

Below you will find eleven states statutory language regarding split estates. These states are: Colorado, Illinois, Indiana, Kentucky, Montana, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia and are listed alphabetically. Please note that some of the electronic versions of the statutes have been updated since they were provided as hard copies in early February 2004. Further, note that the various state statutes are regularly being updated by state legislative actions. Most states then compile the statutes and make electronic versions available on a routine basis. Nonetheless, this electronic version is a static description of the electronic copies of available state statutes as of this past week. This is important to note as the Oklahoma statutes relating to split estates have just recently been updated to reflect legislative revisions from the 2003 session. Other major actions from other states could be incorporated over the next several months.

I. Colorado

ARTICLE 65.5 NOTIFICATION OF SURFACE DEVELOPMENT

Law reviews: For article, "Oil and Gas Title Searches and Notice Under the Surface Development Notification Act", see 31 Colo. Law. 113 (October 2002).

24-65.5-101. Legislative declaration - intent.

The general assembly recognizes that the surface estate and the mineral estate are separate and distinct interests in real property and that one may be severed from the other. The general assembly further recognizes that if the surface estate and mineral estate are severed, the owners of these estates shall be entitled to the notice specified in section 31-23-215 or 34-60-106 (14), C.R.S. It is the intent of the general assembly that this article provide a streamlined procedure for providing notice to owners of mineral interests concerning impending surface development. Further, it is the intent of the general assembly to include local governments in the notification process without creating additional liabilities for local governments.

Source: L. 2001: Entire article added, p. 486, § 2, effective July 1.

24-65.5-102. Definitions - legislative declaration.

As used in this article, unless the context otherwise requires:

(1) "Applicant" means a person who submits an application for development to a local government.

(2) (a) "Application for development" means an application for a preliminary or final plat for a subdivision, a planned unit development, or any other similar land use designation that is used by a local government. "Application for development" includes applications for general development plans and special use permits where such applications are in anticipation of new surface development, but does not include building permit applications, applications for a change of use for an existing structure, applications for boundary adjustments, applications for platting of an additional single lot, applications for lot site plans, or applications with respect to electric lines, natural gas pipelines, steam pipelines, chilled and other water pipelines, or appurtenances to said lines or pipelines.

(b) (I) The general assembly hereby finds that:

(A) Pursuant to section 2-4-202, C.R.S., statutes are presumed to have only prospective effect, and under applicable case law this presumption applies unless the general assembly's contrary intent is clearly expressed; and

(B) House Bill 01-1088, which enacted this article, did not contain an applicability clause and was silent with regard to the issue of whether the requirements of this article apply to applications for development that were pending on July 1, 2001, the effective date of House Bill 01-1088.

(II) The general assembly hereby determines that, notwithstanding the fact that House Bill 01-1088 did not clearly express any intent of the general assembly that the requirements of this article would apply retroactively, there is uncertainty concerning whether such requirements should apply retroactively.

(III) To clarify its intent, the general assembly hereby declares that this article was intended to apply, and should only be applied, to applications for development that were filed on or after July 1, 2001.

(3) "Local government" means a county; a home rule or statutory city, town, or city and county; or a territorial charter city.

(4) "Mineral estate" means a mineral interest in real property that is shown by the real estate records of the county in which the real property is situated and that is not owned as part of the full fee title to the real property.

(5) "Mineral estate owner" means the owner or lessee of a mineral estate underneath a surface estate that is subject to an application for development.

(6) "Surface estate" means an interest in real property that is less than full fee title and that does not include mineral rights as shown by the real estate records of the county in which the real property is situated.

(7) "Surface owner" means the owner of the surface estate and any person with rights under a recorded contract to purchase all or part of the surface estate.

Source: L. 2001: Entire article added, p. 486, § 2, effective July 1. L. 2002: (2) and (4) amended, p. 891, § 1, effective August 7. L. 2003: (2) amended, p. 3, § 1, effective February 26.

24-65.5-103. Notice requirements.

(1) Not less than thirty days before the date scheduled for the initial public hearing by a local government on an application for development, the applicant shall send notice, by first class mail, to:

(a) The mineral estate owner. Such notice shall contain the time and place of the initial public hearing, the nature of the hearing, the location of the property that is the subject of the hearing, and the name of the applicant.

(b) The local government considering the application for development. Such notice shall contain the name and address of the mineral estate owner.

(1.5) If an applicant files more than one application for development for the same new surface development with a local government, the applicant shall only be required to send notice pursuant to subsection (1) of this section of the initial public hearing scheduled for the first application for development to be considered by the local government. Local governments shall, pursuant to section 24-6-402 (7), provide notice of subsequent hearings to mineral estate owners who register for such notification.

(2) (a) The applicant shall identify the mineral estate owner by examining the records in the office of the county clerk and recorder of the county in which the real property is located. Notice shall be sent to the last-known address of record of the mineral estate owner if the records in the office of the county clerk and recorder establish:

(I) The identity and address of record of the owner of the mineral estate; or

(II) That an applicable request for notification form pursuant to subsection (3) of this section is of record; or

(III) That the mineral estate owner has recorded an instrument satisfying any applicable dormant mineral interest act.

(b) If such records do not identify any mineral estate owners, including their addresses of record, the applicant shall be deemed to have acted in good faith and shall not be subject to further obligations under this article. The applicant shall not be liable for any errors or omissions in such records.

(3) A mineral estate owner or mineral estate owner's agent may file in the office of the county clerk and recorder of the county in which the real property is located a request

for notification form that identifies the mineral estate owner's mineral estate and the corresponding surface estate by parcel number and by section, township, and range numbers. The clerk and recorder shall file request for notification forms in the real estate records for the county and shall also keep an index of request for notification forms.

(4) Local governments shall, as a condition of approval of an application for development, require the applicant to certify that notice has been provided to the mineral estate owner pursuant to subsection (1) of this section.

(5) A mineral estate owner may waive the right to notice under this section in writing to the applicant.

(6) Before completing the sale of a mineral estate, a mineral estate owner who has received notice as the owner of the mineral estate of a public hearing with respect to an application for development pursuant to this section shall notify the buyer of the mineral estate of the existence of the application for development.

Source: L. 2001: Entire article added, p. 487, § 2, effective July 1. **L. 2002:** (1.5) and (6) added and IP(2)(a), (2)(a)(I), and (2)(b) amended, p. 892, § 2, effective August 7.

ANNOTATION

Law reviews. For article, "Tension Beneath the Surface: The Evolving Relationship Between Surface and Mineral Estates", see 30 Colo. Law. 67 (December 2001).

24-65.5-104. Enforcement.

(1) Mineral estate owners entitled to notice pursuant to section 24-65.5-103 or 31-23-215, C.R.S., shall have standing to enforce the notice requirements of those sections and, subject to the provisions of subsections (2) and (2.5) of this section, to make claims as may be available at law or equity for noncompliance.

(2) If no mineral estate owner or agent has filed a request for notification form pursuant to section 24-65.5-103 (3), in determining those mineral estate owners entitled to notice pursuant to section 24-65.5-103 or 31-23-215, C.R.S., any surface owner required to provide such notice shall be entitled to rely on a listing of such parties prepared by an attorney licensed to practice law in the state of Colorado, a title insurance company licensed to do business in the state of Colorado, a certified professional landman certified by the American association of professional landmen, or a title insurance agent licensed in such capacity by the state of Colorado. The provisions of any law to the contrary notwithstanding, if a surface owner provides the required notice in a timely manner to a party named in such listing or whose identity is disclosed in a request filed pursuant to section 24-65.5-103 (3) at the address of such party as that address appears in such listing, such party shall be deemed to have constructively received the required notice, and the surface owner shall be deemed to have otherwise complied with the notice requirements of sections 24-65.5-103 and 31-23-215, C.R.S. In such event, the surface owner shall not have any liability to any mineral estate owner or other party

deemed to have constructively received such notice for any legal or equitable remedy or relief arising from, in connection with, or otherwise relating to the application for development, any development activities commenced on the surface of the real property, any inability or impediment or other hindrance to drilling operations or other development of the mineral estate or any portion thereof, or any actual failure to receive any notice required by section 24-65.5-103 or 31-23-215, C.R.S., unless:

(a) Prior to final approval of the application for development by the local government, a mineral estate owner provides written notice to the surface owner and to such local government setting forth the nature of any objection such mineral estate owner may have to the approval of such development application, in which event such mineral estate owner and all other parties may seek any legal or equitable remedy or relief that may be available to such parties; or

(b) (I) A mineral estate owner commences an action in a court of competent jurisdiction seeking compensatory monetary damages prior to the later of the following to occur:

(A) One year after the final approval of the application for development by the local government; or

(B) Sixty days after the earliest to occur of the commencement of development activities with heavy equipment or the posting of the surface of the real property with notice that the local government has given final approval of the application for development, which posting shall be made in the manner that would be required by the local government to provide notice of an application for a change in zoning classification, but, in all events, which posting shall be made facing, and reasonably visible from, all public roads abutting the surface of the real property.

