

SENATE BILL No. 547

By Committee on Judiciary

2-5

9 AN ACT enacting the oil and gas surface owner notice and compensation
10 act.

11

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

13 Section 1. Sections 1 through 11, and amendments thereto, may be
14 cited as the Kansas surface use notice and compensation act.

15 Sec. 2. It is the purpose of this act to clarify the mutual rights and
16 obligations concerning the reasonable use of the surface to conduct oil
17 and gas operations. This act, enacted in the public interest, shall be sup-
18 plemental to and shall not contravene any express provisions of oil and
19 gas leases and other agreements or contracts governing surface use that
20 shall be in existence prior to the effective date of this act.

21 Sec. 3. All terms used in this act shall have the meanings as elsewhere
22 defined in chapter 55 of the Kansas Statutes Annotated, and amendments
23 thereto, except for those terms defined as follows:

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

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

29 (c) "completion of a well" means the date that gas or oil is first pro-
30 duced to be sold from a completed well into a pipeline or tank. If a well
31 is completed as capable of producing oil or gas, but is shut-in for lack of
32 a current market or awaiting a pipeline connection, the date of completion
33 shall be the date the well is initially shut-in. If a well is drilled as a dry
34 hole, an exploratory hole, stratigraphic hole, core hole or seismic shot
35 hole, the date of completion of such well is the date the well is plugged
36 and abandoned;

37 (d) "completion operations" means activities commenced after the
38 termination of drilling operations for the purpose of equipping a well,
39 bringing a well into production or constructing facilities reasonably nec-
40 essary to produce oil and gas; or the shut-in of a well capable of produc-
41 tion but for lack of a market or awaiting a pipeline connection; or, in the
42 case of a well that is drilled as a dry hole, when surface operations to plug
43 and abandon the well are completed. For purposes herein, the installation

- 1 of flow lines, gathering lines, electrical lines and other underground struc-
2 tures below the surface constitutes completion operations hereunder only
3 to the extent that such installation activities are necessary to initially equip
4 a well for production operations;
- 5 (e) “drilling operations” means the drilling of a well intended upon
6 completion to produce oil or gas or to be used for injection or disposal,
7 or to be an exploratory hole, stratigraphic hole or core hole. Drilling
8 operations includes the deepening, conversion, recompletion or rework-
9 ing of an existing well only if such oil and gas operations results in ex-
10 panded use of the surface estate beyond that portion of the surface estate
11 being used immediately before new oil and gas operations. Drilling op-
12 erations are complete when either production casing is set, a well is ca-
13 pable of being returned to production in the event of a well conversion,
14 recompletion or rework or a well is plugged and abandoned;
- 15 (f) “entry upon the surface estate” means the physical movement
16 onto or use of a surface estate for conducting oil and gas operations;
- 17 (g) “fresh water” means water containing no more than 1,000 milli-
18 grams per liter, total dissolved solids and appurtenant to the surface estate
19 as either on the surface or in the subsurface thereof;
- 20 (h) “geophysical contractor” means a contractor acting independently
21 and not as an agent of oil and gas operator to conduct geophysical oper-
22 ations on a surface estate, who assumes the responsibility for compliance
23 with this act for the purposes of required notice, surface damages and
24 otherwise;
- 25 (i) “mineral estate” means a mineral interest in a specific tract of land
26 separate and apart from the surface estate that is created by and described
27 in a deed, or other instrument of conveyance, regardless of whether such
28 mineral interest has been severed from the surface or not;
- 29 (j) “oil and gas” means crude oil, natural gas, casinghead gas, con-
30 densate, or any combination thereof, inclusive of shale or coal bed
31 methane;
- 32 (k) “oil and gas operations” means those operations, which require
33 entry upon the surface estate, including geophysical and other exploration
34 operations, drilling operations, completion operations, production oper-
35 ations, plugging and abandonment operations, and restoration of the sur-
36 face estate;
- 37 (l) “oil and gas operator” means the person who is responsible for or
38 conducts or controls the physical operation of a well and who conducts
39 oil and gas operations on its own behalf or on behalf of others on a surface
40 estate pursuant to an oil and gas lease or other agreements or contracts,
41 except that such term shall not include an independent contractor who
42 performs specified services for oil and gas operations pursuant to an ex-
43 press or implied contract with an oil and gas operator;

