

2009 SENATE NATURAL RESOURCES

SB 2404

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2404

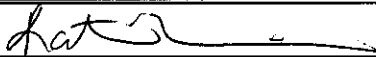
Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8778

Committee Clerk Signature



Minutes:

**Senator Lyson** opened the hearing on SB 2404, to provide for the protection of the payment of proceeds from the sale of oil or gas. All committee members were present.

**Senator Miller** introduced the bill and handed out a proposed amendment (see attachment #1).

**Robert Harms**, President of Northern Alliance of Independent producers, Inc., spoke in favor of the bill and explained the bill and amendment (see attached testimony #2).

**Senator Hogue** are you aware of whether any federal bankruptcy courts have construed acts like this and granted a priority to one of these liens?

**Robert Harms** I am not. The lawyers that I am dealing with down there tell me that this lien is a first in time lien. It doesn't have any super priority over any other liens in Oklahoma law and that is not our intent here. If you file first you get first priority.

**Senator Triplett** this is a protection fro the royalty owners also correct? In the sense, by making sure the oil companies get paid for their produce and then they are able to pay the royalty owners in a timely way.

**Robert Harms** indirectly yes.

**Senator Lyson** closed the hearing on SB 2404.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2404

Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: 8827

Committee Clerk Signature

*Kat*

Minutes:

**Senator Lyson** opened the discussion on SB 2404, to provide for the protection of the payment of proceeds from the sale of oil or gas.

Committee discussed the amendment, but some had not had the chance to read over it yet.

**Senator Lyson** we will hold off on this until a later date so everyone gets a chance to read the amendment.

**Senator Triplett** another point on this bill is that Bob Harms did kind of suggest in passing that maybe we should consider central filing also in addition to recording in the county recorder's office. that would be like filing with the Secretary of State's office. Which might be a good idea and someone should follow up on that.

**Senator Lyson** closed the discussion on SB 2404.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2404


Senate Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: February 13, 2009

Recorder Job Number: 9471

Committee Clerk Signature



Minutes:

**Senator Lyson opens the discussion on SB 2404.**

**Robert Harms**, President of Northern Alliance of Independent Producers, you have amendments that Senator Miller submitted and I have my own amendments also. They are the same except on page 2. Page 2 section 4 where it discusses perfection of lien verified notice, at the bottom of the section it didn't really make any sense so I thought we needed to fix that.

**Senator Lyson** asked Robert to walk the committee through it sense it is a hog house amendment.

**Robert Harms** this amendment takes the Oklahoma statute we have been working from and incorporates that into the bill. We thought the original bill didn't get the industry to where we wanted to get to. We are trying to arm those producers with some means of protecting themselves in a way that is efficient and gets them to the point where they can protect themselves in an event of bankruptcy. Section 1 provides you with definitions under the statute. Section 2 is the section that creates a continueing lien on behalf of the producers an extends to oil and gas proceeds. Section 3 indicates that the lien is not dependent upon possession of the oil and gas that it continues even though the oil and gas is sold. Section 4 simply provides the notice that the producers needs to sign and file with the county at the

County Recorder's office in which the production is taking place. Section 5 gives you the means and time period within which the lien is to be enforced if at all. It gives the producer one year from the period of filing to enforce the lien if they choose to do so. It provides for attorney fees for the prevailing party. Section 6 expressly indicates that it doesn't change any of the rights or remedies under the uniform commercial code. It is a specific part of the North Dakota century code that deals with the sale of goods.

**Senator Triplett** moves to adopt the amendment.

**Senator Erbele** seconds the motion.

A voice vote was taken and the motion passed.

**Al Jager**, Secretary of State, we just saw the amendments few minutes ago. We gave a copy to our attorney so we haven't had a lot of time to review it. There are some questions. I would say if you want to pass the bill out we can try and make our changes in the House. I am assuming since this is a hog house bill the county Recorders Association and their legislative committee are unaware of this and I will let them know about it.

**Senator Hogue** I have a couple concerns, but it sounds like we could pass this and let the house make any other necessary changes. This amendment makes clear that it doesn't affect prior security holders. This doesn't mean that they are going to get priority, but it may help in the rare case when there is a bankruptcy when the operator is competing against unsecured creditors. They might be able to get priority over and above those unsecured creditors. I think it is a good deal and I support the amendments and the bill. I move a Do Pass as amended.

**Senator Erbele** seconds the motion

The bill received a Do Pass as amended on a vote of 7 to 0.

**Senator Lyson** closed the discussion on SB 2404.

February 3, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2404

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide a lien for oil and gas owners to secure payment for the sale of oil and gas."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Definitions. As used in this Act:**

1. "First purchaser" means the first person who takes, receives, or purchases oil or gas from an interest owner at or after the time the oil or gas is severed.
2. "Interest owner" means a person owning an entire or fractional interest of any kind or nature in the oil or gas at the time it is severed, or a person who has a right, either express or implied, to receive a monetary payment determined by the value of the oil or gas severed.
3. "Operator" means a person engaged in the severance of oil or gas.
4. "Purchaser" means a person who takes, receives, or purchases oil or gas from a first purchaser.
5. "Severed" means the taking, extraction, or production from the land of oil or gas in any manner.

**SECTION 2. Extent of lien - Dispute as to amount due - Notice - Buyer in ordinary course of business.**

1. To secure payment from the sale of oil or gas, an interest owner, subject to section 5 of this Act, has a continuing security interest in and a lien on the oil or gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of the interest owner's interest until the purchase price has been paid to the interest owner.
2. In the event of a bona fide dispute as to the amount due the interest owner, the security interest and the lien do not accrue if the person holding the proceeds upon which a lien is claimed tenders to the interest owner the amount which that person in good faith believes to be due and payable.
3. A security interest or lien claimed pursuant to this Act is not effective against an interest owner, operator, first purchaser, or purchaser until a copy of the notice of lien required to be filed under section 4 of this Act has been delivered to the interest owner, operator, first purchaser, or purchaser by registered mail.
4. Notwithstanding any other provision in this Act to the contrary, a person who pays the purchase price for oil or gas severed from a well to the interest owner with whom that person has a contract regarding purchases from the well or to one who is authorized to receive payment on behalf of or for the interest owner is deemed a buyer in the ordinary course of business and takes the oil or gas free of the security interest and lien granted to the interest owner by this Act, and the first purchaser or purchaser who makes

the payment and all its property is free from and not subject to the security interest or lien granted to the interest owner by this Act.

