

SENATE BILL 435

Introduced by Tveit

2/15	Introduced
2/15	Referred to Natural Resources
2/20	Hearing
	Died in Committee

1 *Sen. Trent* BILL NO. 435  
2 INTRODUCED BY Trent  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN OIL AND GAS  
5 OWNER'S LIEN; AND PROVIDING FOR FILING, ATTACHMENT, AND  
6 PRIORITY OF THE LIEN."  
7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. **Section 1.** Short title. [This act] may  
10 be cited as the "Oil and Gas Owner's Lien Act".

11 NEW SECTION. **Section 2.** Definitions. In [this act],  
12 unless the context requires otherwise, the following  
13 definitions apply:

14 (1) "First purchaser" means the first person who  
15 takes, receives, or purchases oil or gas from an interest  
16 owner at or after the time the oil or gas is severed.

17 (2) "Interest owner" means a person:

18 (a) owning a whole or fractional interest in oil or  
19 gas at the time it is severed; or

20 (b) having an express or implied right to receive a  
21 monetary payment determined by the value of the severed oil  
22 or gas.

23 (3) "Operator" means a person engaged in the severance  
24 of oil or gas for himself, for another person, or for both.

25 (4) "Person" means an individual, executor,

1 administrator, estate, agent, trust, trustee, institution,  
2 receiver, business trust, firm, corporation, partnership,  
3 cooperative, joint venture, governmental entity or agency,  
4 association, or any group of the foregoing when acting as a  
5 unit.

6 (5) "Purchaser" means a person who takes, receives, or  
7 purchases oil or gas from a first purchaser.

8 (6) "Severed" means the taking, extracting, or  
9 producing from the land of oil or gas.

10 NEW SECTION. **Section 3.** Lien created -- dispute  
11 settlement -- persons who take free of the lien --  
12 exception. (1) To secure payment of the purchase price from  
13 the sale of oil or gas, an interest owner has a continuing  
14 lien, to the extent of his interest and until the purchase  
15 price has been paid to him, on the oil or gas severed or on  
16 the proceeds of the sale if the oil or gas has been sold.

17 (2) If there is a bona fide dispute as to the amount  
18 due the interest owner, the lien does not accrue if the  
19 person holding the proceeds upon which a lien is claimed  
20 tenders to the interest owner the amount that the person  
21 holding the proceeds believes in good faith to be due and  
22 payable.

23 (3) A first purchaser who pays the purchase price for  
24 oil or gas severed to an interest owner with whom the first  
25 purchaser has a contract regarding purchases from the well

1 or to one who is authorized to receive payment on behalf of  
2 the interest owner is considered a buyer in the ordinary  
3 course of business, as defined in 30-1-201. He takes the oil  
4 or gas free of the lien granted to the interest owner by  
5 subsection (1).

6 (4) The first purchaser and a purchaser who make the  
7 payment, and the property of the first purchaser and the  
8 purchaser, are not subject to the lien granted to the  
9 interest owner under [this act].

10 NEW SECTION. Section 4. Lien not dependent on  
11 possession. The lien granted to an interest owner under  
12 [this act] is not dependent on possession of the oil or gas  
13 by an interest owner or an operator. The lien does not  
14 become void or expire because of a change or transfer of the  
15 actual or constructive possession or title of the oil or gas  
16 from the interest owner or an operator to a first purchaser  
17 or purchaser.

18 NEW SECTION. Section 5. Notice of lien -- perfection  
19 of lien by filing. (1) To claim a lien under [this act], an  
20 interest owner shall deliver a copy of the notice of lien by  
21 certified mail to the operator, the first purchaser, a  
22 purchaser, and any other interest owner.

23 (2) If the proceeds for oil or gas are not paid to the  
24 interest owner when due, the interest owner may perfect the  
25 lien by filing of record in the office of the county clerk

1 and recorder of the county in which the well is located a  
2 verified notice of lien.

3 (3) If a verified notice of the lien is not filed as  
4 provided in [section 5] within 90 days from the date payment  
5 of the purchase price is due, the lien is not perfected and  
6 the interest owner does not have priority over a perfected  
7 security interest in the same oil, gas, or proceeds of the  
8 oil or gas.

