

CHAPTER NO. 266

HOUSE BILL NO. 2177

By Representative Armstrong

Substituted for: Senate Bill No. 2226

By Senator Williams

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 9, Part 3, relative to secured transactions.

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

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 9, Part 3, is amended by adding the following language as a new section:

§ 47-9-343.

(a) This section provides a security interest in favor of interest owners, as secured parties, to secure the obligations of the first purchaser of oil and gas production, as debtor, to pay the purchase price. An authenticated record giving the interest owner a right operates as a security agreement created under this chapter. The act of the first purchaser in signing an agreement to purchase oil or gas production, in issuing a division order, or in making any other voluntary communication to the interest owner or any governmental agency recognizing the interest owner's right operates as an authentication of a security agreement in accordance with § 47-9-203(b) for purposes of this chapter.

(b) The security interest provided by this section is perfected automatically without the filing of a financing statement. If the interest of the secured party is evidenced by a deed, mineral deed, reservation in either, oil or gas lease, assignment, or any other such record recorded in the real property records of a register of deeds, that record is effective as a filed financing statement for purposes of this chapter, but no fee is required except a fee that is otherwise required by the register of deeds, and there is no requirement of refiling every five (5) years to maintain effectiveness of the filing.

(c) The security interest exists in oil and gas production, and also in the identifiable proceeds of that production owned by, received by, or due to the first purchaser:

(1) For an unlimited time if:

(A) The proceeds are oil or gas production, inventory of raw, refined, or manufactured oil or gas production, or rights to or products of any of those, although the sale of those proceeds by a first purchaser to a buyer in the ordinary course of business as provided in subsection (e) cuts off the security interest in those proceeds;

(B) The proceeds are accounts, chattel paper, instruments, documents, or payment intangibles; or

(C) The proceeds are cash proceeds, as defined in § 47-9-102; and

(2) For the length of time provided in § 47-9-315 for all other proceeds.

(d) This section creates a lien that secures the payment of all taxes that are or should be withheld or paid by the first purchaser and a lien that secures the rights of any person who would be entitled to a security interest under subsection (a) except for lack of any adoption of a security agreement by the first purchaser or a lack of possession or record required by § 47-9-203 for the security interest to be enforceable.

(e) The security interests and liens created by this section have priority over any purchaser who is not a buyer in the ordinary course of the first purchaser's business, but are cut off by the sale to a buyer from the first purchaser who is in the ordinary course of the first purchaser's business under § 47-9-320(a). But in either case, whether or not the buyer from the first purchaser is in ordinary course, a security interest will continue in the proceeds of the sale by the first purchaser as provided in subsection (c).

(f) The security interests and all liens created by this section have the following priorities over other Chapter 9 security interests:

(1) A security interest created by this section is treated as a purchase-money security interest for purposes of determining its relative priority under § 47-9-324 over other security interests not provided for by this section. A holder of a security interest created under this section is not required to give the written notice every five (5) years as provided in § 47-9-324(b)(3) to have purchase-money priority over a security interest with a prior financing statement covering inventory.

(2) A statutory lien is subordinate to all other perfected Chapter 9 security interests and has priority over unperfected Chapter 9 security interests and the lien creditors, buyers, and transferees mentioned in § 47-9-317.

(g) The security interests and liens created by this section have the following priorities among themselves:

(1) If a record effective as a filed financing statement under subsection (b) exists, the security interests perfected by that record have priority over a security interest automatically perfected without filing under subsection (b). If several security interests perfected by records exist, they have the same priority among themselves as established by law for interests in oil and gas in place. If property law establishes no priority among them, they share priority pro rata.

(2) A security interest perfected automatically without filing under subsection (b) has priority over a lien created under subsection (d).

(3) A nontax lien under subsection (d) has priority over a lien created under that subsection that secures the payment of taxes.

(h) The priorities for statutory liens mentioned in § 47-9-333 do not apply to any security interest or statutory lien created by this section. But if a pipeline common carrier has a statutory or tariff lien that is effective and enforceable against a trustee in bankruptcy and not invalidated by the Federal Tax Lien Act, that lien has priority over the security interests and statutory liens created by this section.

(i) If oil or gas production in which there are security interests or statutory liens created by this section is commingled with inventory or other production, the rules of § 47-9-336 apply.

(j) A security interest or statutory lien created by this section remains effective against the debtor and perfected against the debtor's creditors even if assigned, regardless of whether the assignment is perfected against the assignor's creditors. If a deed, mineral deed, assignment of oil and gas lease, or other such record evidencing the assignment is filed in the real property records of the county, it will have the same effect as filing an amended financing statement under § 47-9-514.

