

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1665

By: Johnson (Rob) and Shortey
of the Senate

6 and

7 Jordan of the House
8
9

10 COMMITTEE SUBSTITUTE

11 An Act relating to oil and gas; creating the Energy
12 Litigation Reform Act; providing short title;
13 providing rules of construction for certain oil and
14 gas agreements; allowing exceptions; providing for
15 private agreements; limiting remedies to certain
16 actions for failure to pay proceeds or interest;
17 providing exception for cases of actual, knowing and
18 willful intent to deceive; amending 52 O.S. 2011,
19 Sections 318.21, 318.22 and 318.23, which relate to
20 the Seismic Exploration Regulation Act; defining
21 terms; providing for attempt to notify; defining
22 term; providing for filing of certain affidavit;
23 requiring certain information be provided in the
24 notice; providing for certain damages; requiring
notice to surface owner prior to seismic exploration;
providing for acceptance and rejection procedures of
certain offers; requiring affidavit of mailing;
providing cause of action for damages from seismic
exploration; defining prevailing party; directing
recovery of certain costs for prevailing party;
declaring applicability of act; providing for
codification; providing for noncodification; and
providing an effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 901 of Title 52, unless there is
4 created a duplication in numbering, reads as follows:

5 Sections 1 through 3 of this act shall be known and may be cited
6 as the "Energy Litigation Reform Act".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 902 of Title 52, unless there is
9 created a duplication in numbering, reads as follows:

10 A. The sanctity of private agreements, statutes, governmental
11 orders and common law being essential to the oil and gas industry,
12 the following are declared to be paramount rules of construction to
13 be applied by the courts of this state in the construction of
14 private agreements, statutes and governmental orders relating to the
15 exploration for, operations for, producing of, or marketing of oil
16 or gas, or disbursing proceeds of production of oil or gas:

17 1. A person is bound as a reasonably prudent operator to
18 perform any duties owed to any person under a private agreement,
19 statute, governmental order or common law relating to the
20 exploration for, operations for, producing of, or marketing of oil
21 or gas, or disbursing proceeds of production of oil or gas, and
22 performance of the duties described herein is that performance which
23 an operator acting reasonably would have undertaken given the
24 circumstances at the time, without being required to subordinate its

1 own business interests but with due regard to the interests of all
2 affected parties, including the operator; and

3 2. There shall not be implied in the duties in paragraph 1 of
4 this subsection or otherwise any fiduciary duty, quasi-fiduciary
5 duty or other similar special relationship in any private agreement,
6 statute, governmental order or common law relating to the
7 exploration for, operations for, producing of, or marketing of oil
8 or gas, or disbursing proceeds of production of oil or gas, and any
9 contrary or inconsistent legal authority shall be deemed to be of no
10 effect.

11 B. Nothing in this section shall either prohibit the parties to
12 a private agreement from expressly agreeing in writing otherwise or
13 prohibit the Legislature from expressly providing otherwise in any
14 statute subsequently enacted or prohibit any governmental order from
15 expressly providing otherwise to the extent within the power or
16 authority of the issuer of such order. However, the provisions of
17 paragraph 2 of subsection A of this section shall not apply to
18 Section 287.1 of Title 52 of the Oklahoma Statutes.

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 903 of Title 52, unless there is
21 created a duplication in numbering, reads as follows:

22 The following terms shall apply to any action brought to recover
23 proceeds and interest or either proceeds or interest under the
24 Production Revenue Standards Act or otherwise:

1 Except for the right to enforce lien rights under private
2 agreement or under Sections 548 through 549.12 of Title 52 of the
3 Oklahoma Statutes, the Production Revenue Standards Act shall
4 provide the exclusive remedy to a person entitled to proceeds from
5 production for failure of a holder to pay the proceeds within the
6 time periods required for payment. The interest amount set forth in
7 paragraph 1 of subsection D of Section 570.10 of Title 52 of the
8 Oklahoma Statutes is deemed to be an adequate penalty for failure to
9 pay proceeds within the time periods required for payment and no
10 other penalty or damages shall be recoverable in any litigation
11 involving a claim for unpaid or underpaid proceeds from production
12 including, without limitation, punitive or exemplary damages or
13 disgorgement damages, unless there shall be a determination by the
14 finder of fact upon clear and convincing evidence that the person
15 failing to pay such proceeds did so with the actual, knowing and
16 willful intent to deceive the person to whom the proceeds were due.

