

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3094**

BY DELEGATE ANDERSON

[Introduced March 14, 2017; Referred  
to the Committee on Energy then the Judiciary.]

1 A BILL to amend and reenact §37-7-2 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-  
 3 1-3, §37B-1-4, §37B-1-5, §37B-1-6 and §37B-1-7, all relating to real property generally;  
 4 providing an exception to waste for certain oil and gas development; providing a short title;  
 5 providing declarations of public policy and legislative findings; providing definitions;  
 6 providing that consent for the lawful use of the oil and gas mineral property by three-  
 7 fourths of mineral interest owners is permissible, not waste and not trespass; providing  
 8 that cotenants are not liable for damages for as a result of the lawful use of oil and gas  
 9 mineral property when an accounting is provided and a pro rata share of revenues and  
 10 costs are distributed to or reserved for each unknown or unlocatable cotenant; allowing  
 11 for an acreage weighted average royalty interest, free of post-production expenses, to  
 12 each nonconsenting cotenant; permitting for the joint development by horizontal drilling of  
 13 multiple adjacent leases held by the same operator if the operator has a surface use  
 14 agreement with all surface owners whose tracts may be disturbed by joint development;  
 15 providing that royalties distributed to royalty owners affected by joint development may not  
 16 be reduced by post-production expenses; providing for severability of provisions.

*Be it enacted by the Legislature of West Virginia:*

1 That §37-7-2 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; and that said code be amended by adding thereto a new chapter, designated §37B-  
 3 1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6 and §37B-1-7, all to read as follows:

**CHAPTER 37. WASTE BY COTENANT.**

**ARTICLE 7. WASTE.**

**§37-7-2. Waste by cotenant.**

1 If a tenant in common, joint tenant, or parcener ~~commit~~ commits waste, he ~~shall be~~ or she  
 2 is liable to his or her cotenants, jointly or severally, for damages, except as provided for oil and

3 gas development in chapter thirty-seven-b of this code.

**CHAPTER 37B. COTENANCY AND LEASE INTEGRATION.**

**ARTICLE 1. COTENANCY AND LEASE INTEGRATION.**

**§37B-1-1. Short title.**

1 This chapter shall be known as the “Cotenancy and Lease Integration Act.”

**§37B-1-2. Declaration of public policy; legislative findings.**

1 It is declared to be the public policy of this state and in the public interest to:

2 (1) Foster, encourage and promote exploration for and development, production,  
3 utilization and conservation of oil and gas resources;

4 (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas  
5 and their constituents;

6 (3) Encourage the maximum recovery of oil and gas;

7 (4) Safeguard, protect and enforce the correlative rights of operators and royalty owners  
8 in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her  
9 just and equitable share of production from that pool of oil or gas;

10 (5) Safeguard, protect and enforce the rights of surface owners; and

11 (6) Protect and enforce the clear provisions of contracts lawfully made.

**§37B-1-3. Definitions.**

1 As used in this article, and in the absence of specific contract language to the contrary:

2 “Operator” means any owner of the right to develop, operate and produce oil and gas from  
3 a pool and to appropriate the oil and gas produced therefrom, either for that person or for that  
4 person and others; and in the event the oil is owned separately from the gas, the owner of the  
5 substance being produced or sought to be produced from the pool is the “owner” as to that pool.

6 “Person” means any individual, corporation, partnership, limited liability company,  
7 association, receiver, trustee, executor, administrator, guardian, fiduciary or other representative

8 of any kind, and includes any government or any political subdivision or any agency thereof.

9 “Pool” means an underground accumulation of petroleum or gas in a single and separate  
10 reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-  
11 pressure system so that production of petroleum or gas from one part of the pool affects the  
12 reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions,  
13 such as geologic structural conditions, impermeable strata, and water in the formations, so that it  
14 is effectively separated from any other pools that may be presented in the same district or on the  
15 same geologic structure.

16 “Pooling” means the integration of smaller tracts and interests therein to obtain a drilling  
17 permit in compliance with spacing rules.

18 “Post-production expense” means an expense or cost subsequent to production including,  
19 but not limited to, an expense or cost related to pipelines, surface facilities, telemetry, gathering,  
20 dehydration, transportation, fractionation, compression, manufacturing, processing, treating, or  
21 marketing of the oil or natural gas or any severance or other taxes of any nature paid on the  
22 production thereof.

23 “Pro rata share” means the allocation of revenues and costs attributable to the lawful use  
24 of a mineral property that is calculated based on the proportion that the net acreage of such  
25 ownership interest bears to the total net acreage of jointly developed tracts in a development or  
26 production unit that includes, all or part of, that mineral property, if any.