(II) Such action shall allege, at a minimum, that:

(A) The provisions of section 24-65.5-103 or 31-23-215, C.R.S., require notice to have been sent to such mineral estate owner; and

(B) The required notice was not sent to such mineral estate owner in compliance with the requirements of section 24-65.5-103 or 31-23-215, C.R.S.

(III) If the mineral estate owner commences such an action in a court of competent jurisdiction on or before the last day described in subparagraph (I) of this paragraph (b), such mineral estate owner may seek to recover compensatory monetary damages in connection with the failure of the surface owner to provide the notice required by section 24-65.5-103 or 31-23-215, C.R.S., but such mineral estate owner shall not be entitled to recover special, punitive, or other extraordinary damages, nor shall such mineral estate owner be entitled to any equitable remedy or relief. A finding by such court that the allegations of such mineral estate owner described in subparagraph (II) of this paragraph

(b) are accurate and materially complete shall be a condition precedent to the recovery of any such compensatory monetary damages by such mineral estate owner.

(2.5) With respect to any application that was granted on or after August 7, 2002, for a change of use for an existing structure, a boundary adjustment, the platting of an additional single lot, a lot site plan, or with respect to electric lines, natural gas pipelines, steam pipelines, chilled and other water pipelines, or appurtenances to said lines or pipelines:

(a) A mineral estate holder who claims entitlement to notice pursuant to section 24-65.5-103 but who alleges that the applicant failed to provide such notice shall be limited to only the remedy set forth in paragraph (b) of subsection (2) of this section; and

(b) No failure as alleged in paragraph (a) of this subsection (2.5) shall rescind, curtail, abrogate, or otherwise restrict any final approval of an application specified in this subsection (2.5).

(3) If a surface owner certifies to the local government that such surface owner has complied with the notice requirements of section 24-65.5-103 or 31-23-215, C.R.S., and no mineral estate owner has provided the written notice required by paragraph (a) of subsection (2) of this section to the surface owner and to the local government, no development or related activities contemplated by the application for development, no permit or other approval by such local government, and no permit or other approval by any other local government or agency that approves or permits such development or related activities or any aspect thereof shall, subsequent to the final approval of such application, be rescinded, curtailed, abrogated, or otherwise restricted in connection with any purported noncompliance with the notice requirements of section 24-65.5-103 or 31-23-215, C.R.S., that may be alleged by any party.

Source: L. 2001: Entire article added, p. 488, § 2, effective July 1. **L. 2002:** IP(2) amended, p. 892, § 3, effective August 7. **L. 2003:** (1) amended and (2.5) added, p. 4, § 2, effective February 26.

II. Illinois

Property (765 ILCS 530/) Drilling Operations Act.

(765 ILCS 530/1) (from Ch. 96 1/2, par. 9651)

Sec. 1. This Act shall be known and may be cited as the "Drilling Operations Act".

(Source: P.A. 85-1312.)

(765 ILCS 530/2) (from Ch. 96 1/2, par. 9652)

Sec. 2. As used in this Act:

(a) "Person" means any natural person, corporation, firm, partnership, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind and includes any government or any political subdivision or agency thereof;

(b) "Drilling operations" means the drilling, deepening or conversion of a well for oil or gas production, core hole or drill hole for a stratigraphic test;

(c) "Entry" means the moving upon the surface of land with equipment to commence drilling operations, but shall not include entry for the survey for or ascertaining or identification of a well location;

(d) "Operator" means the person, whether the owner or not, who applies for or holds a permit for drilling operations or who is named as the principal on a bond for a permit for a well that was issued by the Department of Natural Resources;

(e) "Surface owner" means the person in whose name the surface of the land on which drilling operations are contemplated, and who is assessed for purposes of taxes imposed pursuant to the Property Tax Code according to the records of the assessor of the county where the land is located as certified by said assessor;

(f) "Assessor" means the supervisor of assessments, board of assessors, or county assessor, as the case may be, for the county in which the land is located;

(g) "Production operation" means the operation of a well for the production of oil or gas including all acts, structures, equipment, and roadways necessary for such operation;

(h) "New well" means a well that is spudded after the effective date of this Act and does not utilize any part of a well bore or drilling location that existed prior to the effective date of this Act;

(i) "Completion of the well" means completion of those processes necessary before production occurs, including the laying of flow lines and the construction of the tank battery. If the well is not productive, the date of completion of the well is the day it is plugged and abandoned.

(Source: P.A. 88-670, eff. 12-2-94; 89-445, eff. 2-7-96.)

(765 ILCS 530/3) (from Ch. 96 1/2, par. 9653)

Sec. 3. This Act shall be applicable only for the drilling operations of new wells except as explicitly provided in paragraph (c) of Section 6. It shall not apply for reworking operations on a well.

This Act shall be applicable only when the surface owner has not consented in writing to the drilling operations and:

(A) there has been a complete severance of the ownership of the oil and gas from the ownership of the surface, or

(B) where the surface owner owns an interest in the oil and gas, which interest is the subject of either:

(1) An integration proceeding brought pursuant to "An Act in relation to oil, gas, coal, and other surface and underground resources and to repeal an Act herein named", approved July 24, 1945, as amended, or

(2) A proceeding brought pursuant to "An Act in relation to oil and gas interest in land", approved July 1, 1939, as amended.

(Source: P.A. 85-1312.)

(765 ILCS 530/4) (from Ch. 96 1/2, par. 9654)

Sec. 4. Notice.

(a) Prior to commencement of the drilling of a well, the operator shall give written notice to the surface owner of the operator's intent to commence drilling operations.

(b) The operator shall, for the purpose of giving notice as herein required, secure from the assessor's office within 90 days prior to the giving of the notice, a certification which shall identify the person in whose name the lands on which drilling operations are to be commenced and who is assessed at the time the certification is made. The written certification made by the assessor of the surface owner shall be conclusive evidence of the surface ownership and of the operator's compliance with the provisions of this Act.

(c) The notice required to be given by the operator to the surface owner shall identify the following:

(1) The location of the proposed entry on the surface for drilling operations, and the date on or after which drilling operations shall be commenced.

(2) A photocopy of the drilling application to the Department of Natural Resources for the well to be drilled.

(3) The name, address and telephone number of the operator.

(4) An offer to discuss with the surface owner those matters set forth in Section 5 hereof prior to commencement of drilling operations.

(5) If the surface owner elects to meet the operator, the surface owner shall request the operator to schedule a meeting at a mutually agreed time and place within the limitations set forth herein. Failure of the surface owner to contact the operator at least 5 days prior to the proposed commencement of drilling operations shall be conclusively deemed a waiver of the right to meet by the surface owner.

(6) The meeting shall be scheduled between the hours of 9:00 in the morning and the setting of the sun of the same day and shall be at least 3 days prior to commencement of drilling operations. Unless agreed to otherwise, the place shall be located within the county in which drilling operations are to be commenced where the operator or his agent shall be available to discuss with the surface owner or his agent those matters set forth in Section 5 hereof.

(7) The notice herein required shall be given to the surface owner by either:

(A) certified mail addressed to the surface owner at the address shown in the certification obtained from the assessor, which shall be postmarked at least 10 days prior to the commencement of drilling operations; or

(B) personal delivery to the surface owner at least 8 days prior to the commencement of drilling operations.

(C) Notice to the surface owner as defined in this Act shall be deemed conclusive notice to the record owners of all interest in the surface.

(Source: P.A. 89-445, eff. 2-7-96.)

(765 ILCS 530/5) (from Ch. 96 1/2, par. 9655)

Sec. 5. Discussion. The operator, or his agent shall, if the surface owner accepts the offer to discuss, be available at the time agreed, date and place to discuss with the surface owner the following:

(A) Placement of roads to be constructed by operator.

(B) Points of entry upon the surface for drilling operations.

(C) Construction and placement of pits used for drilling operations.

(D) Restoration of fences to be cut in order to make entry upon the surface for drilling operations.

(E) Use of waters on the surface of the lands.

(F) Removal of trees.

(G) Surface water drainage changes caused by drilling operations.

(Source: P.A. 85-1312.)

(765 ILCS 530/6) (from Ch. 96 1/2, par. 9656)

Sec. 6. Compensation of surface owners for drilling and producing operations and duties after cessation of production.

(A) The surface owner shall be entitled to reasonable compensation from the operator for damages to growing crops, trees, shrubs, fences, roads, structures, improvements and livestock thereon caused by the drilling of a new well. The surface owner shall also be entitled to reasonable compensation from the operator for subsequent damages to growing crops, trees, shrubs, fences, roads, structures, improvements and livestock thereon caused by subsequent production operations of the operator thereon. The surface owner shall also be entitled to reasonable compensation for all negligent acts of operator that cause measurable damage to the productive capacity of the soil. In addition, the operator shall not utilize any more of the surface estate than is reasonably necessary for the exploration, production and development of the mineral estate.

