

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1035

By: Justice

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5
6 AS INTRODUCED

7 An Act relating to oil and gas; amending 52 O.S.
8 2011, Section 318.2, which relates to surface
9 damages; creating the Oklahoma Surface Use and
10 Damages Act; providing short title; modifying
11 definitions; defining terms; amending 52 O.S. 2011,
12 Section 318.3, which relates to notice prior to
13 drilling; requiring notice to certain surface
14 tenants; providing for damages for seismic
15 exploration; modifying notice procedures; amending 52
16 O.S. 2011, Section 318.4, which relates to surety
17 deposits; conforming language; amending 52 O.S. 2011,
18 Section 318.5, which relates to negotiations;
19 conforming language; providing alternative procedure
20 for seismic exploration; and amending 52 O.S. 2011,
21 Section 318.9, which relates to awards of damages;
22 conforming language; providing for filing of certain
23 petitions; providing an effective date; and declaring
24 an emergency.

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

SECTION 1. AMENDATORY 52 O.S. 2011, Section 318.2, is
amended to read as follows:

Section 318.2. ~~For purposes of Sections 1 through 8 of this
act:~~

A. Sections 318.2 through 318.9 of this title shall be known
and may be cited as the "Oklahoma Surface Use and Damages Act".

1 B. As used in the Oklahoma Surface Use and Damages Act:

2 1. "Operator" means a mineral owner or lessee who is engaged in
3 ~~drilling or preparing to drill for oil or gas; and~~ operations, or in
4 the case of seismic exploration, means a person or entity who is
5 either the owner of the right to conduct seismic exploration or the
6 agent of the owner;

7 2. "Oil and gas operations" means:

8 a. drilling or preparing to drill for oil or gas,

9 b. conducting new or additional operations affecting the
10 surface estate not included in the original drilling
11 operations, or

12 c. conducting or preparing to conduct seismic
13 exploration;

14 3. "Person" means any individual, executor, administrator,
15 estate, agent, trust, trustee, institution, receiver, business
16 trust, firm, corporation, partnership, limited liability company,
17 cooperative, joint venture, governmental entity or agency,
18 association or any other group or combination acting as a unit;

19 4. "Seismic exploration" means the same as defined in Section
20 318.21 of this title;

21 5. "Surface estate" means the same as defined in Section 802 of
22 this title;

1 6. "Surface owner" means the owner or owners of record of the
2 surface estate of the property on which the ~~drilling operation is~~
3 oil or gas operations are to occur; and

4 7. "Surface tenant" means any person who has a possessory
5 interest in the surface estate for agricultural purposes or through
6 a wind or solar agreement, as defined in Section 802 of this title.

7 SECTION 2. AMENDATORY 52 O.S. 2011, Section 318.3, is
8 amended to read as follows:

9 Section 318.3. A. Before entering upon a site for oil or gas
10 ~~drilling operations~~, except in instances where there are ~~non-state~~
11 ~~resident surface owners, non-state resident surface tenants~~, unknown
12 heirs, imperfect titles, or surface owners, or surface tenants whose
13 whereabouts cannot be ascertained with reasonable diligence, the
14 operator shall give to the surface owner, and any surface tenant who
15 has recorded with the county clerk a notice of the tenancy, a
16 written notice of his intent to ~~drill~~ conduct oil or gas operations
17 containing a designation of the proposed location and the
18 approximate date that the operator proposes to commence ~~drilling the~~
19 oil or gas operations.

20 ~~Such~~ B. The notice required by subsection A of this section
21 shall be given in writing by certified mail to the ~~surface owner~~
22 party or parties entitled to the notice. If the operator makes an
23 affidavit that he or she has conducted a search with reasonable
24 diligence and the whereabouts of ~~the surface owner~~ a party entitled

1 to notice cannot be ascertained or such notice cannot be delivered,
2 then constructive notice of the intent to ~~drill~~ conduct oil or gas
3 operations may be given in the same manner as provided for the
4 notice of proceedings to appoint appraisers.

5 C. Within five (5) days of the date of delivery or service of
6 the notice ~~of intent to drill~~ required by this section, it shall be
7 the duty of the operator and the surface owner to enter into good
8 faith negotiations to determine if the proposed use of the surface
9 by the operator is reasonable under the circumstances and the value
10 of any damages that will be incurred as a result of the proposed
11 operation.

12 SECTION 3. AMENDATORY 52 O.S. 2011, Section 318.4, is
13 amended to read as follows:

14 Section 318.4. A. Every operator doing business in this state
15 shall file a corporate surety bond, letter of credit from a banking
16 institution, cash, or a certificate of deposit with the Secretary of
17 State in the sum of Twenty-five Thousand Dollars (\$25,000.00)
18 conditioned upon compliance with Sections 318.2 through 318.9 of
19 this title for payment of any ~~location~~ damages due which the
20 operator cannot otherwise pay. The Secretary of State shall hold
21 such corporate surety bond, letter of credit from a banking
22 institution, cash or certificate of deposit for the benefit of the
23 surface owners of this state and shall ensure that such security is
24 in a form readily payable to a surface owner awarded damages in an

1 action brought pursuant to ~~this act~~ the Oklahoma Surface Use and
2 Damages Act. Each corporate surety bond, letter of credit, cash, or
3 certificate of deposit filed with the Secretary of State shall be
4 accompanied by a filing fee of Ten Dollars (\$10.00).

