

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Walters**

# A Bill

**SENATE BILL**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 15-72-305(a)(3) TO  
9 REQUIRE THE WELL OPERATORS TO PAY ROYALTIES TO ROYALTY  
10 OWNERS WITHOUT DEDUCTING ANY MARKETING, TRANSPORTATION OR  
11 TREATMENT COSTS FOR NATURAL GAS SOLD; TO PROHIBIT FUTURE  
12 OIL AND GAS LEASES FROM CONTAINING PROVISIONS FOR  
13 DEDUCTING THE MARKETING, TRANSPORTATION, AND TREATMENT  
14 COSTS OF GAS FROM THE ROYALTIES AND TO MAKE THOSE  
15 PROVISIONS VOID AND UNENFORCEABLE; AND FOR OTHER  
16 PURPOSES."

## Subtitle

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19 "AN ACT TO REQUIRE THE WELL OPERATORS TO PAY GAS ROYALTIES  
20 WITHOUT DEDUCTING ANY TREATMENT COSTS AND TO MAKE THOSE  
21 TERMS OF OIL AND GAS LEASES UNENFORCEABLE."

22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24  
25 SECTION 1. Subdivision (a)(3) of Arkansas Code § 15-72-305 is hereby  
26 amended to read as follows:

27 "(3) One-eighth ( 1/8) of all gas sold on or after the first day of the  
28 calendar month next ensuing after March 6, 1985, from any such unit shall be  
29 considered royalty gas, and the gross proceeds received from the sale thereof  
30 shall be distributed to the owners of the marketable title in and to the  
31 leasehold royalty and royalty as defined under § 15-72-304(d). Marketability  
32 of title shall be determined according to principles of real property law  
33 governing title to oil and gas interests. Unless all royalty owners within the  
34 drilling unit agree to a different method for distribution of the royalty, the  
35 distribution shall be coordinated by the operator of the well as follows:

1           (A) (i) Within thirty (30) days of the receipt of the proceeds  
2 from gas sale, each working interest owner shall furnish to the working  
3 interest owner designated as operator, in a form acceptable to the operator,  
4 the following information:

5                       (a) The names and addresses of all owners of royalty  
6 under the working interest owner's leasehold interests;

7                       (b) Each royalty owner's tax identification or social  
8 security number and any other information needed to meet the requirements of  
9 the Internal Revenue Service or other governmental agencies; and

10                      (c) The fractional or decimal interests in the unit  
11 of each tract in which interests are owned and each royalty owner's fractional  
12 or decimal interest therein;

13                      (ii) Thereafter, each working interest owner shall notify  
14 the operator of any changes of ownership and provide the necessary information  
15 to facilitate the necessary changes promptly upon receiving proof thereof;

16                      (iii) If any working interest owner should fail or refuse  
17 to discharge its obligation to provide the information outlined in subdivision  
18 (a) (3) (A) (i) in a timely manner, to facilitate payments, the operator may, at  
19 its option, either:

20                      (a) Notify the working interest owner by certified or  
21 registered mail of the name, address, and decimal interests of the royalty  
22 owner believed to be entitled to receive payments pursuant to the terms hereof  
23 under the working interest owner's leasehold on the basis of the best  
24 information then available to the operator. If the working interest owner  
25 fails to respond to the notification within thirty (30) days of the receipt  
26 thereof, the operator shall be entitled to pay royalty moneys in accordance  
27 with its prior notification and usual procedures. Further, the operator's  
28 payment in this manner shall constitute a complete defense to any claim or in  
29 any legal proceeding or cause of action; and the responsible working interest  
30 owner shall indemnify and hold the operator harmless from all liability and  
31 reimburse the operator for any and all costs and expenses, including  
32 attorneys' fees, interest, or penalty incurred with respect to the proceeding  
33 or action; or

34                      (b) File an application with the Oil and Gas  
35 Commission, setting forth sufficient facts to identify the well concerned and

1 the responsible working interest owner requesting that the commission issue an  
2 order requiring the working interest owner to appear at the next regularly  
3 scheduled hearing and show cause with respect to its failure to timely comply  
4 with the provisions of this section. Subsequent to the hearing, the commission  
5 shall impose upon a working interest owner who has failed to meet its  
6 obligations hereunder such sanctions as are reasonably calculated to enforce  
7 compliance with this section. These sanctions shall include, but not be  
8 limited to, a civil penalty of up to, but not more than, five hundred dollars  
9 (\$500). The commission shall have the authority to suspend the imposition of  
10 any sanction for a maximum period of sixty (60) days in order to allow the  
11 noncompliant the opportunity to furnish proof to the commission of his  
12 compliance with any commission order. All civil penalties levied by the  
13 commission as a result of this provision shall be collected by the Oil and Gas  
14 Commission and shall be deposited in the State Treasury to the credit of the  
15 Oil and Gas Commission Fund. The commission may promulgate such other rules  
16 and regulations as it deems appropriate and necessary to carry out the  
17 purposes of this section;

18 (iv) The terms of subdivision (a) (3) (A) of this section  
19 shall not be applicable to any producing unit or well that produces liquid  
20 hydrocarbons only, or liquid hydrocarbons associated with the production of  
21 gas, or gas produced associated with the production of liquid hydrocarbons;

