

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1273

By: Representative S. Smith

For An Act To Be Entitled

AN ACT TO ESTABLISH THE OIL AND GAS OWNERS' LIEN ACT
OF 2021; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE OIL AND GAS OWNERS'
LIEN ACT OF 2021.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 15, Chapter 72, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Oil and Gas Owners' Lien Act of 2021

15-72-1101. Title.

This subchapter shall be known and may be cited as the "Oil and Gas Owners' Lien Act of 2021".

15-72-1102. Definitions.

As used in this subchapter:

(1) "Affiliate" means a person that directly or indirectly:

(A) Is controlled by a first purchaser; or

(B) Controls a first purchaser;

(2) "Agreement to sell" means an enforceable agreement that is express or implied or oral or written, by which an interest owner, directly or through a representative, agrees to sell, or is deemed by applicable contract or law to have agreed to sell, oil or gas upon or after severance to a first purchaser;



(3) "Article 9" means the Uniform Commercial Code – Secured Transactions, § 4-9-101 et seq., or a comparable article under the uniform commercial code of another state to the extent applicable;

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

(5) "First purchaser" means the first person that purchases oil or gas from an interest owner either directly or through a representative under an agreement to sell;

(6) "Gas" means natural gas and casinghead gas and all constituent parts before and after processing but before the time at which a first purchaser transfers title, possession, or control to a purchaser;

(7) "Integration order" means an order issued by the Oil and Gas Commission that requires the owners of the right to drill for oil or gas in a drilling unit to pool their interests for the development of the drilling unit;

(8)(A) "Interest owner" means a person owning an interest in an oil and gas right before the acquisition by a first purchaser.

(B) "Interest owner" includes a representative and a transferee interest owner;

(9) "Oil" means oil and condensate and all constituent parts whether before or after processing but before the time at which a first purchaser transfers title, possession, or control to a purchaser;

(10) "Oil and gas lien" means a lien granted by this subchapter;

(11)(A) "Oil and gas right" means a right, title, or interest, whether legal or equitable, in and to:

(i) Oil;

(ii) Gas;

(iii) Proceeds;

(iv) An oil and gas lease;

(v) An integration order; or

(vi) An agreement to sell.

(B) "Oil and gas right" including, but not limited to:

(i) Oil or gas in place before severance;

(ii) Oil or gas production or the right to receive a

portion of the proceeds upon severance;

(iii) An interest or estate in, by, through, or under an oil and gas lease;

(iv) Rights acquired under an integration order insofar as the rights relate to ownership of oil and gas, the right to proceeds, or the right to enter into an agreement to sell;

(v) A legal or equitable right to receive consideration of any nature under an agreement to sell; or

(vi) A mortgage lien or security interest in an item listed in subdivisions (11)(B)(i)-(v) of this section;

(12) "Operator" means a person engaged in the severance of oil or gas for that person or for other persons, or both;

(13)(A) "Permitted lien" means the following liens or security interests:

(i) A mortgage lien or security interest granted by a first purchaser in favor of a person that is not an affiliate of the first purchaser that secures payment under a written instrument of indebtedness signed by the first purchaser and accepted in writing by the payee before the effective date of this subchapter with a principal amount and a fixed maturity date stated in the written instrument of indebtedness; or

(ii) A validly perfected and enforceable lien created by statute or by rule or regulation of a governmental agency for storage or transportation charges, including terminal charges, tariffs, demurrage, insurance, labor or other charges, owed by a first purchaser in relation to oil or gas originally purchased under an agreement to sell.