5 B. The bonding company or banking institution shall file, for
6 such fee as is provided for by law, a certificate that said bond or
7 letter of credit is in effect or has been canceled, or that a claim
8 has been made against it in the office of the court clerk in each
9 county in which the operator is ~~drilling or planning to drill~~
10 conducting or planning to conduct oil or gas operations. Said bond
11 or letter of credit must remain in full force and effect as long as
12 the operator continues drilling operations in this state. Each such
13 filing shall be accompanied by a filing fee of Ten Dollars (\$10.00).

14 C. Upon deposit of the bond, letter of credit, cash, or
15 certificate of deposit, the operator shall be permitted entry upon
16 the property and shall be permitted to commence ~~drilling of a well~~
17 oil or gas operations in accordance with the terms and conditions of
18 any lease or other existing contractual or lawful right.

19 D. If the damages agreed to by the parties or awarded by the
20 court are greater than the bond, letter of credit, cash, or
21 certificate of deposit posted, the operator shall pay the damages
22 immediately or post an additional bond, letter of credit, cash, or
23 certificate of deposit sufficient to cover the damages. Said
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1 increase in bond, letter of credit, cash, or certificate of deposit
2 shall comply with the requirements of this section.

3 SECTION 4. AMENDATORY 52 O.S. 2011, Section 318.5, is
4 amended to read as follows:

5 Section 318.5. A. Prior to entering the site with heavy
6 equipment for oil or gas operations, the operator shall negotiate
7 with the surface owner for the payment of any damages which may be
8 caused by the ~~drilling operation~~ oil or gas operations. If the
9 parties agree, and a written contract is signed, the operator may
10 enter the site to ~~drill~~ conduct the oil or gas operations. If
11 agreement is not reached, or if the operator is not able to contact
12 all parties, the operator shall petition the district court in the
13 county in which the ~~drilling site~~ oil or gas operation is ~~located to~~
14 occur for appointment of appraisers to make recommendations to the
15 parties and to the court concerning the reasonableness of the
16 proposed operation and the amount of damages, if any. If the form
17 of the oil or gas operation is seismic exploration, and the operator
18 asserts the damages are equal to or less than the amount set forth
19 in the small claims procedures, the operator may alternatively file
20 the petition in the district court in the county in which the oil or
21 gas operation is to occur pursuant to the Oklahoma Small Claims
22 Procedure Act and the action shall be conducted in accordance with
23 the Oklahoma Small Claims Procedure Act. If the surface owner seeks
24 to and is allowed to transfer the action from the small claims

1 docket, the action shall proceed as though the petition was filed
2 for the appointment of appraisers pursuant to this subsection. The
3 operator is only required to name as a defendant or defendants in
4 any action filed pursuant to this subsection the surface owner or
5 owners; however, any surface tenant shall be entitled to intervene
6 in the action if so requested. Once the operator has petitioned for
7 appointment of appraisers or filed the petition as allowed by this
8 subsection, the operator may enter the site to ~~drill~~ conduct the oil
9 or gas operation.

10 B. Ten (10) days' notice of the petition to appoint appraisers
11 or the filing of the petition as allowed by subsection A of this
12 section, shall be given to the opposite party, either by personal
13 service or by leaving a copy thereof at the party's usual place of
14 residence with some family member over fifteen (15) years of age,
15 or, in the case of nonresidents, unknown heirs or other persons
16 whose whereabouts cannot be ascertained, by publication in one issue
17 of a newspaper qualified to publish legal notices in said county, as
18 provided in Section 106 of Title 25 of the Oklahoma Statutes, ~~said~~
19 the ten-day period to begin with the first publication.

20 C. ~~The~~ In an action for the appointment of appraisers, the
21 operator shall select one appraiser, the surface owner shall select
22 one appraiser, and the two selected appraisers shall select a third
23 appraiser for appointment by the court, which such third appraiser
24 shall be a state-certified general real estate appraiser and be in

1 good standing with the Oklahoma Real Estate Appraisal Board. Unless
2 for good cause shown, additional time is allowed by the district
3 court, the three (3) appraisers shall be selected within twenty (20)
4 days of service of the notice of the petition to appoint appraisers
5 or within twenty (20) days of the first date of publication of the
6 notice as specified in subsection B of this section. If either of
7 the parties fails to appoint an appraiser or if the two appraisers
8 cannot agree on the selection of the third appraiser within the
9 required time period, the remaining required appraisers shall be
10 selected by the district court upon application of either party of
11 which at least one shall be a state-certified general real estate
12 appraiser and be in good standing with the Oklahoma Real Estate
13 Appraisal Board. Before entering upon their duties, such appraisers
14 shall take and subscribe an oath, before a notary public or some
15 other person authorized to administer oaths, that they will perform
16 their duties faithfully and impartially to the best of their
17 ability. They shall inspect the real property and consider the
18 surface damages which the owner has sustained or will sustain by
19 reason of entry upon the subject land and by reason of ~~drilling or~~
20 ~~maintenance of oil or gas production~~ the oil or gas operations on
21 the subject tract of land. The appraisers shall then file a written
22 report within thirty (30) days of the date of their appointment with
23 the clerk of the court. The report shall set forth the quantity,
24 boundaries and value of the property entered on or to be utilized in

