

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2704

By: McNiel

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5
6 AS INTRODUCED

7 An Act relating to oil and gas; amending 52 O.S.
8 2011, Sections 318.22, as last amended by Section 2,
Chapter 229, O.S.L. 2012 and 312.23, as last amended
9 by Section 3, Chapter 229, O.S.L. 2012 (52 O.S. Supp.
2013, Sections 318.22 and 318.23), which relate to
10 the Seismic Exploration Regulation Act; changing
number of days required for notice and acceptance of
11 an offer; modifying authority of the Corporation
Commission to investigate complaints; modifying
12 determination of prevailing party in action to
recover damages; deleting provision making the
13 surface owner forfeit the right to receive damages in
certain circumstances; and declaring an emergency.

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

17 SECTION 1. AMENDATORY 52 O.S. 2011, Section 318.22, as
18 last amended by Section 2, Chapter 229, O.S.L. 2012 (52 O.S. Supp.
19 2013, Section 318.22), is amended to read as follows:

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

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 owners of the surface
13 estate where the seismic exploration will occur at least ~~fifteen~~
14 ~~(15)~~ thirty (30) days prior to commencement of seismic exploration.
15 If the applicant has the right to conduct seismic exploration and
16 has attempted to give actual notice of intent to conduct seismic
17 exploration to the surface owner any time before ~~fifteen (15)~~ thirty
18 (30) days prior to conducting seismic exploration, such action shall
19 be considered sufficient notification for the purposes of this
20 section. For the purposes of this section, an attempt to notify
21 shall be considered sufficient when the notification is sent by U.S.
22 mail, the notice is postmarked at least ~~fifteen (15)~~ thirty (30)
23 days prior to commencement of any seismic exploration, and has been
24 given at the last address shown of record for the surface owner in

1 the records of the county clerk in the county where the surface
2 estate is located, or an address that is known by applicant to be
3 more accurate than the foregoing address of record;

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

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

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

19 1. Name of the company conducting seismic exploration;

20 2. Anticipated date of seismic exploration;

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

23 4. If there is not a prior written agreement between the
24 surface owner and the operator as to seismic exploration, the

1 following provision with regard to the amount of the damages offered
2 by the operator to the surface owner shall be included in the
3 notice:

4 "Operator will conduct the proposed seismic exploration in
5 a prudent manner and agrees to indemnify and hold you
6 harmless from personal injury or property damage claims
7 that may result from the operator's seismic exploration to
8 the extent that such damage claims are not the result of
9 your acts or omissions. Pursuant to the Seismic
10 Exploration Regulation Act, you, as the surface owner, are
11 entitled to reasonable damages that will be sustained by
12 reason of the operator's seismic exploration. The
13 operator hereby offers you \$_____ [operator shall fill in
14 the amount] as compensation for the reasonable damages to
15 be sustained by reason of the operator's seismic
16 exploration. If you accept this offer in writing to the
17 operator within ~~fifteen (15)~~ thirty (30) days of the
18 postmark of this letter, you will be deemed to have
19 accepted and agreed to the amount as full consideration
20 for all reasonable damages by reason of the operator's
21 seismic exploration. Operator shall, upon receipt of your
22 timely acceptance of the offer contained herein, remit to
23 you the consideration described in this offer. The
24 acceptance of this amount shall not prohibit you from

1 attempting to recover damages which are unreasonable and
2 caused by reason of the operator's seismic exploration on
3 your surface estate.

4 In the event that you either (a) reject the offer in this
5 letter in writing to the operator within ~~fifteen (15)~~
6 thirty (30) days of the postmark of this letter, or (b)
7 fail to make a timely acceptance of the offer contained
8 herein, then you will be deemed to have rejected the offer
9 contained herein, and pursuant to the Seismic Exploration
10 Regulation Act, you may initiate an action pursuant to The
11 Small Claims Procedure Act or a civil action pursuant to
12 the Oklahoma Pleading Code, as appropriate, to recover the
13 reasonable damages, if any, actually sustained by reason
14 of the operator's seismic exploration. If an action to
15 recover reasonable damages is commenced accordingly and a
16 judgment is entered in the action for you as to the
17 damages in an amount in excess of the amount set forth in
18 this notice for reasonable damages by reason of the
19 operator's seismic exploration, you shall be considered
20 the prevailing party. If the judgment entered is for an
21 amount equal to or less than the amount set forth in this
22 notice for reasonable damages by reason of the operator's
23 seismic exploration, although you will be entitled to
24 receive the judgment amount, if any, the operator shall be

1 considered the prevailing party. The prevailing party in
2 any court proceeding brought pursuant to the Seismic
3 Exploration Regulation Act shall be entitled to recover
4 the costs of the suit, including but not limited to
5 reasonable attorney and expert witness fees and litigation
6 expenses. If the action should be dismissed other than by
7 way of settlement prior to the entry of judgment, then the
8 surface owner shall forfeit its right to receive any
9 consideration for all reasonable damages by reason of the
10 operator's seismic exploration."; and

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

13 E. The Commission is further directed to promulgate rules to
14 implement a system to register, investigate and resolve complaints
15 against any person, firm or corporation conducting seismic
16 exploration. ~~The~~ Upon the filing of a complaint, the Commission may
17 ~~determine if and when a complaint has been adequately resolved~~ shall
18 conduct a formal complaint process to resolve the complaint.

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
23 (\$1,000.00) per violation per day by the Commission, in addition to
24 any other legal remedy provided by law.

1 SECTION 2. AMENDATORY 52 O.S. 2011, Section 318.23, as
2 last amended by Section 3, Chapter 229, O.S.L. 2012 (52 O.S. Supp.
3 2013, Section 318.23), is amended to read as follows:

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

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

12 C. At least ~~fifteen (15)~~ thirty (30) days prior to commencement
13 of seismic exploration, the operator shall provide the notice to the
14 surface owner required by Section 318.22 of this title, and, in the
15 absence of an agreement between the surface owner and the operator
16 as to seismic exploration, operator and surface owner shall make a
17 good-faith effort to resolve any reasonable damage issues raised by
18 the surface owner by reason of operator's seismic exploration.

19 D. The surface owner may accept the offer in the notice
20 required by Section 318.22 of this title by accepting the offer in
21 writing to the operator within ~~fifteen (15)~~ thirty (30) days of the
22 postmark of the notice. By the timely acceptance of such offer, the
23 surface owner shall be deemed to have accepted and agreed to such
24 offer as full consideration for all reasonable damages by reason of

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

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

17 F. Within ninety (90) days of the last mailing of the notice
18 described herein, the applicant shall file an affidavit setting out
19 that mailing of the notice has occurred in compliance with Section
20 318.22 of this title, and specifically listing the surface owners
21 which were not locatable at the addresses required. Further, in the
22 event that any surface owner is not locatable at the addresses, then
23 such surface owner will be deemed as having rejected the offer
24 provided in the notice required under Section 318.22 of this title.

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

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

1 ~~any consideration for all reasonable damages by reason of the~~
2 ~~operator's seismic exploration.~~

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

11 SECTION 3. 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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