FIRST ENGROSSMENT

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2404

Introduced by

Senators Miller, O'Connell, Wardner

Representatives S. Meyer, Rust, Weiler

A BILL 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)

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.