

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1273

5 By: Representative S. Smith  
6

## For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE OIL AND GAS OWNERS’ LIEN ACT  
9 OF 2021; AND FOR OTHER PURPOSES.  
10

### Subtitle

11 TO ESTABLISH THE OIL AND GAS OWNERS’  
12 LIEN ACT OF 2021.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

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

21 Subchapter 11 – Oil and Gas Owners’ Lien Act of 2021  
22

23 15-72-1101. Title.

24 This subchapter shall be known and may be cited as the “Oil and Gas  
25 Owners’ Lien Act of 2021”.  
26

27 15-72-1102. Definitions.

28 As used in this subchapter:

29 (1) “Affiliate” means a person that directly or indirectly:

30 (A) Is controlled by a first purchaser; or

31 (B) Controls a first purchaser;

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



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

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

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

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

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

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

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

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

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

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

28                   (i) Oil;

29                   (ii) Gas;

30                   (iii) Proceeds;

31                   (iv) An oil and gas lease;

32                   (v) An integration order; or

33                   (vi) An agreement to sell.

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

35                   (i) Oil or gas in place before severance;

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

1 portion of the proceeds upon severance;

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

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

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

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

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

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

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

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

26 (B) "Permitted lien" does not include:

27 (i) A mortgage lien or security interest that:

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

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

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

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

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

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

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

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

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

23                   (A) Oil or gas on or after severance;

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

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

28                   (D) Cash proceeds;

29                   (E) Accounts;

30                   (F) Chattel paper;

31                   (G) Instruments;

32                   (H) Documents; or

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

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

1 first purchaser;

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

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

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

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

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

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

17  
18 15-72-1103. Nature, extent, and duration of oil and gas lien.

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

23 (b) An oil and gas lien:

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

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

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

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

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

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

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

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

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

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

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

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

30  
31 15-72-1104. Perfection of oil and gas security interest.

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

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

1 date of this subchapter.

2  
3 15-72-1105. Commingling.

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

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

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

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

28  
29 15-72-1106. Rights of purchasers.

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

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

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

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

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

10  
11           15-72-1107. Priority relative to other liens or security interests.

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

15  
16           15-72-1108. Legal title.

17           This subchapter does not affect:

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

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

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

26  
27           15-72-1109. Waiver.

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

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

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

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



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

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

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

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

16  
17 15-72-1110. Expiration of oil and gas lien – Enforcement – Joinder and  
18 consolidation – Costs – Personal actions – Other rights and remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30  
31 15-72-1111. Rights of operator not impaired.

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

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

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

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

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

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

9  
 10 15-72-1112. Rights cumulative.

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

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

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