(B) "Permitted lien" does not include:

(i) A mortgage lien or security interest that:

(a) Secures payment of indebtedness incurred on and after the effective date of this subchapter;

(b) Secures payment under a written instrument of indebtedness not signed by a first purchaser and accepted in writing by the payee before the effective date of this subchapter;

(c) Secures payment under a written instrument of indebtedness modified, amended, or restated on or after the effective date of this subchapter that increases the principal amount that was owed as of effective date of this subchapter;

(d) Secures payment under a written instrument of indebtedness modified, amended, or restated on or after the effective date of this subchapter that extends the maturity date that was in effect as of the effective date of this subchapter; or

(e) Is not validly perfected with a first priority against the claims of all persons under applicable law other than persons holding a statutory or regulatory lien as to which first priority is granted by statute, rule, or regulation;

(ii) A lien that is in favor of an affiliate of a first purchaser unless the lien is authorized by the statute, rule, or regulation creating the lien; or

(iii) A lien that is for charges in excess of ninety (90) days from the time the first purchaser delivers the oil or gas for storage or transportation;

(14) "Person" means an individual, executor, administrator, estate, agent, trust, trustee, institution, receiver, business trust, firm, corporation, partnership, limited liability company, cooperative, joint venture, governmental entity or agency, association, or other group or combination acting as a unit;

(15) "Proceeds" means the following when paid or to be paid in consideration of, or as a consequence of, the sale of oil or gas under an agreement to sell:

(A) Oil or gas on or after severance;

(B) Inventory of raw, refined, or manufactured oil or gas after severance;

(C) Rights to or products of items listed in subdivisions (15)(A) and (B) of this section;

(D) Cash proceeds;

(E) Accounts;

(F) Chattel paper;

(G) Instruments;

(H) Documents; or

(I) Payment intangibles with respect to items listed in subdivisions (15)(A)-(H) of this section;

(16) "Purchaser" means a person that is not an affiliate of a first purchaser and that takes, receives, or purchases oil or gas from a

first purchaser;

(17) "Representative" means a person, including without limitation an operator or a broker that is authorized, either expressly or by implication, to sell oil or gas on behalf of or for the benefit of an interest owner under an agreement to sell or to receive on behalf of an interest owner the consideration under an agreement to sell;

(18) "Sales price" means the proceeds that a first purchaser agrees to pay an interest owner or representative under an agreement to sell;

(19) "Security interest" means a security interest governed by Article 9;

(20) "Severance" means the point in time at which oil or gas is reduced to possession at the mouth of the wellbore of an oil and gas well;

(21) "Transferee interest owner" means a person that acquires an oil and gas right from a transferor interest owner; and

(22) "Transferor interest owner" means an interest owner that transfers or conveys an oil and gas right, in whole or in part.

15-72-1103. Nature, extent, and duration of oil and gas lien.

(a) To secure the obligations of a first purchaser to pay the sales price, each interest owner is granted an oil and gas lien to the extent of the interest owner's interest in an oil and gas right that exists as part of and incident to the ownership of an oil and gas right.

(b) An oil and gas lien:

(1) Exists in and attaches immediately to all oil and gas as of the effective date of this subchapter;

(2) Continues uninterrupted and without lapse in all oil and gas upon and after severance; and

(3) Continues uninterrupted and without lapse in and to all proceeds.

(c)(1) An oil and gas lien exists until the interest owner or representative first entitled to receive the sales price has received the sales price.

(2)(A) Notwithstanding subdivision (c)(1) of this section, as between an interest owner and a representative or a person claiming adversely to the interest owner or representative, the interest owner's oil and gas lien continues uninterrupted and without lapse in proceeds in the possession

or control of a representative until the interest owner on whose behalf the representative acts receives the proceeds in full.

(B)(i) When a first purchaser, in good faith, pays the sales price to an interest owner or a representative otherwise apparently entitled to receive the sales price and the first purchaser is without actual knowledge that the interest owner or representative is not entitled to receive the sales price so paid, then the first purchaser takes free of the oil and gas lien otherwise applicable to the oil or gas for which the payment was made.

(ii) Notwithstanding subdivision (c)(2)(B)(i) of this section, the oil and gas lien shall continue uninterrupted in the proceeds paid to or otherwise due the interest owner or representative.

(d)(1) The validity of an oil and gas lien shall not be dependent on possession of the oil or gas by an interest owner or representative.

(2) An oil and gas lien shall not become or be deemed to be void or expired by reason of a change or transfer of the actual or constructive possession of or title to the oil or gas from the interest owner or representative to a first purchaser or purchaser.

