

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 210

By: Senators Hardin, Gordon, Harriman, and Walters

As engrossed 2-2-87 As engrossed 2-3-87 As engrossed 2-4-87

"AN ACT TO AMEND SUBSECTION A-2 OF SECTION 15 OF ACT 105 OF 1939, AS AMENDED [ARK. STAT. 53-115A-2] RELATING TO THE PAYMENT OF OIL AND GAS ROYALTIES; AND TO AMEND SUBSECTIONS (B) AND (C) OF SECTION 1 OF ACT 269 OF 1981, AS AMENDED [ARK. STAT. 53-525(B) AND (C)] TO MODIFY THE PENALTY PROVISIONS FOR THE WILLFUL WITHHOLDING OF ROYALTY PAYMENTS; TO LIMIT THE APPLICATION OF THE LAW; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection A-2 of Section 15 of Act 105 of 1939, as amended, the same being Arkansas Statutes 53-115A-2, is hereby amended to read as follows:

"A-2. The order of the Commission creating a drilling unit shall provide that effective as of the commencement of the drilling of a well upon such drilling unit, or if a well capable of producing oil and gas in commercial quantities has already been completed upon some part of the lands included within such drilling unit, all royalty, overriding royalty, production payment, or similar interests in such drilling unit shall be integrated without the necessity of any additional order or action by the Commission or owners. In the event any such unit includes an unleased mineral interest upon the effective date thereof, one-eighth (1/8th) of such unleased mineral interest shall be deemed as royalty for the purposes of this subsection A-2.

For the purpose of making distribution to the owners of royalty, overriding royalty, production payment or similar interests, there shall be allocated to each tract in such established drilling unit that percentage of the total production from such drilling unit, except any part thereof unavoidably lost or used for production or development purposes, which the area of each such tract bears to the total area of such drilling unit. Such interests

shall be paid or delivered to each owner thereof in conformance with the provisions of the appropriate lease, agreement, or contract creating the same, but computed upon the production allocated to each such tract as hereinabove provided, rather than upon the actual production therefrom.

One-eighth (1/8th) of all gas sold on or after the first (1st) day of the calendar month next ensuing after March 6, 1985 from any such unit shall be considered royalty gas and the net proceeds received from the sale thereof shall be distributed to the owners of the marketable title in and to the leasehold royalty and royalty as defined under subparagraph (e) of subsection A-1 hereof; marketability of title shall be determined according to principles of real property law governing title to oil and gas interests. Unless all royalty owners within such drilling unit agree to a different method for distribution of said royalty, such distribution shall be coordinated by the operator of such well as follows:

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

(i) the names and addresses of all owners of royalty under such working interest owner's leasehold interests;

(ii) each royalty owner's tax identification or Social Security number and such other information needed to meet the requirements of the Internal Revenue Service or other governmental agencies; and,

(iii) the fractional or decimal interests in the unit of each tract in which interests are owned and each royalty owner's fractional or decimal interest therein.

Thereafter, each working interest owner shall notify the operator of any changes of ownership and provide the necessary information to facilitate the necessary changes promptly upon receiving proof thereof.

If any working interest owner should fail or refuse to discharge its obligation to provide the information outlined hereinabove in a timely manner, the operator to facilitate payments hereunder, may, at its option, either:

(i) notify such working interest owner by certified or registered mail of the name(s), address(es) and decimal interests(s) of the royalty owner(s) believed to be entitled to receive payments pursuant to the terms hereof under such working interest owner's leasehold on the basis of the best

information then available to the operator and, if such working interest owner fails to respond to such notification within thirty (30) days of the receipt thereof, the operator shall be entitled to pay royalty moneys hereunder in accordance with its prior notification and usual procedures and, further, the operator's payment in such manner shall constitute a complete defense to any claim or in any legal proceeding or cause of action and the responsible working interest owner shall indemnify and hold the operator harmless from all liability and reimburse the operator for any, and all costs and expenses, including attorneys' fees, interest or penalty incurred with respect to such proceeding or action; or,

(ii) file an application with the Arkansas Oil and Gas Commission, setting forth sufficient facts to identify the well concerned and the responsible working interest owner requesting that said Commission issue an order requiring such working interest owner to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions hereof and, subsequent to said hearing, said Commission shall impose upon a working interest owner who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance herewith. Such sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars (\$500.00). The Commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the non-compliant the opportunity to furnish proof to the Commission of his compliance with any Commission order. All civil penalties levied by the Commission as a result of this provision shall be collected by the Oil and Gas Commission and shall be deposited in the State Treasury to the credit of the Oil and Gas Commission Fund. The Commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this Act.

