WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4369

BY DELEGATES SHOTT, HIGGINBOTHAM, J. KELLY AND

Pethtel

[Introduced January 16, 2020; Referred to the

Committee on Energy then the Judiciary]

2020R2309

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 5 cancelled oil or natural gas leases; providing for a procedure by which a lessor may serve 6 notice to a lessee, if a lessee fails to timely provide the release; providing requirements 7 for the content of the notice; requiring a lessee to timely notify the lessor in writing of a 8 dispute regarding the termination, expiration, or cancellation of the oil and natural gas 9 lease; providing for an affidavit of termination, expiration, or cancellation with specified 10 contents; providing a requirement that county clerks accept and record said affidavit; and 11 providing that with proper notification by the lessor and in the absence of a dispute by the 12 lessee, an affidavit of termination, expiration, or cancellation, upon recordation by a county 13 clerk, creates a rebuttable presumption of termination and cancellation of the oil or natural 14 gas lease for certain interests and renders the recorded oil or natural gas lease as 15 insufficient notice of the recorded lease.

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.

(a) Not more than 30 days after the termination, expiration or cancellation of an oil or
natural gas lease, the lessee, shall deliver to the lessor, without cost to the lessor, or his or her
successors or assigns, a properly executed and notarized release of such lease in recordable
form.
(b) If the lessee fails to provide a timely release as required in §36-4-9b(a) of this code,
the lessor, or his or her successors or assigns, may serve notice on the lessee of lessee's failure
to provide such release. The notice shall contain the following:

8 (1) A statement that:

1

Intr HB

2020R2309

9	(A) The lease is terminated, expired, or canceled according to its terms, including the date
10	of such termination, expiration, or cancelation;
11	(B) The lessee has a duty to provide a release pursuant to §36-4-9b(a) of this code; and
12	(C) If the release, or a written challenge to such termination, expiration or cancelation, is
13	not received by lessor, or his or her successors or assigns, from the lessee within 30 days from
14	receipt of this notice, the lessor, or his or her successors or assigns, shall have the right to file an
15	affidavit of termination, expiration, or cancellation under §36-4-9b(e) of this code.
16	(2) The name and address of the lessor or his or her successors or assigns;
17	(3) A brief description of the land covered by the lease including, but without limitation, the
18	state, county, tax district, tax map and parcel, watershed, historical farm name, or other identifying
19	information;
20	(4) If there is a well on the land covered by the lease, the name or American Petroleum
21	Institute number of the well, if known to the lessor or his or her successors or assigns; and
22	(5) If located in a unit, the name of the unit, if known to the lessor or his or her successors
23	or assigns;
24	(6) 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 lessee under the lease.
27	(c) Service of notice under §36-4-9b(b) of this code shall be effected either personally or
28	by certified mail to the lessee's last known business address, or, if service cannot reasonably be
29	made by those means, by publication as a Class II legal advertisement pursuant to §59-3-1 et
30	seq. of this code in a newspaper of general circulation in the county or counties in which the lands
31	covered by the lease are located.
32	(d) If, after receiving a notice of termination, expiration, or cancellation under §36-4-9b(b)
33	of this code, the lessee disputes in good faith that the oil or natural gas lease is terminated,
34	expired, or canceled as stated in the notice, the lessee must, not more than 30 days after receipt

2

35	of the notice, deliver a written challenge to the lessor, or his or her successors or assigns, detailing
36	the good faith basis for such dispute.
37	(e) A lessor, or his or her successors or assigns, who has served a notice under §36-4-
38	9b(b) of this code and fails to receive a timely challenge from the lessee under §36-4-9b(d) of this
39	code may record an affidavit of termination, expiration, or cancellation of an oil or natural gas
40	lease in the office of the county clerk in the county or counties where the lands covered by the
41	lease are situated. The county clerk of each county shall accept all such affidavits and shall enter
42	and record them in the official records of that county and shall index each in the indices under the
43	names, as they appear in the affidavit, of the original lessor, the original lessee, the lessor seeking
44	the release, and the lessee identified in the affidavit.
45	(f) Upon recordation of a properly executed affidavit of termination, expiration, or
46	cancellation, as defined in §36-4-9b(g) of this code, the recorded lease shall be rebuttably
47	presumed to be terminated and canceled and shall not be notice to the public of the existence of
48	the lease or of any interest therein or rights thereunder.
49	(g) An affidavit of termination, expiration, or cancellation of an oil or natural gas lease shall
50	be in the form of an affidavit and contain the following information:
51	(1) The name and address of the affiant,
52	(2) The names and addresses of the lessor and lessee,
53	(3) If located in a unit, the name of the unit, if known to the affiant,
54	(4) If there is a well on the land, the name or American Petroleum Institute number of the
55	well, if known to the affiant,
56	(5) The recording information for the lease, or a memorandum of same, 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 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:

3

- 61 (7) A statement that the lessor, or his or her successors or assigns, complied with its duty
- 62 to serve proper notice to the lessee under §36-4-9b(b) of this code and that the lessee failed to
- 63 provide a timely challenge to the notice as provide in §36-4-9b(d) of this code, and
- 64 (8) The notarized signature of the affiant.
- 65 (h) The lessor, or his or her successors or assigns, is not required to use the provisions of
- 66 this section to establish that a lease is terminated, expired, cancelled or otherwise no longer in
- 67 effect. A lessor's, or his or her successors' or assigns', decision not to use the provisions of this
- 68 section is not evidence that a lease is still in effect.

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 cancelled 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.

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