**SECTION 3. Validity of lien.** The validity of the security interest and lien granted to an interest owner under this Act is not dependent upon possession of the oil or gas by an interest owner or operator and a security interest or lien does not become or may not be deemed to be void or expired by reason of a change or transfer of the actual or constructive possession or title of the oil or gas from the interest owner or an operator to a first purchaser or purchaser.

**SECTION 4. Perfection of lien - Verified notice - Effect of Instruments - Effective date of lien.**

1. If the proceeds for oil or gas which are required to be paid are not paid to the interest owner when due under this Act, the interest owner may perfect the security interest and lien by filing for record in the office of the county recorder of the county in which the well is located a verified notice of lien in substantially the following form:

**NOTICE OF OIL AND GAS OWNER'S LIEN**

Notice is given that (name of interest owner for whom notice is filed) whose address is (address of named interest owner) claims an (fractional decimal interest) interest in the oil and gas severed or proceeds of sale from the (name of well) operated by (name and address of operator) which well is located on the following described land in \_\_\_\_\_ County, North Dakota:

(Description of land)

Oil and gas severed from the land has been and is now or may be taken and the above-named interest owner has a security interest in and lien upon the oil and gas and the proceeds thereof to secure payment under the provisions of this Act.

Dated: (date)

(Signature of interest owner or operator)

If verified notice of lien is not filed within ninety days from the time in which payment is due under this Act, the security interest is not perfected and does not give the interest owner priority over a perfected security interest in the same oil, gas, or proceeds of the oil or gas.

2. All instruments that are presented to a county recorder for filing in accordance with subsection 1 are deemed to be effective as financing statements even though the signature of the debtor may not appear on the instrument. Instruments may be terminated in the same manner as financing statements.
3. Upon perfection by filing, the security interest and lien of the interest owner relates back to and is effective as of the date on which the severance occurred and takes priority over the rights of all persons whose rights or claims arise or attach to the oil or gas unpaid for, or the proceeds of oil or gas if the oil or gas has been sold, including those that arise or attach between the time the security interest and lien attaches and the time of filing. The security interest and lien created pursuant to this Act do not

have priority over the security interest and lien rights previously created and perfected or an operating agreement or other voluntary agreement for the development and operation of the property.

**SECTION 5. Rights of first purchasers.** Neither this Act nor the filing of an instrument permitted under this Act affects the time at which legal title to the oil and gas may pass from an interest owner or operator to a first purchaser or the ownership of the oil and gas before severed as reflected by the records affecting real property or the right of a first purchaser to take or receive oil and gas under the terms of a division order or similar agreement for the sale and purchase of oil or gas. Notwithstanding this Act, a first purchaser or purchaser is free to transport products out of the state and to sell the products without permission or release of lien.

**SECTION 6. Expiration of lien - Enforcement - Joinder and consolidation - Costs - Personal actions - Other rights and remedies.**

1. The security interest and lien granted to an interest owner follow the oil and gas unpaid for or the proceeds of the oil or gas if the oil or gas has been sold. The security interest and lien expire one year after the date of the filing of the notice of lien unless proper action to enforce the lien is commenced within such time in the district court of the county in which the well is located, or wherever the oil or gas unpaid for or the proceeds of oil or gas sold may be found. Persons claiming security interests and liens with respect to the oil or gas from the same well may join in the same action, and where separate actions are commenced the court may consolidate them. The court may allow as part of the costs of the action moneys paid for filing and recording instruments and reasonable attorney's fees for the prevailing party. If an action is commenced after the filing of an instrument, the instrument is considered a lien upon the oil or gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of the interest of the claimant, for payment of the amount due the claimant and the security interest and lien of the claimant may be enforced in the manner provided by law.
2. This Act does not impair or affect the right of a person to whom a debt may be due to maintain a personal action to recover the debt against the person liable for payment of the debt.
3. This Act does not impair or affect the rights, priorities, or remedies of a person under the Uniform Commercial Code and this Act is cumulative to and not a limitation on or a substitution for any rights or remedies otherwise provided by law to a creditor against the creditor's debtor."

Renumber accordingly



PROPOSED AMENDMENTS TO SENATE BILL NO. 2404

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide a lien for oil and gas owners to secure payment for the sale of oil and gas.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Definitions.** As used in this Act:

1. "First purchaser" means the first person who takes, receives, or purchases oil or gas from an interest owner at or after the time the oil or gas is severed.
2. "Interest owner" means a person owning an entire or fractional interest of any kind or nature in the oil or gas at the time it is severed, or a person who has a right, either express or implied, to receive a monetary payment determined by the value of the oil or gas severed.
3. "Operator" means a person engaged in the severance of oil or gas.
4. "Purchaser" means a person who takes, receives, or purchases oil or gas from a first purchaser.
5. "Severed" means the taking, extraction, or production from the land of oil or gas in any manner.

**SECTION 2. Extent of lien - Dispute as to amount due - Notice - Buyer in ordinary course of business.**

1. To secure payment from the sale of oil or gas, an interest owner, subject to section 5 of this Act, has a continuing security interest in and a lien on the oil or gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of the interest owner's interest until the purchase price has been paid to the interest owner.
2. In the event of a bona fide dispute as to the amount due the interest owner, the security interest and the lien do not accrue if the person holding the proceeds upon which a lien is claimed tenders to the interest owner the amount which that person in good faith believes to be due and payable.
3. A security interest or lien claimed pursuant to this Act is not effective against an interest owner, operator, first purchaser, or purchaser until a copy of the notice of lien required to be filed under section 4 of this Act has been delivered to the interest owner, operator, first purchaser, or purchaser by registered mail.
4. Notwithstanding any other provision in this Act to the contrary, a person who pays the purchase price for oil or gas severed from a well to the interest owner with whom that person has a contract regarding purchases from the well or to one who is authorized to receive payment on behalf of or for the interest owner is deemed a buyer in the ordinary course of business and takes the oil or gas free of the security interest and lien granted to the interest owner by this Act, and the first purchaser or purchaser who makes

the payment and all its property is free from and not subject to the security interest or lien granted to the interest owner by this Act.