(B) The compensation required pursuant to paragraph (A) above shall be paid in any manner mutually agreed upon by the operator and the surface owner, but the failure to agree upon, or make the compensation required, shall not prevent the operator from commencement of drilling operations; provided, however, that operator shall tender to the surface owner payment by check or draft in accordance with the provisions herein no later than 90 days after completion of the well. The surface owner's remedy shall be an action for compensation in the circuit court in which the lands or the greater part thereof are located on which drilling operations were conducted; provided, however, that if operator fails to tender payment within the 90-day period or if the tender is not reasonable, surface owner shall be entitled to reasonable compensation as provided herein as well as attorney's fees.

If operator relies on a third party appraiser or fair market value, such amount shall be conclusively deemed to be reasonable, and there shall be no award of attorney's fees.

(C) In conjunction with the plugging and abandonment of any well, the operator shall restore the surface to a condition as near as practicable to the condition of the surface prior to commencement of drilling operations; provided, however, that the surface owner and operator may waive this requirement in writing, subject to the approval of the Department of Natural Resources that the waiver is in accordance with its rules.

(D) Where practicable and absent a written agreement to the contrary with the surface owner, all flow lines and other underground structures must be buried to a depth not less than 36 inches from the surface.

(Source: P.A. 89-445, eff. 2-7-96.)

(765 ILCS 530/7) (from Ch. 96 1/2, par. 9657)

Sec. 7. Common law rights and remedies preserved. Nothing in this Act shall be construed to diminish the rights of the operator or surface owner as they exist by established common law; provided, however, that any compensation paid pursuant to the provisions of Section 6 hereof, shall be a complete bar to the assertion of any other remedy for such damages.

(Source: P.A. 85-1312.)

III. Indiana

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IC 32-23-7

Chapter 7. Oil and Gas: Estates in Land

IC 32-23-7-1

"Oil and gas" defined

Sec. 1. As used in this chapter, "oil and gas" means petroleum and mineral oils and gaseous substances of whatever character naturally lying or found beneath the surface of land.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-2

"Oil and gas estate in land" defined

Sec. 2. As used in this chapter, "oil and gas estate in land" means the aggregate of all rights in land that affect the oil and gas in, on, under, or that may be taken from beneath the surface of the land.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-3

"Operations for oil and gas" defined

Sec. 3. As used in this chapter, "operations for oil and gas", unless otherwise indicated by the context of this chapter, means:

(1) the:

- (A) exploration;
- (B) testing;
- (C) surveying; or
- (D) other investigation;

of the potential of the land for oil and gas;

(2) the actual drilling or preparations for drilling of wells for oil and gas on the land; or

(3) any other actions directed toward the eventual production or attempted production of oil and gas from the land.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-4

"Person in interest" defined

Sec. 4. (a) As used in this chapter, "person in interest" means the owner of a beneficial interest in the oil and gas estate in land, whether the interest is held for life, for a term of years, or in fee.

(b) The term includes a lessee, licensee, or duly qualified agent of the owner.

(c) The term does not include a mortgagee or security assignee of the owner if the mortgagee or security assignee does not have a right to the control or operation of the premises for oil and gas.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-5

"Surface rights" defined

Sec. 5. As used in this chapter, "surface rights" means all rights relating to the occupancy, user, or ownership of the surface of land affected by this chapter.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-6

Rights and privileges transferred

Sec. 6. A grant or reservation contained in an instrument that affects land in Indiana and that purports to convey or transfer an interest in the oil and gas in, on, under, or that may be produced from beneath the surface of the land transfers the following expressed rights and privileges in addition to any other rights naturally flowing from the character of the instrument in law to the named recipient:

(1) A person in interest in the oil and gas estate in land may enter the land for the purpose of:

(A) exploring, prospecting, testing, surveying, or otherwise investigating the land to determine the potential of the land for oil or gas production; or

(B) otherwise conducting operations for oil and gas on the land;

whether or not the person is also the owner, lessee, or licensee of an owner of an interest in the surface rights in the land.

(2) A person in interest in the oil and gas estate in land in Indiana may enter the land to drill a well or test well on the land for the production or attempted production of oil and gas regardless of whether the:

(A) person is also the owner, lessee, or licensee of an owner of an interest in the surface rights in the land; and

(B) owner of the remaining rights in the land consents to the entrance and drilling.

A person that drills a well under this subdivision shall provide an accounting to the remaining or nonparticipating persons in interest in the oil and gas estate in the land, for their respective proportionate shares of the net profits arising from the operations conducted upon the land for oil or gas. In calculating the profits, a reduction may not be made from the gross proceeds of the production of oil and gas, except for expenses that are reasonably or necessarily incurred in connection with the drilling, completion, equipping, and operation of the wells drilled upon the premises during the period in which the relationship of cotenancy existed between the person drilling the well and the person whose interest is sought to be charged with the respective proportionate part of the cost of the drilling.

(3) A person who may enter and enters land in Indiana for the purpose of exploring, prospecting, testing, surveying, or otherwise investigating the potential of the land for oil and gas, or for the purpose of conducting operations on the land for the production of oil and gas, is accountable to the owner of the surface of the land for the actual damage resulting from the person's activities on the land to:

(A) the surface of the land;

(B) improvements to the land; or

(C) growing crops on the land.

However, a person who enters land under this subdivision is not liable for punitive damages. This subdivision does not increase damages between a lessor and a lessee in a valid and subsisting oil and gas lease that specifies damages if damages are not due other than damages that are expressly provided by contract between cotenants or the lessees of cotenants of a like estate in the land. This section does not authorize the location of a well for oil and gas nearer than two hundred (200) feet to an existing house, barn, or other structure (except fences) without the express consent of the owner of the structure.

(4) The right to conduct operations for oil and gas upon land located in Indiana includes the right to:

(A) install and maintain physical equipment on the land; and

(B) use the portion of the surface of the land that is reasonably necessary for the operations;
subject to the payment of damages resulting from the installation only of the equipment specified in this subdivision.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-7

Interests created; title; alienability

Sec. 7. (a) Interests in the oil and gas in, on, under, or that may be taken from beneath the surface of land located in Indiana may be created:

- (1) for life;
- (2) for a term of years; or
- (3) in fee;

in the manner and to the extent that other interests in real estate and title are created.

(b) Title to the estates specified under subsection (a) may be vested in one (1) or more persons by:

- (1) sole ownership;
- (2) tenancy in common;
- (3) joint tenancy;
- (4) tenancy by the entireties; or
- (5) another manner recognized under Indiana law.

(c) Interests or estates specified in this section are freely alienable, in whole or in part, in the same manner as are other interests in real estate.

As added by P.L.2-2002, SEC.8.

IC 32-23-7-8

Contract rights not limited; legislative intent; regulation of industry; construction of law

Sec. 8. (a) This chapter does not limit the rights of parties to contract with regard to the oil and gas estate affecting lands in Indiana:

- (1) to the extent permitted by; and
- (2) in a manner consistent with;

the nature of the estate in law as specified under this chapter.

(b) This chapter is intended to declare the law of this state with regard to the subject matter treated in this chapter as the law existed before March 5, 1951.

(c) This chapter does not affect the rights or powers of any commission, board, or authority duly constituted for the regulation of the oil and gas industry in Indiana.

As added by P.L.2-2002, SEC.8.

IV. Kentucky

353.595 Notice to surface owner of intent to drill oil or gas well -- Compensation for damage to surface -- Restoration of surface.

(1) As used in this section:

- (a) "Person" means any natural person, corporation, firm, partnership, venture, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any government or any political subdivision or agency thereof.
- (b) "Drilling operations" means the drilling, deepening, or conversion of a well for oil or gas production, core hole for oil or gas purposes, or drill hole for a stratigraphic test for oil or gas purposes.
- (c) "Entry" means the moving upon the surface of land with equipment to commence drilling operations, but shall not include entry for the survey for or ascertaining or identification of a well location.
- (d) "Operator" means the person, whether the owner or not, who applies for or holds a permit for drilling operations or who is named as the principal on a bond for a permit for a well that was issued by the department.
- (e) "Surface owner" means the person in whose name the surface of the land on which drilling operations are contemplated, and who is assessed for purposes of taxes imposed according to the records of the property valuation administrator of the county where the land is located as certified by the property valuation administrator.
- (f) "Production operation" means the operation of a well for the production of oil or gas, including all acts, structures, equipment, and roadways necessary for the operation.
- (g) "New well" means a well that is spudded after July 13, 1990, and does not utilize any part of a well bore or drilling location that existed prior to July 13, 1990.
- (h) "Completion of the well" means completion of those processes necessary before production occurs, including the laying of flow lines and the construction of the tank battery. If the well is not productive, the date of completion of the well shall be the day it is plugged and abandoned.