22 (B) (i) Commencing no later than six (6) months after the date of  
23 first sale, and thereafter no later than the earlier of thirty (30) days after  
24 first payment is received or thirty (30) days after the sixty-day period  
25 within which the first purchaser is to make payment pursuant to §§ 15-74-501  
26 and 15-74-601 - 15-74-603, or a total of ninety (90) days after the end of the  
27 calendar month within which subsequent production is sold, each working  
28 interest owner or marketing party who has sold gas shall remit or cause to be  
29 remitted to the operator one-eighth ( 1/8) of the revenue realized or royalty  
30 moneys from gas sales computed at the mouth of the well less any federal and  
31 state taxes levied upon the production or proceeds and shall indemnify and  
32 hold the other working interest owner free from any liability therefor.  
33 However, if any portion of the price received by a marketing party is subject  
34 to possible refund to the gas purchaser pursuant to the regulations or orders  
35 of any governmental authority, the refundable portion need not be included in

1 the amount remitted to the operator for distribution hereunder until the  
2 possibility of refund has terminated. The funds or amounts as so remitted  
3 shall be held in trust by the operator for the account of the royalty owner or  
4 owners entitled thereto until distributed and paid as provided in this  
5 section;

6 (ii) If any operator should fail or refuse to discharge its  
7 obligation to remit revenues in a timely manner as provided in this section,  
8 the working interest owner whose royalty owner's obligations have not been  
9 paid may, to facilitate payment, either:

10 (a) File an application with the Oil and Gas  
11 Commission, setting forth sufficient facts to identify the well concerned and  
12 the responsible operator, requesting that the commission issue an order  
13 requiring the operator to appear at the next regularly scheduled hearing and  
14 show cause with respect to its failure to timely comply with the provisions of  
15 this section. Subsequent to the hearing, the commission shall impose upon an  
16 operator who has failed to meet its obligations hereunder such sanctions as  
17 are reasonably calculated to enforce compliance with this section. The  
18 sanctions shall include, but not be limited to, a civil penalty of up to, but  
19 not more than, five hundred dollars (\$500). The commission shall have the  
20 authority to suspend the imposition of any sanction for a maximum period of  
21 sixty (60) days in order to allow the noncompliant the opportunity to furnish  
22 proof to the commission of his compliance with any commission order. All civil  
23 penalties levied by the commission as a result of this provision shall be  
24 collected by the Oil and Gas Commission and deposited in the State Treasury to  
25 the credit of the Oil and Gas Commission Fund. The commission may promulgate  
26 such other rules and regulations as it deems appropriate and necessary to  
27 carry out the purposes of this section; or

28 (b) File a legal proceeding or cause of action to  
29 compel the operator's compliance with the terms hereof. The operator shall  
30 reimburse the complaining working interest owner for any and all costs or  
31 expenses, including attorneys' fees, incurred with respect to the proceeding  
32 or action;

33 (iii) The operator shall not be held liable for failure to  
34 distribute royalty hereunder where its failure is due to the failure of a  
35 working interest owner to timely provide or cause to be provided the

1 information and royalty moneys described in subdivisions (a) (3) (A) and  
2 (a) (3) (B) of this subsection. Each working interest owner shall indemnify and  
3 hold the operator harmless for all costs, including reasonable attorneys'  
4 fees, incurred as a result of the failure;

5 (iv) The operator shall not deduct any costs for marketing,  
6 transportation, compression or for other treatments of the gas sold from any  
7 payments made to royalty owners in accordance with the provisions of  
8 subdivision (a) (3) of this section.

9 (v) The terms of subdivision (a) (3) (B) of this section shall  
10 not be applicable to any producing unit or well that produces liquid  
11 hydrocarbons only, or liquid hydrocarbons associated with the production of  
12 gas, or gas produced associated with the production of liquid hydrocarbons."

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14 SECTION 2. From and after the effective date of this act, all mineral  
15 interest leases for oil and gas in Arkansas shall not contain any provision to  
16 require the royalty interest owner to be responsible for the payment of any  
17 costs for marketing, transportation, compression, or for any other treatments  
18 of the oil or gas sold from any well or field of production of which the  
19 mineral interest is a part thereof. If, after this act is effective, any  
20 mineral interest lease for oil and gas is entered into and it contains a  
21 provision requiring the royalty interest owner to pay any of the costs for  
22 marketing, transportation, compression, or for any other treatments of the oil  
23 or gas sold in violation of this act, those provisions of the lease shall be  
24 void and unenforceable. Any waiver of the royalty owner of the provisions of  
25 this section shall be deemed contrary to public policy and shall be void and  
26 unenforceable.

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28 SECTION 3. All provisions of this act of general and permanent nature  
29 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
30 Revision Commission shall incorporate the same in the Code.

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32 SECTION 4. If any provisions of this act or the application thereof to  
33 any person or circumstance is held invalid, the invalidity shall not affect  
34 other provisions or applications of the act which can be given effect without  
35 the invalid provisions or application, and to this end the provisions of this

1 act are declared to be severable.

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3           SECTION 5. All laws and parts of laws in conflict with this act are  
4 hereby repealed.