27 “Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the  
28 extent that the owner is not an operator as defined in this section.

29 “Unitization” means the exploration and development of an entire geologic structure or  
30 producing reservoir.

31 “Unknown and unlocatable interest owner” means a person vested with a present  
32 ownership interest in the oil and gas in place in a mineral property whose present identity or  
33 location cannot be determined from:

34 (A) A reasonable review of the records of the clerk of the county commission, the sheriff,  
35 the assessor and the clerk of the circuit court in the county or counties in which the interest is  
36 located, and includes unknown heirs, successors and assigns known to be alive;

37 (B) Diligent inquiry in the vicinity of the owner's last known place of residence; and

38 (C) Diligent inquiry to known interest owners in the same tract.

**§37B-1-4. Waste by cotenant; lawful use; trespass; accounting; unknown or unlocatable  
cotenant; royalty interest to nonconsenting cotenant.**

1 (a) If, after a reasonable effort to negotiate by the operator with all royalty owners in an oil  
2 and gas mineral property, tenants in common, joint tenants or coparceners representing three-  
3 fourths of the ownership interest in the oil and gas mineral property consent to a lawful use of the  
4 mineral property, then that use is permissible, is not waste and is not a trespass. In that case, the  
5 consenting cotenants and their lessees, operators, agents, contractors or assigns, are not liable  
6 to any nonconsenting cotenant for damages if:

7 (1) An accounting of a pro rata share of the revenues and costs resulting from the lawful  
8 use of that oil and gas mineral property is provided to each consenting cotenant equal to its  
9 proportionate ownership interest in the property; and

10 (2) Pro rata shares of each consenting cotenant are distributed, or in the case of an  
11 unknown or unlocatable interest owner, are reserved.

12 (b) The surface owners of record may file a petition pursuant to article twelve-a, chapter  
13 fifty-five of the code for any relief provided therein for any unknown or unlocatable interest owner  
14 that has not collected his or her pro rata share reserved under subsection (a) of this section.

15 (c) If, under subsection (a) of this section, a person with an ownership interest in the oil  
16 and gas mineral property refuses to consent to its lawful use, that person is entitled to a royalty,  
17 free of post-production expenses, equal to his or her fractional share of the average royalty of his  
18 or her consenting cotenants, but in no event may the royalty be less than his or her fractional  
19 share of one-eighth.

**§37B-1-5. Development of minerals.**

1           Where an operator or operators have the right to develop multiple contiguous oil and gas  
 2 leases, the operator may develop these leases jointly by horizontal drilling unless the  
 3 development is expressly prohibited by the terms of a lease or agreement: *Provided*, That the  
 4 operator has a surface use agreement with all owners of record for any surface tract that may be  
 5 disturbed by joint development.

**§37B-1-6. Deductions for post-production expenses.**

1           (a) In determining the royalty where multiple contiguous leases are developed, in the  
 2 absence of specific agreement language to the contrary, the production shall be allocated to each  
 3 lease in the proportion that the net acreage of each lease bears to the total net acreage of the  
 4 jointly developed tracts.

5           (b) In the absence of specific agreement language to the contrary or where deductions  
 6 are authorized by statute, the royalty for all royalty owners of the jointly developed acreage who  
 7 do not have leases containing express pooling and unitization clauses shall not be reduced for  
 8 post-production expenses incurred by the operator. Nothing in this subsection is intended to  
 9 impact royalties due for wells drilled prior to the effective date of this chapter.

**§37B-1-7. Severability.**

1           The provisions of this chapter are severable and accordingly, if any part of this chapter is  
 2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity  
 3 of the remaining provisions of this chapter.

NOTE: The purpose of this bill is to provide an exception to waste for certain oil and gas development, and to encourage the efficient and economic development of oil and gas resources by providing that a lawful use of mineral property that has been consented to by three-fourths of the mineral interest owners is permissible, is not waste, and is not a trespass. The bill provides that cotenants are not liable for damages for the use of their mineral property when an accounting is provided and the prorata share of revenues and costs are distributed to each consenting cotenant or reserved for unknown or unlocatable tenants. The bill also provides for an acreage weighted average royalty interest, free of post-production expenses, to each nonconsenting cotenant. The bill prevents waste by authorizing the development by horizontal drilling of multiple adjacent leases held by the

same operator provided that the operator has a surface use agreement with all surface owners whose tracts may be disturbed by joint development. The bill also addresses the manner by which royalties are distributed to owners affected by joint development, and provides that the royalties may not be reduced by post-production expenses. Finally, the bill provides its provisions are severable.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.