(2) This section shall be applicable only for the drilling operations of new wells except as provided in subsection (7) of this section. This section shall not apply for reworking operations on a well. This section shall be applicable only when the surface owner has not consented in writing to the drilling operations and:

- (a) There has been a complete severance of the ownership of the oil and gas from the ownership of the surface; or
- (b) The surface owner owns an interest in the oil and gas.

(3) (a) Prior to commencement of the drilling of a well, the operator shall give written notice to the surface owner of the operator's intent to commence drilling operations.

- (b) The operator shall, for the purpose of giving notice, secure from the property valuation administrator's office, within ninety (90) days prior to the giving of

- the notice, a certification which shall identify the person in whose name the lands on which drilling operations are to be commenced and who is assessed at the time the certification is made. The written certification made by the property valuation administrator of the surface owner shall be conclusive evidence of the surface ownership.
- (c) The notice required to be given by the operator to the surface owner shall identify the following:
 1. The location of the proposed entry on the surface for drilling operations and the date on or after which drilling operations shall commence.
 2. A photocopy of the drilling application to the department for the well to be drilled.
 3. The name, address, and telephone number of the operator.
 4. An offer to discuss with the surface owner those matters set forth in subsection (4) of this section prior to commencement of drilling operations.
 - (d) If the surface owner elects to meet the operator, the surface owner shall request the operator to schedule a meeting at a mutually agreed time and place within the limitations set forth herein. Failure of the surface owner to contact the operator at least five (5) days prior to the proposed commencement of drilling operations shall be conclusively deemed a waiver of the right to meet by the surface owner. The meeting shall be scheduled between the hours of nine o'clock in the morning and the setting of the sun of the same day and shall be at least three (3) days prior to commencement of drilling operations. Unless agreed to otherwise, the place shall be located within the county in which drilling operations are to be commenced where the operator or his agent shall be available to discuss with the surface owner or his agent those matters set forth in subsection (4) of this section.
 - (e) The notice shall be given to the surface owner by either:
 1. Certified mail addressed to the surface owner at the address shown in the certification obtained from the property valuation administrator, which shall be postmarked at least ten (10) days prior to the commencement of drilling operations; or
 2. Personal delivery to the surface owner at least eight (8) days prior to the commencement of drilling operations.
 - (f) Notice to the surface owner as defined in this section shall be deemed conclusive notice to the record owners of all interest in the surface.
- (4) The operator, or his agent shall, if the surface owner accepts the offer to discuss, be available at the time agreed, date, and place to discuss with the surface owner the following:
- (a) Placement of roads to be constructed by the operator;
 - (b) Points of entry upon the surface for drilling operations;
 - (c) Construction and placement of pits used for drilling operations;
 - (d) Restoration of fences to be cut in order to make entry upon the surface for drilling operations;
 - (e) Use of water on the surface of the lands;
 - (f) Removal of trees; and

- (g) Surface water drainage changes caused by drilling operations.
- (5) The surface owner shall be entitled to reasonable compensation from the operator for damages to growing crops, trees, shrubs, fences, roads, structures, improvements, and livestock thereon caused by the drilling of a new well. The surface owner shall be entitled to reasonable compensation from the operator for subsequent damages to growing crops, trees, shrubs, fences, roads, structures, improvements, and livestock caused by subsequent production operations of the operator thereon. The surface owner shall be entitled to reasonable compensation for all negligent acts of the operator that cause measurable damage to the productive capacity of the soil. In addition, the operator shall not utilize any more of the surface estate than is reasonably necessary for the exploration, production and development of the mineral estate.
- (6) The compensation required pursuant to subsection (5) of this section shall be paid in any manner mutually agreed upon by the operator and the surface owner, but the failure to agree upon, or make the compensation required, shall not prevent the operator from commencement of drilling operations. The operator shall tender to the surface owner payment by check or draft in accordance with the provisions of this section no later than ninety (90) days after completion of the well. The surface owner's remedy shall be an action for compensation in the Circuit Court in which the lands, or the greater part thereof, are located on which drilling operations were conducted. If the operator fails to tender payment within the ninety (90) day period or if the tender is not reasonable, the surface owner shall be entitled to reasonable compensation as provided in this section, as well as attorney's fees. If the operator relies on a third-party appraiser's assessment of damages there shall be no award of attorney's fees.
- (7) In conjunction with the plugging and abandonment of any well or the reworking of any well, the operator shall restore the surface and any improvements thereon to a condition as near as practicable to their condition prior to commencement of the work. The surface owner and operator may waive this requirement in writing, subject to the approval of the department that the waiver is in accordance with its administrative regulations.
- (8) Nothing in this section shall be construed to diminish the rights of the operator or surface owner as they exist by established common law. Any compensation paid and accepted pursuant to the provisions of subsections (5) and (6) of this section shall be a complete bar to the assertion of any other remedy for such damages.

Effective: July 13, 1990

History: Created 1990 Ky. Acts ch. 128, sec. 1, effective July 13, 1990.

V. Montana

Table of Contents

TITLE 82. MINERALS, OIL, AND GAS CHAPTER 10. OIL AND GAS -- GENERAL PROVISIONS

Part 5. Surface Owner Damage and Disruption Compensation

82-10-501. Purpose -- legislative findings. (1) The purpose of this part is to provide for the protection of surface owners of land underlaid with oil and gas reserves while allowing for the necessary development of those reserves.

(2) To carry out the purpose described in subsection (1), the legislature finds that:

- (a) it is necessary to protect the economic well-being of individuals engaged in agricultural production;
- (b) exploration for and development of oil and gas reserves in this state, while necessary, interferes with the use, agricultural or otherwise, of the surface of certain land; and
- (c) owners of the surface estate should be justly compensated for use of their property and interference with the use of their property due to oil and gas development.

History: En. Sec. 1, Ch. 199, L. 1981.

82-10-502. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural production" means the production of any growing grass, crops, or trees attached to the surface of the land or farm animals with commercial value.

(2) "Oil and gas developer or operator" means the person who acquires the oil and gas lease for the purpose of extracting oil and gas.

(3) "Oil and gas estate" means an estate in or ownership of all or part of the oil and gas underlying a specified tract of land.

(4) "Oil and gas operations" means the exploration for or drilling of an oil and gas well that requires entry upon the surface estate and is begun subsequent to June 1, 1981, and the production operations directly related to the exploration or drilling.

(5) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of the land.

History: En. Sec. 2, Ch. 199, L. 1981.

82-10-503. Notice of drilling operations. In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that he plans to undertake. This notice shall be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice shall be given no more than 90 days and no fewer than 10 days before commencement of any activity on the land surface.

History: En. Sec. 3, Ch. 199, L. 1981; amd. Sec. 27, Ch. 526, L. 1983; amd. Sec. 1, Ch. 497, L. 1985.

82-10-504. Surface damage and disruption payments -- penalty for late payment. (1) (a) The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling operations.

(b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration shall be given to the period of time during which the loss occurs.

(c) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner shall be compensated by a single sum payment for harm caused by exploration only.

(d) The payments contemplated by this subsection (1) may only cover land directly affected by drilling operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption; no person may reserve or assign that compensation apart from the surface estate except to a tenant of the surface estate.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner.

History: En. Sec. 4, Ch. 199, L. 1981; amd. Sec. 2, Ch. 497, L. 1985; (2)En. Sec. 3, Ch. 497, L. 1985.

82-10-505. Liability for damages to property. The oil and gas developer or operator is responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the oil and gas developer or operator. The oil and gas developer or operator is responsible for damages to property, real or personal, caused by drilling operations and production.

History: En. Sec. 5, Ch. 199, L. 1981.

82-10-506. Notification of injury. To receive compensation under this part, a surface owner shall give written notice to the oil and gas developer or operator of the damages sustained by the surface owner within 2 years after the injury occurs or would become apparent to a reasonable man.

History: En. Sec. 6, Ch. 199, L. 1981.

82-10-507. Agreement -- offer of settlement. Unless both parties provide otherwise by written agreement, within 60 days after the oil and gas developer or operator receives notice of damages pursuant to [82-10-506](#), he shall make a written offer of settlement to the person seeking compensation for the damages. The surface owner seeking compensation may accept or reject any offer.

History: En. Sec. 7, Ch. 199, L. 1981.

82-10-508. Rejection -- legal action. If the person seeking compensation receives a written rejection, rejects the offer of the oil and gas developer or operator, or receives no reply, that person may bring an action for compensation in the district court of the county in which the damage was sustained.

History: En. Sec. 8, Ch. 199, L. 1981.

82-10-509 through 82-10-510 reserved.

82-10-511. Remedies cumulative. The remedies provided by this part do not preclude any person from seeking other remedies allowed by law.

History: En. Sec. 9, Ch. 199, L. 1981.