**SECTION 3. Validity of lien.** The validity of the security interest and lien granted to an interest owner under this Act is not dependent upon possession of the oil or gas by an interest owner or operator and a security interest or lien does not become or may not be deemed to be void or expired by reason of a change or transfer of the actual or constructive possession or title of the oil or gas from the interest owner or an operator to a first purchaser or purchaser.

**SECTION 4. Perfection of lien - Verified notice - Effect of instruments - Effective date of lien.**

1. If the proceeds for oil or gas which are required to be paid are not paid to the interest owner when due, the interest owner may perfect the security interest and lien by filing for record in the office of the county recorder of the county in which the well is located a verified notice of lien in substantially the following form:

NOTICE OF OIL AND GAS OWNER'S LIEN

Notice is given that (name of interest owner for whom notice is filed) whose address is (address of named interest owner) claims an (fractional decimal interest) interest in the oil and gas severed or proceeds of sale from the (name of well) operated by (name and address of operator) which well is located on the following described land in \_\_\_\_\_ County, North Dakota:

(Description of land)    ← u.s

Oil and gas severed from the land has been and is now or may be taken and the above-named interest owner has a security interest in and lien upon the oil and gas and the proceeds thereof to secure payment.

Dated: (date)

(Signature of interest owner or operator)

If verified notice of lien is not filed within ninety days from the date of production, the security interest is not perfected and does not give the interest owner priority over a perfected security interest in the same oil, gas, or proceeds of the oil or gas.

2. All instruments that are presented to a county recorder for filing in accordance with subsection 1 are deemed to be effective as financing statements even though the signature of the debtor may not appear on the instrument. Instruments may be terminated in the same manner as financing statements.
3. Upon perfection by filing, the security interest and lien of the interest owner relates back to and is effective as of the date on which the severance occurred and takes priority over the rights of all persons whose rights or claims arise or attach to the oil or gas unpaid for, or the proceeds of oil or gas if the oil or gas has been sold, including those that arise or attach between the time the security interest and lien attaches and the time of filing. The security interest and lien created pursuant to this Act do not

have priority over the security interest and lien rights previously created and perfected or an operating agreement or other voluntary agreement for the development and operation of the property.

**SECTION 5. Rights of first purchasers.** Neither this Act nor the filing of an instrument permitted under this Act affects the time at which legal title to the oil and gas may pass from an interest owner or operator to a first purchaser or the ownership of the oil and gas before severed as reflected by the records affecting real property or the right of a first purchaser to take or receive oil and gas under the terms of a division order or similar agreement for the sale and purchase of oil or gas. Notwithstanding this Act, a first purchaser or purchaser is free to transport products out of the state and to sell the products without permission or release of lien.

**SECTION 6. Expiration of lien - Enforcement - Joinder and consolidation - Costs - Personal actions - Other rights and remedies.**

1. The security interest and lien granted to an interest owner follow the oil and gas unpaid for or the proceeds of the oil or gas if the oil or gas has been sold. The security interest and lien expire one year after the date of the filing of the notice of lien unless proper action to enforce the lien is commenced within such time in the district court of the county in which the well is located, or wherever the oil or gas unpaid for or the proceeds of oil or gas sold may be found. Persons claiming security interests and liens with respect to the oil or gas from the same well may join in the same action, and where separate actions are commenced the court may consolidate them. The court may allow as part of the costs of the action moneys paid for filing and recording instruments and reasonable attorney's fees for the prevailing party. If an action is commenced after the filing of an instrument, the instrument is considered a lien upon the oil or gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of the interest of the claimant, for payment of the amount due the claimant and the security interest and lien of the claimant may be enforced in the manner provided by law.
2. This Act does not impair or affect the right of a person to whom a debt may be due to maintain a personal action to recover the debt against the person liable for payment of the debt.
3. This Act does not impair or affect the rights, priorities, or remedies of a person under the Uniform Commercial Code and this Act is cumulative to and not a limitation on or a substitution for any rights or remedies otherwise provided by law to a creditor against the creditor's debtor."

Renumber accordingly

Date: Feb 13, 2009

Roll Call Vote #: #1 2404

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."**

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amendment

Motion Made By Sen. Triplett Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: Feb 13, 2009

Roll Call Vote #: #2 2404

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."**

Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Senators	Yes	No	Senators	Yes	No
Senator Stanley W. Lyson, Chairman	/		Senator Jim Pomeroy	/	
Senator David Hogue, Vice Chairman	/		Senator Mac Schneider	/	
Senator Robert S. Erbele	/		Senator Constance Triplett	/	
Senator Layton W. Freborg	/				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Sen. Schneider

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2404: Natural Resources Committee (Sen. Lyson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2404 was placed on the Sixth order on the calendar.

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2. In the event of a bona fide dispute as to the amount due the interest owner, the security interest and the lien do not accrue if the person holding the proceeds upon which a lien is claimed tenders to the interest owner the amount which that person in good faith believes to be due and payable.
3. A security interest or lien claimed pursuant to this Act is not effective against an interest owner, operator, first purchaser, or purchaser until a copy of the notice of lien required to be filed under section 4 of this Act has been delivered to the interest owner, operator, first purchaser, or purchaser by registered mail.
4. Notwithstanding any other provision in this Act to the contrary, a person who pays the purchase price for oil or gas severed from a well to the interest owner with whom that person has a contract regarding purchases from the well or to one who is authorized to receive payment on behalf of or for the interest owner is deemed a buyer in the ordinary course of business and takes the oil or gas free of the security interest and lien

granted to the interest owner by this Act, and the first purchaser or purchaser who makes the payment and all its property is free from and not subject to the security interest or lien granted to the interest owner by this Act.

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(Description of land)

Oil and gas severed from the land has been and is now or may be taken and the above-named interest owner has a security interest in and lien upon the oil and gas and the proceeds thereof to secure payment.  
Dated: (date)

(Signature of interest owner or operator)

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and perfected or an operating agreement or other voluntary agreement for the development and operation of the property.

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2. This Act does not impair or affect the right of a person to whom a debt may be due to maintain a personal action to recover the debt against the person liable for payment of the debt.
3. This Act does not impair or affect the rights, priorities, or remedies of a person under the Uniform Commercial Code and this Act is cumulative to and not a limitation on or a substitution for any rights or remedies otherwise provided by law to a creditor against the creditor's debtor."