(b) Commencing no later than six (6) months after the date of first sale, and thereafter no later than the earlier of thirty (30) days after first payment is received or thirty (30) days after the sixty (60) day period within which the first purchaser is to make payment pursuant to Section 1 of Act 269 of 1981, as amended, [Ark. Stat. 53-525], or a total of ninety (90) days after the end of the calendar month within which subsequent production is sold, each working interest owner who has sold gas (marketing party) shall remit or cause to be remitted to the operator one-eighth (1/8th) of the revenue realized

(royalty moneys) from gas sales computed at the mouth of the well less all lawful deductions, including but not limited to all federal and state taxes levied upon such production or proceeds and shall indemnify and hold the other working interest owner is free from any liability therefor, provided that, if any portion of the price received by a marketing party is subject to possible refund to the gas purchaser pursuant to the regulations or orders of any governmental authority, the refundable portion need not be included in the amount remitted to the operator for distribution hereunder until the possibility of refund has terminated. Such funds or amounts as so remitted shall be held in trust by operator for the account of the royalty owner or owners entitled thereto until distributed and paid as herein provided.

If any operator should fail or refuse to discharge its obligation to remit revenues in a timely manner as provided herein, the working interest owner whose royalty owner's obligations have not been paid, may, to facilitate payment, either:

(i) file an application with the Arkansas Oil and Gas Commission, setting forth sufficient facts to identify the well concerned and the responsible operator, requesting that said Commission issue an order requiring such operator to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions hereof and, subsequent to said hearing, said Commission shall impose upon an operator who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance herewith. Such sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars (\$500.00). The Commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the non-compliant the opportunity to furnish proof to the Commission of his compliance with any Commission order. All civil penalties levied by the Commission as a result of this provision shall be collected by the Oil and Gas Commission and deposited in the State Treasury to the credit of the Oil and Gas Commission Fund. The Commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this Act; or

(ii) file a legal proceeding or cause of action to compel such operator's compliance with the terms hereof and such operator shall reimburse the complaining working interest owner for any and all costs or expenses,

including attorneys' fees, incurred with respect to such proceeding or action.

The operator shall not be held liable for failure to distribute royalty hereunder where such failure is due to the failure of a working interest owner to timely provide or cause to be provided the information and royalty moneys described in subparagraphs (a) and (b) of this subsection A-2, and each working interest owner shall indemnify and hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of such failure.

Any working interest owner may arrange for such royalty moneys to be remitted directly to the operator by the purchaser to whom such gas is sold but in such case shall continue to hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of failure to provide or cause to be provided the information and royalty moneys required by subparagraphs (a) and (b) of subsection A-2.

(c) On or before the thirtieth (30th) day of the next calendar month following its receipt of the royalty moneys as provided hereinabove, the operator shall distribute the same to all royalty owners as provided in this subsection A-2, provided that such distribution may be made annually for the aggregate of up to twelve (12) months of accumulated royalty moneys where the aggregate amount due any royalty owner is twenty-five dollars (\$25.00) or less. Such payment shall be made in a form evidencing the following:

- (i) the name of the party entitled to payment;
- (ii) identification of the well(s) for which payment is being made by well number or division order;
- (iii) the time period for which payment is made;
- (iv) the decimal interest of the party being paid;
- (v) the total production from each well for which payment is being made;
- (vi) the gross price received for each unit of production from each well;
- (vii) any and all deductions from the payment which shall be itemized as to the nature thereof;
- (viii) an address and telephone number at which additional information may be obtained and questions be answered.

In the event that the operator stops the royalty payments for a period of more than sixty (60) days for any reason, the operator shall send a letter of

explanation.

If a royalty interest owner requests information or answers to questions concerning a payment made pursuant to this subsection and the request is made by certified mail with return receipt requested, the party making payment must respond to the request by certified mail with return receipt requested not later than forty-five (45) days after the request is received.