VI. North Dakota

CHAPTER 38-11.1

OIL AND GAS PRODUCTION DAMAGE COMPENSATION

38-11.1-01. Legislative findings. The legislative assembly finds the following:

1. It is necessary to exercise the police power of the state to protect the public welfare of North Dakota which is largely dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.

38-11.1-02. Purpose and interpretation. It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and 38-11.1-05 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons.

38-11.1-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of an oil and gas well and the production and completion operations ensuing from the drilling which require entry upon the surface estate and which were commenced after June 30, 1979, and oil and gas geophysical and seismograph exploration activities commenced after June 30, 1983.
3. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
5. "Minerals" means oil and gas.
6. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
7. "Surface owner" means any person who holds record title to the surface of the land as an owner.

38-11.1-03.1. Inspection of well site. Upon request of the surface owner or adjacent landowner, the state department of health shall inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, the state department of health shall issue appropriate orders under chapter 23-25 to protect the health and safety of the surface owner's health, welfare, and property.

38-11.1-04. Damage and disruption payments. The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages, consideration must be given to the period of time during which the loss occurs and the surface owner may elect to be paid damages in annual installments over a period of time; except that the surface owner must be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section only cover land directly affected by drilling operations. Payments under this section are intended to compensate the surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

38-11.1-05. Notice of drilling operations. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of the operations, unless waived by mutual agreement of both parties. If the mineral developer plans to begin drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time prior to commencement of drilling operations. This notice must be given to the record surface owner at that person's address as shown by the records of the county recorder at the time the notice is given. This notice must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice must be a form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under the chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide. If a mineral developer fails to give notice as provided under this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral developer. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where geophysical or seismograph activities are or have been conducted or within one mile [1.61 kilometers] of an oil or gas well site has been disrupted, or diminished in quality or quantity by the drilling operations and a certified water quality and quantity test has been performed by the person who owns an interest in real property within one year preceding the commencement of drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use from an underground source has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the

action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.

A tract of land is not bound to receive water contaminated by drilling operations on another tract of land, and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.

The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

38-11.1-07. Notification of injury. Any person, to receive compensation, under sections 38-11.1-08 and 38-11.1-09, shall notify the mineral developer of the damages sustained by the person within two years after the injury occurs or would become apparent to a reasonable person.

38-11.1-08. Agreement - Offer of settlement. Unless both parties provide otherwise by written agreement, at the time the notice required by section 38-11.1-05 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by section 38-11.1-05 is given. The person seeking compensation may accept or reject any offer so made.

38-11.1-09. Rejection - Legal action - Fees and costs. If the person seeking compensation rejects the offer of the mineral developer, that person may bring an action for compensation in the court of proper jurisdiction. If the amount of compensation awarded by the court is greater than that which had been offered by the mineral developer, the court shall award the person seeking compensation reasonable attorney's fees, any costs assessed by the court, and interest on the amount of the final compensation awarded by the court from the day drilling is commenced. The rate of interest awarded must be the prime rate charged by the Bank of North Dakota on the date of the judgment.

38-11.1-10. Application of chapter. The remedies provided by this chapter do not preclude any person from seeking other remedies allowed by law. This chapter does not apply to the operation, maintenance, or use of a motor vehicle upon the highways of this state as these terms are defined in section 39-01-01.

VII. Oklahoma

Section 318.1 - "Agreement to Drill, Operate, and Plug Wells."

A. Any person who drills or operates any well for the exploration, development or production of oil or gas, or as an injection or disposal well, within this state, shall furnish in writing, on forms approved by the Corporation Commission, his or her agreement to drill, operate and plug wells in compliance with the rules of the Commission and the laws of this state, together with evidence of financial ability to comply with the requirements for plugging, closure of surface impoundments, removal of trash and equipment as established by the rules of the Commission and by law. To establish evidence of financial ability, the Commission shall require:

1. Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with banks and other financial institutions. The statement shall prove a net worth of not less than Fifty Thousand Dollars (\$50,000.00); or
2. Category B surety which shall include an irrevocable commercial letter of credit, cash, a cashier's check, a Certificate of Deposit, Bank Joint Custody Receipt, other negotiable instrument or, a blanket surety bond. Except as provided in paragraph 3 of subsection A of this section, amount of such letter of credit, cash, cashier's check, certificate, bond, receipt or other negotiable instrument shall be in the amount of Twenty-five Thousand Dollars (\$25,000.00) but may be set higher at the discretion of the Director of the Oil and Gas Conservation Division. The Commission is authorized to determine the amount of Category B surety based upon the past performance of the operator and its insiders and affiliates regarding compliance with the laws of this state, and any rules promulgated thereto including but not limited to the drilling, operation and plugging of wells, closure of surface impoundments or removal of trash and equipment. Any instrument shall constitute an unconditional promise to pay and be in a form negotiable by the Commission.
3. The Commission upon certification by any operator subject to Category B surety that its plugging liability statewide is less than the twenty-five-thousand-dollar standard specified in this section may allow said operator to provide Category B type surety in an amount less than the required Twenty-five Thousand Dollars (\$25,000.00), but at least sufficient to cover the estimated cost of all plugging, closure, and removal operations currently the responsibility of that operator. The liability certification referred to in this paragraph shall take the form of an affidavit from a licensed well plugger estimating the costs of all plugging, closure, and removal operations of the operator requesting such relief. This alternative amount shall be modified upward upon the assumption of additional operations by such operator, the maximum amount of Category B surety to be posted not to exceed the twenty-five-thousand-dollar total unless as provided previously.

B. Operators of record as of June 7, 1989, who do not have any outstanding contempt citations or fines and whose insiders or affiliates have no outstanding contempt citations or fines may post Category A surety.

New operators, operators who have outstanding fines or contempt citations and operators whose insiders or affiliates have outstanding contempt citations or fines as of June 7, 1989, shall be required to post Category B surety. Operators who have posted Category B surety and have operated under this type surety and have no outstanding fines at the end of three (3) years may post Category A surety.

Operators using Category A surety who are assessed a fine of Two Thousand Dollars (\$2,000.00) or more and who do not pay the fine within the specified time shall be required to post a Category B surety within thirty (30) days of notification by the Commission.

C. For good cause shown concerning pollution or improper plugging of wells by the operator posting either Category A or B surety or by an insider or affiliate of such operator, the Commission, upon application of the Director of the Oil and Gas Conservation Division, after notice and hearing, may require the filing of additional Category B surety in an amount greater than Twenty-five Thousand Dollars (\$25,000.00) but not to exceed One Hundred Thousand Dollars (\$100,000.00).

D. If the Commission determines that a blanket surety bond is required, the bond shall be conditioned on the fact that the operator shall cause the wells to be plugged and abandoned surface impoundments to be closed, and trash and equipment to be removed in accordance with the laws of this state and the rules of the Commission. Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and continued in effect until the conditions have been met or release of the bond is authorized by the Commission.

E. The agreement provided for in subsection A of this section shall provide that if the Commission determines that the person furnishing the agreement has neglected, failed, or refused to plug and abandon, or cause to be plugged and abandoned, or replug any well or has neglected, failed or refused to close any surface impoundment or removed or cause to be removed trash and equipment in compliance with the rules of the Commission, then the person shall forfeit from his or her bond, letter of credit or negotiable instrument or shall pay to this state, through the Commission, for deposit in the State Treasury, a sum equal to the cost of plugging the well, closure of any surface impoundment or removal of trash and equipment. The Commission may cause the remedial work to be done, issuing a warrant in payment of the cost thereof drawn against the monies accruing in the State Treasury from the forfeiture or payment. Any monies accruing in the State Treasury by reason of a determination that there has been a noncompliance with the provisions of the agreement or the rules of the Commission, in excess of the cost of remedial action ordered by the Commission, shall be credited to the Oil and Gas Revolving Fund. The Commission shall also recover any costs arising from litigation to enforce this provision. Provided, before a person is required to forfeit or pay any monies to the state pursuant to this section, the Commission shall notify the person at his or her last-known address of the determination of neglect, failure or refusal to plug or replug any well, or close any surface impoundment or remove trash and equipment and said person shall have ten (10) days from the date of notification within which to commence remedial operations. Failure to commence remedial operations shall result in forfeiture or payment as provided in this subsection.

F. It shall be unlawful for any person to drill or operate any oil or gas well subject to the provisions of this section, without the evidence of financial ability required by this section. The Commission shall shut in, without notice, hearing or order of the Commission, the wells of any such person violating the provisions of this subsection and such wells shall remain shut in for noncompliance until the required evidence of Category B surety is obtained and verified by the Commission.

G. If title to property or a well is transferred, the transferee shall furnish the evidence of financial ability to plug the well and close surface impoundments required by the provisions of this section, prior to the transfer.