Renumber accordingly



2009 HOUSE NATURAL RESOURCES

SB 2404

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2404

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 3-12-09

Recorder Job Number: 10838

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Chairman Porter – Open the hearing on SB 2404.

Robert Harms - Northern Alliance of Independent Producers – See **Attachments # 1 & 2.**

SB 2404 sets up a statute that creates a security interest in oil and gas after it's produced. A lien on oil and gas after it's produced and attaches to the proceeds of sale as well. We have a law in ND – the uniform commercial code – that allows for security interest to be created on oil and gas already. What this bill does is simply allows for this. If a producer wants to create a security interest using this statute he simply has to file a UCC1A form without getting the security and signature of the purchaser of the oil and gas and he can file that in the register of deeds, the recorder's office and the county. The reason that kind of mechanism is important is last summer you might have heard of a bankruptcy out of Oklahoma called Cem Group. Cem Group was an oil and gas marketing firm. Their bankruptcy documents show they aren't quite as bad as the federal government, but they had debts of 1 billion dollars and they were a principal purchaser of oil and gas in ND. When they filed bankruptcy a number of ND producers delivered the wrong gas to some group that were never paid for that oil and gas and it puts them in a spot having lost the product and still owe the royalty owners their share of the oil and gas proceeds. It created some sensitivity with producers so they asked if we could

provide them with additional tools to help protect themselves in the event something like that comes up in the future. That's what 2404 essentially does. Questions?

Rep. Drovdal – Would you walk me through the current the law that pertains to recovering the money and then walk me through how this is changing it? I don't quite understand.

Mr. Harms – This bill doesn't change the existing law. It adds to it. The existing law says if I sell the Harms oil company and I'm selling you oil and gas under a contract and I want to secure payment from you, what you and I have to agree on the front end is you sign a "security agreement" contract with me that says you are buying my oil and you are going to give me a security interest in the oil I'm selling you until you pay me. We sign a contract, that's the first step of how that works and then when I want to notify the rest of the world that the Drovdal Oil Co. owes Harms Oil Co. \$100 I file what is known as UCC1 in your local county and that can also be filed in a central system here in Bismarck. That's current law, and current law allows for that to apply to severed oil and gas. The Uniform Commercial Code allows for that under current law. That's how it works now.

Rep. Drovdal – If I go broke – bankrupt how do you try to collect from me?

Mr. Harms – Then what happens is it becomes a contest between the Harms Oil Co., I should have a pretty high priority because it was my oil, there will be special classifications I enjoy in a bankruptcy above and beyond the Damschen Oil well service company. They may come into second priority. What the court does is try to establish who has priority for payment. If there's \$1,000.00 and Harms Oil Company has a first priority and Damschen Well Service Company has second, I'll get my money first. If there isn't enough money to pay the Damschen Well Service Company they won't get paid. That's the way it works right now. The only thing SB 2404 does, it doesn't effect that priority system at all, it just simply says, if the Harms Oil Co. is dealing with the Drovdal Oil Co. and for some reason feels they might be at risk for being paid,

I can simply file in the Williams Co. Court House a notice that's contained within the bill and establish my lean that way as opposed to coming to you saying after the fact, Dave I'd really like you to sign this security agreement. At which point you might not be willing to do that. That's essentially what we are doing.

Rep. Drovdal – You've already got the security agreement, probably before when you started doing business. But you've got this lien. How are people going to know you've got this lean filed? Somewhere I'm missing how this changes a priority. You say you're already above Damschen Oil Service Co., how does this help you out any more?

Mr. Harms – If I used the UCC the way it's intended, I can establish that priority in a reasonably good order. That's the way it should be done. My guess is 90% of oil companies and most others don't use the uniform commercial code the way it was intended, or for that kind of protection. They don't establish that priority on the front end. That's the way it should be done. When you're starting business you sign a contract on the front end. What this does is allow for a mechanism, if you've already started doing business with Drovdal Oil Co. and you see they might be in trouble, you don't have to go to them and have them sign a security agreement so you can establish your lean, you simply file this lean in the recorder's office. That lien then is a matter of law is notice to the world that you have a lien established under ND law and that's how it's supposed to work.

Rep. Drovdal – If established procedure is the way it's currently being done, for those individuals that were owed money and you were trying to get money, why would they not go to established procedures instead of going to the clerk of court and the recorder to find out if there was a lien on it? It seems cumbersome somehow.

Mr. Harms – I'm not sure I'm following you on that question? Are you saying why don't they use the current law as opposed to using the possibility of the new mechanism that the bill provides for? Is that the question?

Rep. Drovdal – Partly, I'm trying to look it from that person that owes me money and how he is going to figure out that he's supposed to pay it to you instead of somebody else. If he is used to doing business the old way. Would the bill put the lien on instead of the court house? You lost me somehow.

Mr. Harms – Whether the liens are established under the current law or liens that would utilize the bill we have in front of you, the priority of payment really is established by the order the liens are taken. If everyone of us in this room were all doing business with the same oil marketing company, and it started getting into trouble, and lawyers and the commercial system recognized that, that's the way it works. We would all have a race to the court house. If Rep. Keiser was the first to file his lien with that oil co. and you were second and I was third that's the priority the bankruptcy court would sort out who gets paid. Obviously there's going to be a shortage of money and those people who take advantage of the system to establish their lien will be paid in the priority in which they were established by the time they filed those security documents.

Chairman Porter – As those priority are established does this law pertain only to the producer, or can a service company beat the producer to the door? Or, is this mechanism only in place for the producer?

Mr. Harms – This bill is designed only for interest owners. Interest owners would be probably an operator, a working interest owner or a royalty owner. It doesn't apply to a service company. They would have an ability to cover their security issue through the Uniform Commercial Code provisions in place now.

Chairman Porter – If they didn't do that at the time of the contract, if they didn't file that lien at the time of contracting it would always make them 2<sup>nd</sup> to this mechanism.

Mr. Harms – That is correct, unless they had some kind of special priority. Most of those are going to be established at the time they are filed.

Chairman Porter – Under the current system – if nobody filed a lien up front – everybody knows something is going on then it is truly a race to the courthouse. Then the service company that was working on it could technically get priority to the producer. What this would do is always give priority to the producer.