If a royalty interest owner fails to receive an answer to his/her request for information or to his/her questions, the royalty interest owner may file a complaint with the Arkansas Oil and Gas Commission, on a form provided by the Commission, describing the information requested or the questions to be answered, the party responsible for making the royalty payments, the date the information or answers were requested, and the date the requested information or answers were due from the paying party. Upon the filing of the complaint form, the Commission shall issue an order requiring the party making the payments to appear at the next regularly scheduled hearing and to show cause for its failure to respond to the royalty interest owner's request for information or answers. If the party making the payments fails to respond to the royalty interest owner's inquiry after the complaint is filed or fails to show just cause for its failure to respond at the hearing, the Commission shall impose such sanctions as are reasonably calculated to enforce compliance with this provision. Such sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars (\$500.00). The Commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the non-compliant the opportunity to furnish proof to the Commission of his compliance with any Commission order. All civil penalties levied by the Commission as a result of this provision shall be collected by the Oil and Gas Commission and shall be deposited in the State Treasury to the credit of the Oil and Gas Commission Fund. The Commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this Act.

The operator, or other working interest owner, shall not be held liable for failure to make distributions in the manner set out herein for a period of six (6) months from and after the effective date of this Act.

Payment of one-eighth (1/8th) of the revenue realized from the sale of gas as provided herein shall fully discharge all obligations of the operator and other working interest owners with respect to the payment of one-eighth

(1/8th) leasehold royalty, or royalty as described under subparagraph (e) of subsection A-1 of this section.

Any gas taken in kind shall be excluded from royalty gas for which payment shall be made pursuant to this subsection A-2, but the operator shall be promptly provided with written notification of the intent to exclude such gas. Additionally, any gas taken by a working interest owner to correct an imbalance in production between the working interest owners, which was created or existed prior to April 1, 1985, shall also be excluded from royalty gas for which payment shall be made pursuant to this subsection A-2. Nothing contained herein shall affect the obligations of working interest owners with respect to the payment of royalties, overriding royalties, production payments or similar interests in excess of the one-eighth (1/8th) royalty required to be distributed hereunder.

The operator shall be entitled to reimbursement from each working interest owner, whether or not such party is marketing gas, such party's fair and equitable share of the costs of distributing the one-eighth (1/8th) royalty required by this subsection A-2. The amount of such charges shall be based upon the reasonable cost of administering these provisions and shall be subject to review by the Commission upon application of any working interest owner."

SECTION 2. Subsection (B) of Section 1 of Act 269 of 1981, as amended, the same being Arkansas Statutes 53-525(B), is hereby amended to read as follows:

"(B) If said first purchaser, or owner of the right to drill and produce substituted for the first commercial purchaser as provided herein, violates this Act by willfully withholding payments without just cause or through bad faith from persons legally entitled to the proceeds from production, the court may award, in addition to the unpaid amount of such proceeds and interest as provided in subsection (A) of this section, a penalty in an amount not to exceed simple interest at a rate of fourteen percent (14%) per annum on the amount of the unpaid proceeds from the due date as provided in subsection (A) of this section and a reasonable attorney's fee."

SECTION 3. Subsection (C) of Section 1 of Act 269 of 1981, as amended, the same being Arkansas Statutes 53-525(C), is hereby amended to read as

follows:

"(C) Any court of competent jurisdiction of the county in which the oil or gas well is located shall have jurisdiction over all proceedings brought pursuant to this Act. If persons legally entitled to the proceeds seek relief for the failure of the purchaser to make timely payment of proceeds from the sale of oil or gas or interest thereon as required in subsection 1(A) or (B) of this section, the first purchaser or the owner of the right to produce under an oil or gas lease or force pooling order shall be furnished with written notice of such failure as a prerequisite to commencing judicial action for such nonpayment. The first purchaser shall have thirty (30) days after receipt of the required notice within which to pay proceeds or to respond in writing with a reasonable basis for nonpayment. If the court is satisfied that payments have not been willfully withheld without just cause or through bad faith, the penalty provisions of subsection (B) of this section shall not apply to the withholding of such payments. In the event of the willfull non-payment or in the event the court finds there was a complete absence of a justiciable issue of either law or fact raised by the losing party or his attorney, the court shall award an attorney's fee in the amount not to exceed five thousand dollars (\$5,000.00) or ten percent (10%) of the amount in controversy, whichever is less, to the prevailing party unless a voluntary dismissal is filed, or the pleadings are amended, as to any such non-justiciable issue within a reasonable time after the attorney or party filing the dismissal or the amended pleadings knew, or reasonably should have known, that he would not prevail.

SECTION 4. Limitations. The terms of this Act shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas or gas produced associated with the production of liquid hydrocarbons.

SECTION 5. All laws and parts of laws in conflict with this Act are hereby repealed.

/s/ Hardin, et al

