

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

A Bill

HOUSE BILL 2746

4
5 By: Representatives Walters, Breedlove, Pickett
6
7

For An Act To Be Entitled

8
9 AN ACT TO REQUIRE ADDITIONAL NOTICE TO A SURFACE
10 OWNER; TO PROVIDE ADDITIONAL REMEDIES TO A
11 SURFACE OWNER FOR DAMAGE CAUSED BY AN OPERATOR;
12 AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO REQUIRE ADDITIONAL NOTICE TO A
16 SURFACE OWNER AND TO PROVIDE ADDITIONAL
17 REMEDIES TO A SURFACE OWNER FOR DAMAGE
18 CAUSED BY AN OPERATOR.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. Arkansas Code § 15-72-201 is amended to read as follows:
24 15-72-201. Definitions.

25 As used in this ~~act~~ subchapter, ~~unless the context otherwise requires:~~

26 (1) "Operations" means the exploration, drilling, or completion
27 activities or any other activity involved in the drilling and producing of an
28 oil or gas well that requires entry upon the surface owner's property;

29 (2) "Operator" means the person or his or her agent who has the
30 right to enter upon the lands of another for the purposes of exploring,
31 drilling, and developing for the production of brine, oil, gas, and all other
32 petroleum hydrocarbons; ~~and~~

33 ~~(1)~~(3) "Person" means any natural person, corporation,
34 association, partnership, trustee, guardian, executor, administrator,
35 fiduciary, or representative of any kind; and

36 ~~(3)~~(4) "Surface owner" means the owner or owners of record of



1 the surface of the property on which the ~~drilling operation~~ operations ~~is~~ are
2 to occur.

3
4 SECTION 2. Arkansas Code § 15-72-203 is amended to read as follows:

5 15-72-203. Prerequisite to ~~exploring or drilling~~ conducting operations
6 - Notice to surface owner.

7 (a)~~(1)~~ Before entering upon a site for the purpose of ~~exploration or~~
8 ~~for oil or gas drilling~~ conducting operations on the surface owner's
9 property, except in instances where there are nonresident surface owners,
10 nonresident surface tenants, unknown heirs, imperfect titles, surface owners
11 or surface tenants whose whereabouts cannot be ascertained with reasonable
12 diligence, the operator shall give to the surface owner written notice of his
13 or her intent of exploration or undertaking drilling to conduct operations
14 that will disturb the surface on premises of any property owned by the
15 surface owner.

16 (2) The notice shall:

17 (A)(i) ~~contain the proposed location~~ Describe the planned
18 operations in sufficient detail that the surface owner can reasonably
19 understand the proposed operations.

20 (ii) The description shall include the proposed
21 location of any access route, well, well pad, seismic test, pit, reservoir,
22 power line, pipeline, compressor pad, tank battery, and any other facility
23 planned in connection with the operations;

24 (B) ~~and the approximate~~ Provide the date that the operator
25 proposes to commence ~~exploration or drilling~~ operations on the surface
26 owner's property;

27 ~~(b) The notice shall be~~ (C)(i) Be given in writing by
28 certified United States mail, or personally, to:

29 (a) ~~the~~ The surface owner at the address of the
30 surface owner as is reflected in the records of the tax collector of the
31 county in which the lands are located, or

32 (b) The guardian or executor whenever the
33 surface owner is a minor or the surface ownership is pending in a probate
34 proceeding.

35 (ii) Personal delivery is presumed if the operator
36 has an acknowledgement of receipt of notice signed by the surface owner.

1 (iii) In the event that the surface owner's address
2 cannot be determined after a reasonable search, notice shall be given by
3 publication in a newspaper of general circulation in the county where the
4 surface owner's property on which the operator intends to begin operations is
5 located;

6 (D) Be delivered to the surface owner no less than twenty
7 (20) days before the operator begins operations on the surface owner's
8 property; and

9 (E) Contain the name, address, and telephone number of the
10 operator or his or her agent and the operator's or his or her agent's
11 facsimile transmission number and electronic mailing address, if the operator
12 has a connection for those means of communication.

13 (b) An operator shall not engage in work, the relocation of
14 facilities, or the alteration of access routes for his or her operations that
15 is materially different from the notice provided under subsection (a) of this
16 section unless:

17 (1) The surface owner has agreed to the proposed changes; or

18 (2) At least five (5) days before the operator begins making the
19 proposed change, he or she gives the surface owner additional written notice:

20 (A) Disclosing the proposed change; and

21 (B) Offering to meet with the surface owner.

22
23 SECTION 3. Arkansas Code Title 15, Chapter 72, Subchapter 2 is amended
24 to add additional sections to read as follows:

25 15-72-219. Surface damage negotiation – Damage recoverable by surface
26 owner – Right to bring action.

27 (a)(1) Unless the surface owner and the operator agree otherwise, at
28 the time the operator gives the notice required under § 15-72-203, the
29 operator shall make a written offer of settlement for reasonably foreseeable
30 damage that the surface owner will incur as a result of the operator's
31 operations.

32 (2) The surface owner may accept or reject any offer made by the
33 operator.

34 (b)(1) If no settlement is reached under subsection (a) of this
35 section, the surface owner may bring an action for damages in the circuit
36 court in the county where the damage to his or her property was sustained.

1 (2) The operator shall be liable for damage caused by his or her
 2 operations to the surface owner's real property for:

3 (A) The surface owner's loss of the:

4 (1) Production of the real estate;

5 (2) Income derived from the real property and his or
 6 her activities on the real property;

7 (3) Value of his or her real property;

8 (4) Value of his or her improvements on the real
 9 property; and

10 (5) Value of his or her personal property.

11 (B) In determining the amount of the surface owner's loss,
 12 consideration shall be given to the period of time during which the loss
 13 occured.

14 (C) The surface owner and the operator may at any time
 15 mutually agree on the amount of damages.

16 (3) A surface owner shall not reserve or assign any part of his
 17 or her right to recover damages from an operator for damage to the surface
 18 owner's real property except to a tenant who holds an interest in the surface
 19 owner's real property on which the operator's operations occur.

20 (c) If the amount of damages awarded by the court is greater than the
 21 amount offered by the operator under subsection (a) of this section, the
 22 court shall award the surface owner:

23 (1) An amount that fully compensates him or her for the loss to
 24 the surface owner as set forth in subdivision (b)(2) of this section;

25 (2) Reasonable attorney's fees; and

26 (3) Court costs.

27 (d) A surface owner may bring an action for damages under this section
 28 within three (3) years after the damage to his or her property was discovered
 29 or reasonably should have been discovered by the surface owner.

30 (d)(1) The remedies provided by this section do not preclude a surface
 31 owner or any other person from seeking other remedies allowed by law and do
 32 not diminish rights previously granted by law or contract.

33 (2) Any written surface use agreement consent, prior regulatory
 34 approval, or judicial order or decree in effect prior to the effective date
 35 of this act shall not be subject to the provisions of this act.

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1 15-72-220. Restoration after operator ceases activities – Damages.

2 (a) After ceasing his or her operations, the operator shall restore
3 the surface land as nearly as practicable to its original condition or to
4 another condition as agreed upon by the surface owner and the operator.

5 (b) Failure to restore the surface owner’s property as required under
6 subsection (a) of this section shall make the operator liable for the amount
7 of the actual damages or one thousand dollars (\$1,000), whichever is greater,
8 in addition to reasonable attorney’s fees.

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