

SENATE BILL No. 701

By Committee on Ways and Means

4-30

9 AN ACT enacting the Kansas surface owner's compensation act.

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11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. Sections 1 through 12, and amendments thereto, may be
13 cited as the Kansas surface owner's compensation act.

14 Sec. 2. The purposes of this act are to provide timely relief to surface
15 owners whose surface is damaged by oil and gas activities, to promote
16 best practices in the relationship between surface owners and oil and gas
17 operators and to provide educational information about oil and gas leasing
18 and related activities to surface owners, oil and gas operators, legal prac-
19 titioners and other interested persons. The provisions of this act shall be
20 liberally construed to carry out these purposes. Nothing contained in this
21 act shall be deemed to modify the express terms of any valid existing or
22 future contract between surface owners and oil and gas operators.

23 Sec. 3. As used in this act:

24 (a) "Agricultural surface use" means the use of the surface estate for
25 pasture, livestock, cultivation, harvesting, growing of crops, timber,
26 grasses and other vegetation, woodlands and hunting, including any im-
27 provements, fresh water and soil used for these purposes;

28 (b) "commission" means the state corporation commission;

29 (c) "oil and gas" means crude oil, natural gas, casinghead gas, con-
30 densate or any combination thereof, inclusive of shale or coal bed
31 methane;

32 (d) "oil and gas operations" means those operations, which require
33 entry upon the surface estate, including geophysical and other exploration
34 operations, drilling operations, completion operations, production oper-
35 ations, plugging and abandonment operations, and restoration of the sur-
36 face estate;

37 (e) "oil and gas operator" means the person or such person's repre-
38 sentative who is responsible for or conducts or controls the physical op-
39 eration of a well and who conducts oil and gas operations on its own behalf
40 or on behalf of others on a surface estate pursuant to an oil and gas lease
41 or other agreements or contracts, except that such term shall not include
42 an independent contractor who performs specified services for oil and
43 gas operations pursuant to an express or implied contract with an oil and

1 gas operator;

2 (f) “person” means any natural person, partnership, governmental or
3 political subdivision, firm, association, corporation or other legal entity;

4 (g) “restoration” means to substantially restore that part of the sur-
5 face affected by oil and gas operations to the condition that existed prior
6 to those operations to the extent that such restoration is reasonably prac-
7 ticable, or as otherwise agreed to in writing by the oil and gas operator
8 and the surface owner, except that any such agreement between an oil
9 and gas operator and a surface owner shall not alter any duty to restore
10 the surface pursuant to any law or governmental regulation or as other-
11 wise shall be prescribed in an oil and gas lease or other contract effecting
12 the surface estate;

13 (h) “surface damages” means nonincidental damages actually in-
14 curred to the surface estate for disturbances, impacts or alterations to the
15 surface or surface estate resulting from oil and gas operations, including
16 damages arising from agricultural surface use and other improvements
17 appurtenant to the surface estate;

18 (i) “surface” or “surface estate” means a specific tract of land and
19 improvements thereon created by and held in fee or other legal or eq-
20 uitable title under a deed or other instrument of conveyance by a person
21 other than the United States, a state, an Indian tribal organization or any
22 agency, instrumentality or subdivision of any of the foregoing, regardless
23 of whether such person also owns or otherwise holds interest in the min-
24 eral estate underlying the surface estate; and

25 (j) “surface owner” means any person who holds or owns legal or
26 equitable title to the surface estate or an interest therein as shown on the
27 records of the register of deeds for the county where the surface estate
28 is located, and who is assessed real estate property taxes in accordance
29 with the records of the county treasurer, except that surface owner shall
30 not include a tenant, or persons whose only rights to use that surface
31 estate are based upon an easement, right-of-way, license, mortgage, lien
32 severed mineral interest or any non-possessory interest in the surface.

