

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1407

By: Scott

6 AS INTRODUCED

7 An Act relating to oil and gas; creating the Vertical
8 Well Damage Act; stating purpose of act; defining
9 terms; requiring certain report to be filed with
10 Corporation Commission in certain circumstances;
11 authorizing certain well operators to provide certain
12 notification; authorizing vertical well operators to
13 initiate litigation in certain circumstances;
14 establishing procedures for appraisal of certain
15 damages; requiring report to certain persons;
16 establishing procedures for filing exception to
17 appraisal; authorizing certain persons to petition
18 for trial; establishing certain trial procedures;
19 specifying recoverable amount and interest rate on
20 certain judgment; specifying types of damage act
21 applies to; prohibiting certain judgment from
22 precluding future judgments; establishing certain
23 damage as evidence; establishing burden of proof in
24 court; authorizing certain persons to file appeal;
establishing procedures for appeal; requiring certain
actions be brought in specific timeframe; construing
clause; providing for noncodification; providing for
codification; and declaring an emergency.

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

21 SECTION 1. NEW LAW A new section of law not to be
22 codified in the Oklahoma Statutes reads as follows:

23 The Oklahoma Legislature recognizes the role that vertical oil
24 and gas wells have played in the development of the State of

1 Oklahoma for over a century, and the role that they have played, and
2 continue to play, in the economy of the state.

3 Further the Legislature recognizes conflicts and disputes have
4 arisen as between vertical well operators and horizontal well
5 operators and the potential damage caused to vertical wells by the
6 drilling, completion, operation and maintenance of horizontal wells
7 in areas already developed by vertical wells.

8 The Legislature also recognizes the economic disparities between
9 owners and operators of vertical wells as compared to the owners and
10 operators of horizontal wells.

11 Further the Legislature recognizes that existing vertical wells
12 have proven production and reserves that are being damaged or taken
13 by the drilling, completion, production or maintenance of adjacent
14 horizontal wells.

15 It is the intent of the Legislature to provide a specific
16 procedure for vertical wells operators to be compensated when their
17 wells are damaged by the drilling, completion, operation and
18 maintenance of horizontal wells.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 88.1 of Title 52, unless there
21 is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Vertical Well
23 Damage Act".
24

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 88.2 of Title 52, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Vertical Well Damage Act:

5 1. "Area of impact or influence" means the area, both surface
6 and subsurface, surrounding a horizontal well that will or may be
7 impacted by the drilling, completion, operation and maintenance of
8 such horizontal well;

9 2. "Area of impact or influence report" means a detailed
10 written document prepared by an experienced qualified registered
11 professional engineer based upon recognized industry formulas,
12 standards and methodologies, identifying and setting forth in detail
13 the area of impact of influence, including how the area of impact of
14 influence was determined or calculated, and the formulas, standards,
15 methodologies and data relied upon;

16 3. "Horizontal well" means an oil, gas or oil and gas well
17 drilled, completed, or recompleted with one or more laterals which,
18 for at least one lateral, the horizontal component of the completion
19 interval exceeds the vertical component of the completion interval
20 and the horizontal component extends a minimum of one hundred fifty
21 (150) feet in the formation;

22 4. "Horizontal well operator" means any person or owner of the
23 right to drill or operate an oil and gas well engaged in drilling,
24 completion, operation or maintenance of a horizontal well;

1 5. "Vertical well" means any oil and gas well, including
2 unplugged, disposal or injection wells, other than a horizontal
3 well; and

4 6. "Vertical well operator" means any person or owner of the
5 right to drill or operate an oil and gas well engaged in drilling,
6 completion, operation or maintenance of a vertical well.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 88.3 of Title 52, unless there
9 is created a duplication in numbering, reads as follows:

10 Prior to the drilling of a horizontal well, each horizontal well
11 shall prepare an area of impact or influence report which shall be
12 filed with the Oklahoma Corporation Commission and sent to all
13 operators of vertical wells within two (2) miles of the proposed
14 location of the laterals for the horizontal well.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 88.4 of Title 52, unless there
17 is created a duplication in numbering, reads as follows:

18 A. If a vertical well operator believes that damages, pursuant
19 to Section 9 of this act, occurred to his or her vertical well, the
20 vertical well operator may notify the horizontal well operator in
21 writing, using a form provided by the Corporation Commission, of
22 such alleged damage within ninety (90) days of discovering the
23 alleged damage and shall indicate his or her desire to negotiate a
24 settlement of the alleged damages.