H. As used in this section:

1. "Affiliate" means an entity that owns twenty percent (20%) or more of the operator, or an entity of which twenty percent (20%) or more is owned by the operator; and
2. "Insider" means officer, director, or person in control of the operator; general partners of or in the operator; general or limited partnership in which the operator is a general partner; spouse of an officer, director, or person in control of the operator; spouse of a

general partner of or in the operator; corporation of which the operator is a director, officer, or person in control; affiliate, or insider of an affiliate as if such affiliate were the operator; or managing agent of the operator.

Historical Data

Added by Laws 1971, c. 25, § 1, emerg. eff. March 22, 1971. Amended by Laws 1983, c. 91, § 1, eff. Nov. 1, 1983; Laws 1984, c. 117, § 1, eff. Nov. 1, 1984; Laws 1986, c. 310, § 4, operative July 1, 1986; Laws 1987, c. 45, § 1, emerg. eff. April 24, 1987; Laws 1989, c. 381, § 3, emerg. eff. June 7, 1989; Laws 1991, c. 332, § 9, eff. July 1, 1991; Laws 1992, c. 362, § 2, emerg. eff. June 4, 1992; Amended by Laws 1997, c. 275, § 11, eff. July 01, 1997

Section 318.1a - Confidential Nature of Financial Statement.

Pursuant to the Oklahoma Open Records Act, the Commission is authorized to provide for the confidentiality of any financial statement filed pursuant to Section 318.1 of Title 52 of the Oklahoma Statutes. Copies of such financial statements may only be obtained upon written request to the Director of the Oil and Gas Division. Upon good cause shown, upon the discretion of the Director, copies of such financial statements may be released.

Historical Data

Added by Laws 1987, c. 45, § 2, emerg. eff. April 24, 1987.

Section 318.2 - Definitions.

For purposes of Sections 1 through 8 of this act:

1. "Operator" means a mineral owner or lessee who is engaged in drilling or preparing to drill for oil or gas; and
2. "Surface owner" means the owner or owners of record of the surface of the property on which the drilling operation is to occur.

Historical Data

Added by Laws 1982, c. 341, § 1, operative July 1, 1982.

Section 318.3 - Notice of Intent to Drill - Negotiating Surface Damages.

Before entering upon a site for oil or gas drilling, except in instances where there are non-state resident surface owners, non-state resident surface tenants, unknown heirs, imperfect titles, surface owners, or surface tenants whose whereabouts cannot be ascertained with reasonable diligence, the operator shall give to the surface owner a written notice of his intent to drill containing a designation of the proposed location and the approximate date that the operator proposes to commence drilling.

Such notice shall be given in writing by certified mail to the surface owner. If the operator makes an affidavit that he has conducted a search with reasonable diligence and the whereabouts of the surface owner cannot be ascertained or such notice cannot be delivered, then constructive notice of the intent to drill may be given in the same manner as provided for the notice of proceedings to appoint appraisers.

Within five (5) days of the date of delivery or service of the notice of intent to drill, it shall be the duty of the operator and the surface owner to enter into good faith negotiations to determine the surface damages.

Historical Data

Added by Laws 1982, c. 341, § 2, operative July 1, 1982.

Section 318.4 - Bond or Letter of Credit.

A. Every operator doing business in this state shall file a corporate surety bond, letter of credit from a banking institution, cash, or a certificate of deposit with the Secretary of State in the sum of Twenty-five Thousand Dollars (\$25,000.00) conditioned upon compliance with Sections 318.2 through 318.9 of this title for payment of any location damages due which the operator cannot otherwise pay. The Secretary of State shall hold such corporate surety bond, letter of credit from a banking institution, cash or certificate of deposit for the benefit of the surface owners of this state and shall ensure that such security is in a form readily payable to a surface owner awarded damages in an action brought pursuant to this act. Each corporate surety bond, letter of credit, cash, or certificate of deposit filed with the Secretary of State shall be accompanied by a filing fee of Ten Dollars (\$10.00).

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

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

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

Historical Data

Added by Laws 1982, c. 341, § 3, operative July 1, 1982. Amended by Laws 1983, c. 273, § 13, operative July 1, 1983; Laws 1986, c. 120, § 1, eff. Nov. 1, 1986; Laws 1990, c. 74, § 1, emerg. eff. April 16, 1990.

Section 318.5 - Negotiating Surface Damages - Appraisers - Report and Exceptions Thereto - Jury trial

A. Prior to entering the site with heavy equipment, the operator shall negotiate with the surface owner for the payment of any damages which may be caused by the drilling operation. If the parties agree, and a written contract is signed, the operator may enter the site to drill. If agreement is not reached, or if the operator is not able to contact all parties, the operator shall petition the district court in the county in which the drilling site is located for appointment of appraisers to make recommendations to the parties and to the court concerning the amount of damages, if any. Once the operator has petitioned for appointment of appraisers, the operator may enter the site to drill.

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

C. The operator shall select one appraiser, the surface owner shall select one appraiser, and the two selected appraisers shall select a third appraiser for appointment by the court, which such third appraiser shall be a state-certified general real estate appraiser and be in good standing with the Oklahoma Real Estate Appraisal Board. Unless for good cause shown, additional time is allowed by the district court, the three (3) appraisers shall be selected within twenty (20) days of service of the notice of the petition to appoint appraisers or within twenty (20) days of the first date of publication of the notice as specified in subsection B of this section. If either of the parties fails to appoint an appraiser or if the two appraisers cannot agree on the selection of the third appraiser within the required time period, the remaining required appraisers shall be selected by the district court upon application of either party of which at least one shall be a state-certified general real estate appraiser and be in good standing with the Oklahoma Real Estate Appraisal Board. Before entering upon their duties, such appraisers shall take and subscribe an oath, before a notary public or some other person authorized to administer oaths, that they will perform their duties faithfully and impartially to the best of their ability. They shall inspect the real property and consider the surface damages which the owner has sustained or will sustain by reason of entry upon the subject land and by reason of drilling or maintenance of oil or gas production on the subject tract of land. The appraisers shall then file a written report within thirty (30) days of the date of their appointment with the clerk of the court. The report shall set forth the quantity, boundaries and value of the property entered on or to be utilized in said oil or gas drilling, and the amount of surface damages done or to be done to the property. The appraisers shall make a valuation and determine the amount of compensation to be paid by the operator to the surface owner and the manner in which the amount shall be paid. Said appraisers shall then make a report of their proceedings to the court. The compensation of the appraisers shall be fixed and determined by the court. The operator and the surface owner shall share equally in the payment of the appraisers' fees and court costs.

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

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

2. If a party has been served by publication, the clerk shall forward a copy of the report of the appraisers and the notice of time limits for filing either an exception or a demand for jury trial to the last-known mailing address of each party, if any, and shall cause a copy of the notice of time limits to be published in one issue of a newspaper qualified to publish legal notices as provided in Section 106 of Title 25 of the Oklahoma Statutes.

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

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

F. The report of the appraisers may be reviewed by the court, upon written exceptions filed with the court by either party within thirty (30) days after the filing of the report. After the hearing the court shall enter the appropriate order either by confirmation, rejection, modification, or order of a new appraisal for good cause shown. Provided, that in the event a new appraisal is ordered, the operator shall have continuing right of entry subject to the continuance of the bond required herein. Either party may, within sixty (60) days after the filing of such report, file with the clerk a written demand for a trial by jury, in which case the amount of damages shall be assessed by a jury. The trial shall be conducted and judgment entered in the same manner as railroad condemnation actions tried in the court. A copy of the final judgment shall be forwarded to the county assessor in the county or counties in which the property is located. If the party demanding the jury trial does not recover a more favorable verdict than the assessment award of the appraisers, all court costs including reasonable attorney fees shall be assessed against the party.

Historical Data

Added by Laws 1982, c. 341, § 4, operative July 1, 1982. Amended by Laws 1986, c. 227, § 8, eff. Nov. 1, 1986; Laws 1987, c. 189, § 6, emerg. eff. June 29, 1987; Amended by Laws 2001, SB 632, c. 258 § 9, emerg. eff. May 23, 2001 and HB 1724, c. 265, § 1, emerg. eff. May 24, 2001; Duplicative measures repealed and statute amended by Laws 2002, HB 2924, c. 22, §§ 16,34, emerg. eff. March 8, 2002

Section 318.6 - Appeal of Decision on Exceptions to Report of Appraiser or Verdict Upon Jury Trial - Execution of Instruments of Conveyance.

Any aggrieved party may appeal from the decision of the court on exceptions to the report of the appraisers or the verdict rendered upon jury trial. Such appeal shall not serve to delay the prosecution of the work on the premises in question if the award of the appraisers or jury has been deposited with the clerk for the use and benefit of the surface owner. In case of review or appeal, a certified copy of the final order or judgment shall be transmitted by the clerk to the appropriate county clerk to be filed and recorded.