Mr. Harms – You are absolutely correct.

Rep. Drovdal – Isn't this a wrong place to file.

Mr. Harms – That's the reason I have what I will offer is the final amendments and would ask you to throw away the ones I just handed you. That is one of the reasons we put in the bill a system known well among lawyers and recorders offices called the central filing system or central indexing system. It is a separate filing system that's different from the system you know of in the court house. The court house records you think of is the typical real estate deed, mortgage and real estate records, an index system oil and gas companies use all the time. That's different from the central indexing system for UCC filings. That is a system that automatically communicates between the secretary of state's office and the recorder's office in Williams Co.

Rep. Keiser – If an oil producer and someone who is going to purchase the oil enter into a contractual arrangement, I'll sell it to you and you'll pay this much. The payment isn't available at that point; it's going to come later. There's debt created, on the books at least. The oil is gone, and somewhere I could go in and file a standard lien against that if I wanted to say there's some debt out there. Then if it is a standard lien I get into line behind another lien

anyone else has filed in the court. This creates, not a new kind of lien, but in this instance, you get to file this type of lien which moves you up to 1<sup>st</sup> position only for that portion associated with the oil. Is that correct?

Mr. Harms – No. It doesn't create any super priority. You should have a security agreement, no matter what product you are buying or selling, so you have a secure transaction on the front end of the deal. That is a pretty systificated transaction in most businesses. Once the business relationship starts to sour, you still have to have the debtor or purchaser sign a security agreement. You have to have the signature in order to use the UCC as its typically done. It doesn't create any special priority over anybody else.

Rep. Hofstad – I'm trying to equate this to the world agricultural commodities. As I understand it you can file a lien against somebody's commodities you can do UCC filing in the court house and you become an owner of that crop. When that commodity is then sold your name is on that check. Is this a different world? Are laws applied differently here?

Mr. Harms – I don't know what you just said not to be true, but I think that's correct. That kind of priority is what we are trying to establish in this bill outside of the uniform commercial code.

Rep. Drovdal – Is there any restriction on somebody filing this lien? I can see somebody with a grudge could go pay the \$15 and file a lien just to cause problems against somebody? Is that possible under this system?

Mr. Harms – There is no express prohibition from doing that. The bill says only an interest owner can file this lien. The other thing I would be concerned about is if someone would ask me if that would be a good idea, who didn't have an interest in it, I would say NO.- because there is a cause of action called the slander of title. You could create some liability for yourself by just engaging in some mischief. Particularly when you are dealing in some pretty big numbers. I wouldn't advise a client to do that.

Chairman Porter – In the current world does the state of ND, as a royalty owner, file liens up front with their royalties?

Mr. Harms – I do not know the answer to that question.

Chairman Porter – Would this mechanism be available to the state of ND if they were part of the process?

Mr. Harms – Yes

Chairman Porter – It would be available to any mineral owner at risk of not getting their mineral payment.

Mr. Harms – Any interest owner – correct.

Rep. Keiser – Is the lien limited solely to the oil transaction?

Mr. Harms – It is, it's limited just to the oil and gas severed from the property and the proceeds that result from that sale.

Al Jaeger – Secretary of State – When the bill was heard in the Senate side we only had a few minutes' notice and we had some concerns about the process of filing and the terminology that was being used. What you just received, if these amendments are passed, as an office of record between the secretary of state and the recorders, we're OK with our part of this.

Shilea Dalen – Ward Co. Recorder – We support the bill with the amendments the way they are drafted on a recording side of things.

Rep. Keiser – This does not require a signature. The regular lien does require a signature of the other party. Is that true, and also, or, in the case of small claims court and action, the court can make the obligation to the lien. Is that correct?

Ms. Dalen – Yes. The bill the way it was originally written to be put into the real estate records could not indicate the signatures would be notarized. The way it was written it was not recordable.



Chairman Porter – Further testimony in support? Opposition?

Rep. Hofstad – Mr. Harms as a payer if you fail to check the register is there a liability? Do you incur that liability if you do not find out who that lien holder is?

Mr. Harms – If you buy the oil from me and you're then going to sell it – that is the intention the lien follows the oil so the first seller, the producer of the oil and gas gets paid. This summer what was happening was we had producers, that production had been sold, some group went bankrupt and our producers were still obligated to pay the royalty owners. The intent is to make sure that if you are a subsequent buyer from the first buyer, you need to be sensitive to the fact that the oil and gas you are buying has a lien on it.

Rep. Pinkerton – This doesn't affect mineral owner at all?

Mr. Harms – That's exactly right.

Rep. Pinkerton – The other question is, is there some harm to commerce, because when you put a lien on there, as an independent producer you sell it to some intermediary and they sell it in turn to some refinery. The refinery would have to have a release on that lien before they would put payment out wouldn't they?

Mr. Harms – That would be correct. When everything starts to unravel this is when these liens will be important.

Rep. Pinkerton – If you have someone who comes in and does well work or some other kind of thing, are they given knowledge of that lien?

Mr. Harms – They have knowledge of that lien by its filing. They are on notice that production from that well is subject to a lien. I don't think a well service company really is going to be a good example because what we really are trying to do is attach a lien on the oil and gas, which is essentially the asset of the producer. If a well servicing company won't be in a higher priority than the people who owned the oil and gas in the first place, and shouldn't be.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2404

House Natural Resources Committee

☐ Check here for Conference Committee

Hearing Date: 3-12-09

Recorder Job Number: 10840

Committee Clerk Signature

*Nancy L. Gerhard*

Minutes:

Chairman Porter – Take out SB 2404.

Rep. Drovda – On the last amendment on page 4, line 16 replace “instrument” with “the lien”.

Chairman Porter – Do you want to move the amendment?

Rep. Drovda – I’ll move the amendment.

Rep. DeKrey – 2<sup>nd</sup>.

Chairman Porter – We have a motion from Rep. Drovda to move the amendment, 2<sup>nd</sup> from Rep. DeKrey. Discussion? Seeing none all in favor – Unison voice vote – motion carries. We now have an amended bill.

Rep. Keiser – Move Do Pass as Amended.

Chairman Porter – Rep. Keiser has moved a Do Pass As Amended. Is there a 2<sup>nd</sup>?

