

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 81**

BY SENATORS SMITH AND ROMANO

[Introduced January 8, 2020; referred  
to the Committee on Energy, Industry, and Mining;  
and then to the Committee on 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 subsection (a) of this  
 7 section, the lessor may serve notice on the lessee of lessee’s failure to provide such release. The  
 8 notice 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 subsection (a) of this section;  
13 and

14           (C) If the release or a written challenge to the termination, expiration, or cancellation, is  
15 not received by lessor from the lessee within 90 days from receipt of this notice, the lessor, has  
16 the right to file an affidavit of termination, expiration, or cancellation under subsection (e) of this  
17 section.

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

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

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

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

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

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

35 (e) A lessor, who has served a notice under subsection (b) of this section and fails to  
36 receive a timely challenge from the lessee under subsection (d) of this section, may record an  
37 affidavit of termination, expiration, or cancellation of an oil or natural gas lease in the office of the  
38 county clerk in the county or counties where the lands covered by the lease are situated. The  
39 county clerk of each county shall accept all such affidavits and shall enter and record them in the  
40 official records of that county and shall index each in the indices under the names of the original  
41 lessors and original lessees appearing in the affidavit.

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

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

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

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

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

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

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

60 (6) A brief recitation of the facts known to the affiant relating to the termination, expiration,

- 61 or cancellation of the lease including relevant dates and evidence of service of notice, if available;
- 62 (7) A statement that the lessor complied with their duty to serve proper notice to the lessee
- 63 under subsection (b) of this section and that the lessee failed to provide a timely challenge to the
- 64 notice as provided in subsection (d) of this section; and
- 65 (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.