- 1 (m) “person” means any natural person, partnership, governmental
2 or political subdivision, firm, association, corporation or other legal entity;
- 3 (n) “producer” means a person who is not the oil and gas operator,
4 but who participates in oil and gas operations as a working interest owner;
- 5 (o) “production operations” means the operation of a well for the
6 production of oil and gas after the well has been completed and equipped
7 for such production, including the maintenance of structures, equipment,
8 facilities and roadways necessary for such operations;
- 9 (p) “restoration” means to substantially restore that part of the sur-
10 face affected by oil and gas operations to the condition that existed prior
11 to those operations to the extent that such restoration is reasonably de-
12 sired by surface owner or practicable, or as otherwise agreed to in writing
13 by the oil and gas operator or producer and the surface owner, except
14 that any such agreement between an oil and gas operator or producer
15 and a surface owner shall not affect any duty to reclaim the surface pur-
16 suant to any law or governmental regulation or as otherwise shall be pre-
17 scribed in an oil and gas lease or other contract effecting the surface
18 estate;
- 19 (q) “surface damages” means nonincidental damages incurred to the
20 surface estate for disturbances, impacts, or alterations to the surface or
21 surface estate resulting from oil and gas operations, including damages
22 arising from agricultural surface use and other improvements appurtenant
23 to the surface estate;
- 24 (r) “surface” or “surface estate” means a specific tract of land and
25 improvements thereon created by and held in fee or other legal or eq-
26 uitable title under a deed or other instrument of conveyance by a person
27 other than the United States, a state, an Indian tribal organization, or any
28 agency, instrumentality or subdivision of any of the foregoing, regardless
29 of whether such person also owns or otherwise holds interest in the min-
30 eral estate underlying the surface estate;
- 31 (s) “surface owner” means any person, including their representa-
32 tives, who holds or owns legal or equitable title to the surface estate or
33 an interest therein as shown on the records of the register of deeds for
34 the county where the surface estate is located, and who is assessed real
35 estate property taxes in accordance with the records of the county trea-
36 surer, except that surface owner shall not include a tenant, or persons
37 whose only rights to use that surface estate are based upon an easement,
38 right-of-way, license, mortgage, lien or any non-possessory interest in the
39 surface;
- 40 (t) “tenant” means a person who occupies land or premises belonging
41 to another in subordination to the owner’s title and with the owner’s
42 assent, express or implied;
- 43 (u) “use of the surface” means the reasonable use of the surface es-

