

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1615

By: Bingman of the Senate

3 and

4 Trebilcock of the House

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7
8 (oil and gas - creating the Oil and Gas Owners' Lien
9 Act of 2010 - codification - repealer -
10 emergency)

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12
13 AUTHORS: Add the following House Coauthors: Reynolds, Walker and
14 Jackson

15 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
16 entire bill and insert

17 "An Act relating to oil and gas; creating the Oil and
18 Gas Owners' Lien Act of 2010; providing definitions;
19 granting an oil and gas lien to certain interest
20 owners; describing an oil and gas lien; providing
21 for continuation of an oil and gas lien; making an
22 oil and gas lien valid and not dependent on
23 possession; providing for retention and transfer of
24 certain rights upon transfer of oil and gas rights;
providing for the perfection of an oil and gas
security interest; providing for continuation of an
oil and gas lien after the commingling of the oil or
gas; establishing the priority of an oil and gas
lien in commingled product; establishing certain
rights of an oil and gas purchaser and certain
obligations under certain circumstances;

1 establishing the priority of an oil and gas lien;
2 making certain exception; limiting the affect of law
3 on the passing of legal title and certain rights;
4 prohibiting a requirement for an interest owner to
5 relinquish or release an oil and gas lien upon
6 certain payment; making certain relinquishments or
7 releases void; allowing an interest owner to waive
8 or relinquish an oil and gas lien under certain
9 conditions; providing for the expiration of an oil
10 and gas lien; providing for judicial actions to
11 enforce an oil and gas lien; requiring the tolling
12 of certain time period if certain proceedings are
13 commenced; allowing the joining of actions to
14 enforce oil and gas liens; specifying certain costs
15 allowed in certain actions; limiting affect of law
16 on certain actions; limiting impairment of certain
17 rights of an operator; providing for operation of a
18 good-faith tender of funds under certain
19 circumstances; making certain rights cumulative;
20 providing for construction of the rights of an
21 interest owner; preserving the rights of an interest
22 owner accrued under certain law; repealing 52 O.S.
23 2001, Sections 548.1, 548.2, 548.3, 548.4, 548.5 and
24 548.6, which relate to the Oil and Gas Owners' Lien
Act; providing for codification; and declaring an
emergency.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 549.1 of Title 52, unless there
is created a duplication in numbering, reads as follows:

SHORT TITLE

This act shall be known and may be cited as the "Oil and Gas
Owners' Lien Act of 2010".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 549.2 of Title 52, unless there
3 is created a duplication in numbering, reads as follows:

4 DEFINITIONS

5 As used in the Oil and Gas Owners' Lien Act of 2010:

6 1. "Affiliate" means any person:

7 a. who is controlled, directly or indirectly, by a first
8 purchaser, or

9 b. who controls, directly or indirectly, a first
10 purchaser.

11 "Control" or "controlled by" means the possession, directly or
12 indirectly, of the power to direct or cause the direction of the
13 management and policies of a person, whether through ownership, by
14 contract, or otherwise;

15 2. "Agreement to sell" means any enforceable agreement, whether
16 express or implied, whether oral or written, by which an interest
17 owner, either directly or through a representative, agrees to sell
18 or is deemed by applicable contract or law to have agreed to sell
19 oil or gas upon or after severance to a first purchaser;

20 3. "Article 9" means Article 9 of the Oklahoma Uniform
21 Commercial Code in effect as of the relevant date or a comparable
22 article under the uniform commercial code of another state to the
23 extent applicable;

24

1 4. "First purchaser" means the first person that purchases oil
2 or gas from an interest owner, either directly or through a
3 representative, under an agreement to sell;

4 5. "Gas" means natural gas and casinghead gas and all
5 constituent parts thereof both before and after processing but prior
6 to the time at which a first purchaser transfers title, possession
7 or control thereof to a purchaser;

8 6. "Interest owner" means a person owning an interest of any
9 kind or nature in oil and gas rights before the acquisition thereof
10 by a first purchaser. Interest owner includes a representative and
11 a transferee interest owner;

12 7. "Oil" means oil and condensate and all constituent parts
13 thereof whether before or after processing but prior to the time at
14 which a first purchaser transfers title, possession or control
15 thereto to a purchaser;

16 8. "Oil and gas lien" means the lien granted by this act;

17 9. a. "Oil and gas rights" means, as to any lands within the
18 State of Oklahoma, any right, title or interest,
19 whether legal or equitable, in and to:

20 (1) oil,

21 (2) gas,

22 (3) proceeds,

23 (4) an oil and gas lease,

24 (5) a pooling order, and

1 (6) an agreement to sell.

