

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2866**

BY DELEGATES ANDERSON, J. KELLY, HIGGINBOTHAM,

PETHTEL AND PORTERFIELD

[Introduced February 6, 2019; Referred  
to the Committee on Energy then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §36-4-9b, relating to the termination, expiration, or cancellation of oil or natural  
3 gas leases; providing a requirement for a lessee to execute and deliver to the lessor, within  
4 a specified time and without cost, a recordable release for terminated, expired, or canceled  
5 oil or natural gas leases; providing for a procedure by which a lessor may serve notice to  
6 a lessee, if a lessee fails to timely provide the release; providing requirements for the  
7 content of the notice; requiring a lessee to timely notify the lessor in writing of a dispute  
8 regarding the termination, expiration, or cancellation of the oil and natural gas lease;  
9 providing for an affidavit of termination, expiration, or cancellation with specified contents;  
10 providing a requirement that county clerks accept and record said affidavit; and providing  
11 that with proper notification by the lessor and in the absence of a dispute by the lessee,  
12 an affidavit of termination, expiration, or cancellation, upon recordation by a county clerk,  
13 creates a rebuttable presumption of termination and cancellation of the oil or natural gas  
14 lease for certain interests and renders the recorded oil or natural gas lease as insufficient  
15 notice of the recorded lease under the notice statute.

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

#### **ARTICLE 4. COVENANTS.**

##### **§36-4-9b Release of terminated, expired or canceled oil or natural gas leases.**

1 (a) Not more than 90 days after the termination, expiration, or cancellation of an oil or  
2 natural gas lease, the lessee shall deliver without cost to the lessor a properly executed and  
3 notarized release of the lease in recordable form. The terms “lessee” and “lessor” as used in this  
4 section mean the current owner or owners of an interest in the subject lease or the minerals  
5 burdened by such lease unless otherwise defined or modified.

6 (b) If the lessee fails to provide a timely release as required in §36-4-9b(a) of this code,  
7 the lessor may serve notice on the lessee of lessee’s failure to provide such release. The notice  
8 shall contain the following:

9           (1) A statement that:

10           (A) The lease is terminated, expired, or canceled according to its terms, including the date  
11 of such termination, expiration, or cancellation;

12           (B) The lessee has a duty to provide a release pursuant to §36-4-9b(a) of this code; and

13           (C) If the release or a written challenge to the termination, expiration, or cancellation, is  
14 not received by lessor from the lessee within 90 days from receipt of this notice, the lessor, have  
15 the right to file an affidavit of termination, expiration, or cancellation under §36-4-9b(e) of this  
16 code.

17           (2) The name and address of the lessor;

18           (3) A brief description of the land covered by the lease including, but without limitation, the  
19 state, county, tax district, tax map and parcel, watershed, historical farm name, or other identifying  
20 information;

21           (4) If there is or has been a well on the land covered by the lease, the name or API number  
22 of the well, if known to the lessor; and

23           (5) The recording information for the lease, or a memorandum of lease, in the public  
24 records of the county or counties, along with the execution date of the lease, and the identity of  
25 the original lessor and original lessee under the lease.

26           (c) Service of notice under §36-4-9b(b) of this code shall be made either personally or by  
27 certified mail to the lessee's last known business address, or, if service cannot be made by those  
28 means, by publication once a week for two consecutive weeks in a newspaper of general  
29 circulation in the county or counties in which the lands covered by the lease are located.

30           (d) If, after receiving a notice of termination, expiration, or cancellation under §36-4-9b(b)  
31 of this code, the lessee disputes that the oil or natural gas lease is terminated, expired, or  
32 canceled as stated in the notice, the lessee must, not more than 90 days after receipt of the notice,  
33 deliver a written challenge to the lessor, detailing the basis for the dispute.

34           (e) A lessor, who has served a notice under §36-4-9b(b) of this code and fails to receive

35 a timely challenge from the lessee under §36-4-9b(d) of this code, may record an affidavit of  
36 termination, expiration, or cancellation of an oil or natural gas lease in the office of the county  
37 clerk in the county or counties where the lands covered by the lease are situated. The county  
38 clerk of each county shall accept all such affidavits and shall enter and record them in the official  
39 records of that county and shall index each in the indices under the names of the original lessors  
40 and original lessees appearing in the affidavit.

41 (f) Upon recordation of a properly executed affidavit of termination, expiration, or  
42 cancellation, as defined in §36-4-9b(g) of this code, the recorded lease shall be rebuttably  
43 presumed to be terminated and canceled, but only with respect to the interests of the lessors  
44 identified in such affidavit, and shall no longer be considered notice to the public of the existence  
45 of the lease with respect to the interests of lessors identified in such affidavit unless successfully  
46 rebutted.

47 (g) An affidavit of termination, expiration, or cancellation of an oil or natural gas lease shall  
48 be in the form of an affidavit and contain the following information:

49 (1) The name and address of the affiant;

50 (2) The names and addresses of the lessor and lessee;

51 (3) A brief description of the land covered by the lease including, but without limitation,  
52 the state, county, tax district, tax map and parcel, watershed, historical farm name, or other  
53 identifying information;

54 (4) If there is or has been a well on the land, the name or API number of the well, if known  
55 to the affiant;

56 (5) The recording information for the lease, or a memorandum of lease, in the public record  
57 of the county or counties, along with the execution date of the lease and the names of the original  
58 lessors and original lessees under the lease;

59 (6) A brief recitation of the facts known to the affiant relating to the termination, expiration,  
60 or cancellation of the lease including relevant dates and evidence of service of notice, if available;

- 61           (7) A statement that the lessor complied with their duty to serve proper notice to the lessee  
62 under §36-4-9b(b) of this code and that the lessee failed to provide a timely challenge to the notice  
63 as provided in §36-4-9b(d) of this code; and  
64           (8) The notarized signature of the affiant.

NOTE: The purpose of this bill is to provide a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or canceled oil or natural gas leases; provide for a procedure by which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; require a lessee to timely notify the lessor in writing of a dispute; provide for a recordable affidavit of termination, expiration, or cancellation with specified contents; provide that with proper notification in the absence of a dispute, a recorded affidavit creates a rebuttable presumption of termination and cancellation for the oil or natural gas lease regarding certain interests and renders it insufficient notice of the recorded lease under the notice statute.

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