1 tate by an oil and gas operator to the extent necessary to conduct oil and
2 gas operations in a prudent manner; and
3 (v) “well” means a hole drilled or recompleted for the purpose of
4 geological, geophysical, or any oil and gas activity, including:
5 (1) Producing oil and gas;
6 (2) injecting fluid, air or gas in the ground in connection with the
7 exploration for or production of oil and gas;
8 (3) obtaining geological information in connection with the explora-
9 tion for or production of oil and gas by taking cores or through geophysical
10 operations;
11 (4) disposing of fluids produced in connection with the exploration
12 for or production of oil and gas;
13 (5) providing cathodic protection to prevent corrosion to lines; or
14 (6) injecting or withdrawing natural gas.
15 Sec. 4. This act shall be applicable after its effective date:
16 (a) To proposed geophysical operations to the extent that such op-
17 erations require entry upon the surface;
18 (b) to proposed oil and gas operations that shall be subject to the
19 notice requirements set out in section 5, and amendments thereto, other
20 than such operations that shall have been commenced prior to the effec-
21 tive date of this act and that prospectively shall not require an expanded
22 or additional physical area of use of the surface estate than is utilized
23 immediately prior to such prospective operations;
24 (c) to the proposed construction of or installation on the surface of
25 oil and gas facilities subsequent to completion operations that require an
26 expanded or additional physical area of use of the surface estate than is
27 utilized immediately prior to such prospective operations;
28 (d) to determinations of damages resulting from oil and gas opera-
29 tions, only to the extent that a preexisting oil and gas lease or other written
30 contracts or agreements do not expressly provide for compensation for
31 surface damages resulting from oil and gas operations; and
32 (e) to oil and gas operations, notwithstanding:
33 (1) A complete severance of the ownership of the oil and gas com-
34 prising the mineral estate from the ownership of the overlying surface
35 estate;
36 (2) the possession of the surface estate by a tenant; or
37 (3) the ownership by the surface owner of an interest in oil and gas,
38 which shall be subject to a unitization agreement or order.
39 Sec. 5. (a) An oil and gas operator shall notify the surface owner not
40 less than 14 days prior to the commencement of the following oil and gas
41 operations on the surface estate and expressly or impliedly allowed pur-
42 suant to an oil and gas lease or other contract governing the use of the
43 surface estate:

- 1 (1) The staking, well site preparation, rigging up, or drilling of a new
2 well or from the filing of a notice of intent to drill with the commission
3 pursuant to K.S.A. 55-151, and amendments thereto, and the rules and
4 regulations promulgated thereunder;
- 5 (2) the reworking, deepening, or plugging back of a well if such oil
6 and gas operations results in expanded use of the surface estate beyond
7 that portion of the surface estate being used immediately before such
8 operations;
- 9 (3) the initial construction or reconstruction of a road for ingress or
10 egress;
- 11 (4) the installation, removal, replacement, relocate, repair, alter the
12 size of, to environmentally remediate, replace, substitute, renew, recon-
13 struct and to remove such of a pipeline or an electrical line;
- 14 (5) the installation of a tank battery; or
- 15 (6) the construction, installation or maintenance of any other facility,
16 structure or operation which materially disturbs the surface or materially
17 expands the use of the surface.
- 18 (b) With regard to each proposed oil and gas operation requiring
19 notice in accordance with subsection (a):
- 20 (1) Each such specifically identified oil and gas operation shall be
21 noticed on a form prescribed for such purposes and adopted by the com-
22 mission prior to the commencement of such operations, except that the
23 oil and gas operator may combine all or some of the required notices of
24 such oil and gas operations into a single notice if such operations are
25 continuous and shall be completed within six months from the initial date
26 of entry upon the surface estate for the conduct of such oil and gas
27 operations;
- 28 (2) the oil and gas operator shall deliver a copy of the prescribed and
29 completed form to the surface owner not less than 14 days prior to the
30 proposed date for commencing such oil and gas operations, unless oth-
31 erwise agreed, or unless, as herein provided, exigent or emergency cir-
32 cumstances necessitate a lesser time for such notice;
- 33 (3) the oil and gas operations form prescribed by the commission shall
34 include the proposed location or a general description of the noticed oil
35 and gas operations to be conducted and shall specifically provide that the
36 surface owner may contact the oil and gas operator through its represen-
37 tative designated on such form to discuss the proposed operations, and
38 shall include the designated representative's address and telephone num-
39 ber and shall also include an electronic mail or facsimile address if
40 available;
- 41 (4) in determining surface ownership, absent actual knowledge to the
42 contrary, the oil and gas operator shall be entitled to rely solely upon the
43 property ownership records maintained by the register of deeds or trea-