17 SECTION 4. AMENDATORY 52 O.S. 2011, Section 318.21, is
18 amended to read as follows:

19 Section 318.21 ~~This act~~ A. Sections 318.21 through 318.23 of
20 this title shall be known and may be cited as the "Seismic
21 Exploration Regulation Act". ~~For purposes of this act only,~~
22 ~~"seismic~~

23 B. As used in the Seismic Exploration Regulation Act:
24

1 1. "Seismic exploration" means the drilling of seismograph test
2 holes and use of surface energy sources such as weight drop
3 equipment, thumpers, hydropulses or vibrators, and any of the
4 activities associated therewith;

5 2. "Operator" or "applicant" means a person or entity who is
6 either the owner of the right to conduct seismic exploration or
7 acting on behalf of the owner;

8 3. "Surface estate" means the same as defined in Section 802 of
9 this title; and

10 4. "Surface owner" means the owner or owners of record of the
11 surface estate of the property upon which the seismic exploration is
12 to occur, based upon the records of the county clerk of the county
13 within which the surface estate is actually located.

14 SECTION 5. AMENDATORY 52 O.S. 2011, Section 318.22, is
15 amended to read as follows:

16 Section 318.22 A. The Corporation Commission is hereby
17 directed and authorized to promulgate rules governing the operations
18 of seismographic exploration for the purpose of protecting the
19 interests and property of the citizens of this state.

20 B. Any person, firm, corporation or entity desiring to commence
21 any seismographic exploration in this state shall, prior to any such
22 activity, be duly registered with the Corporation Commission and
23 shall be required to apply for a permit for each separate seismic
24 exploration.

1 C. Rules promulgated by the Commission governing all seismic
2 exploration operations shall include, but not be limited to,
3 requirements for:

4 1. Applicants to post a form of financial surety guarantee, the
5 form and amount to be determined by the Commission which shall
6 remain in effect until release is authorized by the Commission;

7 2. Applicants to attempt to notify all surface owners of
8 ~~property~~ the surface estate where the seismic exploration will occur
9 at least fifteen (15) days prior to commencement of seismic
10 exploration. If the applicant has ~~obtained specific written~~
11 ~~permission~~ the right to conduct seismic exploration and has ~~given~~
12 attempted to give actual notice of intent to conduct seismic
13 exploration to the surface owner any time before fifteen (15) days
14 prior to conducting seismic exploration, such action shall be
15 considered sufficient notification for the purposes of this section.
16 ~~Notification by U.S. mail shall be sufficient for~~ For the purposes
17 of this section, ~~provided~~ an attempt to notify shall be considered
18 sufficient when the notification is sent by U.S. mail, the notice is
19 postmarked at least fifteen (15) days prior to commencement of any
20 seismic exploration, and has been given at the last address shown of
21 record for the surface owner in the records of the county clerk in
22 the county where the surface estate is located, or an address that
23 is known by applicant to be more accurate than the foregoing address
24 of record; and

1 3. Applicants to file an affidavit within ninety (90) days of
2 the last mailing of the notice described herein with the county
3 clerk in the county where the property is located, setting out that
4 mailing of the notice has occurred in compliance with this section,
5 and specifically listing the surface owners which were not locatable
6 at the addresses required. Further, in the event that any party is
7 not locatable at said addresses, then such surface owner will be
8 deemed as having rejected the offer provided in the notice required
9 under this section; and

10 4. Applicants to be permitted for each seismic exploration
11 operation.