Rep. DeKrey – 2<sup>nd</sup>.

Chairman Porter – 2<sup>nd</sup> from Rep. DeKrey. Discussion? Seeing none the clerk will call the roll on a Do Pass As Amended for SB 2404.

Yes 12 No 0 Absent 1 Carrier Rep. Drovda

March 12, 2009

VR  
3/13/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2404

Page 1, line 5, remove "takes, receives, or"

Page 1, line 12, remove "takes, receives, or"

Page 1, line 19, replace "5" with "4"

Page 2, line 25, replace "for record" with "a form UCC-1A in the central indexing system and recording the lien in the real estate records"

Page 2, line 26, replace "a verified notice of lien in substantially the following form:" with an underscored period

Page 2, remove lines 27 through 30

Page 3, remove lines 1 through 9

Page 3, line 10, replace "verified notice of" with "the oil and gas owner's"

Page 3, line 14, remove "deemed to be"

Page 3, line 15, replace "instrument" with "lien" and replace "Instruments" with "Liens must be filed in the central indexing system and recorded in the real estate records of the county. Liens"

Page 3, line 17, remove "relates"

Page 3, line 18, remove "back to and is effective as of the date on which the severance occurred and"

Page 3, line 19, after "attach" insert "thereafter"

Page 3, line 26, replace "an" with "a lien"

Page 3, line 27, remove "instrument"

Page 4, line 15, replace "an instrument" with "a lien"

Page 4, line 16, replace "instrument" with "lien"

Renumber accordingly

Date: 3-12-2009  
Roll Call Vote #: \_\_\_\_\_

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2404

House Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Keiser Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hanson	✓	
Vice Chairman Damschen	✓		Rep Hunskor		
Rep Clark	✓		Rep Kelsh	✓	
Rep DeKrey	✓		Rep Myxter	✓	
Rep Drovdal	✓		Rep Pinkerton	✓	
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Nottestad	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Drovdal

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

SB 2404, as engrossed: Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2404 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "takes, receives, or"

Page 1, line 12, remove "takes, receives, or"

Page 1, line 19, replace "5" with "4"

Page 2, line 25, replace "for record" with "a form UCC-1A in the central indexing system and recording the lien in the real estate records"

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Page 4, line 16, replace "instrument" with "lien"

Renumber accordingly

2009 TESTIMONY

SB 2404

# Northern Alliance *of* INDEPENDENT PRODUCERS

January 5, 2009

Chairman Lyson, and Members of the Senate Natural Resources Committee

The Northern Alliance has asked that SB 2404 be introduced to provide oil and gas producers a tool to protect themselves (and North Dakota mineral and royalty owners) from not being paid for oil and gas sales.

What has spawned this legislation is a significant bankruptcy last summer, by SemGroup, LP a crude oil purchaser and marketing firm in Tulsa Oklahoma, which filed bankruptcy in July, 2008. SemGroup bankruptcy documents reveal debts in excess of \$1 billion, which has cost North Dakota producers millions of dollars in unpaid revenue. (News story attached) Even though the producer has sold the oil and has not been paid, their obligation to pay mineral and royalty owners for the production remains, putting further strain on their cash flow and with some small operators, threatens their business.

SB 2404 provides a tool to assist the producer to establish a priority for payment in the case of bankruptcy or other disputes where payment is not forthcoming. (SB 2404 and amendments were fashioned after Oklahoma statute that provides the same remedy and structure).

The bill provides a means of establishing a "first in time" lien to perfect a security interest on produced oil or gas and proceeds resulting from the sale. It contemplates the lien would follow the sale proceeds.

Section 1, provides definitions.

Section 2, creates the continuing lien on oil and gas and proceeds; lien does not apply until notice of the lien is delivered to the purchaser; preserves the buyer in the ordinary course of business as provided under the UCC Article 9.

Section 3 provides that the lien is not dependent upon possession and does not expire upon transfer of possession.

Section 4, provides the form of notice and place of filing to perfect the lien (signed by the interest owner—not the debtor). Lien relates back to the date to the date of production; requires filing within 90 days of production.

Section 5, provides that the bill does not change legal title of interest owners, or time at which title may pass and that the purchaser may transport and sell the oil and gas

Section 6, provides 1 year to enforce the lien or else it expires; provides for attorneys fees for prevailing party; does not diminish right to bring personal action for liability; nothing impairs rights or remedies provided under the Uniform Commercial Code.

We ask for your favorable consideration of SB 2404 and proposed amendments.

Robert W. Harms

President

Northern Alliance of Independent Producers, Inc.

Bismarck, North Dakota



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Friday, August 1, 2008

## SemGroup bankruptcy shows Kansas companies are owed millions

Wichita Business Journal - by Bill Roy

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Chuck Touchstone, who lived in a trailer growing up in an Oklahoma town of 2,800 people, walked away recently from a \$50 million payday.



COURTESY PHOTO

SemCrude owes  
Chuck Touchstone

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Tulsa's **SemGroup LP**, including its subsidiary, SemCrude, filed bankruptcy July 22 owing Touchstone's **Central Kansas Crude** nearly \$22 million. A group of investors backed by **Goldman Sachs** that same day offered him the chance to close his company and become CEO of a new firm that would tap SemGroup's disaffected oil customers. In a few years he would get the money.

But because SemGroup's bankruptcy had put his own Pratt-based company in a precarious financial position, closing it would have meant owing millions of dollars to employees, customers and friends.

Instead of walking away with the money, he walked away from the table.

"It's more important for me to walk away with my dignity than to have \$50 million in my pocket," Touchstone said.

Touchstone, who is working on a deal that would allow him to pay his customers, is just one example of the impact SemGroup's multi-billion dollar bankruptcy is having on the Kansas oil industry.

"It is hard to overstate the impact of this to Kansas producers," says Dave Dayvault, president of the **Kansas Independent Oil and Gas Association**.

Rick Navarro, director of crude oil supply for Central Kansas Crude, says the company has been getting calls about the bankruptcy all day every day.

"This debacle that Tom Kivisto created has ended up being somewhat like an atom bomb," Navarro says. "The fallout is thousands and thousands and thousands of people."

Four Kansas businesses, including one from Wichita and one from McPherson, are among the top 30 unsecured creditors in the SemGroup bankruptcy.