- 1 surer for the county where the relevant surface estate is located;
- 2 (5) in the case of drilling operations, a copy of the approved intent
3 to drill shall be posted on the commission website for the surface owners
4 to access or it may be obtained by the surface owners from the oil and
5 gas operator upon written request, including via electronic mail or
6 facsimile.
- 7 (c) In addition to informal notice conveyed in person or by telephone,
8 facsimile or electronic mail, unless otherwise waived the oil and gas op-
9 erator shall give the notice required under subsection (a) to the surface
10 owner either:
- 11 (1) By certified, first class, express or overnight mail addressed to the
12 surface owner at the address obtained from the county treasurer for the
13 county where the surface estate is located and such notice shall be mailed
14 with a reasonable expectation from the method of mailing utilized that
15 such notice will be received not less than 14 days prior to the proposed
16 date for commencement of the oil and gas operations required to be
17 noticed on the prescribed commission form; or
- 18 (2) by personal delivery by the oil and gas operator to the surface
19 owner not less than 14 days prior to the proposed date for commence-
20 ment of the oil and gas operations required to be noticed on the pre-
21 scribed commission form.
- 22 (d) With regard to ingress and egress onto the surface estate for ac-
23 tivities incidental to oil and gas operations requiring the notices pre-
24 scribed hereunder, the operator shall make a reasonable effort to provide
25 at least verbal notice five days in advance of such incidental operations
26 to the surface owner prior to entry upon the surface estate.
- 27 (e) Notice by the oil and gas operator to the surface owners of record
28 as provided under this section shall be deemed conclusive notice to all
29 persons having any legal or equitable interest in or to the surface estate.
- 30 (f) Notice by the oil and gas operator to the surface owner, either in
31 writing or verbally, shall include sufficient disclosure of the planned oil
32 and gas operations to enable the surface owners to evaluate the probable
33 effects and as an aid to determine possible damages to be caused by the
34 operations on the property, including, as applicable and to the extent
35 known, the following:
- 36 (1) Placement, specifications, maintenance and design of well pads,
37 gathering pipelines and roads to be constructed for oil and gas operations;
- 38 (2) location and timing of ingress and egress upon the surface of the
39 land for oil and gas operations;
- 40 (3) construction, maintenance and placement of all pits and equip-
41 ment used or planned for oil and gas operations;
- 42 (4) use or impoundment of water and disposition of produced water;
- 43 (5) removal and restoration of trees and other vegetation;

- 1 (6) surface water drainage changes;
2 (7) activities to limit and control precipitation runoff and erosion;
3 (8) control and management of noise, weeds, dust, traffic, trespass,
4 litter and interference with the surface owner's use; and
5 (9) interim and final reclamation, including plans for closure of pits
6 and plugging of wells.
- 7 (g) If the surface owner elects to meet with the oil and gas operator
8 subsequent to the receipt of the notice provided for in subsection (c) then
9 the surface owner shall contact the oil and gas operator either by verbal
10 or written communication not more than five days after the surface owner
11 receives the notice required hereunder from the oil and gas operator.
12 Thereafter a meeting may be arranged between oil and gas operator and
13 the surface owner at a reasonable, mutually agreeable time and place,
14 except that such meeting shall be scheduled between the parties at least
15 three days prior to the date of commencement of the proposed oil and
16 gas operations on the surface estate.
- 17 (h) Provided the surface owner has received actual notice, failure of
18 the surface owner to respond to or contact the oil and gas operator within
19 five days prior to the proposed date for the commencement of oil and
20 gas operations shall be conclusively deemed to be a waiver by the surface
21 owner of the right to meet with the oil and gas operator prior to com-
22 mencement of such oil and gas operations. Such waiver of such right to
23 meet shall not constitute a waiver of the surface owner's right to claim
24 surface damages after the completion of oil and gas operations subject to
25 the notice requirements of this act.
- 26 (i) With regard to the proposed oil and gas operations subject to the
27 notice requirements hereunder, the oil and gas operator and surface
28 owner may prior to the commencement of such proposed oil and gas
29 operations elect to negotiate in good faith for and enter into an agreement
30 concerning the settlement, in whole or in part of prospective surface
31 damages arising out of such proposed oil and gas operations consistent
32 with section 6, and amendments thereto, and thereby enter into a settle-
33 ment for agreed surface damages. If such parties agree to the settlement
34 of prospective surface damages prior to the commencement of the pro-
35 posed oil and gas operations, they shall enter into a written agreement
36 documenting and memorializing all terms of their negotiated settlement.
37 Such written agreements shall have the full force and effect of written
38 contracts, governed by the laws of Kansas. Where the surface estate has
39 not been severed from the mineral estate, the oil and gas operator and
40 the surface owner may mutually elect to adopt such written agreement
41 as an integral part of the controlling oil and gas lease, such that the set-
42 tlement terms of such written agreement shall not be binding upon future
43 surface estate owners in the event of a subsequent severance of the sur-