2 b. By way of illustration and not limitation, oil and gas
3 rights include, but are not limited to:

4 (1) oil or gas in place prior to severance,

5 (2) oil or gas production, or the right to receive a
6 portion of the proceeds, upon severance,

7 (3) any interest or estate in, by, through or under an
8 oil and gas lease,

9 (4) rights acquired under a pooling order insofar as
10 such rights relate to: ownership of oil and gas,
11 the right to proceeds, or the right to enter into
12 an agreement to sell,

13 (5) a legal or equitable right to receive
14 consideration of whatsoever nature under an
15 agreement to sell, or

16 (6) a mortgage lien or security interest in any of
17 the foregoing;

18 10. "Operator" means a person engaged in the severance of oil
19 or gas for that person alone, for other persons only, or for that
20 person and others;

21 11. "Permitted lien" means any of the following liens or
22 security interests:

23 a. a mortgage lien or security interest granted by a
24 first purchaser in favor of a person not an affiliate

1 of the first purchaser which mortgage lien or security
2 interest secures payment under a written instrument of
3 indebtedness signed by the first purchaser and
4 accepted in writing by the payee thereof prior to the
5 effective date of this act with a principal amount and
6 a fixed maturity stated therein; provided, however, a
7 permitted lien does not include a mortgage lien or
8 security interest which:

9 (1) secures payment of any indebtedness incurred from
10 and after the effective date of this act,

11 (2) secures payment under a written instrument of
12 indebtedness not signed by a first purchaser and
13 accepted in writing by the payee thereof prior to
14 the effective date of this act,

15 (3) secures payment under a written instrument of
16 indebtedness modified, amended or restated from
17 or after the effective date of this act which
18 modification, amendment or restatement increases
19 the principal amount which was owing at the
20 effective date of this act,

21 (4) secures payment under a written instrument of
22 indebtedness modified, amended or restated from
23 or after the effective date of this act which
24 modification, amendment or restatement extends

1 the stated maturity thereof which was in effect
2 at the effective date of this act, or
3 (5) is not validly perfected with a first priority
4 against the claims of all persons under
5 applicable law other than persons holding a
6 statutory or regulatory lien as to which first
7 priority is granted by statute or regulation, or

8 b. a validly perfected and enforceable lien created by
9 statute or by rule or regulation of a governmental
10 agency for storage or transportation charges,
11 including terminal charges, tariffs, demurrage,
12 insurance, labor or other charges, owed by a first
13 purchaser in relation to oil or gas originally
14 purchased under an agreement to sell; provided,
15 however, a permitted lien does not include any such
16 lien:

17 (1) which is in favor of an affiliate of a first
18 purchaser unless such lien is authorized by the
19 statute, rule or regulation creating such lien,
20 or

21 (2) which is for charges in excess of ninety (90)
22 days from the time the first purchaser delivers
23 such oil or gas for such storage or
24 transportation;

1 12. "Person" means any individual, executor, administrator,
2 estate, agent, trust, trustee, institution, receiver, business
3 trust, firm, corporation, partnership, limited liability company,
4 cooperative, joint venture, governmental entity or agency,
5 association or any other group or combination acting as a unit;

6 13. "Pooling order" means an order issued by the Corporation
7 Commission that requires the owners of the right to drill for oil or
8 gas in a drilling and spacing unit to pool their interests for the
9 development of such drilling and spacing unit;

10 14. "Proceeds" means any of the following when paid or to be
11 paid in consideration of, or as a consequence of, the sale of oil or
12 gas under an agreement to sell: oil or gas on or after severance;
13 inventory of raw, refined or manufactured oil or gas after
14 severance; rights to or products of any of the foregoing; cash
15 proceeds; accounts; chattel paper; instruments; documents; or
16 payment intangibles with respect to any of the foregoing;

17 15. "Purchaser" means a person which is not an affiliate of a
18 first purchaser and which takes, receives or purchases oil or gas
19 from a first purchaser;

20 16. "Representative" means any person who is authorized, either
21 expressly or by implication, including, without limitation, an
22 operator or a broker so authorized, to sell oil or gas on behalf of,
23 or for the benefit of, an interest owner under an agreement to sell
24

