

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

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

By: Johnson (Rob) and Shortey
of the Senate

and

Jordan of the House

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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

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1 circumstances at the time, without being required to subordinate its
2 own business interests but with due regard to the interests of all
3 affected parties, including the operator; and

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

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

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

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 The following terms shall apply to any action brought to recover
2 proceeds and interest or either proceeds or interest under the
3 Production Revenue Standards Act or otherwise:

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

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

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

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

3 B. As used in the Seismic Exploration Regulation Act:

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

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

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

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

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

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

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

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

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

12 2. Applicants to attempt to notify all ~~surface~~ owners of
13 ~~property~~ the surface estate where the seismic exploration will occur
14 at least fifteen (15) days prior to commencement of seismic
15 exploration. If the applicant has ~~obtained specific written~~
16 ~~permission~~ the right to conduct seismic exploration and has ~~given~~
17 attempted to give actual notice of intent to conduct seismic
18 exploration to the surface owner any time before fifteen (15) days
19 prior to conducting seismic exploration, such action shall be
20 considered sufficient notification for the purposes of this section.
21 ~~Notification by U.S. mail shall be sufficient for~~ For the purposes
22 of this section, ~~provided~~ an attempt to notify shall be considered
23 sufficient when the notification is sent by U.S. mail, the notice is

1 postmarked at least fifteen (15) days prior to commencement of any
2 seismic exploration, and has been given at the last address shown of
3 record for the surface owner in the records of the county clerk in
4 the county where the surface estate is located, or an address that
5 is known by applicant to be more accurate than the foregoing address
6 of record; and

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

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

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

- 22 1. Name of the company conducting seismic exploration;
- 23 2. Anticipated date of seismic exploration; ~~and~~

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

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

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

1 damages by reason of the operator's seismic exploration.
2 Operator shall, upon receipt of your timely acceptance of
3 the offer contained herein, remit to you the consideration
4 described in this offer. The acceptance of this amount
5 shall not prohibit you from attempting to recover damages
6 which are unreasonable and caused by reason of the
7 operator's seismic exploration on your surface estate.
8 In the event that you either (a) reject the offer in this
9 letter in writing to the operator within fifteen (15) days
10 of the postmark of this letter, or (b) fail to make a
11 timely acceptance of the offer contained herein, then you
12 will be deemed to have rejected the offer contained
13 herein, and pursuant to the Seismic Exploration Regulation
14 Act, you may initiate an action pursuant to The Small
15 Claims Procedure Act or a civil action pursuant to the
16 Oklahoma Pleading Code, as appropriate, to recover the
17 reasonable damages, if any, actually sustained by reason
18 of the operator's seismic exploration. If an action to
19 recover reasonable damages is commenced accordingly and a
20 judgment is entered in the action for you as to the
21 damages in an amount in excess of the amount set forth in
22 this notice for reasonable damages by reason of the
23 operator's seismic exploration, you shall be considered

1 the prevailing party. If the action is dismissed prior to
2 the entry of a judgment, or the judgment entered is for an
3 amount equal to or less than the amount set forth in this
4 notice for reasonable damages by reason of the operator's
5 seismic exploration, although you will be entitled to
6 receive the judgment amount, if any, the operator shall be
7 considered the prevailing party. The prevailing party in
8 any court proceeding brought pursuant to the Seismic
9 Exploration Regulation Act shall be entitled to recover
10 the costs of the suit, including but not limited to
11 reasonable attorney and expert witness fees and litigation
12 expenses."; and

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

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

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

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

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

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

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

20 D. The surface owner may accept the offer in the notice
21 required by Section 318.22 of this title by accepting the offer in
22 writing to the operator within fifteen (15) days of the postmark of
23 the notice. By the timely acceptance of such offer, the surface

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1 owner shall be deemed to have accepted and agreed to such offer as
2 full consideration for all reasonable damages by reason of the
3 operator's seismic exploration and the operator may commence seismic
4 operations. The operator shall, upon receipt of the surface owner's
5 timely acceptance of the offer in the notice, remit the appropriate
6 consideration to the surface owner. The surface owner's acceptance
7 of such offer and consideration shall not prohibit the surface owner
8 from attempting to recover damages which are unreasonable and caused
9 by reason of the operator's seismic exploration on the surface
10 estate of the surface owner.

11 E. If prior to the expiration of the fifteen-day notice period
12 set forth in Section 318.22 of this title, the surface owner rejects
13 the amount tendered with the notice required by Section 318.22 of
14 this title in writing to the operator, or the surface owner fails to
15 make a timely acceptance of the offer contained in the notice, then
16 the surface owner will be deemed to have rejected the offer tendered
17 with the notice, and the operator may enter the property and
18 commence seismic operations.

19 F. Within ninety days (90) days of the last mailing of the
20 notice described herein, the applicant shall file an affidavit
21 setting out that mailing of the notice has occurred in compliance
22 with Section 318.22 of this title, and specifically listing the
23 surface owners which were not locatable at the addresses required.

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1 Further, in the event that any surface owner is not locatable at the
2 addresses, then such surface owner will be deemed as having rejected
3 the offer provided in the notice required under Section 318.22 of
4 this title.

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

13 H. If an action to recover the reasonable damages is commenced
14 pursuant to subsection G 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

1 party. The prevailing party in any court proceeding brought
2 pursuant to this section shall be entitled to recover the costs of
3 the suit, including but not limited to reasonable attorney and
4 expert witness fees and litigation expenses.

5 I. Nothing in the Seismic Exploration Regulation Act shall
6 modify or restrict an operator's right to enter a surface estate and
7 conduct seismic exploration thereon pursuant to the operator's right
8 to conduct seismic exploration. Additionally, nothing in the
9 response or deemed response of a surface owner to any notice
10 required by Section 318.22 of this title shall restrict or otherwise
11 affect an operator's right to enter a surface estate and conduct
12 seismic operations thereon.

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

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

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

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21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/10/2012 - DO
22 PASS, As Amended.

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