

THE HOUSE OF REPRESENTATIVES  
Wednesday, February 11, 2009

House Bill No. 2055

HOUSE BILL NO. 2055 - By: THOMPSON of the House and BINGMAN of the Senate.

An Act relating to the Uniform Commercial Code; creating the Oil and Gas Owner's Sales Protection Act; providing definitions; granting a security interest to certain interest owners; providing for the nature, extent, and duration of an oil and gas security interest; providing for the perfection of an oil and gas security interest; providing for the continuation of an oil and gas security interest when commingled with other production; establishing priority of an oil and gas security interest over first purchasers and buyers; making an oil and gas security interest a purchase money security interest; specifying the rights of an operator are not impaired in certain circumstances; making certain rights cumulative; providing for codification; and providing an effective date.

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

PART 8. OIL AND GAS OWNER'S SALES PROTECTION ACT

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma  
2 Statutes as Section 1-9-801 of Title 12A, unless there is created a duplication in  
3 numbering, reads as follows:

4 Definitions.

5 As used in this act, and whether or not capitalized:

6 1. "Agreement to sell" means any agreement, whether express or implied, whether  
7 oral or written, by which an interest owner agrees to sell oil or gas production to a first  
8 purchaser;

- 1           2. “Article 9” means revised Article 9, Uniform Commercial Code – Secured  
2 Transactions;
- 3           3. “Debtor” means any person that owes consideration to an interest owner for the  
4 sale or receipt of oil or gas to which an oil and gas security interest attaches;
- 5           4. “First purchaser” means the person that first purchases oil or gas production,  
6 whether directly or indirectly, including without limitation through a broker or other  
7 arrangement, from an interest owner after the production is severed;
- 8           5. “Instrument of ownership” means any of the following: deed, mineral deed,  
9 reservation in a deed or mineral deed, conveyance, oil or gas lease, assignment, or any  
10 other similar instrument recorded in the real property records of a county clerk  
11 evidencing a right as an interest owner. The instruments listed in this paragraph are  
12 intended to be illustrative and not exhaustive of the type of instruments that will qualify  
13 as an instrument of ownership;
- 14           6. “Interest owner” means a person owning a legal interest of any kind or nature in  
15 oil and gas production at the time of severance, or a person that has a legal or equitable  
16 right to receive a monetary payment or other consideration under an agreement to sell,  
17 including, without limitation, a representative;
- 18           7. “Oil and gas security interest” means the security interest granted by this act;
- 19           8. “Operator” means a person engaged in the business of severing oil or gas  
20 production from the ground, whether for that person alone, for other persons only, or for  
21 that person and others;

1           9. “Person” means a natural person and any entity of any nature including, without  
2 limitation, a governmental entity;

3           10. “Proceeds” means any of the following:

- 4           a.     oil or gas production,
- 5           b.     inventory of raw, refined or manufactured oil or gas production,
- 6           c.     rights to or products of any of the foregoing,
- 7           d.     cash proceeds,
- 8           e.     accounts,
- 9           f.     chattel paper,
- 10          g.     instruments,
- 11          h.     documents, or
- 12          i.     payment intangibles with respect to any of the foregoing;

13          11. “Representative” means any person who is authorized, either expressly or by  
14 implication, including, without limitation, an operator or a broker, to receive on behalf of  
15 an interest owner a monetary payment or other consideration under an agreement to  
16 sell;

17          12. “Sales price” means the consideration a first purchaser owes an interest owner  
18 under an agreement to sell; and

19          13. “Secured party” means an interest owner granted an oil and gas security  
20 interest under this act.

1 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma  
2 Statutes as Section 1-9-802 of Title 12A, unless there is created a duplication in  
3 numbering, reads as follows:

4 Oil and Gas Interests; Security Interest.

5 Each interest owner is hereby granted a security interest, as a secured party, to  
6 secure the obligations of a first purchaser, as a debtor, to pay the sales price.

7 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma  
8 Statutes as Section 1-9-803 of Title 12A, unless there is created a duplication in  
9 numbering, reads as follows:

10 Nature, Extent and Duration of Oil and Gas Security Interest.

11 An oil and gas security interest exists in and attaches immediately to all oil and gas  
12 on its severance, and in and to all proceeds. Subject only to Section 6 of this act, an oil  
13 and gas security interest exists for an unlimited time until the interest owner first  
14 entitled to receive the sales price has, in fact, received the sales price in full, without set-  
15 off, regardless of whether set-off is permitted by contract or is otherwise lawful.