1 or to receive on behalf of an interest owner the consideration under
2 an agreement to sell;

3 17. "Sales price" means the proceeds a first purchaser agrees
4 to pay an interest owner or representative under an agreement to
5 sell;

6 18. "Security interest" means a security interest governed by
7 Article 9;

8 19. "Severance" means that point in time at which oil or gas is
9 reduced to possession at the mouth of the wellbore of an oil and gas
10 well;

11 20. "Transferor interest owner" means an interest owner that
12 transfers or conveys oil and gas rights, in whole or in part; and

13 21. "Transferee interest owner" means a person that acquires
14 oil and gas rights from a transferor interest owner.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 549.3 of Title 52, unless there
17 is created a duplication in numbering, reads as follows:

18 NATURE, EXTENT AND DURATION OF OIL AND GAS LIEN

19 A. To secure the obligations of a first purchaser to pay the
20 sales price, each interest owner is hereby granted an oil and gas
21 lien to the extent of the interest owner's interest in oil and gas
22 rights. The oil and gas lien granted by this act is granted and
23 shall exist as part of and incident to the ownership of oil and gas
24 rights.

1 B. An oil and gas lien:

2 1. Exists in and attaches immediately to all oil and gas on the
3 effective date of this act;

4 2. Continues uninterrupted and without lapse in all oil and gas
5 upon and after severance; and

6 3. Continues uninterrupted and without lapse in and to all
7 proceeds.

8 C. An oil and gas lien exists until the interest owner or
9 representative first entitled to receive the sales price has
10 received the sales price. Notwithstanding the immediately preceding
11 sentence, as between an interest owner and a representative of an
12 interest owner or any person claiming adversely to such interest
13 owner or representative, such interest owner's oil and gas lien
14 continues uninterrupted and without lapse in proceeds in the
15 possession or control of a representative until the interest owner
16 on whose behalf such representative acts receives such proceeds in
17 full. When a first purchaser, in good faith, pays the sales price
18 to an interest owner or a representative otherwise apparently
19 entitled to receive the sales price and the first purchaser is
20 without actual knowledge that such interest owner or representative
21 is not entitled to receive the sales price so paid, then such first
22 purchaser takes free of the oil and gas lien otherwise applicable to
23 the oil or gas for which such payment was made. Notwithstanding the
24 immediately preceding sentence, the oil and gas lien will continue

1 uninterrupted in the proceeds paid to or otherwise due the interest
2 owner or representative.

3 D. The validity of an oil and gas lien shall not be dependent
4 on possession of the oil or gas by an interest owner or
5 representative. No oil and gas lien shall become or be deemed to be
6 void or expired by reason of a change or transfer of the actual or
7 constructive possession of or title to the oil or gas from the
8 interest owner or representative to a first purchaser or purchaser.

9 E. On the conveyance or transfer of any oil and gas rights by a
10 transferor interest owner, the oil and gas lien vested in the
11 transferor interest owner immediately before the conveyance or
12 transfer shall remain with the transferor interest owner to the
13 extent of any oil and gas rights retained by the transferor interest
14 owner.

15 F. On the conveyance or transfer of any oil and gas rights by a
16 transferor interest owner, the oil and gas lien vested in the
17 transferor interest owner immediately before the conveyance or
18 transfer shall be transferred to and attach automatically to the oil
19 and gas rights acquired by the transferee interest owner
20 uninterrupted and without lapse and as part of and incident to the
21 oil and gas rights so transferred or conveyed.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 549.4 of Title 52, unless there
24 is created a duplication in numbering, reads as follows:

1 PERFECTION OF OIL AND GAS SECURITY INTEREST

2 An oil and gas lien is granted and exists as part of and
3 incident to the ownership of oil and gas rights and is perfected
4 automatically without the need to file a financing statement or any
5 other type of documentation. An oil and gas lien exists and is
6 perfected from the effective date of this act.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 549.5 of Title 52, unless there
9 is created a duplication in numbering, reads as follows:

10 COMMINGLING

11 If oil or gas in which there exists more than one oil and gas
12 lien is commingled with other oil or gas in such a manner that the
13 identity of the specific oil or gas is lost, then the oil and gas
14 lien continues without interruption into and attaches to any such
15 resulting commingled product and is perfected automatically as of
16 the date of its original perfection but only as to volumes out of
17 the commingled product equal to the volume of product to which the
18 oil and gas lien originally attached. In such event, the oil and
19 gas lien in the commingled product has priority over any security
20 interest or other lien that is not an oil and gas lien or permitted
21 lien, whether or not the security interest or other lien has been
22 properly perfected. If more than one oil and gas lien attaches to
23 the commingled product, then the oil and gas liens rank equally in
24 the proportion that the respective sales prices secured by each oil