1 1. Notice shall be by certified mail or personal delivery by a
2 duly licensed process server.

3 2. Upon such notification the horizontal well operator shall
4 have sixty (60) days to negotiate with the vertical well operator a
5 settlement of the claim for damages.

6 B. A vertical well operator shall not be required to avail
7 himself or herself of this section prior to filing litigation
8 pursuant to Section 6 of this act.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 88.5 of Title 52, unless there
11 is created a duplication in numbering, reads as follows:

12 A. If negotiations fail to resolve the claims for damages to a
13 vertical well by a horizontal well, the vertical well operator may
14 file litigation in the form of special proceedings, as set forth in
15 this section, in order to recover damages his or her vertical well
16 incurred due to the drilling, completion, production or maintenance
17 of a horizontal well.

18 As part of the special proceeding, the vertical well operator
19 may petition the district court in the county in which the vertical
20 well is located for appointment of appraisers to make
21 recommendations to the parties and to the court concerning the
22 amount of damages, if any. The pursuit of the appraisal process
23 shall be at the sole discretion of the vertical well owner.

1 B. If the vertical well owner elects to pursue the appraisal
2 process, ten (10) days' notice of the petition to appoint appraisers
3 shall be given to the opposite party. The vertical well operator
4 shall select one appraiser, the horizontal well operator shall
5 select one appraiser, and the two selected appraisers shall select a
6 third appraiser for appointment by the court. The appraisers shall
7 be qualified professionals capable of determining the damages set
8 forth in Section 9 of this act.

9 Unless for good cause shown, additional time is allowed by the
10 district court, the three (3) appraisers shall be selected within
11 twenty (20) days of service of the notice of the petition to appoint
12 appraisers. If either of the parties fails to appoint an appraiser
13 or if the two appraisers cannot agree on the selection of the third
14 appraiser within the required time period, the remaining required
15 appraisers shall be selected by the district court upon application
16 of either party.

17 Before entering upon their duties, such appraisers shall take
18 and subscribe an oath, before a notary public or some other person
19 authorized to administer oaths, that they will perform their duties
20 faithfully and impartially to the best of their ability.

21 C. Upon appointment, the appraisers shall inspect wells and
22 consider the damages which the vertical well has sustained or will
23 sustain by reason of drilling, completion, operation or maintenance
24 of oil or gas production from the horizontal well. The appraisers

1 shall then file a written report within thirty (30) days of the date
2 of their appointment with the clerk of the court. The report shall
3 set forth the amount of damages done or to be done to the vertical
4 well with specificity. The appraisers shall make a valuation and
5 determine the amount of compensation to be paid by the operator of
6 the horizontal well to the vertical well operator and the manner in
7 which the amount shall be paid. The appraisers shall then make a
8 report of their proceedings to the court. The compensation of the
9 appraisers shall be fixed and determined by the court. The
10 horizontal well operator shall pay the fees of the appraisers and
11 court costs if the appraised amount is accepted by the parties and
12 entered as a judgment. If the appraised amount is not accepted by
13 the parties, each party will pay the fees of the appraiser they
14 selected and split the cost of the appraiser's fees of the appraiser
15 appointed by the court.

16 D. Within ten (10) days after the report of the appraisers is
17 filed, the clerk of the court shall forward to each attorney of
18 record, each party, and interested party of record, a copy of the
19 report of the appraisers and a notice stating the time limits for
20 filing an exception or a demand for jury trial as provided for in
21 this section.

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

1 2. After issuing the notice provided herein, the court clerk
2 shall endorse on the notice form filed in the case the date that a
3 copy of the report and the notice form was forwarded to each
4 attorney of record, each party, and each interested party of record.