1 face estate from the mineral estate to the extent that such written agree-
2 ment is inconsistent.

3 Notwithstanding the status of any negotiations between an oil and gas
4 operator and a surface owner regarding purposed oil and gas operations
5 to be conducted on the surface, including negotiations concerning the
6 settlement of prospective surface damages prior to such operations, or
7 the election of the surface owner to forego the meeting with the oil and
8 gas operator prior to the commencement of noticed oil and gas opera-
9 tions, the oil and gas operator shall have the right of entry onto the surface
10 to conduct oil and gas operations to completion pursuant to an oil and
11 gas lease or other controlling agreement and the surface owner shall not
12 prohibit, without right, the oil and gas operator from such entry unless
13 the oil and gas operator shall be precluded from such entry pursuant a
14 judicially ordered injunction.

15 (j) In the case of a well that ceases commercial production and such
16 well is to be plugged and abandoned, the oil and gas operator shall give
17 notice to the surface owner of its intent to enter the surface estate and
18 plug and abandon the well not less than 14 days prior to entry upon the
19 surface estate to commence such plugging and abandonment operations,
20 unless the commission or other governmental authority or an emergency
21 situation requires a more immediate plugging of the well. Upon written
22 request by the surface owner, the operator shall provide the surface
23 owner with a copy of the plugging report filed with the commission.

24 (k) The commission shall provide for a check-off box on the notice
25 of intent to drill and plugging report forms by which the oil and gas
26 operator shall indicate that, to the best of its knowledge, it has reasonably
27 complied with the notice requirements of this section. The commission
28 shall require and shall not otherwise issue a permit to drill, or accept for
29 filing with the commission a plugging report, unless the oil and gas op-
30 erator has indicated its compliance with notice requirements of this sec-
31 tion, or has otherwise provided reasonable cause in writing for its failure
32 to comply with such notice requirements at the time the oil and gas
33 operator files either the notice of intent to drill or a plugging report.

34 (l) An oil and gas operator or geophysical contractor, as the case may
35 be, who proposes to conduct geophysical operations on a surface estate
36 assumes the duty of compliance with this act, and shall provide to the
37 surface owner a copy of the proposed plan for the geophysical operations
38 to be conducted, at least 10 days prior to entry upon the surface to con-
39 duct such operations. The form, methods and procedures for providing
40 such notice shall conform to the procedure prescribed by subsection (c).
41 Thereafter, unless otherwise agreed, the parties shall proceed to resolve
42 issues relevant to use of the surface for such geophysical operations and
43 the payment of surface damages pursuant to sections 5 and 6, and amend-

1 ments thereto. After obtaining permission to conduct geophysical oper-
2 ations from the surface owner, the notice requirements of this subsection
3 shall be deemed satisfied. The commission shall have jurisdiction over
4 such geophysical operations only to the extent provided by Kansas law
5 and the rules and regulations promulgated there under.