SemGroup, a crude oil and natural gas marketing company co-founded by former **Kansas University** basketball player Tom Kivisto, tells the bankruptcy court that it owes more than \$1 billion dollars to creditors, has more than \$1 billion in assets and expects money will be available to pay the unsecured creditors.

The July 22 bankruptcy filing, in a Delaware federal court, shows that the company owes more than \$52 million to **Central Crude Corp.** of Wichita, and nearly \$54 million to the **National Refinery Association** in McPherson. Fountain Capital Management in Overland Park is owed \$27 million.

Those companies did not return calls seeking comment.

Dayvault estimates that SemCrude bought about \$140 million worth of Kansas oil from June 1 to July 22, the day it filed bankruptcy. That money remains unpaid.

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2/5/2009

SemGroup moves oil and natural gas from producers to buyers. The company has about 2,000 employees, according to its 2007 brochure, and Forbes magazine estimated 2007 annual revenue at \$14.75 billion. It is a company made up of many smaller subsidiaries.

Kivisto is a former **Koch Industries Inc.** executive vice president for crude oil marketing. SemGroup bought **Koch Pavement Solutions**, Koch's asphalt business, in 2005.

According to the **Tulsa World** newspaper, SemGroup lost about \$2.4 billion dollars in hedged trading on oil futures markets.

#### Kansas Impact

Dayvault says SemCrude and its affiliates were the second largest purchaser of crude oil in Kansas.

He says every Kansas company connected to the oil patch will be impacted in some way by the SemCrude bankruptcy.

Touchstone has had trouble sleeping since July 22. He remembers how people were treated during the **Enron** bankruptcy.

He was holding out a glimmer of hope that he might get some money from SemCrude Thursday.

Tuesday was his birthday.

"My greatest present would be if I got paid on the 31st," Touchstone says.

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## PROPOSED AMENDMENTS TO SENATE BILL NO. 2404

Page 1, line 1, after the words "A BILL for an Act", delete the remainder of the language in the Bill and insert the following:

To create a new chapter of the North Dakota Century Code relative to an oil and gas owner lien to secure payment from the sale of oil and gas produced in the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

### **Section 1. Definitions.**

As used in this act:

1. "Severed" means the taking, extraction or production from the land of any oil or gas in any manner;
2. "Person" means any individual, executor, administrator, estate, agent, trust, trustee, institution, receiver, business trust, firm, corporation, partnership, cooperative, joint venture, governmental entity or agency, association or any other group or combination acting as a unit;
3. "Interest owner" means a person owning an entire or fractional interest of any kind or nature in the oil or gas at the time it is severed, or a person who has a right to receive a monetary payment for the value of the oil or gas severed;
4. "Operator" means any person engaged in the severance of oil or gas for himself, for himself and other persons or for other persons;
5. "First purchaser" means the first person who takes, receives or purchases oil or gas from an interest owner at or after the time the oil or gas is severed; and
6. "Purchaser" means a person who takes, receives or purchases oil or gas from a first purchaser.

### **Section 2. Extent of lien - Dispute as to amount due - Notice - Buyer in ordinary course of business.**

A. To secure payment from the sale of oil or gas, an interest owner, subject to Section 5 of this chapter, shall have a continuing security interest in and a lien upon the oil or gas severed, or the proceeds of sale if such oil or gas has been sold, to the extent of his interest until the purchase price has been paid to the interest owner.

B. In the event of a bona fide dispute as to the amount due the interest owner, the security interest and the lien herein provided shall not accrue if the person holding the proceeds upon which a lien is claimed tenders to the interest owner the amount which such person in good faith believes to be due and payable.

C. No security interest or lien claimed pursuant to this chapter shall be effective against any interest owner, operator, first purchaser or purchaser until a copy of the notice of lien required to be filed under Section 5 has been delivered to such interest owner, operator, first purchaser or purchaser by registered or certified mail.

D. Notwithstanding any other provision in this chapter to the contrary, any person who pays the purchase price for oil or gas severed from a well to the interest owner with whom that person has a contract regarding purchases from such well or to one who is authorized to receive payment on behalf of or for such interest owner shall be deemed a buyer in the ordinary course of business as defined by Section 41-01-09(2)(i), and shall take the oil or gas free of the security interest and lien granted to the interest owner by this act, and the first purchaser or purchaser

who makes such payment and all its property shall be free from and not subject to the security interest or lien granted to the interest owner by this chapter.

### **Section 3. Validity of lien.**

The validity of the security interest and lien granted to an interest owner under the provisions of this chapter shall not be dependent upon possession of the oil or gas by an interest owner or operator and no such security interest or lien shall become or be deemed to be void or expired by reason of a change or transfer of the actual or constructive possession or title of the oil or gas from the interest owner or an operator to a first purchaser or purchaser.

### **Section 4. Perfection of lien - Verified notice - Effect of instruments - Effective date of lien.**

A. If the proceeds for oil or gas which are required to be paid are not paid to the interest owner when due, the interest owner may perfect the security interest and lien by filing of record in the office of the county recorder of the county in which the well is located a verified notice of lien in substantially the following form:

#### **"NOTICE OF OIL AND GAS OWNER'S LIEN**

Notice is hereby given that (name of interest owner for whom notice is filed) whose address is (address of named interest owner) claims an (fractional decimal interest) interest in the oil and/or gas severed or proceeds of sale from the (name of well) operated by (name and address of operator) which well is located on the following described land in \_\_\_\_\_ County, North Dakota:

(Description of land)

Oil and/or gas severed from said land has been and is now or may be taken and the above named interest owner has a security interest in and lien upon such oil and/or gas and the proceeds thereof to secure payment under the provisions of this chapter \_\_\_\_ NDCC.

Dated: (date)

\_\_\_\_\_  
(Signature of interest owner  
or operator)"

If verified notice of lien is not so filed within ninety (90) days from the date of production, the security interest shall not be perfected and shall not give the interest owner priority over any perfected security interest in the same oil, gas or proceeds of such oil or gas.

B. All instruments which are presented to a county recorder for filing in accordance with subsection A of this section shall be deemed to be effective as financing statements pursuant to the provisions of chapter 41-09 (Article 9), even though the signature of the debtor may not appear thereon. All such instruments may be terminated in the same manner as financing statements under the provisions of chapter 41-09 (Article 9).

