

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4500

(BY DELEGATES IRELAND, ANDERSON, R. SMITH, BORDER,
MILLER, AMBLER, COOPER, ZATEZALO, LYNCH
AND ELDRIDGE)

[Originating in the Committee on Finance,
February 27, 2016.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §22-6C-1, §22-6C-2, §22-6C-3, §22-6C-4, §22-6C-5 and §22-6C-6, all relating
3 to oil and gas royalty owner protections; providing methods of ensuring transparency in
4 determining the amount paid to a royalty interest owner by requiring certain information
5 be attached to the payment instrument provided to the interest owner by the producer;
6 defining terms; establishing a general rule for the accumulation of proceeds from
7 production and the payment of funds therefrom; requiring the timely payment of royalties
8 and establishing interest penalty for failure to timely pay an interest owner; requiring oil
9 and gas producers to report to the Department of Environmental Protection on a quarterly
10 basis all production data associated with a given well; requiring the Department of
11 Environmental Protection to collect all quarterly production data and organize such data
12 on the Department of Environmental Protection website; resolving conflicts between
13 division orders and leases; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §22-6C-1, §22-6C-2, §22-6C-3, §22-6C-4, §22-6C-5 and §22-6C-6, all to read
3 as follows:

ARTICLE 6C. HORIZONTAL WELL PRODUCTION ROYALTY TRANSPARENCY.

§22-6C-1. Legislative findings.

1 The Legislature finds the following:

2 (1) That clear and open communication is essential to the good faith and fair dealings
3 between producers of oil or natural gas and their lessors or the successors in interest to the
4 lessors;

5 (2) That oil and gas producers may have differing standards for the reporting of production
6 volumes and royalty proceeds to lessors or successors in interest to the lessors which may result
7 in uncertainty for interested parties for which such information may be useful or required for
8 responsible administration of their affairs; and

9 (3) That in order to create transparency in the reporting of production volumes and
10 proceeds from the sale of such volumes as to all interested parties a set of requirements should
11 be adopted in order to communicate to lessors or successors in interest to such lessors,
12 information regarding production volumes and proceeds received from the sale thereof so that
13 they may make informed decisions with regard to their minerals and leasehold estates.

§22-6C-2. Definitions.

1 The following words and phrases when used in this act shall have the meanings given to
2 them in this section unless the context clearly indicates otherwise:

3 (1) "Check stub" means the financial record attached to a check;

4 (2) "Division order" means an agreement signed by an interest owner directing the
5 distribution of proceeds from the sale of oil, gas, casing head gas or other related hydrocarbons.
6 The order shall direct and authorize the payor to make payment for the products taken;

7 (3) "Interest owner" means a person who is legally entitled to payment from the proceeds
8 derived from the sale of oil or gas from an oil or gas well located in this State;

9 (4) "Mcf" means an abbreviation denoting a 1,000 cubic feet of natural gas. A single unit
10 of Mcf is equal to approximately 1,000,000 Btu (British thermal units) of energy;

11 (5) "DTH" means an abbreviation for Dekatherm, meaning ten therms or 1,000,000 British
12 thermal units of energy; and

13 (6) "Horizontal Well" means a well as defined in section four, article six-a of this chapter.

§22-6C-3. Quarterly Reports of Oil and Gas Production.

1 A quarterly report of the volume of oil or natural gas produced from each horizontal well
2 shall be filed with the Chief of the Office of Oil and Gas on a form prescribed by the Secretary of
3 the West Virginia Department of Environmental Protection. All reported data shall be made
4 available to the public through the Office of Oil and Gas' website within a reasonable time after
5 such data is collected. The Secretary has the express authority pursuant to this article, as well
6 as pursuant to the powers enumerated in section two, article six, chapter twenty-two of this code

7 to promulgate rules and to amend the current rules to require timely quarterly reporting of
8 production data as well as to establish a process for collecting such data.