33 Sec. 4. (a) An oil and gas operator shall notify the surface owner, in
34 accordance with the provisions of this section, not less than five days prior
35 to the commencement of the following oil and gas operations on the
36 surface estate and expressly or impliedly allowed pursuant to an oil and
37 gas lease or other contract governing the use of the surface estate:

38 (1) Well site preparation or the drilling of a new well;

39 (2) the construction of roads, but not including repair or maintenance
40 of such roads; and

41 (3) the plugging of any well.

42 (b) With regard to each proposed oil and gas operation requiring
43 notice in accordance with subsection (a):

- 1 (1) Each such specifically identified oil and gas operation shall be
2 noticed on a form prescribed for such purposes and adopted by the com-
3 mission prior to the commencement of such operation, except that the
4 oil and gas operator may combine all or some of the required notices of
5 oil and gas operations into a single notice if such operations shall be
6 completed within six months from the initial date of entry upon the sur-
7 face estate for the conduct of such oil and gas operations;
- 8 (2) in accordance with subsection (c), the oil and gas operator shall
9 provide a copy of the prescribed and completed form to the surface owner
10 not less than five days prior to the commencement of such oil and gas
11 operations, unless otherwise agreed to, or unless, an exigent or emergency
12 situation necessitates a lesser time for such notice or necessitates that no
13 prior notice be given;
- 14 (3) the oil and gas operations form prescribed by the commission shall
15 include a general description of the proposed location and the planned
16 oil and gas operations to be conducted and shall specifically provide that
17 the surface owner may contact the oil and gas operator through its rep-
18 resentative designated on such form to discuss the proposed operations,
19 and shall include the designated representative's address and telephone
20 number and shall also include an electronic mail or facsimile address if
21 available;
- 22 (4) in determining surface ownership the oil and gas operator shall
23 be entitled to rely solely upon the property ownership records maintained
24 by the treasurer for the county where the relevant surface estate is lo-
25 cated; and
- 26 (5) in the case of drilling operations, a copy of the approved intent
27 to drill shall be posted on the commission website for the surface owners
28 to access or it may be obtained by the surface owners from the oil and
29 gas operator upon written request, including via electronic mail or
30 facsimile.
- 31 (c) Unless otherwise waived the oil and gas operator shall give the
32 notice required under subsection (a) to the surface owner either:
- 33 (1) By certified, first class, express or overnight mail addressed to the
34 surface owner at the address obtained from the county treasurer for the
35 county where the surface estate is located and such notice shall be mailed
36 not less than five days prior to commencement of the oil and gas opera-
37 tions required to be noticed on the prescribed commission form; or
- 38 (2) by personal delivery by the oil and gas operator to the surface
39 owner at the address obtained from the county treasurer for the county
40 where the surface estate is located not less than five days prior to com-
41 mencement of the oil and gas operations required to be noticed on the
42 prescribed commission form.
- 43 (d) When notice is provided by mail, the five-day notice period shall

1 commence on the date of the postmark on such notice.

2 (e) Notice by the oil and gas operator to the surface owners of record,
3 as provided under this section, shall be deemed conclusive notice to all
4 persons having any legal or equitable interest in or to the surface estate.
5 The surface owner shall be responsible for notifying a surface tenant prior
6 to the start of the operations.

7 (f) Notice by the oil and gas operator to the surface owner shall con-
8 tain a general description of the proposed location and the planned oil
9 and gas operations.

10 (g) No notice shall be required by the act if an oil and gas lease is
11 expiring within the five days referenced in this section.

12 (f) So long as the oil and gas operator has complied with the notice
13 provisions of this section 4, and amendments thereto, the oil and gas
14 operator shall be entitled to enter upon the surface owner's land and
15 conduct the operations in accordance with the terms and conditions of
16 any lease or other existing contractual or lawful right. In the event that
17 the oil and gas operator is required to file a legal action to enforce its
18 right to enter upon the surface owner's land and conduct those opera-
19 tions, the prevailing party in such action shall be entitled to recover the
20 costs and expenses of such action, including reasonable attorneys fees.