6 (m) In the event the efforts of an oil and gas operator or a geophysical
7 contractor to provide notice under this section prior to commencement
8 of oil and gas operations or geophysical operations on the surface estate
9 shall be judicially found to be insufficient to comply with the require-
10 ments of this section, then the oil and gas operator or geophysical con-
11 tractor found not in compliance with the requirements of this section
12 shall pay liquidated damages to the surface owner in an initial amount of
13 \$2,500, which amount will be adjusted annually, commencing January 1,
14 2010, by the percentage change in the consumer price index (all items)
15 published by the United States department of labor. A court shall not
16 require an oil and gas operator to remove, alter or relocate any surface
17 equipment or facilities for failure to provide notice as required under this
18 section unless the court finds that the compensation for any damages to
19 the surface owner arising from the absence of such notice can not oth-
20 erwise be adequately compensated by the liquidated damages provided
21 for in this section or with additional compensation.

22 Sec. 6. Unless the oil and gas operator and the surface owner agree
23 to settle surface damages as provided for in subsection (i) of section 5,
24 and amendments thereto, surface damages payable to the surface owner
25 by the oil and gas operator and the restoration of the surface estate by
26 the oil and gas operator shall be governed in accordance with the follow-
27 ing procedures:

28 (a) In negotiating for the payment of the surface damages pursuant
29 to this act, an oil and gas operator shall deal directly with the surface
30 owner. The surface owner shall bear the responsibility of dealing with his
31 tenant on the surface estate in resolving issues of compensation for sur-
32 face damages, unless the oil and gas operator otherwise agrees in writing
33 to deal with the tenant directly, or unless the tenant has been legally
34 assigned in writing the right to receive payment for such surface damages.

35 (b) Unless otherwise agreed between the oil and gas operator and
36 surface owner, within 60 days after the completion of a well or the com-
37 pletion of oil and gas operations subject to the notice requirements of
38 subsection (a) of section 5, and amendments thereto, as the case may be,
39 the oil and gas operator shall notify the surface owner of such completion.
40 The surface owner shall within 60 days after the receipt of such required
41 notice of the completion present to the oil and gas operator a detailed
42 list of the surface damages caused by such noticed oil and gas operations
43 together with a statement of the total monetary amount of such damages

1 claimed. Within 30 days after the receipt of such detailed list and state-
2 ment of surface damages claimed, the oil and gas operator shall pay the
3 surface owner such stated amount of damages or, in the alternative, shall
4 make a written counter offer to the surface owner for the payment of
5 such surface damages. When such surface damage payments are made,
6 they may be made in total to the surface owner, unless the surface owner
7 requests and the oil and gas operator agrees to pay such damages to the
8 surface owner in installments.

9 (c) In calculating surface damages, the surface owner and court may
10 consider the applicable factors listed in subsection (f) of section 5, and
11 amendments thereto.

12 (d) After any counter offer of surface damages by the oil and gas
13 operator, the oil and gas operator and surface owner may negotiate and
14 exchange such counter offers as they may elect in good faith in pursuit
15 of a final settlement for such surface damages.

16 (e) Upon settlement of surface damages between the oil and gas op-
17 erator and the surface owner, the payment for such damages shall be
18 made in accordance with the terms mutually agreed upon by the oil and
19 gas operator and the surface owner and such parties shall enter into a
20 written agreement documenting and memorializing all terms of such ne-
21 gotiated settlement. This settlement of surface damages shall have the
22 full force and effect of a written contract, governed by and under the
23 laws of Kansas.

24 (f) If the surface owner ultimately rejects all offers or counter offers
25 of settlement for surface damages made by the oil and gas operator, or
26 the oil and gas operator fails to pay the negotiated sum for the surface
27 damages in the agreed to timeframe, the surface owner may at its election
28 bring an action for the alleged amount due for surface damages, in a court
29 of competent jurisdiction. Any award by the court shall be consistent with
30 the damages and methods of valuation provided for in this act. If the
31 amount of damages awarded by a court is greater than 120% of the high-
32 est offer of damages by the oil and gas operator, or if the oil and gas
33 operator shall have failed to make a counter offer within the required 30-
34 day period, the court shall award the surface owner reasonable attorneys
35 fees and costs. If the amount of damages awarded by the court is greater
36 than that which had been offered by the oil and gas operator, but is less
37 than 120% of the highest offer of damages by the oil and gas operator,
38 the court shall award the surface owner court costs. If the amount of
39 damages awarded by the court is less than 80% of the highest offer of
40 damages by the oil and gas operator, the court may award the oil and gas
41 operator reasonable attorneys fees and costs. In addition to the deter-
42 mination of surface damages, the surface owner shall be entitled to liq-
43 uidated damages as defined in subsection (m) of section 5, and amend-

