

1 ENGROSSED HOUSE
2 BILL NO. 2654

By: Jordan and Billy of the
House

3 and

4 Johnson (Rob) of the Senate

5
6
7 (oil and gas - rules of construction - allowing
8 exceptions - amending 52 O.S., Sections 318.21,
9 318.22 and 318.23 - Seismic Exploration Regulation
10 Act - codification -
11 effective date)

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 900 of Title 52, unless there is
17 created a duplication in numbering, reads as follows:

18 Sections 1 through 8 of this act shall be known and cited as the
19 "Energy Litigation Reform Act".

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

23 As used this act, "Production Revenue Standards Act" means
24 Sections 570.1 through 570.15 of Title 52 of the Oklahoma Statutes.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 902 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

4 The sanctity of private agreements, statutes and governmental
5 orders being essential to the oil and gas industry, the following
6 are declared to be paramount rules of construction to be applied by
7 the courts of Oklahoma in the construction of private agreements,
8 statutes and governmental orders relating to the exploration for,
9 operations for, producing of, or marketing oil or gas or disbursing
10 proceeds of production of oil or gas:

11 1. A person is bound as a reasonably prudent operator to
12 perform any duties owed to any person under any private agreement,
13 statute or governmental order relating to the exploration for,
14 operations for, producing of, or marketing oil or gas or disbursing
15 proceeds of production of oil or gas; and

16 2. There shall not be implied in the duties in paragraph 1 of
17 this section or otherwise any fiduciary duty, quasi-fiduciary duty
18 or other similar special relationship in any private agreement,
19 statute or governmental order relating to the exploration for,
20 operations for, producing of, or marketing oil or gas or disbursing
21 proceeds of production of oil or gas, and any contrary or
22 inconsistent legal authority shall be deemed to be of no effect.
23 Nothing in this section shall either prohibit the parties to a
24 private agreement from expressly agreeing in writing otherwise or

1 prohibit the Legislature from expressly providing otherwise in any
2 statute subsequently enacted or prohibit any governmental order from
3 expressly providing otherwise to the extent within the power or
4 authority of the issuer of such order. However, the provisions of
5 this paragraph shall not apply to Section 287.1 of Title 52 of the
6 Oklahoma Statutes.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 903 of Title 52, unless there is
9 created a duplication in numbering, reads as follows:

10 The following terms shall apply to any action brought to recover
11 proceeds and interest or either proceeds or interest under the
12 Production Revenue Standards Act or otherwise:

13 1. Except the right to enforce lien rights under private
14 agreement or under Sections 548 through 549.12 of Title 52 of the
15 Oklahoma Statutes, the Production Revenue Standards Act shall
16 provide the exclusive remedy to a person entitled to proceeds from
17 production for failure of a holder to pay the proceeds within the
18 time periods required for payment. The interest amounts set forth
19 in paragraph 1 of subsection D of Section 570.10 of Title 52 of the
20 Oklahoma Statutes are deemed to be an adequate penalty for failure
21 to pay proceeds within the time periods required for payment and no
22 other penalty or damages shall be recoverable in any litigation
23 involving a claim for unpaid or underpaid proceeds from production
24

1 including, without limitation, punitive or exemplary damages or
2 disgorgement damages; and

3 2. Any action to recover proceeds and interest or either
4 proceeds or interest must be brought within five (5) years from the
5 date the proceeds become due.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 904 of Title 52, unless there is
8 created a duplication in numbering, reads as follows:

9 Despite any other provision of law, no action described in this
10 section shall be brought or maintained unless before filing the
11 action the party or parties bringing the action shall have complied
12 with the following terms of this section:

13 1. No person may start a civil action against any person
14 alleged to be in violation of the Production Revenue Standards Act
15 to recover either or both of interest or attorney fees unless each
16 claimant has provided written notice by certified mail of the
17 alleged violation in accordance with this section;

18 2. The notice required under paragraph 1 of this section shall
19 contain the following:

- 20 a. the name and address of the claimant and the name and
21 address of the claimant's attorney, if any,
22 b. a concise statement of the factual basis of the claim,
23 and
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1 c. a statement of the amount of monetary damages sought
2 by the claimant.