1 said oil or gas ~~drilling~~ operations, and the amount of surface
2 damages done or to be done to the property. The appraisers shall
3 make a valuation and determine the amount of compensation to be paid
4 by the operator to the surface owner and the manner in which the
5 amount shall be paid. Said appraisers shall then make a report of
6 their proceedings to the court. The compensation of the appraisers
7 shall be fixed and determined by the court. The operator and the
8 surface owner shall share equally in the payment of the appraisers'
9 fees and court costs.

10 D. Within ten (10) days after the report of the appraisers is
11 filed, the clerk of the court shall forward to each attorney of
12 record, each party, and interested party of record, a copy of the
13 report of the appraisers and a notice stating the time limits for
14 filing an exception or a demand for jury trial as provided for in
15 this section. The operator shall provide the clerk of the court
16 with the names and last-known addresses of the parties to whom the
17 notice and report shall be mailed, sufficient copies of the notice
18 and report to be mailed, and pre-addressed, postage-paid envelopes.

19 1. This notice shall be on a form prepared by the
20 Administrative Director of the Courts, approved by the Oklahoma
21 Supreme Court, and supplied to all district court clerks.

22 2. If a party has been served by publication, the clerk shall
23 forward a copy of the report of the appraisers and the notice of
24 time limits for filing either an exception or a demand for jury

1 trial to the last-known mailing address of each party, if any, and
2 shall cause a copy of the notice of time limits to be published in
3 one issue of a newspaper qualified to publish legal notices as
4 provided in Section 106 of Title 25 of the Oklahoma Statutes.

5 3. After issuing the notice provided herein, the clerk shall
6 endorse on the notice form filed in the case the date that a copy of
7 the report and the notice form was forwarded to each attorney of
8 record, each party, and each interested party of record, or the date
9 the notice was published.

10 E. The time for filing an exception to the report or a demand
11 for jury trial shall be calculated as commencing from the date the
12 report of the appraisers is filed with the court. Upon failure of
13 the clerk to give notice within the time prescribed, the court, upon
14 application by any interested party, may extend the time for filing
15 an exception to the report or filing a demand for trial by jury for
16 a reasonable period of time not less than twenty (20) days from the
17 date the application is heard by the court. Appraisers' fees and
18 court costs may be the subject of an exception, may be included in
19 an action by the petitioner, and may be set and allowed by the
20 court.

21 F. The report of the appraisers may be reviewed by the court,
22 upon written exceptions filed with the court by either party within
23 thirty (30) days after the filing of the report. After the hearing
24 the court shall enter the appropriate order either by confirmation,

1 rejection, modification, or order of a new appraisal for good cause
2 shown. Provided, that in the event a new appraisal is ordered, the
3 operator shall have continuing right of entry subject to the
4 continuance of the bond required herein. Either party may, within
5 sixty (60) days after the filing of such report, file with the clerk
6 a written demand for a trial by jury, in which case the amount of
7 damages shall be assessed by a jury. The trial shall be conducted
8 and judgment entered in the same manner as railroad condemnation
9 actions tried in the court. A copy of the final judgment shall be
10 forwarded to the county assessor in the county or counties in which
11 the property is located. If the party demanding the jury trial does
12 not recover a more favorable verdict than the assessment award of
13 the appraisers, all court costs including reasonable attorney fees
14 shall be assessed against the party.

15 SECTION 5. AMENDATORY 52 O.S. 2011, Section 318.9, is
16 amended to read as follows:

17 Section 318.9. Upon presentation of clear, cogent and
18 convincing evidence that the operator willfully and knowingly
19 entered upon the premises for the purpose of commencing ~~the drilling~~
20 ~~of a well~~ oil or gas operations before giving notice of such entry
21 or without the agreement of the surface owner, the court may, in a
22 separate action, award treble damages. The issue of noncompliance
23 shall be a fact question, determinable without jury, and a de novo
24 issue in the event of appeal.

1 Any operator who willfully and knowingly fails to keep posted
2 the required bond or who fails to notify the surface owner, prior to
3 entering, or fails to come to an agreement and does not ask the
4 court for appraisers or file a petition pursuant to the Oklahoma
5 Surface Use and Damages Act, shall pay, at the direction of the
6 court, treble damages to the surface owner.

7 Damages collected pursuant to ~~this act~~ the Oklahoma Surface Use
8 and Damages Act shall not preclude the surface owner from collecting
9 any additional damages caused by the operator at a subsequent date.

10 SECTION 6. This act shall become effective July 1, 2012.

11 SECTION 7. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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