1 ments thereto, if it is judicially determined that the oil and gas operator
2 either failed to make a counter offer for regarding surface damages or
3 failed to pay surface damages agreed upon in writing by the oil and gas
4 operator and surface owner.

5 (g) Upon the plugging and abandonment of any well, or upon the
6 conclusion of any oil and gas operations for which a notice was required
7 under section 5, and amendments thereto, the oil and gas operator shall,
8 as near as reasonably practicable restore the surface to its condition for
9 use prior to the commencement of such oil and gas operations, except
10 that the surface owner and oil and gas operator may by mutual agreement
11 in writing waive this requirement. The surface owner shall provide the
12 oil and gas operator with reasonable access to the surface estate to con-
13 duct the restoration or to plug any well pursuant to any law, administrative
14 rule and regulation or order or to remediate or abate any contamination
15 or potential contamination that shall have resulted from oil and gas op-
16 erations. The restoration requirements of this section shall apply during
17 the existence of, and subsequent to the expiration of, any oil and gas lease
18 pursuant to which the oil and gas operator conducted oil and gas opera-
19 tions on the surface estate.

20 (h) A producer who is not an oil and gas operator with respect to the
21 surface estate at issue shall be liable for surface damages to the surface
22 owner as provided in this act only to the extent of the producer's per-
23 centage interest in the mineral estate, and in no event shall such producer
24 be liable for attorneys' fees.

25 (i) The remedies provided by this act shall constitute remedies in
26 contract available against an oil and gas operator or producer for surface
27 damages resulting from the use of the surface for oil and gas operations,
28 or for a failure to substantially restore the surface as herein provided,
29 unless an oil and gas lease or other agreement or contract provide rem-
30 edies in addition to those provided by this act.

31 (j) All remedies at law and in equity beyond the remedies provided
32 by this act for damages arising from an oil and gas operator's operations,
33 including negligence, gross or wanton negligence or willful or intentional
34 misconduct, including exemplary damages and all defenses thereto, are
35 hereby expressly reserved.

36 (k) All claims or lawsuits for damages provided under this section
37 shall be commenced in a court of competent jurisdiction within five years
38 of the date the notice of completed oil and gas operations is or should
39 have been sent by the oil and gas operator to the surface owner as pro-
40 vided in subsection (b).

41 Sec. 7. The surface owner and the oil and gas operator may, in an
42 oil and gas lease or in or by any other agreement, alter or waive in writing,
43 in whole or in part, their respective rights and obligations under this act,

1 provided such alteration or waiver conspicuously and expressly acknowl-
2 edges such agreement alters the provisions of this act. Any such alteration
3 or waiver shall be binding upon the parties thereto and their respective
4 heirs, successors or assigns.

5 Sec. 8. Notwithstanding any provision of this act to the contrary, no
6 notice, compensation or damage payment for failure to give any notice
7 required by this act shall be required in any emergency situation which
8 requires that an oil and gas operator immediately access the surface estate
9 and conduct activities reasonably necessary to protect the health or safety
10 of any person or the environment.

11 Sec. 9. The provisions of this act shall apply to oil and gas operations
12 covered hereunder, commenced by entry upon the surface estate on or
13 after the effective date of this act.

14 Sec. 10. This act shall take effect and be in force from and after its
15 publication in the statute book.