

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 244

BY SENATORS BLAIR, MULLINS, CARMICHAEL (MR.

PRESIDENT) AND CLINE

[Introduced February 10, 2017; referred

to the Committee on the Judiciary]

1 A BILL to amend and reenact §37-7-2 of the Code of West Virginia, 1931, as amended, relating
 2 to encouraging and facilitating the efficient and economic development of oil and gas
 3 resources; preventing waste by co-tenants; providing that consent to a lawful use of
 4 mineral property by a majority of co-tenants is not waste and does not constitute trespass;
 5 providing that co-tenant is liable for damages as a result of the lawful use of mineral
 6 property consented to by a majority of the ownership interest when an accounting is
 7 provided and a pro rata share of revenues and costs are distributed to or reserved for
 8 each co-tenant, as applicable; allowing joint development of oil and natural gas wells by
 9 horizontal drilling under certain circumstances; addressing production royalties where
 10 multiple contiguous leases are developed; and 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 reenacted
 2 to read as follows:

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant; lawful use; trespass; development; severability.

1 (a) If a tenant in common, joint tenant or parcener ~~commit~~ commits waste, he or she shall
 2 be is liable to his or her cotenants, jointly or severally, for damages.

3 (b) If the tenants in common, joint tenants or parceners representing a majority of the
 4 ownership interest in the mineral property consent to a lawful use of the mineral property, that use
 5 is permissible, is not waste and is not a trespass. In that case, the cotenant and their lessees,
 6 operators, agents, contractors or assigns, are not liable for damages if:

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

10 (2) Pro rata shares of each cotenant are distributed or, in the case of a cotenant that
 11 cannot be located are reserved for that cotenant.

12 (c) Without limiting subsection (b) of this section, operators of oil and natural gas wells
13 should maximize efficient extraction of oil and natural gas reserves and prevent waste by using
14 horizontal drilling technology where practical based on the geology and the nature of the
15 reserves. Where an operator or operators have the right to develop multiple contiguous oil and
16 gas leases separately, the operator may develop these leases jointly by horizontal drilling unless
17 the development is expressly prohibited by the terms of a lease. The operator's use of any
18 surface tract overlying the jointly developed leases shall be permissible for that joint
19 development. In determining the royalty where multiple contiguous leases are developed, in the
20 absence of an agreement by all affected royalty owners, the production shall be allocated to each
21 lease in the proportion that the net acreage of each lease bears to the total net acreage of the
22 jointly developed tracts.

23 (d) The provisions of this section are severable and accordingly, if any part of this section
24 is adjudged to be unconstitutional or invalid, that determination does not affect the continuing
25 validity of the remaining provisions of this section.

NOTE: The purpose of this bill is to encourage and facilitate 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 a majority of the ownership interests in the property is permissible, is not waste, and is not a trespass. The bill provides that covenants are not liable for damages for the use of their mineral property when an accounting is provided and the pro rata share of revenues and costs are distributed to each cotenant or reserved for unlocatable covenants. The bill also prevents waste by authorizing the development of horizontal drilling of multiple adjacent leases held by the same operator. Finally, the bill provides that the provisions of §37-7-2 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.