21 Sec. 5. The surface owner and the oil and gas operator may, by an
22 agreement separate and apart from an oil and gas lease, alter or waive, in
23 whole or in part, their respective rights and obligations under sections 4
24 and 6, and amendments thereto, provided such alteration or waiver ex-
25 pressly acknowledges that such agreement alters the provisions of sections
26 4 and 6, and amendments thereto. Such agreement shall be filed of record
27 in the office of register of deeds of the county in which the real estate is
28 located and, once filed of record, shall constitute a covenant running with
29 the land.

30 Sec. 6. The oil and gas operator is responsible for actual damages to
31 the present surface use caused by the oil and gas operations on the af-
32 fected area and for the restoration of the surface estate upon the com-
33 pletion of oil and gas operations on the affected area, except that an oil
34 and gas operator shall not be responsible for any surface damages in-
35 curred or caused by a previous oil and gas operator unless the current oil
36 and gas operator has expressly assumed such responsibility, except that
37 the damages shall not exceed the fair market value of the affected area.

38 Sec. 7. The commission shall establish an office of surface owner
39 assistance and shall assign personnel to such office to carry out the pro-
40 visions of this act.

41 Sec. 8. Upon the filing of a written complaint by the surface owner
42 that the oil and gas operator has not complied with the notice provisions
43 under section 4, and amendments thereto, the commission staff shall

1 investigate the substance of the complaint. The commission staff shall
2 provide a copy of the complaint to the oil and gas operator and shall give
3 said oil and gas operator a reasonable period of time to respond to the
4 allegations contained in the complaint. After due investigation, the com-
5 mission may issue an order requiring the oil and gas operator to comply
6 with such notice requirements under section 4, and amendments thereto,
7 and, in addition, to subject the oil and gas operator to an administrative
8 penalty not to exceed \$500 per violation.

9 Sec. 9. When a dispute arises between a surface owner and an oil
10 and gas operator as to the existence or extent of any surface damages, the
11 commission staff is hereby authorized to conduct an investigation upon
12 the filing of a written complaint.

13 (a) The commission staff shall provide a copy of the complaint to the
14 oil and gas operator. As part of any initial investigation, the commission
15 staff shall determine whether the oil and gas operations have been com-
16 pleted. The parties to the investigation should attempt to negotiate in
17 good faith to resolve the dispute concerning such surface damages. If the
18 parties are unable to resolve the dispute, the commission may provide
19 for the appointment of a commission staff member as a mediator, or the
20 parties may agree to employ and pay for an independent mediator for the
21 purpose of mediating the surface damages dispute.

22 (b) If the parties are not successful in resolving the dispute through
23 negotiation or mediation, then either party may file a written request with
24 the commission for appointment of appraisers, as provided in subsection
25 (c), to make recommendations to the parties and to the commission con-
26 cerning the amount of surface damages, if any.

27 (c) Notice of the filing of a request for appointment of appraisers
28 shall be given to the other party. Within 20 days thereafter, the oil and
29 gas operator shall select one appraiser, the surface owner shall select one
30 appraiser, and the two selected appraisers shall select a third appraiser
31 for appointment by the commission, which such third appraiser shall be
32 a duly qualified and licensed general real estate appraiser. If either of the
33 parties fails to appoint an appraiser or the two selected appraisers cannot
34 agree on the selection of the third appraiser, then the remaining apprais-
35 ers shall be selected by the commission upon application of either party.
36 Before entering upon their duties, such appraisers shall take and sub-
37 scribe an oath, before a notary public or other person authorized to ad-
38 minister oaths, that they will perform their duties faithfully and impar-
39 tially to the best of their ability. They shall inspect the surface estate and
40 consider the actual damages which the surface owner has sustained by
41 reason of entry upon the subject land and by reason of the oil and gas
42 operations conducted on the subject land. The appraisers shall then file
43 a written report within 30 days of the date of their appointment with the