(k) This section does not impair an operator's right to set-off or withhold funds from other interest owners as security for or in satisfaction of any debt or security interest. In case of a dispute between an operator and another interest owner, a good faith tender of funds by anyone to the person who the operator and other interest owner agree on, to a person who otherwise shows himself or herself to be the one entitled to the funds, or to a court of competent jurisdiction in the event of litigation or bankruptcy operates as a tender of the funds to both.

(l) A first purchaser who acts in good faith may terminate an interest owner's security interest or statutory lien under this section by paying, or by making and keeping open a tender of, the amount the first purchaser believes to be due to the interest owner:

(1) If the interest owner's rights are to oil or gas production or its proceeds, either to the operator alone, in which event the operator is considered the first purchaser, or to some combination of the interest owner and the operator, as the first purchaser chooses;

(2) Whatever the nature of the production to which the interest owner has rights, to the person that the interest owner agreed to or acquiesced in; or

(3) To a court of competent jurisdiction in the event of litigation or bankruptcy.

(m) A person who buys from a first purchaser can ensure that the person buys free and clear of an interest owner's security interest or statutory lien under this section:

(1) By buying in the ordinary course of the first purchaser's business from the first purchaser under § 47-9-320(a);

(2) By obtaining the interest owner's consent to the sale under § 47-9-315(a)(1);

(3) By ensuring that the first purchaser has paid the interest owner or, provided that gas production is involved, or the interest owner has so agreed or acquiesced, by ensuring that the first purchaser has paid the interest owner's operator; or

(4) By ensuring that the person or the first purchaser or some other person has withheld funds sufficient to pay amounts in dispute and has maintained a tender of those funds to whoever shows himself or herself to be the person entitled.

(n) If a tender under subdivision (m)(4) that is valid thereafter fails, the security interest and liens governed by this section remain effective.

(o) In addition to the usual remedy of sequestration available to secured parties, the holders of security interests and liens created by this section have available to them, to the extent constitutionally permitted, the remedies of replevin, attachment, and garnishment to assist them in realizing upon their rights.

(p) The rights of any person claiming under a security interest or lien created by this section are governed by the other provisions of this chapter except to the extent that this section necessarily displaces those provisions. This section does not invalidate or otherwise affect the interests of any person in any real property before severance of any oil or gas production.

(q) In this section:

(1) "First purchaser" means the first person that purchases oil or gas production from an operator or interest owner after the production is severed, or an operator that receives production proceeds from a third-party purchaser who acts in good faith under a division order or other agreement authenticated by the operator under which the operator collects proceeds of production on behalf of other interest owners. To the extent the operator receives proceeds attributable to the interest of other interest owners from a third-party purchaser who acts in good faith under a division order or other agreement authenticated by such operator, the operator is considered to be the first purchaser of the production for all purposes under this section, notwithstanding the characterization of other persons as first purchasers under other laws or regulations. To the extent the operator has not received from the third-party purchaser proceeds attributable to the operator's interest and the interest of other interest owners, the operator is not considered the first purchaser for the purposes of this section and is entitled to all rights and benefits under this section. Nothing in this section impairs or affects any rights otherwise held by a royalty owner to take its share of oil in kind or receive payment directly from a third-party purchaser for the royalty owner's share of oil production with or without a previously made agreement;

(2) "Interest owner" means a person owning an entire or fractional interest of any kind or nature in oil or gas production at the time of severance, or a person who has an express, implied, or constructive right to receive a monetary payment determined by the value of oil or gas production or by the amount of production;

(3) "Oil and gas production" means any oil, natural gas, condensate of either, natural gas liquids, other gaseous, liquid, or dissolved hydrocarbons, sulfur, or helium, or other substance produced as a by-product or adjunct to their production, or any combination of these, which is severed, extracted, or produced from the ground within the jurisdiction of this state. Any such substance, including recoverable or recovered natural gas liquids, that is transported to or in a natural gas pipeline or natural gas gathering system, or otherwise transported or sold for use as natural gas, or is transported or sold for the extraction of helium or natural gas liquids is "gas production." Any such substance that is transported or sold to persons and for purposes not included in the foregoing natural gas definition is "oil production"; and

(4) "Operator" means a person engaged in the business of severing oil or gas production from the ground, whether for the person alone, only for other persons, or for the person and others.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.

PASSED: May 16, 2005


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 28th day of May 2005


PHIL BREDESEN, GOVERNOR