

1 ENGROSSED SENATE
2 BILL NO. 632

By: Taylor of the Senate

3 and

4 McEntire of the House

5
6 An Act relating to the Oil and Gas Owners' Lien Act
7 of 2010; amending 52 O.S. 2011, Sections 549.2 and
8 549.3, which relate to definitions and oil and gas
9 liens; modifying definition; granting lien right to
secure obligation to pay certain proceeds; specifying
duration of certain lien; and providing an effective
date.

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

13 SECTION 1. AMENDATORY 52 O.S. 2011, Section 549.2, is
14 amended to read as follows:

15 Section 549.2.

16

DEFINITIONS

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

18 1. "Affiliate" means any person:

19 a. who is controlled, directly or indirectly, by a first
20 purchaser, or

21 b. who controls, directly or indirectly, a first
22 purchaser.

23 "Control" or "controlled by" means the possession, directly or
24 indirectly, of the power to direct or cause the direction of the

1 management and policies of a person, whether through ownership, by
2 contract, or otherwise;

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

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

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

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

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

23 7. "Oil" means oil and condensate and all constituent parts
24 thereof whether before or after processing but prior to the time at

1 which a first purchaser transfers title, possession or control
2 thereto to a purchaser;

3 8. "Oil and gas lien" means the lien granted by ~~this act~~ the
4 Oil and Gas Owners' Lien Act of 2010;

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

- 8 (1) oil,
- 9 (2) gas,
- 10 (3) proceeds,
- 11 (4) an oil and gas lease,
- 12 (5) a pooling order, and
- 13 (6) an agreement to sell.

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

- 16 (1) oil or gas in place prior to severance,
- 17 (2) oil or gas production, or the right to receive a
18 portion of the proceeds, upon severance,
- 19 (3) proceeds owed for oil and gas drilling and
20 development,
- 21 (4) proceeds from the acquisition of oil and gas
22 rights including but not limited to a lease bonus
23 or pooling bonus,

24

1 (5) proceeds from an unfulfilled contract or
2 agreement for the purchase of mineral rights,

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

5 ~~(4)~~

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

10 ~~(5)~~

11 (8) a legal or equitable right to receive
12 consideration of whatsoever nature under an
13 agreement to sell, or

14 ~~(6)~~

15 (9) a mortgage lien or security interest in any of
16 the foregoing;

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

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

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

1 interest secures payment under a written instrument of
2 indebtedness signed by the first purchaser and
3 accepted in writing by the payee thereof prior to ~~the~~
4 ~~effective date of this act~~ April 19, 2010, with a
5 principal amount and a fixed maturity stated therein;
6 provided, however, a permitted lien does not include a
7 mortgage lien or security interest which:

8 (1) secures payment of any indebtedness incurred from
9 and after ~~the effective date of this act~~ April
10 19, 2010,

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~~ April 19, 2010,

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~~ April 19,
18 2010, which modification, amendment or
19 restatement increases the principal amount which
20 was owing ~~at the effective date of this act~~ on
21 April 19, 2010,

22 (4) secures payment under a written instrument of
23 indebtedness modified, amended or restated from
24 or after ~~the effective date of this act~~ April 19,

1 2010, which modification, amendment or
2 restatement extends the stated maturity thereof
3 which was in effect ~~at the effective date of this~~
4 ~~act~~ on April 19, 2010, or

5 (5) is not validly perfected with a first priority
6 against the claims of all persons under
7 applicable law other than persons holding a
8 statutory or regulatory lien as to which first
9 priority is granted by statute or regulation, or

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

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

23 (2) which is for charges in excess of ninety (90)
24 days from the time the first purchaser delivers

1 such oil or gas for such storage or
2 transportation;

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

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

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

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

22 16. "Representative" means any person who is authorized, either
23 expressly or by implication, including, without limitation, an
24 operator or a broker so authorized, to sell oil or gas on behalf of,

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

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

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

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

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

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

16 SECTION 2. AMENDATORY 52 O.S. 2011, Section 549.3, is
17 amended to read as follows:

18 Section 549.3.

19 NATURE, EXTENT AND DURATION OF OIL AND GAS LIEN

20 A. To secure the obligations of a first purchaser to pay the
21 sales price, and to secure the obligation of any person to pay any
22 proceeds, as defined in Section 549.2 of this title, for the
23 acquisition of oil and gas rights, each interest owner is hereby
24 granted an oil and gas lien to the extent of the interest owner's

1 interest in oil and gas rights. The oil and gas lien granted by
2 ~~this act~~ the Oil and Gas Owner' Lien Act of 2010 is granted and
3 shall exist as part of and incident to the ownership of oil and gas
4 rights.

5 B. An oil and gas lien:

6 1. Exists in and attaches immediately to all oil and gas on ~~the~~
7 ~~effective date of this act~~ April 19, 2010;

8 2. Continues uninterrupted and without lapse in all oil and gas
9 upon and after severance; and

10 3. Continues uninterrupted and without lapse in and to all
11 proceeds.

12 C. An oil and gas lien exists until the interest owner or
13 representative first entitled to receive the sales price or any
14 proceeds, as defined in Section 549.2 of this title, for the
15 acquisition of oil and gas rights, has received the sales price or
16 any proceeds, as defined in Section 549.2 of this title, for the
17 acquisition of oil and gas rights. Notwithstanding the immediately
18 preceding sentence, as between an interest owner and a
19 representative of an interest owner or any person claiming adversely
20 to such interest owner or representative, such interest owner's oil
21 and gas lien continues uninterrupted and without lapse in proceeds
22 in the possession or control of a representative until the interest
23 owner on whose behalf such representative acts receives such
24 proceeds in full. When a first purchaser, in good faith, pays the

1 sales price to an interest owner or a representative otherwise
2 apparently entitled to receive the sales price and the first
3 purchaser is without actual knowledge that such interest owner or
4 representative is not entitled to receive the sales price so paid,
5 then such first purchaser takes free of the oil and gas lien
6 otherwise applicable to the oil or gas for which such payment was
7 made. Notwithstanding the immediately preceding sentence, the oil
8 and gas lien will continue uninterrupted in the proceeds paid to or
9 otherwise due the interest owner or representative.

10 D. The validity of an oil and gas lien shall not be dependent
11 on possession of the oil or gas by an interest owner or
12 representative. No oil and gas lien shall become or be deemed to be
13 void or expired by reason of a change or transfer of the actual or
14 constructive possession of or title to the oil or gas from the
15 interest owner or representative to a first purchaser or purchaser.

16 E. On the conveyance or transfer of any oil and gas rights by a
17 transferor interest owner, the oil and gas lien vested in the
18 transferor interest owner immediately before the conveyance or
19 transfer shall remain with the transferor interest owner to the
20 extent of any oil and gas rights retained by the transferor interest
21 owner.

22 F. On the conveyance or transfer of any oil and gas rights by a
23 transferor interest owner, the oil and gas lien vested in the
24 transferor interest owner immediately before the conveyance or

1 transfer shall be transferred to and attach automatically to the oil
2 and gas rights acquired by the transferee interest owner
3 uninterrupted and without lapse and as part of and incident to the
4 oil and gas rights so transferred or conveyed.

5 SECTION 3. This act shall become effective November 1, 2021.

6 Passed the Senate the 10th day of March, 2021.

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Presiding Officer of the Senate

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10 Passed the House of Representatives the ____ day of _____,
11 2021.

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Presiding Officer of the House
of Representatives

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