16 Provided, however, as between an interest owner and a representative or any person  
17 claiming adversely to such interest owner by, through or under a representative, such  
18 interest owner's oil and gas security interest continues and exists in proceeds in the  
19 possession or control of a representative until the interest owner on whose behalf such  
20 representative acts receives such proceeds in full, without set-off, regardless of whether  
21 set-off is permitted by contract or is otherwise lawful.

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma  
2 Statutes as Section 1-9-804 of Title 12A, unless there is created a duplication in  
3 numbering, reads as follows:

4 Perfection of Oil and Gas Security Interest.

5 A. An oil and gas security interest is perfected automatically without the need to  
6 file a financing statement or any other type of documentation. An oil and gas security  
7 interest shall be deemed perfected on the earliest to occur of the following:

8 1. If the interest of an interest owner is evidenced by an instrument of ownership,  
9 the instrument of ownership is effective as a filed financing statement for purposes of  
10 Article 9 as of the date and time of filing of the instrument of ownership; provided,  
11 however, no fee is required except a recording fee otherwise required by law for the  
12 instrument of ownership without regard to its status as a financing statement under this  
13 act;

14 2. A person who succeeds to rights under an instrument of ownership by any  
15 lawful means, whether by acquisition, merger, conveyance or otherwise, also succeeds to  
16 the rights and priorities of any interest owner previously claiming rights under such  
17 instrument of ownership to the extent of the rights so acquired regardless of whether the  
18 document by which the successor claims such rights is recorded in the real property  
19 records of a county clerk so long as:

20 a. such rights of succession are evidenced by a written document or  
21 documents duly executed by the previous owner or owners of such  
22 rights, and



1 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma  
2 Statutes as Section 1-9-806 of Title 12A, unless there is created a duplication in  
3 numbering, reads as follows:

4 Rights of First Purchasers and Buyers in The Ordinary Course of Business.

5 Except as specifically set forth in this section, an oil and gas security interest has  
6 priority over the rights of any person claiming by, through, or under a first purchaser. A  
7 person who buys from a first purchaser takes free of any oil and gas security interest,  
8 provided that both of the following occur:

9 1. The person is buying in the ordinary course of the first purchaser's business from  
10 the first purchaser; and

11 2. The person has paid the first purchaser an amount at least equal to the sales  
12 price, in full, without set-off, regardless of whether set-off is permitted by contract or is  
13 otherwise lawful; provided, that the oil and gas security interest will continue in the  
14 proceeds of the sale paid to the first purchaser.

15 SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma  
16 Statutes as Section 1-9-807 of Title 12A, unless there is created a duplication in  
17 numbering, reads as follows:

18 Priority Relative to Other Security Interests Under Article 9.

19 An oil and gas security interest is a purchase money security interest with the  
20 priorities set forth in this act without regard to any other provisions in Article 9.

1 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma  
2 Statutes as Section 1-9-808 of Title 12A, unless there is created a duplication in  
3 numbering, reads as follows:

4 Rights of Operator Not Impaired.

5 This act does not impair an operator's right to set-off or withhold funds from  
6 another interest owner as security for or in satisfaction of any debt or security interest.  
7 In case of a dispute between an operator and another interest owner, a good-faith tender  
8 of funds by anyone to the person whom the operator and other interest owner agree on, to  
9 a person who otherwise shows himself or herself to be the one entitled to the funds, or to  
10 a court of competent jurisdiction in the event of litigation or bankruptcy, operates as a  
11 tender of the funds to both.

12 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma  
13 Statutes as Section 1-9-809 of Title 12A, unless there is created a duplication in  
14 numbering, reads as follows:

15 Rights Cumulative.

16 The provisions of this act and the rights granted under this act are intended to be  
17 cumulative with all other rights an interest owner may otherwise have at law or in  
18 equity. To the extent that there is a conflict between the provisions of this act and any  
19 other rights an interest owner has at law or in equity, then the rights of the interest  
20 owner are to be liberally construed to the end that those rights which afford the interest  
21 owner the most comprehensive protection to secure the receipt by the interest owner of  
22 the sales price shall be given preference.



1 SECTION 10. This act shall become effective November 1, 2009.  
2 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND UTILITY  
3 REGULATION, dated 02-10-09 - DO PASS, As Coauthored.