1 commission. That report shall set forth the quantity, boundaries and value
2 of the property entered on or utilized by the oil and gas operator and the
3 amount of actual surface damages done to the property. The appraisers
4 shall also make a valuation and determine the amount of compensation
5 to be paid by the oil and gas operator to the surface owner and the manner
6 in which that amount will be paid. In determining the valuation and
7 amount of compensation to be paid, a majority vote among the appraisers
8 shall be sufficient. The appraisers shall then make a report of their pro-
9 ceedings to the commission. The compensation of the appraisers shall be
10 fixed and determined by the commission and the oil and gas operator and
11 surface owner shall share equally in the payment of that compensation.
12 The report of the appraisers may be reviewed by the commission if either
13 party files a written exception to that report within 30 days after it is filed.
14 If either party files a written exception to that report, the matter shall be
15 heard by the commission. After hearing, the commission shall enter the
16 appropriate order either confirming, rejecting or modifying the apprais-
17 ers' report or, for good cause shown, ordering a new appraisal. If the
18 party demanding the review by the commission is not successful, then all
19 costs and expenses of that proceeding shall be assessed against that party.

20 (d) The commission shall report to the legislature on the program's
21 operations and funding by January 30, 2009, and January 30, 2010.

22 Sec. 10. Notwithstanding any provision of this act to the contrary, no
23 notice, compensation or damage payment for failure to give any notice
24 required by this action shall be required in any exigent or emergency
25 situation which requires that an oil and gas operator immediately access
26 the surface estate and conduct activities that are reasonably necessary to
27 protect health, safety or the environment or that are reasonably necessary
28 to protect or safeguard the oil and gas operator's property.

29 Sec. 11. (a) There is hereby created in the state treasury the surface
30 owner assistance fund. The commission shall remit all moneys received
31 by or for it under the provisions of this act to the state treasurer in ac-
32 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.
33 Upon the receipt of each such remittance, the state treasurer shall deposit
34 the entire amount in the state treasury to the credit of the surface owner
35 assistance fund. All expenditures from the surface owner assistance fund
36 shall be made in accordance with appropriation acts upon warrants of the
37 director of accounts and reports and issued pursuant to vouchers ap-
38 proved by the chairperson of the state corporation commission or by a
39 person or persons designated by such chairperson.

40 (b) Upon request of the chairperson of the commission to provide
41 for amounts that may be required to assist in financing the commence-
42 ment of operations of the surface owner assistance office, and expenses
43 related thereto, the pooled money investment board shall loan to the

1 commission an amount not to exceed \$500,000. Upon receipt of such loan
2 amounts, the total amount received shall be credited to the surface owner
3 assistance fund. The total amount loaned shall be repaid by the commis-
4 sion over the period of five fiscal years after fiscal year 2009 in accordance
5 with appropriation acts. Amounts loaned under this subsection shall not
6 bear interest.

7 Sec. 12. (a) Jurisdiction to implement and enforce the provisions of
8 this act is hereby conferred on the commission, except that nothing in
9 this act shall be construed to divest the district courts of Kansas of juris-
10 diction to determine the issues relating to private contract rights or in any
11 way limit or effect the rights or remedies which are otherwise available
12 or permitted by law to either surface owners or oil and gas operators.

13 (b) In order to provide assistance in implementing and carrying out
14 the purpose of this act, the commission shall make available to surface
15 owners and oil and gas operators information concerning the provisions
16 of this act. The commission shall maintain a publicized telephone number
17 to facilitate the handling of inquiries as to the application of this act and
18 complaint procedures and shall assign personnel to handle complaints
19 arising under this act and the rules and regulations promulgated
20 thereunder.

21 (c) The commission may adopt such rules and regulations deemed
22 necessary to carry out the provisions of this act.

23 Sec. 13. This act shall take effect and be in force from and after its
24 publication in the statute book.