When an estate is being probated, or when a minor or incompetent person has a legal guardian or conservator, the administrator or executor of the estate, or guardian of the minor or of the incompetent

person or the conservator, shall have the authority to execute all instruments of conveyance provided for in this act on behalf of the estate, or minor or incompetent person with no other proceedings than approval by the judge of the court of jurisdiction being endorsed on the instrument of conveyance.

Historical Data

Added by Laws 1982, c. 341, § 5, operative July 1, 1982.

Section 318.7 - Effect of Act on Existing Contractual Rights and Contracts to Establish Correlative Rights - Indian Lands.

Nothing herein contained shall be construed to impair existing contractual rights nor shall it prohibit parties from contracting to establish correlative rights on the subject matter contained in this act.

This act shall not be applicable to nor affect in any way property held by an Indian whose interest is restricted against voluntary or involuntary alienation under the laws of the United States or property held by an Indian tribe or by the United States for any Indian tribe.

Historical Data

Added by Laws 1982, c. 341, § 6, operative July 1, 1982.

Section 318.8 - Effect of Act on Jurisdiction, Authority and Power of Corporation Commission.

Nothing in this act shall be construed as repealing or limiting the jurisdiction, authority and power of the Oklahoma Corporation Commission.

Historical Data

Added by Laws 1982, c. 341, § 7, operative July 1, 1982.

Section 318.9 - Violation of Act - Damages.

Upon presentation of clear, cogent and convincing evidence that the operator willfully and knowingly entered upon the premises for the purpose of commencing the drilling of a well before giving notice of such entry or without the agreement of the surface owner, the court may, in a separate action, award treble damages. The issue of noncompliance shall be a fact question, determinable without jury, and a de novo issue in the event of appeal.

Any operator who willfully and knowingly fails to keep posted the required bond or who fails to notify the surface owner, prior to entering, or fails to come to an agreement and does not ask the court for appraisers, shall pay, at the direction of the court, treble damages to the surface owner.

Damages collected pursuant to this act shall not preclude the surface owner from collecting any additional damages caused by the operator at a subsequent date.

Historical Data

Added by Laws 1982, c. 341, § 8, operative July 1, 1982.

Section 318.10 - Unlawful To Locate Habitable Structure Within Certain Radius

A. After the effective date of this act, it shall be unlawful to locate any habitable structure within:

1. A radius of one hundred twenty-five (125) feet from the wellbore of an active well; or
2. A radius of fifty (50) feet from the center of any surface equipment or other equipment necessary for the operation of an active well, including, but not limited to, hydrocarbon and brine storage vessels, tanks, compressors, heaters, separators, dehydrators, or any other related equipment.

B. Provided, however, the provisions of this section shall not prohibit an operator and surface owner from agreeing in writing to setback provisions with distances different from those set forth in this section.

Historical Data

Added by Laws 2003, HB 1569, c. 361, § 1, emerg. eff. July 1, 2003.

VIII. South Dakota

45-5A-1. Legislative findings. The Legislature finds the following:

(1) It is necessary for the state to protect the public welfare of South Dakota which is largely dependent on agriculture, and to protect the economic well-being of individuals engaged in agricultural production;

(2) Exploration for and development of mineral and oil and gas reserves in this state may interfere with the use, agricultural or otherwise, of the surface of certain land;

(3) Surface owners should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by mineral and oil and gas development.

45-5A-2. Purpose of chapter. It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners from the undesirable effects of mineral development. This chapter is to be interpreted to benefit surface owners, regardless of when the mineral estate was separated from the surface estate.

45-5A-3. Definition of terms. Terms used in this chapter, unless the context otherwise clearly requires, mean:

(1) "Agricultural production," the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially;

(2) "Mineral development," the exploration for or drilling of an oil and gas well or mineral test hole which requires entry upon the surface estate and was commenced subsequent to June 30, 1982, and the oil and gas production operations ensuing therefrom;

(3) "Mineral developer," the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes;

(4) "Mineral estate," an estate in or ownership of all or part of the minerals underlying a specified tract of land;

(5) "Mineral," any substance with economic value, whether organic or inorganic, that can be extracted from the earth, including oil and gas, but excluding water;

(6) "Surface estate," an estate in or ownership of the surface of a particular tract of land;

(7) "Surface owner," the person who has possession of the surface of the land, if other than the mineral developer, either as an owner or as a lessee.

45-5A-4. Compensation to surface owner for losses -- Determining damages -- Payment. The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production, lost land value, and lost value of improvements caused by mineral development. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. In determining damages, consideration shall be given to the period of time during which the loss occurs and the surface owner may elect to be paid damages in annual installments over a period of time. However, the surface owner shall be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section shall only cover land directly affected by mineral development. Payments under this section for lost land value shall be paid only to the title holder of such land. Any reservation or assignment of such compensation apart from the surface estate except to a lessee of the surface estate is prohibited.

45-5A-5. Notice to surface owner of proposed development and rights under chapter. The mineral developer shall give the surface owner written notice of proposed mineral development, other than exploration activities, at least thirty days prior to the date operations are commenced. This notice shall be given to the record surface owner at his address as shown by the records of the county register of deeds at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice shall be a form prepared by the Department of Environment and Natural Resources advising the surface owner of his rights and options under this chapter.

45-5A-6. Responsibilities of developer. The mineral developer shall be responsible for all damages to property, real or personal, resulting from the lack of ordinary care by the mineral developer. The mineral developer shall also be responsible for all damages to property, real or personal, resulting from an interference caused by mineral development.

45-5A-7. Time for notice of damages to developer. The affected surface owner, to receive compensation, under § § 45-5A-8 and 45-5A-9, shall notify the mineral developer, in writing, of the damages sustained by the affected surface owner within two years after the injury becomes apparent or should have become apparent to a reasonable man.

45-5A-8. Offer of settlement by developer. Unless both parties provide otherwise by written agreement, within sixty days after the mineral developer receives notice of damages the mineral developer shall make a written offer of settlement to the person seeking compensation for the damages. The person seeking compensation may accept or reject any offer so made within sixty days of receipt.

45-5A-9. Action for compensation. If the person seeking compensation receives a written rejection, rejects the offer of the mineral developer, or receives no reply, that person may bring an action for compensation in the court of proper jurisdiction.

45-5A-10. Other remedies not precluded. Any remedy provided by this chapter does not preclude any person from seeking other remedies allowed by law.

45-5A-11. Motor vehicle operation excluded from chapter. This chapter does not apply to the operation, maintenance, or use of a motor vehicle upon the highways of this state.

IX. Tennessee

60-1-601. Short title.

This part shall be known as and may be cited as the "Oil and Gas Surface Owners Compensation Act of 1984."

[Acts 1984, ch. 863, § 2.]

60-1-602. Purpose.

(a) The general assembly finds that the exploration for and development of oil and gas reserves must coexist with the equal right to the use, agricultural or otherwise, of the surface of land within the state of Tennessee.

(b) It is the purpose of this part to provide constitutionally permissible protection and compensation to surface owners of land on which oil and gas wells are drilled for the burden resulting from such drilling operations. This part shall be interpreted to benefit surface owners regardless of when any particular oil and gas estate was separated from the surface estate and regardless of who executed that document.

[Acts 1984, ch. 863, § 2.]

60-1-603. Part definitions.

For purposes of this part and unless the context clearly requires otherwise, the terms listed below will have the following meaning:

(1) "Drilling operation" means the actual drilling or redrilling of an oil or gas well and the related preparation of the drilling site and access roads, which requires entry upon the surface estate;

(2) "Oil and gas developer" means the person who acquires the oil and gas estate by any legal means for the purpose of extracting therefrom oil or gas;

(3) "Person" means any natural person, corporation, firm, partnership, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(4) "Surface owner" means a person who owns an estate in fee in the surface of land overlying an oil and gas estate being developed, either solely or as a co-owner.

[Acts 1984, ch. 863, § 2.]

60-1-604. Compensation of surface owners for drilling operations.

The oil and gas developer shall be obligated to pay the surface owner for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to

the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained, measured from the date the operator enters upon the land;

(2) The market value of crops destroyed, damaged or prevented from reaching market;

(3) Any damage to a water supply in use prior to the commencement of the permitted activity;

(4) The cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality; and

(5) The diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued, determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

[Acts 1984, ch. 863, § 2.]

60-1-605. Notice of claim.

Any surface owner, to receive compensation under this part shall notify by certified mail, return receipt requested, the oil and gas developer of the damages sustained by the person within three (3) years after the injury occurs.

[Acts 1984, ch. 863, § 2.]

60-1-606. Response to persons seeking compensation.

Within sixty (60) days after the oil and gas developer receives notice of damages, the oil and gas developer shall make a written response to the person seeking compensation for the damages.

[Acts 1984, ch. 863, § 2.]

60-1-607. Arbitration.