12 D. The notice required in subsection C of this section shall be
13 sent by U.S. mail, include a copy of the oil or gas lease or seismic
14 permit authorizing the use of the surface for seismic exploration
15 and contain the following information:

16 1. Name of the company conducting seismic exploration;

17 2. Anticipated date of seismic exploration; ~~and~~

18 3. A description of the surface estate of the notice recipient
19 to be entered upon for the seismic exploration to be conducted;

20 4. If there is not a prior written agreement between the
21 surface owner and the operator as to seismic exploration, the
22 following provision with regard to the amount of the damages offered
23 by the operator to the surface owner shall be included in the
24 notice:

1 "Operator will conduct the proposed seismic exploration in
2 a prudent manner and agrees to indemnify and hold you
3 harmless from personal injury or property damage claims
4 that may result from the operator's seismic exploration to
5 the extent that such damage claims are not the result of
6 your acts or omissions. Pursuant to the Seismic
7 Exploration Regulation Act, you, as the surface owner, are
8 entitled to reasonable damages that will be sustained by
9 reason of the operator's seismic exploration. The
10 operator hereby offers you \$ [operator shall fill in
11 the amount] as compensation for the reasonable damages to
12 be sustained by reason of the operator's seismic
13 exploration. If you accept this offer in writing to the
14 operator within fifteen (15) days of the postmark of this
15 letter you will be deemed to have accepted and agreed to
16 the amount as full consideration for all reasonable
17 damages by reason of the operator's seismic exploration.
18 Operator shall, upon receipt of your timely acceptance of
19 the offer contained herein, remit to you the consideration
20 described in this offer. The acceptance of this amount
21 shall not prohibit you from attempting to recover damages
22 which are unreasonable and caused by reason of the
23 operator's seismic exploration on your surface estate.
24

1 In the event that you either (a) reject the offer in this
2 letter in writing to the operator within fifteen (15) days
3 of the postmark of this letter, or (b) fail to make a
4 timely acceptance of the offer contained herein, then you
5 will be deemed to have rejected the offer contained
6 herein, and pursuant to the Seismic Exploration Regulation
7 Act, you may initiate an action pursuant to The Small
8 Claims Procedure Act or a civil action pursuant to the
9 Oklahoma Pleading Code, as appropriate, to recover the
10 reasonable damages, if any, actually sustained by reason
11 of the operator's seismic exploration. If an action to
12 recover reasonable damages is commenced accordingly and a
13 judgment is entered in the action for you as to the
14 damages in an amount in excess of the amount set forth in
15 this notice for reasonable damages by reason of the
16 operator's seismic exploration, you shall be considered
17 the prevailing party. If the action is dismissed prior to
18 the entry of a judgment, or the judgment entered is for an
19 amount equal to or less than the amount set forth in this
20 notice for reasonable damages by reason of the operator's
21 seismic exploration, although you will be entitled to
22 receive the judgment amount, if any, the operator shall be
23 considered the prevailing party. The prevailing party in
24 any court proceeding brought pursuant to the Seismic

1 Exploration Regulation Act shall be entitled to recover
2 the costs of the suit, including but not limited to
3 reasonable attorney and expert witness fees and litigation
4 expenses."; and

5 5. Any other pertinent information the Commission deems
6 appropriate and relevant for the protection of surface owners.

7 E. The Commission is further directed to promulgate rules to
8 implement a system to register complaints against any person, firm
9 or corporation conducting seismic exploration. The Commission may
10 determine if and when a complaint has been adequately resolved.

11 F. Any person, firm, corporation or entity which conducts any
12 seismic exploration without a permit by the Commission, or in any
13 other manner violates the rules of the Commission governing such
14 exploration shall be subject to a penalty of One Thousand Dollars
15 (\$1,000.00) per violation per day by the Commission, in addition to
16 any other legal remedy provided by law.

17 SECTION 6. AMENDATORY 52 O.S. 2011, Section 318.23, is
18 amended to read as follows:

19 Section 318.23 A. It shall be unlawful for any person, firm,
20 corporation or entity to conduct any seismic test hole blasting
21 within two hundred (200) feet of any habitable dwelling, building or
22 water well without written permission from the owner of the
23 property.

1 B. The surface owner shall be entitled to reasonable damages
2 that have been or will be sustained to the surface estate by reason
3 of the operator's seismic exploration.

