An Act

ENROLLED SENATE
BILL NO. 1615

By: Bingman, Marlatt and Branan of the Senate

and

Trebilcock, Reynolds, Walker and Jackson of the House

An Act relating to oil and gas; creating the Oil and Gas Owners' Lien Act of 2010; providing definitions; granting an oil and gas lien to certain interest owners; describing an oil and gas lien; providing for continuation of an oil and gas lien; making an oil and gas lien valid and not dependent on possession; providing for retention and transfer of 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; establishing the priority of an oil and gas lien; making certain exception; limiting the affect of law on the passing of legal title and certain rights; prohibiting a requirement for an interest owner to relinquish or release an oil and gas lien upon certain payment; making certain relinquishments or releases void; allowing an interest owner to waive or relinquish an oil and gas lien under certain conditions; providing for the expiration of an oil and gas lien; providing for judicial actions to enforce an oil and gas lien; requiring the tolling of certain time period if certain proceedings are

commenced; allowing the joining of actions to enforce oil and gas liens; specifying certain costs allowed in certain actions; limiting affect of law on certain actions; limiting impairment of certain rights of an operator; providing for operation of a good-faith tender of funds under certain circumstances; making certain rights cumulative; providing for construction of the rights of an interest owner; preserving the rights of an interest owner accrued under certain law; repealing 52 O.S. 2001, Sections 548.1, 548.2, 548.3, 548.4, 548.5 and 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".

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

DEFINITIONS

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

1. "Affiliate" means any person:

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

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

"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;

2. "Agreement to sell" means any enforceable agreement, whether express or implied, whether oral or written, by which an interest owner, either 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 Article 9 of the Oklahoma Uniform Commercial Code in effect as of the relevant date or a comparable article under the uniform commercial code of another state to the extent applicable;

4. "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;

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

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

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

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

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

(1) oil,

(2) gas,

(3) proceeds,

(4) an oil and gas lease,

(5) a pooling order, and

(6) an agreement to sell.

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

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

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

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

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

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

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

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

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

a. a mortgage lien or security interest granted by a first purchaser in favor of a person not an affiliate of the first purchaser which mortgage lien or security interest secures payment under a written instrument of indebtedness signed by the first purchaser and accepted in writing by the payee thereof prior to the effective date of this act with a principal amount and a fixed maturity stated therein; provided, however, a permitted lien does not include a mortgage lien or security interest which:

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

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

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

(4) secures payment under a written instrument of indebtedness modified, amended or restated from or after the effective date of this act which modification, amendment or restatement extends the stated maturity thereof which was in effect at the effective date of this act, or

(5) 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 or regulation, or

b. 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; provided, however, a permitted lien does not include any such lien:

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

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

12. "Person" means any 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 any other group or combination acting as a unit;

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

14. "Proceeds" means any of 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: oil or gas on or after severance; inventory of raw, refined or manufactured oil or gas after severance; rights to or products of any of the foregoing; cash proceeds; accounts; chattel paper; instruments; documents; or payment intangibles with respect to any of the foregoing;

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

16. "Representative" means any person who is authorized, either expressly or by implication, including, without limitation, an operator or a broker so authorized, 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;

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

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

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

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

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

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

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 hereby granted an oil and gas lien to the extent of the interest owner's interest in oil and gas rights. The oil and gas lien granted by this act is granted and shall exist as part of and incident to the ownership of oil and gas rights.

B. An oil and gas lien:

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

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. An oil and gas lien exists until the interest owner or representative first entitled to receive the sales price has received the sales price. Notwithstanding the immediately preceding sentence, as between an interest owner and a representative of an interest owner or any person claiming adversely to such interest owner or representative, such 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 such representative acts receives such proceeds in full. 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 such interest owner or representative is not entitled to receive the sales price so paid, then such first purchaser takes free of the oil and gas lien otherwise applicable to the oil or gas for which such payment was made. Notwithstanding the immediately preceding sentence, the oil and gas lien will continue uninterrupted in the proceeds paid to or otherwise due the interest owner or representative.