1 and gas lien bears as a percentage of the total of the sales prices
2 secured by all oil and gas liens applicable to the production at the
3 time the production was commingled. This section is intended to
4 recognize the continuation of oil and gas lien rights of an interest
5 owner in the commingled product stream only as to a volume of oil or
6 gas proportionate to the volume of oil or gas that originated from
7 such interest owner, with that volume of the commingled product
8 being considered to have maintained a distinct identity as being
9 available for sale or transportation under the specific contractual
10 arrangements applicable to the production at the time it entered the
11 commingled product stream.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 549.6 of Title 52, unless there
14 is created a duplication in numbering, reads as follows:

15 RIGHTS OF PURCHASERS

16 A purchaser takes free of any oil and gas lien otherwise
17 applicable to the oil or gas so purchased, and shall be relieved of
18 any obligations created by subsection A of Section 570.10 of Title
19 52 of the Oklahoma Statutes, only in the event that either of the
20 following occur:

- 21 1. The purchaser is deemed to be a buyer in the ordinary course
22 of the first purchaser's business as defined in Article 9; or
- 23 2. The purchaser has paid all of the consideration due the
24 first purchaser, including by exchange of oil or gas, net-out or

1 set-off, under all applicable enforceable contracts in existence at
2 the time of the payment.

3 Notwithstanding the foregoing, the oil and gas lien will
4 continue uninterrupted in the proceeds paid to or otherwise due the
5 first purchaser.

6 Except as specifically set forth in this section, an oil and gas
7 lien has priority over the rights of any purchaser.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 549.7 of Title 52, unless there
10 is created a duplication in numbering, reads as follows:

11 PRIORITY RELATIVE TO OTHER LIENS OR SECURITY INTERESTS

12 Except for a permitted lien, an oil and gas lien is a lien that
13 takes priority over any other lien, whether arising by contract,
14 law, equity or otherwise, or any security interest.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 549.8 of Title 52, unless there
17 is created a duplication in numbering, reads as follows:

18 TITLE

19 The provisions of this act shall not affect:

20 1. The time at which legal title to oil and gas may pass by
21 agreement or operation of law subject to an oil and gas lien;

22 2. The right of a first purchaser to take or receive oil and
23 gas under the terms of a division order, provided that such division
24

1 order shall not modify, waive or abrogate in any respect the rights
2 of an interest owner under this act; or

3 3. Subject to the provisions of Section 9 of this act, the
4 right of a first purchaser to take or receive oil and gas under an
5 agreement to sell.

6 SECTION 9. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 549.9 of Title 52, unless there
8 is created a duplication in numbering, reads as follows:

9 WAIVER

10 No interest owner shall be required, as a condition or term of
11 an agreement to sell or otherwise, to waive, relinquish or release
12 any oil and gas lien or any rights under this act other than upon
13 payment in full of the sales price or agree to any provision that
14 would apply the law of any state other than the State of Oklahoma
15 insofar as the same relates to rights under this act, and any such
16 purported waiver, relinquishment, release, or provision shall be
17 void as a matter of the public policy of this state.

18 Notwithstanding the preceding sentence, any interest owner or a
19 representative acting on behalf of an interest owner, may waive,
20 relinquish or release any oil and gas lien or any rights under this
21 act or agree to a provision that would apply the law of any state
22 other than the State of Oklahoma insofar as the same relates to
23 rights under this act only as to such interest owner's oil and gas
24 rights provided the first purchaser either:

1 1. Posts a letter of credit in form and amount satisfactory to
2 the interest owner, or a representative acting on behalf of an
3 interest owner; or

4 2. Agrees to a binding contractual arrangement satisfactory in
5 form and substance to the interest owner, or a representative acting
6 on behalf of an interest owner to prepay or escrow the sales price
7 under an agreement to sell in form and substance satisfactory to the
8 interest owner and performs all of the first purchaser's obligations
9 thereunder.

