

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2890

By: Taylor

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5  
6 AS INTRODUCED

7 An Act relating to oil and gas; stating Legislative  
8 intent; creating the Vertical Well Damage Act;  
9 defining terms; providing for time limit to report;  
10 providing for negotiation period; providing for right  
11 to file suit for damages; providing for a damage  
12 appraisal process; requiring appraiser's report be  
13 filed with the court; requiring court clerk to  
14 forward appraisal report to parties; providing time  
15 limits to file exception or demand jury trial;  
16 allowing review of appraiser's report by court;  
17 providing for jury trial; providing for types of  
18 damages; providing for evidence of damages providing  
19 for appeals; making certain rights cumulative;  
20 requiring certain construction of certain rights;  
21 requiring certain reports of horizontal operators  
22 prior to drilling; requiring reimbursement of certain  
23 costs and fees; providing for treble damages in  
24 certain cases; requiring actions be brought within  
three years; providing for codification; providing  
for noncodification; providing an effective date; and  
declaring an emergency.

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

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

22 The Oklahoma Legislature recognizes the continuing conflicts and  
23 disputes as between vertical well operators and horizontal well  
24 operators and the potential damage caused to vertical wells by the

1 drilling, completion, operation and maintenance of horizontal wells  
2 in areas already developed by vertical wells. The Legislature also  
3 recognizes the economic disparities between owners and operators of  
4 vertical wells, many of which are stripper wells, as compared to the  
5 owners and operators of horizontal wells. It is the intent of the  
6 Legislature to provide a specific procedure for vertical well  
7 operators to be compensated when their wells are damaged by the  
8 drilling, completion, operation and maintenance of horizontal wells.

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

12 This act shall be known and may be cited as the "Vertical Well  
13 Damage Act".

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

17 As used in the Vertical Well Damage Act:

18 1. "Area of impact or influence" means the area surrounding a  
19 horizontal well that will be impacted by the drilling, completion  
20 and operation of the horizontal well;

21 2. "Area of impact or influence report" means a detailed  
22 written document prepared by an experienced qualified registered  
23 professional engineer based upon recognized industry methodologies;

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1           3. "Horizontal well operator" means any person or owner of the  
2 rights to drill an oil and gas well who is engaged in drilling,  
3 completion, operation, maintenance or preparation of an oil or gas  
4 well; and

5           4. "Vertical well operator" means any person or owner of the  
6 rights to drill an oil and gas well who is engaged in drilling,  
7 completion, operation, maintenance or preparation of an oil or gas  
8 well.

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

12           If a vertical well operator believes that damage occurred to the  
13 vertical well operator's vertical well by a horizontal well  
14 operator, the vertical well operator may elect to notify the  
15 horizontal well operator of such alleged damage within ninety (90)  
16 days of discovering the alleged damage. Upon such notification the  
17 horizontal well operator shall have sixty (60) days to negotiate in  
18 good faith with the vertical well operator a settlement of the claim  
19 for damages. If a settlement cannot be reached the vertical well  
20 operator may initiate litigation pursuant to Section 5 of this act.  
21 A vertical well operator shall not be required to use the  
22 negotiation procedure provided for in this section prior to filing  
23 litigation.

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

4 A. In lieu of negotiations or if negotiations fail to resolve  
5 the claims for damages to a vertical well by a horizontal well, the  
6 vertical well operator may file litigation to recover damages to a  
7 vertical well incurred by the drilling, completion or production of  
8 a horizontal well. As part of the litigation, the vertical well  
9 operator may petition the district court in the county in which the  
10 vertical well is located for appointment of appraisers to make  
11 recommendations to the parties and to the court concerning the  
12 amount of damages, if any. The pursuit of the appraisal process  
13 shall be optional and in the sole discretion of the vertical well  
14 operator.