(a) If the person seeking compensation receives a written rejection, rejects any counter-offer of the oil and gas developer, or receives no reply, that person may bring an action for compensation in a court of proper jurisdiction or the parties may elect to proceed by arbitration as provided herein. If the amount of compensation awarded by arbitration or the court is greater than that which had been offered by the oil and gas developer, the person seeking compensation shall also be awarded reasonable attorney fees, costs of expert witnesses, any other costs which may be legally assessed, and interest on the amount of the final compensation awarded from the day drilling was commenced.

(b) The person seeking compensation, in place of bringing an action in court, can request of the oil and gas developer in writing by certified mail, return receipt requested, that compensation be determined by binding arbitration. If the oil and gas developer agrees to binding arbitration, the developer shall notify the person seeking compensation of consent to arbitration in writing within fifteen (15) days of receiving the request.

(c) (1) In the event of binding arbitration, compensation to be awarded the surface owner shall be determined by a disinterested arbitrator chosen by the surface owner and the oil and gas developer from a list of arbitrators approved by the American Arbitration Association.

(2) Such hearings shall be conducted as provided in title 29, chapter 5, part 3.

(d) Each party shall pay one half (1/2) the compensation due the arbitrator.

[Acts 1984, ch. 863, § 2.]

60-1-608. Common law remedies preserved.

Nothing in this part shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's interest.

[Acts 1984, ch. 863, § 2.]

X. Texas

§ 52.297. COMPENSATION FOR DAMAGES FROM USE OF SURFACE.

(a) Leases issued under Subchapter B of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring the compensation for damages from the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.

(b) The commissioner by rule shall set the procedure for receiving compensation for damages to the surface of land dedicated to the permanent school fund.

(c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for conservation, reclamation, or construction of permanent improvements on land that belongs to the permanent school fund.

(d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the permanent school fund.

(e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

(g) The compensation for damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease.

Added by Acts 1985, 69th Leg., ch. 624, § 46, eff. Sept. 1, 1985.
Amended by Acts 1993, 73rd Leg., ch. 897, § 42, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 328, § 8, eff. Jan. 1, 2004.

§ 53.155. COMPENSATION FOR DAMAGES FROM USE OF SURFACE.

(a) Leases issued under Subchapter B or E of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring compensation for damages from the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.

(b) The commissioner by rule shall set the procedure for receiving compensation for damages to the surface of land dedicated to the permanent school fund.

(c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for conservation, reclamation, or constructing permanent improvements on land that belongs to the permanent school fund.

(d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the permanent school fund.

(e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

(g) Compensation for damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease.

Added by Acts 1985, 69th Leg., ch. 624, § 48, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 948, § 32, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, § 64, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 328, § 9, eff. Jan. 1, 2004.

XI. West Virginia

§22-7-1. Legislative findings and purpose.

(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas reserves in this state must coexist with the use, agricultural or otherwise, of the surface of certain land and that each constitutes a right equal to the other.

(2) Modern methods of extraction of oil and gas require the use of substantially more surface area than the methods commonly in use at the time most mineral estates in this state were severed from the fee tract; and, specifically, the drilling of wells by the rotary drilling method was virtually unknown in this state prior to the year one thousand nine hundred sixty, so that no person severing their oil and gas from their surface land and no person leasing their oil and gas with the right to explore for and develop the same could reasonably have known nor could it have been reasonably contemplated that rotary drilling operations imposed a greater burden on the surface than the cable tool drilling method heretofore employed in this state; and since the year one thousand nine hundred sixty, the use of rotary drilling methods has spread slowly but steadily in this state, with concomitant public awareness of its impact on surface land; and that the public interest requires that the surface owner be entitled to fair compensation for the loss of the use of surface area during the rotary drilling operation, but recognizing the right of the oil and gas operator to conduct rotary drilling operations as allowed by law.

(3) Prior to the first day of January, one thousand nine hundred sixty, the rotary method of drilling oil or gas wells was virtually unknown to the surface owners of this state nor was such method reasonably contemplated during the negotiations which occasioned the severance of either oil or gas from the surface.

(4) The Legislature further finds and creates a rebuttable presumption that even after the thirty-first day of December, one thousand nine hundred fifty-nine, and prior to the ninth day of June, one thousand nine hundred eighty-three, it was unlikely that any surface owner knew or should have known of the rotary method of drilling oil or gas wells, but, that such knowledge was possible and that the rotary method of drilling oil or gas wells could have, in some instances, been reasonably contemplated by the parties during the negotiations of the severance of the oil and gas from the surface. This presumption against knowledge of the rotary drilling method may be rebutted by a clear preponderance of the evidence showing that the surface owner or the surface owner's predecessor of record did in fact know of the rotary drilling method at the time the owner or the owner's predecessor executed a severance deed or lease of oil and gas and that the owner or owner's predecessor fairly contemplated the rotary drilling method and received compensation for the same.

(b) Any surface owner entitled to claim any finding or any presumption which is not rebutted as provided in this section shall be entitled to the compensation and damages of this article.

(c) The Legislature declares that the public policy of this state shall be that the compensation and damages provided in this article for surface owners may not be diminished by any provision in a deed, lease or other contract entered into after the ninth day of June, one thousand nine hundred eighty-three.

(d) It is the purpose of this article to provide constitutionally permissible protection and compensation to surface owners of lands on which oil and gas wells are drilled from the burden resulting from drilling operations commenced after the ninth day of June, one thousand nine hundred eighty-three. This article is to be interpreted in the light of the legislative intent expressed herein. This article shall be interpreted to benefit surface owners, regardless of whether the oil and gas mineral estate was separated from the surface

estate and regardless of who executed the document which gave the oil and gas developer the right to conduct drilling operations on the land. Section four of this article shall be interpreted to benefit all persons.

§22-7-2. Definitions.

(a) In this article, unless the context or subject matter otherwise requires:

(1) "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially;

(2) "Drilling operations" means the actual drilling or redrilling of an oil or gas well commenced subsequent to the ninth day of June, one thousand nine hundred eighty-three, and the related preparation of the drilling site and access road, which requires entry, upon the surface estate;

(3) "Oil and gas developer" means the person who secures the drilling permit required by article six of this chapter;

(4) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(5) "Surface estate" means an estate in or ownership of the surface of a particular tract of land overlying the oil or gas leasehold being developed; and

(6) "Surface owner" means a person who owns an estate in fee in the surface of land, either solely or as a co-owner.

§22-7-3. Compensation of surface owners for drilling operations.

(a) The oil and gas developer shall be obligated to pay the surface owner compensation for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained measured from the date the operator enters upon the land until the date reclamation is completed, (2) the market value of crops destroyed, damaged or prevented from reaching market, (3) any damage to a water supply in use prior to the commencement of the permitted activity, (4) the cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality, and (5) the diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-ownership, any claim for compensation under this article shall be for the benefit of all such co-owners. The resolution of a claim for compensation provided in this article shall operate as a bar to the assertion of additional claims under this section arising out of the same drilling operations.

§22-7-4. Common law right of action preserved; offsets.

(a) Nothing in section three or elsewhere in this article shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's mineral interest.

(b) An oil and gas developer shall be entitled to offset compensation agreed to be paid or awarded to a surface owner under section three of this article against any damages sought by or awarded to the surface owner through the assertion of common law remedies respecting the surface land actually occupied by the same drilling operation.

(c) An oil and gas developer shall be entitled to offset damages agreed to be paid or awarded to a surface owner through the assertion of common-law remedies against compensation sought by or awarded to the surface owner under section three of this article respecting the surface land actually occupied by the same drilling operation.

§22-7-5. Notification of claim.

Any surface owner, to receive compensation under section three of this article, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas developer files notice that reclamation is commencing under section thirty, article six of this chapter. Such notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing. If more than three tenants in common or other co-owners hold interests in such lands, the developer may give such notice to the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the director shall prescribe by rule.

§22-7-6. Agreement; offer of settlement.

Unless the parties provide otherwise by written agreement, within sixty days after the oil and gas developer received the notification of claim specified in section five of this article, the oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation, or reject the claim. The surface owner may accept or reject any offer so made.

§22-7-7. Rejection; legal action; arbitration; fees and costs.

(a) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within sixty days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either (i) bring an action for compensation in the circuit court of the county in which the well is located, or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section six, article six of this chapter, to have his compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer shall not be admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common law remedies.

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in such party's notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators are hereby empowered to and shall forthwith submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and not be appointed as arbitrators: Any person who is personally interested in the land on which rotary drilling is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, such land or the oil and gas development thereof. No person shall be deemed interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation wherein the land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take such testimony and receive such exhibits as shall be necessary to determine the amount of compensation to be paid to the surface owner. However, no award of compensation shall be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but shall not be required.

(e) Each party shall pay the compensation of such party's arbitrator and one half of the compensation of the third arbitrator, or such party's own court costs as the case may be.

§22-7-8. Application of article.

The remedies provided by this article shall not preclude any person from seeking other remedies allowed by law.