

ENROLLED SENATE  
BILL NO. 1665

By: Johnson (Rob), Shortey and  
Johnson (Constance) of the  
Senate

and

Jordan of the House

An Act relating to oil and gas; amending 52 O.S. 2011, Sections 318.21, 318.22 and 318.23, which relate to the Seismic Exploration Regulation Act; defining terms; providing for attempt to notify; defining term; providing for filing of certain affidavit; requiring certain information be provided in the 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; and providing an effective date.

SUBJECT: Seismic Exploration Regulation Act

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

SECTION 1. AMENDATORY 52 O.S. 2011, Section 318.21, is amended to read as follows:

Section 318.21 ~~This act~~ A. Sections 318.21 through 318.23 of this title shall be known and may be cited as the "Seismic

Exploration Regulation Act". ~~For purposes of this act only,~~  
"seismic

B. As used in the Seismic Exploration Regulation Act:

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

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

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

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

SECTION 2. AMENDATORY 52 O.S. 2011, Section 318.22, is amended to read as follows:

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

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

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

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

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

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

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

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

1. Name of the company conducting seismic exploration;

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

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

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

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

In the event that you either (a) reject the offer in this letter in writing to the operator within fifteen (15) days of the postmark of this letter, or (b) fail to make a timely acceptance of the offer contained herein, then you will be deemed to have rejected the offer contained herein, and pursuant to the Seismic Exploration Regulation

Act, you may initiate an action pursuant to The Small Claims Procedure Act or a civil action pursuant to the Oklahoma Pleading Code, as appropriate, to recover the reasonable damages, if any, actually sustained by reason of the operator's seismic exploration. If an action to recover reasonable damages is commenced accordingly and a judgment is entered in the action for you as to the damages in an amount in excess of the amount set forth in this notice for reasonable damages by reason of the operator's seismic exploration, you shall be considered the prevailing party. If the judgment entered is for an amount equal to or less than the amount set forth in this notice for reasonable damages by reason of the operator's seismic exploration, although you will be entitled to receive the judgment amount, if any, the operator shall be considered the prevailing party. The prevailing party in any court proceeding brought pursuant to the Seismic Exploration Regulation Act shall be entitled to recover the costs of the suit, including but not limited to reasonable attorney and expert witness fees and litigation expenses. If the action should be dismissed other than by way of settlement prior to the entry of judgment, then the surface owner shall forfeit its right to receive any consideration for all reasonable damages by reason of the operator's seismic exploration."; and

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

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

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

SECTION 3. AMENDATORY 52 O.S. 2011, Section 318.23, is amended to read as follows:

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

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

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

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

E. If prior to the expiration of the fifteen-day notice period set forth in Section 318.22 of this title, the surface owner rejects the amount tendered with the notice required by Section 318.22 of this title in writing to the operator, or the surface owner fails to make a timely acceptance of the offer contained in the notice, then the surface owner will be deemed to have rejected the offer tendered

with the notice, and the operator may enter the property and commence seismic operations.

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

G. If the surface owner has properly rejected or has been deemed to have rejected the amount tendered with the notice required by Section 318.22 of this title, the surface owner may initiate an action pursuant to The Small Claims Procedure Act or a civil action pursuant to the Oklahoma Pleading Code, as appropriate, to recover the reasonable damages, if any, actually sustained by reason of the operator's seismic exploration. Venue for such action shall properly be in the county where the surface estate is located.

H. If an action to recover the reasonable damages is commenced pursuant to subsection G of this section and a judgment is entered in the action for the surface owner for reasonable damages by reason of the operator's seismic exploration in an amount in excess of the amount set forth in the notice required by Section 318.22 of this title, the surface owner shall be considered the prevailing party; if the judgment entered for reasonable damages by reason of the operator's seismic exploration is for an amount equal to or less than the amount set forth in the notice required by Section 318.22 of this title, the operator shall be considered the prevailing party. The prevailing party in any court proceeding brought pursuant to this section shall be entitled to recover the costs of the suit, including but not limited to reasonable attorney and expert witness fees and litigation expenses. If the action should be dismissed other than by way of settlement prior to the entry of judgment, then the surface owner shall forfeit its right to receive any consideration for all reasonable damages by reason of the operator's seismic exploration.

I. Nothing in the Seismic Exploration Regulation Act shall modify or restrict an operator's right to enter a surface estate and

conduct seismic exploration thereon pursuant to the operator's right to conduct seismic exploration. Additionally, nothing in the response or deemed response of a surface owner to any notice required by Section 318.22 of this title shall restrict or otherwise affect an operator's right to enter a surface estate and conduct seismic operations thereon.

SECTION 4. This act shall become effective November 1, 2012.

Passed the Senate the 1st day of May, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2012.

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Presiding Officer of the House  
of Representatives