3 In providing a notice of claim, substantial compliance with the
4 terms and requirements of this paragraph shall constitute valid
5 notice of a claim. The contents of such notice shall not be
6 admissible in any later action arising out of the claim except to
7 prove compliance or noncompliance with this section. No person
8 other than an expressly authorized representative may provide such
9 notice on behalf of any other person; and

10 3. Once notice of the claim is provided, no action shall be
11 started until after the claimant has received notice that the claim
12 has been denied or until thirty (30) days has passed from the date
13 of the receipt of the notice, whichever occurs first. A claim is
14 deemed denied if the person receiving the notice fails to agree to
15 pay the amount of the claim in its entirety, or a lesser amount as
16 may be negotiated by the parties, within the thirty-day period and
17 pays such amount within thirty (30) days thereafter. No claimant
18 may start an action to recover either or both of interest or
19 attorney fees unless the claim has been denied in whole or part. If
20 a claim is denied or deemed denied, in whole or in part, then the
21 commencement of any action thereon shall be deemed to have commenced
22 upon the date of the receipt of the written notice.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 905 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

4 Sections 4 and 5 of this act shall apply to all litigation filed
5 after January 1, 2013. The remainder of this act is a clarification
6 of the original intent of the Legislature as to existing law and
7 shall be applied in all pending cases, unless a trial on the merits
8 has commenced in the case prior to January 1, 2013.

9 SECTION 7. AMENDATORY 52 O.S. 2011, Section 318.21, is
10 amended to read as follows:

11 Section 318.21 ~~This act~~ A. Sections 318.21 through 318.23 of
12 this title shall be known and may be cited as the "Seismic
13 Exploration Regulation Act".

14 ~~For purposes of this act only, "seismic~~ B. As used in the
15 Seismic Exploration Regulation Act:

16 1. "Seismic exploration" means the drilling of seismograph test
17 holes and use of surface energy sources such as weight drop
18 equipment, thumpers, hydropulses or vibrators;

19 2. "Operator" or "applicant" means a person or entity who is
20 either the owner of the right to conduct seismic exploration or the
21 agent of the owner;

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

24

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

5 SECTION 8. AMENDATORY 52 O.S. 2011, Section 318.22, is
6 amended to read as follows:

7 Section 318.22 A. The Corporation Commission is hereby
8 directed and authorized to promulgate rules governing the operations
9 of seismographic exploration for the purpose of protecting the
10 interests and property of the citizens of this state.

11 B. Any person, firm, corporation or entity desiring to commence
12 any seismographic exploration in this state shall, prior to any such
13 activity, be duly registered with the Corporation Commission and
14 shall be required to apply for a permit for each separate seismic
15 exploration.

16 C. Rules promulgated by the Commission governing all seismic
17 exploration operations shall include, but not be limited to,
18 requirements for:

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

22 2. Applicants to attempt to notify all surface owners of
23 ~~property~~ the surface estate where the seismic exploration will occur
24 at least fifteen (15) days prior to commencement of seismic

1 exploration. If the applicant has ~~obtained specific written~~
2 ~~permission~~ the right to conduct seismic exploration and has given
3 attempted to give actual notice of intent to conduct seismic
4 exploration to the surface owner any time before fifteen (15) days
5 prior to conducting seismic exploration, such action shall be
6 considered sufficient notification for the purposes of this section.
7 Notification by U.S. mail shall be sufficient for the purposes of
8 this section, provided the notice is postmarked at least fifteen
9 (15) days prior to commencement of any seismic exploration and has
10 been given at the last address shown of record for the surface owner
11 in the records of the county clerk in the county where the surface
12 estate is located, or an address that is known by the applicant to
13 be more accurate than the foregoing address of record; and

14 3. Applicants to be permitted for each seismic exploration
15 operation.

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

20 1. Name of the company conducting seismic exploration;

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

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

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1 4. If there is not a prior written agreement with the surface
2 owner which addresses the payment of damages for the seismic
3 operations, the following provision with regard to the amount of the
4 damages offered by the operator to the surface owner shall be
5 included in the notice:

6 "Operator will conduct the proposed seismic exploration in a
7 prudent manner and agrees to indemnify and hold you harmless from
8 any personal injury or property damage claims that may result from
9 the operator's seismic exploration. Pursuant to the Seismic
10 Exploration Regulation Act, you, as the surface owner, are entitled
11 to reasonable damages that will be sustained by reason of the
12 operator's seismic exploration. The operator hereby offers you \$
13 (operator shall fill in the amount) as compensation for the
14 reasonable damages to be sustained by reason of the operator's
15 seismic exploration. If you accept this offer, either by cashing
16 this check or failing to reject this offer in writing received by
17 the operator within fifteen (15) days of the date of this letter,
18 you will be deemed to have accepted said amount as full
19 consideration for all reasonable damages by reason of the operator's
20 seismic exploration, and you will not be required to execute
21 anything further. The acceptance of this amount shall not prohibit
22 you from attempting to recover damages which are unreasonable and
23 caused by reason of the operator's seismic exploration on your
24 surface estate.