(e) On the conveyance or transfer of an oil and gas right by a transferor interest owner, the oil and gas lien vested in the transferor interest owner immediately before the conveyance or transfer shall remain with the transferor interest owner to the extent of the oil and gas right retained by the transferor interest owner.

(f) On the conveyance or transfer of an oil and gas right by a transferor interest owner, the oil and gas lien vested in the transferor interest owner immediately before the conveyance or transfer shall be transferred to and attach automatically to the oil and gas right acquired by the transferee interest owner uninterrupted and without lapse and as part of and incident to the oil and gas right transferred or conveyed.

15-72-1104. Perfection of oil and gas security interest.

(a) An oil and gas lien is granted and exists as part of and incident to the ownership of an oil and gas right and is perfected automatically without the need to file a financing statement or other type of documentation.

(b) An oil and gas lien exists and is perfected as of the effective

date of this subchapter.

15-72-1105. Commingling.

(a) If oil or gas in which there exists more than one (1) oil and gas lien is commingled with other oil or gas in such a manner that the identity of the specific oil or gas is lost, then the oil and gas lien continues without interruption into and attaches to the resulting commingled product and is perfected automatically as of the date of its original perfection, but only as to volumes out of the commingled product equal to the volume of product to which the oil and gas lien originally attached.

(b) The oil and gas lien in the commingled product has priority over a security interest or other lien that is not an oil and gas lien or permitted lien, whether or not the security interest or other lien has been properly perfected.

(c) If more than one (1) oil and gas lien attaches to the commingled product, then the oil and gas liens rank equally in the proportion that the respective sales prices secured by each oil and gas lien bears as a percentage of the total of the sales prices secured by all oil and gas liens applicable to the product at the time the product was commingled.

(d) This section recognizes the continuation of oil and gas lien rights of an interest owner in the commingled product stream only as to a volume of oil or gas proportionate to the volume of oil or gas that originated from the interest owner, with that volume of the commingled product being considered to have maintained a distinct identity as being available for sale or transportation under the specific contractual arrangements applicable to the product at the time the product entered the commingled product stream.

15-72-1106. Rights of purchasers.

(a) A purchaser takes free of an oil and gas lien otherwise applicable to the oil or gas purchased and is relieved of an obligation to hold revenue or proceeds from the sale of production for the benefit of the owners legally entitled to the revenue or proceeds from the sale of production only in the event that either of the following occur:

(1) The purchaser is deemed to be a buyer in the ordinary course of the first purchaser's business as defined in Article 9; or

(2) The purchaser has paid all of the consideration due the first purchaser, including by exchange of oil or gas, net-out or set-off, under all applicable enforceable contracts in existence at the time of the payment.

(b) Notwithstanding subsection (a) of this section, the oil and gas lien will continue uninterrupted in the proceeds paid to or otherwise due the first purchaser.

(c) Except as specifically set forth in this section, an oil and gas lien has priority over the rights of a purchaser.

15-72-1107. Priority relative to other liens or security interests.

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

15-72-1108. Legal title.

This subchapter does not affect:

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

(2) The right of a first purchaser to take or receive oil and gas under the terms of a lease, provided that the lease shall not modify, waive, or abrogate in any respect the rights of an interest owner under this subchapter; or

(3) Subject to § 15-72-1109, the right of a first purchaser to take or receive oil and gas under an agreement to sell.

15-72-1109. Waiver.

(a) An interest owner is not required, as a condition or term of an agreement to sell or otherwise, to:

(1) Waive, relinquish, or release an oil and gas lien or a right under this subchapter other than upon payment in full of the sales price; or

(2) Agree to a provision that would apply the law of a state other than this state insofar as the law of the other state relates to rights under this subchapter.

(b) A purported waiver, relinquishment, release, or provision required as a condition or term of agreement referenced under subsection (a) of this

section is void as a matter of the public policy of this state.

