

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 650

BY SENATOR NELSON

[Originating in the Committee on Energy, Industry,
and Mining; reported on February 18, 2022]

1 A BILL to amend and reenact §37B-1-4 of the Code of West Virginia, 1931, as amended, relating
2 to amending the number of royalty owners required for utilization by an operator for the
3 lawful use and development by cotenants; and correcting the format of some phrases.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. MINERAL DEVELOPMENT BY A MAJORITY OF COTENANTS.

**§37B-1-4. Lawful use and development by cotenants; election of interests; reporting and
remitting of interests of unknown or unlocatable cotenants; establishment of terms
and provisions for development; and merging of surface and oil and gas.**

1 (a) ~~In cases where there are seven or more royalty owners, if~~ If an operator or owner
2 makes or has made reasonable efforts to negotiate with all royalty owners in an oil or natural gas
3 mineral property and royalty owners vested with at least three fourths of the right to develop,
4 operate, and produce oil, natural gas, or their constituents consent to the lawful use or
5 development of the oil or natural gas mineral property, the operator's or owner's use or
6 development of the oil or natural gas mineral property is permissible, is not waste, and is not
7 trespass. In that case, the consenting cotenants and their lessees, operators, agents, contractors,
8 or assigns are not liable for damages for waste or trespass due to the lawful use or development
9 and shall pay the nonconsenting cotenants in accordance with subsections (b), ~~and (c), and (e)~~
10 of this section, reserve the amounts specified in subsection (d) and (e) of this section for the
11 benefit of unknown or unlocatable interest owners, and report and remit the reserved interests as
12 provided in subsection (d) of this section.

13 (b) A nonconsenting cotenant is entitled to receive, based on his or her election, either:

14 (1) A pro rata share of production royalty, paid on the gross proceeds received at the first
15 point of sale to an unaffiliated third-party purchaser and free of post-production expenses, equal
16 to the highest royalty percentage paid to his or her consenting cotenants in the same mineral
17 property, under a bona fide, arms-length lease transaction and lease bonus and delay rental
18 payments or other non-royalty mineral payments, calculated on a weighted-average net mineral

19 acre basis; or

20 (2) To participate in the development and receive his or her pro rata share of the revenue
21 and cost equal to his or her share of production attributable to the tract or tracts being developed
22 according to the interest of such nonconsenting cotenant, exclusive of any royalty or overriding
23 royalty reserved in any lease, assignments thereof, or agreements relating thereto, after the
24 market value of such nonconsenting cotenant's share of production, exclusive of such royalty and
25 overriding royalty, equals double the share of such costs payable or charged to the interest of
26 such nonconsenting cotenant.

27 (c) A nonconsenting cotenant shall have 45 days following the operator's written delivery
28 of its best and final lease offer in which to make his or her election for either a production royalty
29 or a revenue share as specified in subsection (b) of this section. If the nonconsenting cotenant
30 fails to deliver a written election to the operator prior to the expiration of ~~such~~ the 45-day period,
31 he or she shall be deemed to have made the election set forth in subdivision (1), subsection (b)
32 of this section. Within 30 days after a nonconsenting cotenant has chosen or is deemed to have
33 chosen the production royalty option, the nonconsenting cotenant shall have the right to appeal
34 to the ~~Commission~~ commission regarding the issue of whether there has been compliance with
35 subdivision (1) of subsection (b) of this section, to verify the highest royalty paid in the same
36 mineral property and the value for the lease bonus and delay rental payments: *Provided, however,*
37 That the operations upon the parcel may continue during the proceedings.

38 (d) Unknown or unlocatable interest owners are deemed to have made the election
39 provided by subdivision (1), subsection (b) of this section and are only entitled to receive the
40 amount provided by that subdivision. Within 120 days from the date upon which an amount is
41 reserved for an unknown or unlocatable interest owner pursuant to subsection (a) of this section,
42 the consenting cotenants and their lessees, operators, agents, contractors, or assigns shall make
43 a report to the State Treasurer as the ~~Unclaimed Property~~ unclaimed property administrator and
44 each calendar quarter, thereafter, concerning each reserved interest for each unknown or

45 unlocatable interest owner and shall concurrently remit the amount reserved, in accordance with
46 the provisions of §37B-2-1 *et seq.* and §36-8-1 *et seq.* of this code and as determined by the
47 State Treasurer. The quarterly report and remittances shall be submitted by the first day of the
48 month following each calendar quarter.

49 (e) Unless otherwise agreed to in writing or defined by this section, any nonconsenting
50 cotenant and any unknown or unlocatable interest owner who elects or is deemed to elect a
51 production royalty under subdivision (1), subsection (b) of this section is subject to and shall
52 benefit from the other terms and provisions defined by the lease executed by a consenting
53 cotenant which contains terms and provisions most favorable to the nonconsenting cotenant or
54 the unknown or unlocatable interest owner: *Provided*, That nonconsenting cotenants and
55 unknown or unlocatable interest owners shall not be subject to or liable under any warranty of
56 title, jurisdictional or choice of law provisions, arbitration provisions, injection well provisions,
57 disposal well provisions, and storage provisions: *Provided, further however*, That consenting
58 cotenants and their lessees, operators, agents, contractors, or assigns shall only develop the
59 specifically targeted stratigraphic formation and 100 feet above and below said formation;
60 nonconsenting cotenants and unknown or unlocatable interest owners will retain all rights to all
61 other formations unless or until reasonable efforts are made to renegotiate under this section for
62 each additional formation. If a consenting cotenant has made a lease only for the targeted
63 formation, in that case the nonconsenting cotenants and unknown and unlocatable cotenants
64 shall receive the highest royalty, bonus and delay rental in the lease which was executed for the
65 targeted formation.

66 (f) Unless otherwise agreed to in writing or defined by this section, a nonconsenting
67 cotenant who elects to participate under subdivision (2), subsection (b), of this section, shall be
68 subject to and shall benefit from other terms and provisions determined to be just and reasonable
69 by the Oil and Gas Conservation Commission in a manner similar to the provisions of §22C-9-
70 7(b)(5)(B) of this code governing deep wells. The commission may propose rules for legislative

71 approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement and
72 make effective the provisions of this section and the powers and authority conferred and the duties
73 imposed upon the commission under the provisions of this section. Notwithstanding the
74 determination of participation terms by the commission, an operator may proceed with the
75 development of oil, natural gas, or their constituents pursuant to this section.

76 (g) After seven years from the date of the first report to the ~~Treasurer~~ treasurer, a bona
77 fide surface owner may file an action to quiet title to the interests of all unknown and unlocatable
78 interest owners of the oil and natural gas estate underlying the surface tract. To the extent relevant
79 and practical, such action shall follow the provisions of §55-12A-1 *et seq.* of this code. Upon
80 presentation of sufficient proof, a bona fide surface owner shall be entitled to receive a special
81 commissioner's deed transferring title to the interest of any or all unknown or unlocatable interest
82 owners in an oil and natural gas estate which underlies the surface tract. The surface owner shall
83 only be entitled to their proportionate share of all future proceeds and is not entitled to any of the
84 accrued funds which have been remitted to the ~~Treasurer~~ treasurer prior to the execution of the
85 special commissioner's deed. The unknown or unlocatable interest owners are not entitled to any
86 amounts paid to the grantees of the special commissioner's deed after delivery of said deed.