15 B. If the vertical well operator elects to pursue the appraisal  
16 process, then ten (10) days' notice of the petition to appoint  
17 appraisers shall be given to the opposite party. The vertical well  
18 operator shall select one appraiser, the horizontal well operator  
19 shall select one appraiser, and the two selected appraisers shall  
20 select a third appraiser for appointment by the court. The  
21 appraisers shall be qualified individuals capable of determining the  
22 damages set forth in Section 6 of this act. Appraisers shall be in  
23 good standing with the Oklahoma Real Estate Appraisal Board.  
24 Unless, for good cause shown, additional time is allowed by the

1 district court, the three appraisers shall be selected within twenty  
2 (20) days of service of the notice of the petition to appoint  
3 appraisers. If either of the parties fails to appoint an appraiser  
4 or if the two appraisers cannot agree on the selection of the third  
5 appraiser within the required time period, the remaining required  
6 appraisers shall be selected by the district court upon application  
7 of either party. Before entering upon their duties, the appraisers  
8 shall take and subscribe an oath, before a notary public or some  
9 other person authorized to administer oaths, that they will perform  
10 their duties faithfully and impartially to the best of their  
11 ability.

12 C. Upon appointment the appraisers shall inspect wells and  
13 consider the damages which the vertical well has sustained or will  
14 sustain by reason of drilling, completion, operation or maintenance  
15 of oil or gas production from the horizontal well. The appraisers  
16 shall then file a written report within thirty (30) days of the date  
17 of their appointment with the clerk of the court. The report shall  
18 set forth the amount of damages done or to be done to the vertical  
19 well with specificity. The appraisers shall make a valuation and  
20 determine the amount of compensation to be paid by the operator of  
21 the horizontal well to the vertical well operator and the manner in  
22 which the amount shall be paid. The appraisers shall then make a  
23 report of their proceedings to the court. The compensation of the  
24 appraisers shall be fixed and determined by the court. The

1 horizontal well operator and the surface owner shall pay the  
2 appraisers' fees and court costs if the appraised amount is accepted  
3 by the parties and entered as a judgment.

4 D. Within ten (10) days after the report of the appraisers is  
5 filed, the clerk of the court shall forward to each attorney of  
6 record, each party and each interested party of record, a copy of  
7 the report of the appraisers and a notice stating the time limits  
8 for filing an exception or a demand for jury trial as provided for  
9 in this section.

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

13 2. After issuing the notice required by this subsection, the  
14 clerk shall endorse on the notice form filed in the case the date  
15 that a copy of the report and the notice form was forwarded to each  
16 attorney of record, each party and each interested party of record.

17 E. The time for filing an exception to the report or a demand  
18 for jury trial shall be calculated as commencing from the date the  
19 report of the appraisers is filed with the court. Upon failure of  
20 the clerk to give notice within the time prescribed, the court, upon  
21 application by any party, may extend the time for filing an  
22 exception to the report or filing a demand for trial by jury for a  
23 reasonable period of time not less than twenty (20) days from the  
24 date the application is heard by the court. Appraisers' fees and

1 court costs may be the subject of an exception, may be included in  
2 an action by the petitioner, and may be set and allowed by the  
3 court.

4 F. The report of the appraisers may be reviewed by the court  
5 upon written exceptions filed with the court by either party within  
6 thirty (30) days after the filing of the report. After the hearing,  
7 the court shall enter the appropriate order either by confirmation,  
8 rejection, modification or order of a new appraisal for good cause  
9 shown.

10 G. Either party may, within sixty (60) days after the filing of  
11 such report, file with the clerk a written demand for a trial by  
12 jury, in which case the amount of damages shall be assessed by a  
13 jury. The trial shall be conducted and judgment entered in the same  
14 manner as condemnation actions tried in the court. A copy of the  
15 final judgment shall be forwarded to the county assessor in the  
16 county or counties in which the property is located. If the party  
17 demanding the jury trial does not recover a more favorable verdict  
18 than the assessment award of the appraisers, all court costs  
19 including reasonable attorney fees shall be assessed against the  
20 party.

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

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1 Elements of damage to be considered in negotiating a settlement  
2 of damages pursuant to Section 4 of this act, appraising damages  
3 pursuant to Section 5 of this act, or in determining and awarding  
4 damages shall consist of compensatory damages comprised of direct,  
5 indirect and consequential damages, including, but not limited to,  
6 lost production, lost revenue, loss or potential loss of leasehold,  
7 well values, behind-the-pipe potential, repair of well costs, or  
8 restoration of production costs, economies of scale losses, mental  
9 anguish, emotional distress and punitive damages. Damages collected  
10 pursuant to the Vertical Well Damage Act shall not preclude the  
11 vertical well operator from collecting any additional future damages  
12 caused by the horizontal well operator or other horizontal well  
13 operators at a subsequent date.

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

17 For the purposes of the Vertical Well Damage Act, evidence of  
18 water encroachment, changes in downhole formation pressures, changes  
19 in oil and gas production levels or damage to well equipment within  
20 one and one-half (1.5) miles of the laterals of a horizontal well  
21 and within ninety (90) days after the conclusion of fracking  
22 activity shall be prima facie evidence that the subject horizontal  
23 well was the cause of the damage to a vertical well. Upon  
24 presentation of such evidence, the burden of proof shall be upon the



1 horizontal well operator to affirmatively prove that it did not  
2 cause the damage to the vertical well. Such determination shall be  
3 made by the judge prior to presentation of the case to the jury.

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

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

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

18 The provisions of the Exploration Rights Act of 2011, Sections  
19 801 to 805 of Title 52 of the Oklahoma Statutes, and the rights  
20 granted under the act are intended to be cumulative with all other  
21 rights a person may otherwise have at law or in equity. Nothing in  
22 the Vertical Well Damage Act contained shall be construed to impair  
23 existing contractual rights nor shall it prohibit parties from  
24

1 contracting to establish correlative rights on the subject matter  
2 contained in this act.

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

6 Prior to the drilling of a horizontal well, each horizontal well  
7 operator shall prepare an area of impact or influence report which  
8 shall be filed with the Oklahoma Corporation Commission and sent to  
9 all operators of vertical wells within two (2) miles of the proposed  
10 location of the laterals for the horizontal well. Nothing in the  
11 Vertical Well Damage Act shall be construed as repealing or limiting  
12 the jurisdiction, authority and power of the Oklahoma Corporation  
13 Commission.

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

17 In the event the vertical well operator recovers damages  
18 pursuant to the Vertical Well Damage Act, the vertical well operator  
19 shall be entitled to reasonable attorney fees, court costs,  
20 litigation costs and interest from the date of first production from  
21 the horizontal well.

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

1        Upon presentation of clear, cogent and convincing evidence that  
2 the horizontal well operator willfully and knowingly entered upon  
3 the premises for the purpose of commencing the drilling of a  
4 horizontal well knowing there is a reasonable chance that the  
5 drilling, completion, operation and maintenance of an existing  
6 vertical well might be damaged by the drilling, completion,  
7 operation or maintenance of a horizontal well, the court may, in a  
8 separate action, award treble damages. The issue of noncompliance  
9 shall be a fact question, determinable without jury, and a de novo  
10 issue in the event of appeal.

11        SECTION 13.        NEW LAW        A new section of law to be codified  
12 in the Oklahoma Statutes as Section 88.12 of Title 52, unless there  
13 is created a duplication in numbering, reads as follows:

14        Any action or proceeding commenced pursuant to the Vertical Well  
15 Damage Act shall be brought within three (3) years after the date of  
16 first production reported from the horizontal well to the Oklahoma  
17 Corporation Commission.

18        SECTION 14. This act shall become effective July 1, 2018.

19        SECTION 15. It being immediately necessary for the preservation  
20 of the public peace, health or safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

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24        56-2-8437        JBH        01/14/18