

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

### Committee Substitute

for

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for

## Senate Bill 554

SENATORS SMITH, CLEMENTS, PITSENBARGER, ROBERTS,

TRUMP, ROMANO, HAMILTON, AND MARONEY, *original*

*sponsors*

[Originating in the Committee on the Judiciary;

reported on February 11, 2020]



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 and providing a requirement that county clerks accept and record said affidavit.

*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) Unless a different time is required by the lease, within 60 days after the termination,  
2 expiration, or cancellation of an oil or natural gas lease, the lessee shall deliver to the lessor,  
3 without cost to the lessor, or his or her successors or assigns, a properly executed and notarized  
4 release of such lease in recordable form.

5 (b) If the lessee fails to provide a timely release as required by subsection (a) of this  
6 section, the lessor, or his or her successors or assigns, may serve notice of lessee's failure to  
7 provide such release. The notice shall be made in good faith and contain the following:

8 (1) A statement that:

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

11 (B) The lessee has a duty to provide a release pursuant to subsection (a) of this section;

12 and

13 (C) If the release, or a written dispute to such termination, expiration, or cancellation, is  
14 not received by the lessor, or his or her successors or assigns, from the lessee within 60 days  
15 from receipt of the notice, the lessor, or his or her successors or assigns, shall have the right to  
16 file an affidavit of termination, expiration, or cancellation under subsection (e) of this section;

17 (2) The name and address of the lessor, or his or her successors or assigns;

18 (3) A brief description of the land covered by the lease including, but not limited to, the  
19 state, county, tax district, tax map and parcel, watershed, historical farm name, or other identifying  
20 information;

21 (4) If there is a well on the land covered by the lease, the name or API number of the well,  
22 if known to the lessor, or his or her successors or assigns;

23 (5) If located in a unit, the name of the unit, if known, to the lessor, or his or her successors  
24 or assigns; and

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

28 (7) The notice when served shall include a service sheet showing the names and  
29 addresses of all persons upon whom the notice has been served.

30 (c) The notice shall be sent to the following persons as are shown by the lessor's  
31 reasonable examination of the public records: (1) Lessee; (2) lessee's assignee; (3) all other  
32 lessors; and (4) all other persons who have an interest in the leasehold estate or the minerals  
33 leased thereunder. A lessor's inability to afford notice to everyone to whom notice is to be given  
34 thereunder does not relieve a lessee of its obligation to respond.

35 (d) Service of notice under subsections (b) and (c) of this section shall be effected either  
36 personally or by certified mail to the recipient's last known business addresses, or, if service  
37 cannot reasonably be made by those means, by publication once a week for two weeks in a

38 newspaper of general circulation in the county or counties in which the lands covered by the lease  
39 are located.

40 (e) If, after receiving a notice of termination, expiration, or cancellation under subsections  
41 (b), (c), and (d) of this section, a lessee disputes in good faith that the oil or natural gas lease is  
42 terminated, expired, or canceled as stated in the notice, the lessee must, not more than 60 days  
43 after receipt of the notice, deliver a written dispute of the contents of the notice to the lessor, or  
44 his or her successors or assigns, detailing the good-faith basis for such dispute.

45 (f) A lessor, or his or her successors or assigns, who has served a notice under  
46 subsections (b), (c) and (d) of this section, and who fails to receive a timely dispute from a lessee  
47 under subsection (e) of this section, may record an affidavit of termination, expiration, or  
48 cancellation of an oil or natural gas lease in the office of the county clerk in the county or counties  
49 where the lands covered by the lease are situated. The county clerk of each county shall accept  
50 all such affidavits and shall enter and record them in the official records of that county and shall  
51 index each in the indices under the names, as they appear in the affidavit, of the original lessor,  
52 the original lessee, the lessor seeking the release, and the lessee identified in the affidavit.

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

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

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

57 (3) If located in a unit, the name of the unit, if known to the affiant;

58 (4) If there is a well on the land, the name or API number of the well, if known to the  
59 affiant;

60 (5) The recording information for the lease, or a memorandum of same, in the public record  
61 of the county or counties where the interest is located, along with the execution date of the lease,  
62 and the names of the original lessors and lessees under the lease;

63 (6) A brief recitation of the facts known to the affiant relating to the termination, expiration,  
64 or cancellation of the lease, including relevant dates;

65 (7) A statement that the lessor, or its successors or assigns, complied with his or her duty  
66 to serve proper notice to the lessee under subsections (b), (c), and (d) of this section and that the  
67 lessee failed to provide a timely challenge to the notice as provided in subsection (e) of this  
68 section. The lessor's affidavit shall have attached to it a copy of the notice made and served under  
69 subsections (b), (c), and (d) of this section including therewith a copy of the service sheet  
70 accompanying the notice; and

71 (8) The notarized signature of the affiant.

72 (h) A person who files an affidavit under this section shall serve a copy of the same upon  
73 all persons to whom notice was required to be given under subsections (b), (c), and (d) of this  
74 section in the same manner as notice was required to be served. The filing of an affidavit under  
75 this section does not constitute a modification of a lease, nor does it limit, waive, or prejudice any  
76 claim or defense of any party to the lease in law or in equity.

77 (i) A lessor's, or his or her successors or assigns, decision not to use the provisions of this  
78 section is not evidence that a lease is still in effect.