

SENATE BILL No. 589

By Committee on Judiciary

2-11

9 AN ACT enacting the Kansas landowner and surface owner protection
10 act.

11

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

13 Section 1. Sections 1 through 8, and amendments thereto, may be
14 cited as the Kansas landowner and surface owner protection act.

15 Sec. 2. The purposes of this act are to provide relief to landowners
16 and surface owners whose surface is damaged by oil and gas activities, to
17 promote best practices in the relationship between landowners and oil
18 and gas operators and to provide educational information about oil and
19 gas leasing and related activities to landowners, oil and gas operators, legal
20 practitioners and other interested persons. The provisions of this act shall
21 be liberally constructed to carry out these purposes.

22 Sec. 3. As used in this act:

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

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

28 (c) "oil and gas" means crude oil, natural gas, casinghead gas, con-
29 densate, or any combination thereof, inclusive of shale or coal bed
30 methane;

31 (d) "oil and gas operations" means those operations, which require
32 entry upon the surface estate, including geophysical and other exploration
33 operations, drilling operations, completion operations, production oper-
34 ations, plugging and abandonment operations, and restoration of the sur-
35 face estate;

36 (e) "oil and gas operator" means the person or such person's repre-
37 sentative who is responsible for or conducts or controls the physical op-
38 eration of a well and who conducts oil and gas operations on its own behalf
39 or on behalf of others on a surface estate pursuant to an oil and gas lease
40 or other agreements or contracts, except that such term shall not include
41 an independent contractor who performs specified services for oil and
42 gas operations pursuant to an express or implied contract with an oil and
43 gas operator;

- 1 (f) “person” means any natural person, partnership, governmental or
2 political subdivision, firm, association, corporation or other legal entity;
- 3 (g) “restoration” means to substantially restore that part of the sur-
4 face affected by oil and gas operations to the condition that existed prior
5 to those operations to the extent that such restoration is reasonably de-
6 sired by surface owner or practicable, or as otherwise agreed to in writing
7 by the oil and gas operator and the surface owner, except that any such
8 agreement between an oil and gas operator and a surface owner shall not
9 affect any duty to reclaim the surface pursuant to any law or governmental
10 regulation or as otherwise shall be prescribed in an oil and gas lease or
11 other contract effecting the surface estate;
- 12 (h) “surface damages” means nonincidental damages incurred to the
13 surface estate for disturbances, impacts, or alterations to the surface or
14 surface estate resulting from oil and gas operations, including damages
15 arising from agricultural surface use and other improvements appurtenant
16 to the surface estate;
- 17 (i) “surface” or “surface estate” means a specific tract of land and
18 improvements thereon created by and held in fee or other legal or eq-
19 uitable title under a deed or other instrument of conveyance by a person
20 other than the United States, a state, an Indian tribal organization, or any
21 agency, instrumentality or subdivision of any of the foregoing, regardless
22 of whether such person also owns or otherwise holds interest in the min-
23 eral estate underlying the surface estate; and
- 24 (j) “surface owner” means any person, including their representa-
25 tives, who holds or owns legal or equitable title to the surface estate or
26 an interest therein as shown on the records of the register of deeds for
27 the county where the surface estate is located, and who is assessed real
28 estate property taxes in accordance with the records of the county trea-
29 surer, except that surface owner shall not include a tenant, or persons
30 whose only rights to use that surface estate are based upon an easement,
31 right-of-way, license, mortgage, lien or any non-possessory interest in the
32 surface.
- 33 Sec. 4. (a) An oil and gas operator shall notify the surface owner not
34 less than 20 days prior to the commencement of oil and gas operations
35 on the surface estate which are expressly or impliedly allowed pursuant
36 to an oil and gas lease or other contract governing the use of the surface
37 estate.
- 38 (b) Notice by the oil and gas operator to the surface owners of record
39 shall be deemed conclusive notice to all persons having any legal or eq-
40 uitable interest in or to the surface estate.
- 41 (c) The notice must sufficiently disclose the plan of work and oper-
42 ations to enable the surface owner to evaluate the effect of the oil and
43 gas operations on such surface owner’s use of the property.

- 1 Sec. 5. The oil and gas operator is responsible for all damages to real
2 or personal property resulting from the lack of ordinary care by the oil
3 and gas operator. The oil and gas operator is responsible for damages to
4 real or personal property caused by the oil and gas operator.
- 5 Sec. 6. (a) The commission shall establish an office of landowner and
6 surface owner protection and shall assign personnel to such office to carry
7 out the provisions of this act.
- 8 (b) When a dispute arises between a surface owner and an oil and
9 gas operator as to any surface damages, the commission is hereby au-
10 thorized to conduct an investigation upon the filing of a written complaint.
- 11 (c) The commission may do any one or more of the following:
- 12 (1) Order an oil and gas operator to cease activities that are causing
13 or may cause damage to the surface or surface estate;
- 14 (2) bring an action in the district court of Shawnee county or in such
15 other county where jurisdiction would be proper to:
- 16 (A) Bring an action to enjoin actions or activities which are causing
17 or would cause surface damages;
- 18 (B) make a determination of and recover damages on behalf of the
19 surface owner or require restoration of the surface;
- 20 (C) recover reasonable expenses and costs associated with the inves-
21 tigation; and
- 22 (D) impose a civil penalty not to exceed \$5,000 per day for each day
23 or part thereof that an oil and gas operator is in violation of an order
24 issued pursuant to paragraph (1).
- 25 (d) The parties to the investigation should attempt to negotiate in
26 good faith to resolve the dispute concerning such surface damages. If the
27 parties are unable to resolve the dispute, the commission may provide
28 for the appointment of a commission staff member as a mediator, or the
29 parties may agree to employ and pay for an independent mediator for the
30 purpose of mediating the surface damages dispute.
- 31 (e) If the parties are not successful in resolving the dispute through
32 negotiation or mediation, the commission may conduct the investigation
33 under subsection (b) and may proceed as provided in subsection (c).
- 34 Sec. 7. Nothing in this act shall in any way limit or affect the rights
35 or remedies which are otherwise available or permitted by law to the
36 surface owner.
- 37 Sec. 8. (a) This act shall be administered and enforced by the
38 commission.
- 39 (b) In order to provide assistance in implementing and carrying out
40 the purpose of this act, the commission shall make available to surface
41 owners and oil and gas operators information concerning the provisions
42 of this act.
- 43 (c) The commission may adopt such rules and regulations deemed

- 1 necessary to carry out the provisions of this act.
- 2 Sec. 9. This act shall take effect and be in force from and after its
- 3 publication in the statute book.