4 C. At least fifteen (15) days prior to commencement of seismic
5 exploration, the operator shall provide the notice to the surface
6 owner required by Section 318.22 of this title, and, in the absence
7 of an agreement between the surface owner and the operator as to
8 seismic exploration, operator and surface owner shall make a good-
9 faith effort to resolve any reasonable damage issues raised by the
10 surface owner by reason of operator's seismic exploration.

11 D. The surface owner may accept the offer in the notice
12 required by Section 318.22 of this title by accepting the offer in
13 writing to the operator within fifteen (15) days of the postmark of
14 the notice. By the timely acceptance of such offer, the surface
15 owner shall be deemed to have accepted and agreed to such offer as
16 full consideration for all reasonable damages by reason of the
17 operator's seismic exploration and the operator may commence seismic
18 operations. The operator shall, upon receipt of the surface owner's
19 timely acceptance of the offer in the notice, remit the appropriate
20 consideration to the surface owner. The surface owner's acceptance
21 of such offer and consideration shall not prohibit the surface owner
22 from attempting to recover damages which are unreasonable and caused
23 by reason of the operator's seismic exploration on the surface
24 estate of the surface owner.

1 E. If prior to the expiration of the fifteen-day notice period
2 set forth in Section 318.22 of this title, the surface owner rejects
3 the amount tendered with the notice required by Section 318.22 of
4 this title in writing to the operator, or the surface owner fails to
5 make a timely acceptance of the offer contained in the notice, then
6 the surface owner will be deemed to have rejected the offer tendered
7 with the notice, and the operator may enter the property and
8 commence seismic operations.

9 F. Within ninety days (90) days of the last mailing of the
10 notice described herein, the applicant shall file an affidavit
11 setting out that mailing of the notice has occurred in compliance
12 with Section 318.22 of this title, and specifically listing the
13 surface owners which were not locatable at the addresses required.
14 Further, in the event that any surface owner is not locatable at the
15 addresses, then such surface owner will be deemed as having rejected
16 the offer provided in the notice required under Section 318.22 of
17 this title.

18 G. If the surface owner has properly rejected or has been
19 deemed to have rejected the amount tendered with the notice required
20 by Section 318.22 of this title, the surface owner may initiate an
21 action pursuant to The Small Claims Procedure Act or a civil action
22 pursuant to the Oklahoma Pleading Code, as appropriate, to recover
23 the reasonable damages, if any, actually sustained by reason of the
24

1 operator's seismic exploration. Venue for such action shall
2 properly be in the county where the surface estate is located.

3 H. If an action to recover the reasonable damages is commenced
4 pursuant to subsection G of this section and a judgment is entered
5 in the action for the surface owner for reasonable damages by reason
6 of the operator's seismic exploration in an amount in excess of the
7 amount set forth in the notice required by Section 318.22 of this
8 title, the surface owner shall be considered the prevailing party;
9 if the action is dismissed prior to the entry of a judgment, or if
10 the judgment entered for reasonable damages by reason of the
11 operator's seismic exploration is for an amount equal to or less
12 than the amount set forth in the notice required by Section 318.22
13 of this title, the operator shall be considered the prevailing
14 party. The prevailing party in any court proceeding brought
15 pursuant to this section shall be entitled to recover the costs of
16 the suit, including but not limited to reasonable attorney and
17 expert witness fees and litigation expenses.

18 I. Nothing in the Seismic Exploration Regulation Act shall
19 modify or restrict an operator's right to enter a surface estate and
20 conduct seismic exploration thereon pursuant to the operator's right
21 to conduct seismic exploration. Additionally, nothing in the
22 response or deemed response of a surface owner to any notice
23 required by Section 318.22 of this title shall restrict or otherwise
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1 affect an operator's right to enter a surface estate and conduct
2 seismic operations thereon.

3 SECTION 7. NEW LAW A new section of law not to be
4 codified in the Oklahoma Statutes reads as follows:

5 Sections 1 through 3 of this act are a clarification of the
6 original intent of the Legislature as to existing law and shall be
7 applied in all pending cases, unless a trial on the merits has
8 commenced in the case prior to November 1, 2012.

9 SECTION 8. This act shall become effective November 1, 2012.

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