9 (4) The notice of lien must contain the following  
10 information and be in substantially the following form:

11 NOTICE OF OIL AND GAS OWNER'S LIEN

12 This is to inform you that (name and address of  
13 interest owner for whom notice is filed) claims a  
14 (fractional or decimal) interest in the oil or gas severed  
15 or in the proceeds of the sale of the oil or gas, from the  
16 (name of well) operated by (name and address of operator).  
17 The well is located on the following described land in  
18 ..... County:

19 (description of land)

20 Oil or gas severed from the land has been, is being, or  
21 may be taken, and the above-named interest owner has a lien  
22 on the oil or gas or the proceeds if the oil or gas has been  
23 sold to secure payment of the purchase price under the  
24 provisions of [this act].

25 Dated: .....

.....  
Signature of interest owner

**NEW SECTION. Section 6.** Filing with county clerk. The county clerk and recorder shall endorse on a lien filed under [this act] the date of filing and make an abstract of the lien in an indexed book kept for that purpose. The record must contain:

(1) the date of the filing;

(2) the name of the person against whose property the lien is claimed; and

(3) a description of the property charged with the lien.

**NEW SECTION. Section 7.** Filing effective as financing statement -- failure to file. A notice of lien that is filed as provided in [section 5] is effective as a financing statement pursuant to Title 30, chapter 9, part 4, even though the signature of the debtor does not appear on the notice. A notice of lien may be terminated in the same manner as a financing statement under 30-9-404.

**NEW SECTION. Section 8.** Priority. (1) Upon perfection by filing, the lien of the interest owner relates back to and is effective as of the date on which the severance occurred. Except as provided in subsection (2), the lien granted to the interest owner under [this act] takes priority over the rights of a person whose right or claim

attaches to the oil or gas and to the proceeds if the oil or gas has been sold, including a right that arises or attaches between the time the lien attaches and the time it is filed.

(2) The lien created pursuant to [this act] does not have priority over a lien right that was previously created and perfected pursuant to a laborers' or materialmen's lien on an oil and gas well and pipeline under Title 71, chapter 3, part 10, or a unit operator's lien under 82-11-212, or an operating or other voluntary agreement for the development and operation of the property.

**NEW SECTION. Section 9.** Effect of filing of lien. (1) The filing of a lien notice pursuant to [this act] does not affect:

(a) the time at which legal title to the oil or gas may pass from an interest owner or an operator to a first purchaser;

(b) the ownership of the oil and gas before severance, as reflected by the records affecting real property; or

(c) the right of a first purchaser to take or receive oil and gas under the terms of an agreement for the sale and purchase of oil or gas.

(2) A first purchaser or purchaser may transport products out of the state and sell them without permission of a lienhold claimant or release of a lien arising under [this act].

1        NEW SECTION.    **Section 10.** Lien follows proceeds --  
 2    expiration of lien -- civil action to enforce. (1) A lien  
 3    granted to an interest owner under [this act] follows the  
 4    oil or gas and the proceeds of the oil or gas if the oil or  
 5    gas has been sold.  
 6        (2) (a) The lien expires 1 year after the date of  
 7    filing of the notice of lien unless a civil action to  
 8    enforce the lien is commenced within that time in the  
 9    district court of the county in which the well is located or  
 10   of the county in which the oil or gas or the proceeds of oil  
 11   or gas may be found.  
 12        (b) The lien notice expires at the end of the 1-year  
 13   period unless the interest owner claiming the lien files  
 14   with the clerk and recorder a copy of the complaint in the  
 15   civil action.  
 16        (3) A number of persons claiming security interests  
 17   and liens with respect to the oil or gas from the same well  
 18   may join in the same civil action to enforce their rights in  
 19   the oil or gas or proceeds if the oil or gas has been sold.  
 20   If separate civil actions have been commenced, the district  
 21   court may consolidate them.  
 22        (4) The court may allow to the prevailing party, as  
 23   part of the costs of the action, any money paid for filing  
 24   and recording a lien under [section 5] and reasonable  
 25   attorney fees for the prevailing party.

1        NEW SECTION.    **Section 11.** Acknowledgment                      of  
 2    satisfaction of lien -- penalty. (1) If a debt that is a  
 3    lien on gas or oil or on the proceeds if the oil or gas have  
 4    been sold is paid and satisfied, the interest owner claiming  
 5    the lien shall acknowledge satisfaction of the lien and  
 6    discharge it of record.  
 7        (2) If the interest owner claiming the lien fails to  
 8    acknowledge satisfaction and discharge the lien within 30  
 9    days after being requested to do so, a person having a  
 10   property interest in the oil or gas or proceeds if the oil  
 11   or gas have been sold, the interest owner claiming the lien  
 12   is liable to a person injured in the amount of the injury  
 13   and any costs of a subsequent civil action.

-End-