(c) Notwithstanding subsection (a) of this section, an interest owner or a representative may waive, relinquish, or release an oil and gas lien or a right under this subchapter or agree to a provision that would apply the law of a state other than this state insofar as the waiver, relinquishment, release, or agreement to a provision that would apply the law of the other state relates to rights under this subchapter only as to the interest owner's oil and gas right, if the first purchaser either:

(1) Posts a letter of credit in a form and an amount satisfactory to the interest owner or representative; or

(2) Agrees to a binding contractual arrangement satisfactory in form and substance to the interest owner or representative to prepay or escrow the sales price under an agreement to sell satisfactory in form and substance to the interest owner and performs all of the first purchaser's obligations under the binding contractual arrangement.

15-72-1110. Expiration of oil and gas lien – Enforcement – Joinder and consolidation – Costs – Personal actions – Other rights and remedies.

(a)(1) An oil and gas lien shall expire, as to an interest owner, five (5) years after the last day of the month following the date that proceeds from the sale of oil or gas subject to the oil and gas lien are required by law or contract to be paid to the interest owner, but only as to the oil or gas sold during that month, unless an action to enforce the oil and gas lien is commenced in a court of competent jurisdiction.

(2) In addition to a court of competent jurisdiction, an action to enforce the oil and gas lien may be commenced in the circuit court of the county in which the oil and gas well where the oil or gas is produced is located or in the circuit court of the county in which the unpaid-for oil or gas or the proceeds may be found.

(3) Notwithstanding subdivision (a)(1) of this section, the commencement of a proceeding by or against a person claiming an interest in property subject to the oil and gas lien shall toll the period of five (5) years in which to commence an action to enforce the oil and gas lien if the proceeding is seeking:

(A) To adjudicate a person as bankrupt or insolvent;

(B) Liquidation, winding up, reorganization, arrangement,

adjustment, protection, relief, or composition of the person or the person's debts under a law relating to bankruptcy, insolvency, reorganization, or relief of debtors; or

(C) Entry of an order for relief or the appointment of a receiver, trustee, or similar official for the person or for a substantial part of the person's property.

(4) An action under subdivision (a)(3) of this section shall toll the period of five (5) years in which to commence an action to enforce the oil and gas lien for an additional period of ninety (90) days from the earlier of:

(A) The final conclusion or dismissal of the proceedings;
or

(B) The date final relief is obtained from the applicable court authorizing the commencement of the action.

(b) Proceedings to enforce an oil and gas lien involving more than one (1) oil and gas well in one (1) county can be joined by an interest owner in the same action.

(c)(1) Any number of persons claiming oil and gas liens with respect to the oil or gas from the same oil and gas well or wells may join in the same action.

(2) When separate actions are commenced, the circuit court may consolidate them.

(d) The circuit court shall allow as part of the costs of the action all costs of collection, including without limitation reasonable attorney's fees for the prevailing party in the trial and appellate courts.

(e) This subchapter does not impair or affect the right of an interest owner to maintain a personal action to recover the debt against a person liable for payment of the sales price or to exercise other rights and remedies available at law or in equity.

15-72-1111. Rights of operator not impaired.

(a) This subchapter does not impair an operator's right to be paid, to set-off funds, or to withhold funds from an interest owner as security for or in satisfaction of a debt or security interest.

(b) In the case of a dispute between an operator and an interest owner, a good-faith tender of funds by a person operates as a tender of the

funds to both the operator and the interest owner if the tender of funds is to:

(1) The person that the operator and the interest owner jointly direct the first purchaser in writing to pay;

(2) A person that otherwise shows himself or herself or itself to be the person entitled to the funds; or

(3) A court of competent jurisdiction in the event of litigation or bankruptcy.

15-72-1112. Rights cumulative.

(a) This subchapter and the rights granted under this subchapter are cumulative with all other rights an interest owner may otherwise have at law or in equity.

(b) To the extent that there is a conflict between this subchapter and other rights an interest owner has at law or in equity, then the rights of the interest owner are to be liberally construed to the end that those rights that afford the interest owner the most comprehensive protection to secure the receipt by the interest owner of the sales price shall be given preference.

(c) The rights of an interest owner accrued before the effective date of this subchapter shall be preserved to the extent that the rights are not in conflict with this subchapter.