10 SECTION 10. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 549.10 of Title 52, unless there
12 is created a duplication in numbering, reads as follows:

13 EXPIRATION OF LIEN - ENFORCEMENT - JOINDER AND CONSOLIDATION -
14 COSTS - PERSONAL ACTIONS - OTHER RIGHTS AND REMEDIES

15 A. An oil and gas lien shall expire, as to an interest owner,
16 one (1) year after the last day of the month following the date
17 proceeds from the sale of oil or gas subject to such lien are
18 required by law or contract to be paid to such interest owner but
19 only as to the oil or gas sold during such month, unless an action
20 to enforce the oil and gas lien is commenced within such time in a
21 court of competent jurisdiction. In addition to any other court of
22 competent jurisdiction, an action to enforce the oil and gas lien
23 may be commenced in the district court of the county in which there
24 is located the oil and gas well from which the oil or gas is

1 produced, or wherever the oil or gas unpaid for or the proceeds may
2 be found. Notwithstanding the foregoing, the commencement of any
3 proceeding by or against any person claiming an interest in any
4 property subject to the oil and gas lien seeking to adjudicate such
5 person as bankrupt or insolvent, or seeking liquidation, winding up,
6 reorganization, arrangement, adjustment, protection, relief, or
7 composition of such person or such person's debts under any law
8 relating to bankruptcy, insolvency or reorganization or relief of
9 debtors, or seeking the entry of an order for relief or the
10 appointment of a receiver, trustee or other similar official for
11 such person or for any substantial part of such person's property
12 shall toll the foregoing one (1) year period in which to commence an
13 action to enforce the oil and gas lien for an additional period of
14 ninety (90) days from the earlier of:

- 15 1. The final conclusion or dismissal of such proceedings; or
- 16 2. The date final relief is obtained from the applicable
17 tribunal authorizing the commencement of such action.

18 Proceedings to enforce oil and gas liens involving more than one oil
19 and gas well in one county can be joined by an interest owner in the
20 same action. Any number of persons claiming oil and gas liens with
21 respect to the oil or gas from the same oil and gas well or wells
22 may join in the same action and where separate actions are
23 commenced, the district court may consolidate them. The district
24 court shall allow as part of the costs of the action all costs of

1 collection including, without limitation, reasonable attorney fees
2 for the prevailing party in the trial and appellate tribunals.

3 B. Nothing in this act shall be construed to impair or affect
4 the right of any interest owner to maintain a personal action to
5 recover the debt against any person liable for payment of the sales
6 price or to exercise any other rights and remedies available at law
7 or in equity.

8 SECTION 11. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 549.11 of Title 52, unless there
10 is created a duplication in numbering, reads as follows:

11 RIGHTS OF OPERATOR NOT IMPAIRED

12 This act does not impair an operator's right to be paid, set-off
13 or withhold funds from another interest owner as security for or in
14 satisfaction of any debt or security interest. In case of a dispute
15 between an operator and another interest owner, a good-faith tender
16 of funds by anyone operates as a tender of the funds to both in any
17 of the following circumstances:

18 1. To the person who the operator and other interest owner
19 jointly direct the first purchaser in writing to pay;

20 2. To a person who otherwise shows himself or herself to be the
21 one entitled to the funds; or

22 3. To a court of competent jurisdiction in the event of
23 litigation or bankruptcy.

24

1 SECTION 12. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 549.12 of Title 52, unless there
3 is created a duplication in numbering, reads as follows:

4 RIGHTS CUMULATIVE

5 A. The provisions of this act and the rights granted under this
6 act are intended to be cumulative with all other rights an interest
7 owner may otherwise have at law or in equity. To the extent that
8 there is a conflict between the provisions of this act and any other
9 rights an interest owner has at law or in equity, then the rights of
10 the interest owner are to be liberally construed to the end that
11 those rights which afford the interest owner the most comprehensive
12 protection to secure the receipt by the interest owner of the sales
13 price shall be given preference.

14 B. The rights of any interest owner accrued under the
15 provisions of Section 548.1 et seq. of Title 52 of the Oklahoma
16 Statutes prior to the effective date of this act shall be preserved
17 to the extent not in conflict with the provisions of this act.

18 SECTION 13. REPEALER 52 O.S. 2001, Sections 548.1,
19 548.2, 548.3, 548.4, 548.5 and 548.6, are hereby repealed.

20 SECTION 14. It being immediately necessary for the preservation
21 of the public peace, health and safety, an emergency is hereby
22 declared to exist, by reason whereof this act shall take effect and
23 be in full force from and after its passage and approval."

24