§22-6C-4. Payment information to interest owners.

1 Whenever payment is made for oil or gas production to an interest owner, whether
2 pursuant to a division order, lease, servitude, well unitization order, or other agreement, the
3 following information, at a minimum, shall be reported to the interest owner either through
4 inclusion on the check stub, through written attachment to the form of payment, or through other
5 verified means, including electronic transmission, unless the information is otherwise provided to
6 the interest owner on a regular basis:

7 (1) A name, number or combination of name and number that identifies the lease,
8 property, unit or well or wells for which payment is being made; and the county in which the lease,
9 property or well is located;

10 (2) Month and year of gas production;

11 (3) Total barrels of crude oil or number of Mcf, MMBTU or DTH of gas or volume of natural
12 gas liquids produced and sold;

13 (4) Price received per unit of oil or natural gas produced;

14 (5) Total amount of severance and other production taxes associated with the volume of
15 oil, natural gas or natural gas liquids produced, and other deductions provided under the terms of
16 the governing lease;

17 (6) Net value of total proceeds from the sale of oil, natural gas or natural gas liquids from
18 the property less taxes and deductions set forth in paragraph (5);

19 (7) Interest owner's interest, expressed as a decimal or fraction, in production from the
20 unit or well reported pursuant to paragraph (1);

21 (8) Interest owner's ratable share of the total value of the proceeds of the sale of oil,
22 natural gas or natural gas liquids prior to the deduction of taxes and other deductions set forth in
23 paragraph (5);

24 (9) Interest owner's ratable share of the proceeds from the sale of oil, natural gas or
25 natural gas liquids less the interest owner's ratable share of taxes and other deductions set forth
26 in paragraph (5); and

27 (10) Contact information of the producer of the oil, natural gas or natural gas liquids,
28 including a mailing address and telephone number.

§22-6C-5. Accumulation of proceeds from production.

1 (a) General rule. – Notwithstanding any of the other provisions of this article, proceeds
2 from production of oil, natural gas or natural gas liquids may be accumulated by the producer until
3 such time as proceeds attributable to the interest of the interested person achieves a threshold of
4 \$100 prior to making a remittance. Thereafter, the producer shall remitt to the interested persons
5 their ratable share of the proceeds from the sale of oil, natural gas or natural gas liquids produced
6 and sold from a well subject to the provisions hereof: *Provided*, That in any event, regardless of
7 the amount of money accumulated, the producer shall remit the ratable share of an interested
8 party not less than once annually.

9 (b) Owner to be paid. – Other than as set forth in preceding paragraph (a), all accumulated
10 proceeds shall be paid to the owner thereof immediately, or as soon as practicable thereafter,
11 upon cessation of production of oil, natural gas or natural gas liquids at a particular well or upon
12 relinquishment or transfer of the payment responsibility by a producer.

§22-6C-6. Timely payment of royalties; penalties.

1 Other than as provided in section 5 hereof, or as provided by written agreement of the
2 interest owner or an intervening order of a court of competent jurisdiction, all royalty payments
3 due and owing to an interest owner, whether pursuant to a division order, lease, servitude, well
4 unitization order, or other agreement, shall be tendered in a timely manner which shall not exceed
5 ninety days from the date that a sale of oil, natural gas or natural gas liquids is realized. Failure
6 to remit timely payment shall result in a mandatory additional payment of an interest penalty to be
7 set at the prime rate plus an additional two percent until such payment is made to be compounded

8 semiannually. The prime rate shall be the rate published on the day of the sale of oil, natural gas
9 or natural gas liquids in the *Wall Street Journal* reflecting the base rate on corporate loans posted
10 by at least seventy-five percent of the nation's thirty largest banks.

§22-6C-7. Conflicts.

1 If there is any conflict between a division order and an oil and gas lease, the terms and
2 conditions of the oil and gas lease shall control. A division order may not amend or supplement
3 the terms and conditions of an oil and gas lease.