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

16 F. The report of the appraisers may be reviewed by the court,
17 upon written exceptions filed with the court by either party within
18 thirty (30) days after the filing of the report. After the hearing
19 the court shall enter the appropriate order either by confirmation,
20 rejection, modification or order of a new appraisal for good cause
21 shown.

22 G. Either party may, within sixty (60) days after the filing of
23 such report, file with the clerk a written demand for a trial by
24 jury, in which case the amount of damages shall be assessed by a

1 jury. The trial shall be conducted and judgment entered in the same
2 manner as railroad condemnation actions tried in the court.

3 Proceedings pursuant to this section shall be expedited by the
4 district court. A copy of the final judgment shall be forwarded to
5 the county assessor in the county or counties in which the property
6 is located.

7 SECTION 7. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 88.6 of Title 52, unless there
9 is created a duplication in numbering, reads as follows:

10 In the event the vertical well operator recovers damages
11 pursuant to this act, the vertical well operator shall be entitled
12 to reasonable attorney's fees, court costs, litigation costs and
13 interest, both prejudgment and postjudgment at the rate of 6
14 percent (6%) annum from the date of first production from the
15 horizontal well.

16 SECTION 8. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 88.7 of Title 52, unless there
18 is created a duplication in numbering, reads as follows:

19 Elements of damage to be considered in negotiating a settlement
20 of damages pursuant to Section 5 of this act, appraising damages
21 pursuant to Section 6 of this act, or in determining and awarding
22 damages pursuant to Section 7 of this act shall include compensatory
23 damages comprised of direct, indirect and consequential damages,
24 including, but not limited to, lost production, lost revenue, loss

1 or potential loss of leasehold, well values, behind the pipe
2 potential, repair of well costs, or restoration of production costs,
3 economies of scale losses, mental anguish, emotional distress and
4 punitive damages.

5 Damages collected pursuant to this act shall not preclude the
6 vertical well owner from collecting any additional future damages
7 caused by the horizontal well operator or other horizontal well
8 operators at a subsequent date.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 88.8 of Title 52, unless there
11 is created a duplication in numbering, reads as follows:

12 A. For the purposes of the Vertical Well Protection Act,
13 evidence of water encroachment, changes in downhole formation
14 pressures, changes in oil and gas production levels or damage to
15 well equipment, within one and one half (1 ½) mile of the laterals
16 of a horizontal well and within ninety (90) days after the
17 conclusion of fracking activity shall be prima facie evidence that
18 the subject horizontal well was the cause of the damage to the
19 vertical well.

20 B. Upon presentation of such evidence, the burden of proof
21 shall be upon the horizontal well operator to affirmatively prove
22 that it did not cause the damage to the vertical well.

23 C. Such determination shall be made by the Judge prior to
24 presentation of the case to the jury.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 88.9 of Title 52, unless there
3 is created a duplication in numbering, reads as follows:

4 Any aggrieved party may appeal from the decision of the court on
5 exceptions to the report of the appraisers or the verdict rendered
6 upon jury trial. In the event of an appeal, the amount of the award
7 of the appraisers or jury shall be deposited with the court clerk
8 pending the outcome of the appeal. In case of review or appeal, a
9 certified copy of the final order or judgment shall be transmitted
10 by the court clerk to the appropriate county clerk to be filed and
11 recorded. Appeals from a judgment entered pursuant to this act
12 shall be expedited by the appellate courts.

13 SECTION 11. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 88.10 of Title 52, unless there
15 is created a duplication in numbering, reads as follows:

16 Any action or proceeding commenced under this act shall be
17 brought within three (3) years after the date of first production
18 reported from the horizontal well to the Oklahoma Corporation
19 Commission.

20 SECTION 12. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 88.11 of Title 52, unless there
22 is created a duplication in numbering, reads as follows:

23 The provisions of this act and the rights granted under this act
24 are intended to be cumulative with all other rights a person may

1 otherwise have at law or in equity. Nothing herein contained shall
2 be construed to impair existing rights.

3 The invalidity of any section, subsection, paragraph, clause or
4 sentence of this act shall not in any manner affect the validity of
5 the remaining portion thereof.

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

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