D. 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. No oil and gas lien shall 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 any oil and gas rights 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 any oil and gas rights retained by the transferor interest owner.

F. On the conveyance or transfer of any oil and gas rights 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 rights acquired by the transferee interest owner uninterrupted and without lapse and as part of and incident to the oil and gas rights so transferred or conveyed.

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

PERFECTION OF OIL AND GAS SECURITY INTEREST

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

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

COMMINGLING

If oil or gas in which there exists more than one 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 any such 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. In such event, the oil and gas lien in the commingled product has priority over any 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. If more than one 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 production at the time the production was commingled. This section is intended to recognize 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 such 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 production at the time it entered the commingled product stream.

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

RIGHTS OF PURCHASERS

A purchaser takes free of any oil and gas lien otherwise applicable to the oil or gas so purchased, and shall be relieved of any obligations created by subsection A of Section 570.10 of Title 52 of the Oklahoma Statutes, 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.

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

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

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

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 any security interest.

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

TITLE

The provisions of this act shall 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 division order, provided that such division order shall not modify, waive or abrogate in any respect the rights of an interest owner under this act; or

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

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

WAIVER

No interest owner shall be required, as a condition or term of an agreement to sell or otherwise, to waive, relinquish or release any oil and gas lien or any rights under this act other than upon payment in full of the sales price or agree to any provision that would apply the law of any state other than the State of Oklahoma insofar as the same relates to rights under this act, and any such

purported waiver, relinquishment, release, or provision shall be void as a matter of the public policy of this state. Notwithstanding the preceding sentence, any interest owner or a representative acting on behalf of an interest owner, may waive, relinquish or release any oil and gas lien or any rights under this act or agree to a provision that would apply the law of any state other than the State of Oklahoma insofar as the same relates to rights under this act only as to such interest owner's oil and gas rights provided the first purchaser either:

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

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

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

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

A. An oil and gas lien shall expire, as to an interest owner, one (1) year after the last day of the month following the date proceeds from the sale of oil or gas subject to such lien are required by law or contract to be paid to such interest owner but only as to the oil or gas sold during such month, unless an action to enforce the oil and gas lien is commenced within such time in a court of competent jurisdiction. In addition to any other court of competent jurisdiction, an action to enforce the oil and gas lien may be commenced in the district court of the county in which there is located the oil and gas well from which the oil or gas is produced, or wherever the oil or gas unpaid for or the proceeds may be found. Notwithstanding the foregoing, the commencement of any proceeding by or against any person claiming an interest in any property subject to the oil and gas lien seeking to adjudicate such

person as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such person or such person's debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for such person or for any substantial part of such person's property shall toll the foregoing one (1) year period 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:

1. The final conclusion or dismissal of such proceedings; or

2. The date final relief is obtained from the applicable tribunal authorizing the commencement of such action.

Proceedings to enforce oil and gas liens involving more than one oil and gas well in one county can be joined by an interest owner in the same action. 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 and where separate actions are commenced, the district court may consolidate them. The district court shall allow as part of the costs of the action all costs of collection including, without limitation, reasonable attorney fees for the prevailing party in the trial and appellate tribunals.

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

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

RIGHTS OF OPERATOR NOT IMPAIRED

This act does not impair an operator's right to be paid, set-off or withhold funds from another interest owner as security for or in satisfaction of any debt or security interest. In case of a dispute between an operator and another interest owner, a good-faith tender

of funds by anyone operates as a tender of the funds to both in any of the following circumstances:

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

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

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

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

RIGHTS CUMULATIVE

A. The provisions of this act and the rights granted under this act are intended to be cumulative with all other rights an interest owner may otherwise have at law or in equity. To the extent that there is a conflict between the provisions of this act and any 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 which afford the interest owner the most comprehensive protection to secure the receipt by the interest owner of the sales price shall be given preference.

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

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

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

Passed the Senate the 13th day of April, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 7th day of April, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 14th **day of** April, **20**10, **at** 2:40 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 19th **day of** April, **20**10, **at** 4:08 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 20th **day of** April, **20**10, **at** 3:08 **o'clock** P **M.**

By: