

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 184

BY: TAYLOR

AS INTRODUCED

AN ACT RELATING TO PROPERTY; CREATING THE MODEL
SURFACE USE AND MINERAL DEVELOPMENT ACCOMMODATION
ACT; PROVIDING SHORT TITLE; STATING PUBLIC POLICY;
DEFINING TERMS; PROVIDING FOR SURFACE ACCESS AND
EASEMENT ACCOMMODATIONS; PROTECTING MINERAL
DEVELOPMENT; PROTECTING SURFACE USE AND
IMPROVEMENT; PROVIDING FOR MODIFICATIONS OF SURFACE
ACCESS AND USE EASEMENT; PROVIDING PROCEDURE FOR
NOTICE AND OBJECTION; PROVIDING FOR DETERMINATION
OF ACCOMMODATION; PROVIDING FOR RECORDING OF
CERTAIN NOTICES; PROVIDING FOR DAMAGES AND SETTING
LIMITATIONS; PRESERVING CERTAIN RIGHTS; PROVIDING
FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 700 of Title 52, unless there is
created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Model Surface
Use and Mineral Development Accommodation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 701 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. The public policy of this state is to maximize the economic, cultural and environmental welfare of the people by preserving all reasonable opportunities for optimum development and use of all surface and mineral resources; and to that end it is declared that where mineral estates are severed from surface estates by grant or reservation it is the public policy of this state to:

1. facilitate responsible development of surface and mineral estates by quantifying so far as practical the surface and mineral rights and burdens arising from the severance of the estates;

2. encourage accommodation of potentially conflicting interests by agreement; and

3. provide expeditious procedures for defining and quantifying rights and obligations of owners of severed estates where uncertainties exist and potential conflicts arise.

B. The Oklahoma State Legislature finds that this public policy can be pursued without impairment of any constitutionally protected right of owners of severed estates through the exercise of the state's police power in the manner provided in this act.

C. The Oklahoma State Legislature declares that the purpose of this act is to provide damages as the sole remedy for violations of duties and obligations provided by this act and not to otherwise limit or restrict the right of an owner of a severed mineral interest to engage in the development of minerals. Accordingly, nothing in this act shall be construed to limit or restrict the processing or issuance of any permit, license, or approval required under other law for mineral development.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 702 of Title 52, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Accommodation" and "accommodation doctrine" mean the exercise of mineral development rights with due regard for the rights of the surface owner as to surface use and improvements, if technologically sound and economically practicable alternative methods of mineral development exist.

2. "Mineral" means gas, oil, coal, other gaseous, liquid and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resources, and any other substance defined as a mineral by any law of this state.

3. "Mineral developer" means the owner of a severed mineral estate and any lessee, contract venturer, or other person who has rights of mineral development.

4. "Mineral development" means the full range of activity, from exploration through production and reclamation, associated with the location and extraction of a mineral which will cause actual damage to the surface. Mineral development includes:

- a. processing and transportation of the minerals if they occur on the same surface tract from which the underlying mineral is extracted; and
- b. recovery of any mineral left in residue from previous extraction or processing operations.

5. "Ongoing mineral development" means:

- a. the continuation of any mineral development that is taking place on or under the surface;
- b. any additional mineral development that is identified:
 - (1) in a mine work plan, pooling or unitization agreement, or other document, that has been approved by an agency responsible for regulating the mineral development, or

- (2) in drilling or mining logs or other records maintained by the mineral developer; or
- c. the resumption or extension of mineral development within thirty (30) years after the previous production stopped.

6. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

7. "Surface" means:

- a. the exposed area of land;
- b. improvements on the land;
- c. subjacent and lateral support for land and structures; and
- d. any part of the underground actually used by a surface owner as an adjunct to surface use, such as root medium, groundwater, and construction footings.

8. "Surface owner" means a person who holds an interest of record in the surface estate or a person in possession of the surface who holds an unrecorded interest in the surface estate excluding adverse claimants without adjudicated title.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 703 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. The separation of an interest with mineral development rights from the surface by deed, lease, or other instrument, in the absence of language in the severance document to the contrary, establishes the mineral estate as the dominant estate and creates an easement on and through the surface for reasonable access to the minerals in place and for reasonable use of the surface in the development of the mineral estate, as defined by the law of this state.

B. This surface access and use easement is subject only to:

1. accommodation to surface uses and improvements; and
2. enlargements or curtailments effected under Sections 5, 6, 7

or 9 of this act, or by agreement.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 704 of Title 52, unless there is created a duplication in numbering, reads as follows:

If the mineral developer gives each surface owner notice of proposed mineral development, together with a plan to accommodate existing surface uses or improvements protected by subsection B of Section 4 of this act or a plan satisfying permitting requirements pursuant to federal or state law, the mineral developer is not liable for nonaccommodation of surface uses or improvements affected by the proposed plan unless:

1. a surface owner serves a written objection to the plan on the mineral developer within sixty (60) days of receipt of notice, challenges the plan by a proceeding under Section 9 of this act, and obtains a favorable determination in the proceeding; or
2. the mineral developer makes material deviations from the plan, which result in material injury to surface uses or improvements protected by the accommodation doctrine.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 705 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. A surface owner who desires protection for a surface use or improvement may give the mineral developer notice of the use or improvement. The mineral development rights of the mineral developer will become subject to a claim for damages for any injury that subsequent mineral development causes to the use or improvement unless there is ongoing mineral development or the mineral developer delivers a written objection to the use or improvement to the surface owner within sixty (60) days of receipt of notice.

B. If the mineral developer serves a written objection on the surface owner, the surface owner can gain protection for the use or improvement only by:

1. entering into an agreement with the mineral developer; or
2. obtaining a determination in a proceeding under Section 9 of this act that no probability of future mineral development exists or that technologically sound and economically practicable mineral development can be conducted without material injury to the surface use or improvement.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 706 of Title 52, unless there is created a duplication in numbering, reads as follows:

The surface access and use easement and accommodation obligations are subject to:

1. any provision of a deed, lease, or other instrument that expressly requires payment of surface damages, or waives surface damages, or protects surface improvements constructed before or after severance occurs or accommodation obligations arise; and
2. any agreement relating to surface use or improvement or damages.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 707 of Title 52, unless there is created a duplication in numbering, reads as follows:

A notice or objection to a surface owner or mineral developer is sufficient if in writing and mailed or delivered with a return of service or return receipt. The notice must state the time for objection and the address to which any objection in writing may be mailed or delivered. The notice must be accompanied by:

1. a description of the mineral development or the surface use or improvement; and
2. a copy of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 708 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. If the surface owner and mineral developer are unable to reach an agreement under Section 5 or 6 of this act, either party may institute an appropriate proceeding.

B. If it is determined in the proceeding that:

1. there is a probability of mineral development in the foreseeable future based upon reasonably foreseeable economic conditions and technology and that technologically sound and economically practicable mineral development cannot be conducted without material injury to the surface use or improvement; or

2. that the surface use or improvement would interfere materially with technologically sound and economically practicable mineral development, the mineral developer may exercise the surface access and use easement appurtenant to the mineral estate without accommodation for the surface use or improvement and is not liable under this act for any damages to the use or improvement.

C. If it is determined in the proceeding that:

1. there is no probability of mineral development in the foreseeable future based upon reasonably foreseeable economic conditions and technology; or

2. that the surface use or improvement would not interfere materially with technologically sound and economically practicable mineral development, the mineral developer may exercise the surface access and use easement appurtenant to the mineral estate only with accommodation for the surface use or improvement and is liable under this act for any damages to the use or improvement. If the determination under this subsection authorizes a new use or improvement, and the surface owner does not make the new use or commence construction of the improvement within three (3) years from the determination, the mineral developer shall thereafter be

relieved from the obligation to accommodate the surface use and improvement and shall not be liable under this act for any damages to the use or improvement.

D. The issues specified in subsections B and C of this section are the sole substantive issues for determination in the proceeding. No court shall enjoin mineral development or any surface use or improvement under this act.

E. Reasonable attorney's fees and other expenses incidental to the proceeding shall be awarded to the prevailing party.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 709 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. The written notice and written objection required by Sections 5 and 6 of this act must be recorded in each county where the affected land is located.

B. Any deed, lease, or instrument, an agreement under Section 7 of this act, or a determination under Section 9 of this act may be recorded in each county where the affected land is located.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 710 of Title 52, unless there is created a duplication in numbering, reads as follows:

A. If a mineral developer fails to accommodate a surface use or improvement protected under this act, the surface owner may bring a civil action to recover damages for:

1. Loss of surface use limited to the greater of:

- a. lost income for any interrupted period of use of the surface or improvements to which the accommodation doctrine attaches, or
- b. loss of value of the use of the surface or improvements during any period of interrupted use; and

2. Injury to or destruction of surface improvements limited to the lesser of:

- a. the loss of fair market value of the improvement, or
- b. the cost of repairing, relocating or replacing the improvements.

B. A mineral developer may offset the value of any required reclamation activity or any benefits conferred on the property as a result of any mineral development against the amount of aggregate damages for loss of surface use and destruction of or injury to surface improvements.

C. No action to recover damages under this section may be started more than two (2) years after the loss is or should have been discovered by the surface owner, but the parties by agreement may extend or waive the period of limitation.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 711 of Title 52, unless there is created a duplication in numbering, reads as follows:

Except as specifically modified by this act, nothing herein shall limit the statutory, equitable or common law liability of the surface owner for impairment or obstruction of mineral development, or the remedies of the mineral developer with respect thereto, or the statutory, equitable or common law liability of the mineral developer for unreasonable or excessive use of the surface, or the remedies of the surface owner with respect thereto.

SECTION 13. This act shall become effective September 1, 1992.

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