1 In the event that you reject the offer in this letter in the
2 manner set forth herein, then pursuant to the Seismic Exploration
3 Regulation Act, you may initiate an action pursuant to the Small
4 Claims Procedure Act or as a civil action pursuant to the Oklahoma
5 Pleading Code to recover the reasonable damages, if any, sustained
6 by reason of the operator's seismic exploration. If an action to
7 recover reasonable damages is commenced accordingly and a judgment
8 is entered in the action for you as to said damages in an amount in
9 excess of the amount set forth in this notice for reasonable damages
10 by reason of the operator's seismic exploration, you shall be
11 considered the prevailing party. If the action is dismissed prior
12 to the entry of a judgment, or the judgment entered is for an amount
13 equal to or less than the amount set forth in this notice for
14 reasonable damages by reason of the operator's seismic exploration,
15 although you will be entitled to receive the judgment amount, if
16 any, the operator shall be considered the prevailing party. The
17 prevailing party in any court proceeding brought pursuant to the
18 Seismic Exploration Regulation Act shall be entitled to recover the
19 costs of the suit, including but not limited to reasonable attorney
20 and expert witness fees and litigation expenses."; and

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

23 E. The Commission is further directed to promulgate rules to
24 implement a system to register complaints against any person, firm

1 or corporation conducting seismic exploration. The Commission may
2 determine if and when a complaint has been adequately resolved.

3 F. Any person, firm, corporation or entity which conducts any
4 seismic exploration without a permit by the Commission, or in any
5 other manner violates the rules of the Commission governing such
6 exploration shall be subject to a penalty of One Thousand Dollars
7 (\$1,000.00) per violation per day by the Commission, in addition to
8 any other legal remedy provided by law.

9 SECTION 9. AMENDATORY 52 O.S. 2011, Section 318.23, is
10 amended to read as follows:

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

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

19 C. In the absence of an agreement between the surface owner and
20 the operator as to seismic exploration, at least fifteen (15) days
21 prior to commencement of seismic exploration, the operator shall
22 provide the notice to the surface owner required by Section 318.22
23 of this title and make a good-faith effort to resolve any reasonable
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1 damage issues raised by the surface owner by reason of operator's
2 seismic exploration.

3 D. If the surface owner and operator cannot agree upon the
4 amount of the reasonable damages to be paid prior to the expiration
5 of the fifteen-day-notice period notice set forth in Section 318.22
6 of this title, the operator may commence seismic operations and the
7 surface owner may initiate an action pursuant to the Small Claims
8 Procedure Act or as a civil action pursuant to the Oklahoma Pleading
9 Code to recover the reasonable damages, if any, sustained by reason
10 of the operator's seismic exploration. Jurisdiction and venue shall
11 properly be in the district court where the surface estate is
12 located.

13 E. If an action to recover the reasonable damages is commenced
14 pursuant to subsection D of this section and a judgment is entered
15 in the action for the surface owner for reasonable damages by reason
16 of the operator's seismic exploration in an amount in excess of the
17 amount set forth in the notice required by Section 318.22 of this
18 title, the surface owner shall be considered the prevailing party;
19 if the action is dismissed prior to the entry of a judgment, or if
20 the judgment entered for reasonable damages by reason of the
21 operator's seismic exploration is for an amount equal to or less
22 than the amount set forth in the notice required by Section 318.22
23 of this title, the operator shall be considered the prevailing
24 party. The prevailing party in any court proceeding brought

1 pursuant to this section shall be entitled to recover the costs of
2 the suit, including but not limited to reasonable attorney and
3 expert witness fees and litigation expenses.

4 SECTION 10. This act shall become effective January 1, 2013.

5 Passed the House of Representatives the 15th day of March, 2012.

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8 Presiding Officer of the House of
9 Representatives

10 Passed the Senate the ____ day of _____, 2012.

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13 Presiding Officer of the Senate