for

1 unpaid or underpaid proceeds from production including, without
2 limitation, punitive or exemplary damages or disgorgement damages;

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

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

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

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

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

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

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

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

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

21 3. Once notice of the claim is provided, no action shall be
22 started until after the claimant has received notice that the claim
23 has been denied or until thirty (30) days has passed from the date
24 of the receipt of the notice, whichever occurs first. A claim is

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

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

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

23 B. In any case involving a claim described in subsection A of
24 this section which is certified as a class action as to all or any

1 claims therein, after such notice as the court may direct, the court
2 will exclude any member from the class that does not affirmatively
3 request inclusion in the class. The provisions of this subsection
4 shall govern the procedure thereof notwithstanding any other law,
5 rule or judicial precedent to the contrary.

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

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

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

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