C. Upon perfection by filing, the security interest and lien of the interest owner shall relate back to and be effective as of the date on which the severance occurred and shall take priority over the rights of all persons whose rights or claims arise or attach to the oil or gas unpaid for, or the proceeds of oil or gas if such oil or gas has been sold, including those which arise or attach between the time the security interest and lien attaches and the time of filing. The security interest and lien created pursuant to this act shall not have priority over a security

interest or lien rights previously created and perfected pursuant to law, or an operating agreement or other voluntary agreement for the development and operation of the property.

**Section 5. Rights of first purchasers.**

Neither the provisions of this chapter nor the filing of any instrument permitted under it shall affect the time at which legal title to the oil and gas may pass from an interest owner or operator to a first purchaser or the ownership of the oil and gas before severed as reflected by the records affecting real property or the right of a first purchaser to take or receive oil and gas under the terms of a division order or similar agreement for the sale and purchase of oil or gas. Any first purchaser or purchaser shall be free to transport products out of the state and to sell such products without permission or release of lien notwithstanding the provisions of this act.

**Section 6. Expiration of lien - Enforcement - Joinder and consolidation - Costs - Personal actions - Other rights and remedies.**

A. The security interest and lien granted to an interest owner under the provisions of Section 2 shall follow the oil or gas unpaid for or the proceeds of the oil or gas if such oil or gas has been sold. The security interest and lien shall expire one (1) year after the date of the filing of the notice of lien unless proper action to enforce the lien is commenced within such time in the district court of the county in which the well is located, or wherever the oil or gas unpaid for or the proceeds of oil or gas sold may be found. Any number of persons claiming security interests and liens with respect to the oil or gas from the same well may join in the same action and where separate actions are commenced, the court may consolidate them. The court may allow as part of the costs of the action any moneys paid for filing and recording instruments and reasonable attorneys fees for the prevailing party. If an action is commenced after the filing of an instrument as provided in Section 4 of this chapter, said instrument shall be considered as a lien upon the oil or gas severed, or the proceeds of sale if such oil or gas has been sold, to the extent of the interest of the claimant, for payment of the amount due the claimant and the security interest and lien of the claimant may be enforced in the manner provided by law.

B. Nothing in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due to maintain a personal action to recover the debt against the person liable for payment thereof.

C. Nothing in this chapter shall be construed to impair or affect the rights, priorities, or remedies of any person under the provisions of the Uniform Commercial Code, and the provisions of this act shall be deemed cumulative to and not a limitation on or a substitution for any rights or remedies otherwise provided by law to a creditor against his debtor.

Renumber accordingly.

# **Northern Alliance** *of* **INDEPENDENT PRODUCERS**

March 12, 2009

Natural Resources Committee  
North Dakota House of Representatives  
State Capitol  
Bismarck, North Dakota

Chairman Porter and Members of the Natural Resources Committee:

The Northern Alliance has asked that SB 2404 be introduced to provide oil and gas producers a tool to protect themselves (and North Dakota mineral and royalty owners) from not being paid for oil and gas sales.

What has spawned this legislation is a significant bankruptcy last summer, by SemGroup, LP a crude oil purchaser and marketing firm in Tulsa Oklahoma, which filed bankruptcy in July, 2008. SemGroup bankruptcy documents reveal debts in excess of \$1 billion, which has cost North Dakota producers millions of dollars in unpaid revenue. Even though the producer has sold the oil and has not been paid, his obligation to pay mineral and royalty owners for the production remains, putting further strain on his cash flow and with some small operators, threatens the business itself.

SB 2404 provides a tool to assist the producer to establish a priority for payment in the case of bankruptcy or other disputes where payment is not forthcoming. (SB 2404 was fashioned after an Oklahoma statute that provides the same remedy and structure).

The bill provides a means of establishing a "first in time" lien to perfect a security interest on produced oil or gas and proceeds resulting from the sale. It contemplates the lien would follow the sale proceeds.

Section 1, provides definitions.

Section 2, creates the continuing lien on oil and gas and proceeds; lien does not apply until notice of the lien is delivered to the purchaser; preserves the buyer in the ordinary course of business as provided under the UCC Article 9.

Section 3 provides that the lien is not dependent upon possession and does not expire upon transfer of possession.

Section 4, provides the form of notice and place of filing to perfect the lien (signed by the interest owner—not the debtor/buyer) and requires the filing to be made within 90 days of production.

Section 5, provides that the bill does not change legal title of interest owners, or time at which title may pass and that the purchaser may transport and sell the oil and gas

Section 6, provides 1 year to enforce the lien or else it expires; provides for attorneys fees for prevailing party; does not diminish right to bring personal action for liability; nothing impairs rights or remedies provided under the Uniform Commercial Code.

We ask for your favorable consideration of SB 2404.

Robert W. Harms  
President  
Northern Alliance of Independent Producers, Inc.  
Bismarck, North Dakota

*The voice of independent oil and gas producers in northern states*



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2404

NAIP March 12, 2009

Page 1, line 5 remove "takes, receives, or"

Page 1, line 12 remove "takes, receives, or"

Page 1, line 19, replace "Section 5" with "Section 4"

Page 2, line 25, replace "for record" with "in the central indexing system and recording in the real estate records"

Page 2, line 26, after "located" insert "a form UCC-1A", remove "a verified notice of lien in substantially the following form":

Page 2, remove line 27 thru line 30

Page 3, remove line 1 thru line 9

Page 3, line 10, replace "verified notice of" with "the oil and gas owners"

Page 3, line 14, replace "are deemed" with "shall"

Page 3, line 15, replace "instrument" with "lien", insert after the period "Liens shall be filed in the central indexing system and recorded in the real estate records of the county.", and replace "Instruments" with "Liens"

Page 3, line 17, remove "relates"

Page 3, line 18, remove "back to and is effective as of the date on which the severance occurred and"

Page 3, line 19, after "attach" insert "thereafter"

Page 3, line 26, remove "an"

Page 3, line 27, replace "instrument" with "a lien"

Page 4, line 15, replace "an instrument, the" with "a lien,"

Page 4, line 16, replace "instrument" with "lien"

Renumber accordingly