

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 686

By Senators Rose and Phillips

[Reported February 3, 2026, from the Committee on
Energy, Industry, and Mining]

1 A BILL to amend and reenact §37-7-2 of the Code of West Virginia, 1931, as amended; and to
2 amend the code by adding a new chapter, designated §37D-1-1, §37D-1-2, §37D-1-3,
3 §37D-1-4, §37D-1-5, §37D-1-6, §37D-2-1, §37D-2-2, §37D-2-3, §37D-2-4, §37D-2-5,
4 §37D-2-6, and §37D-2-7, relating to modifying the conditions for lawful mining, extraction,
5 or production of coal in this state regarding co-tenants to a coal estate; providing an
6 exception to waste and trespass for certain coal estates; providing a short title; providing
7 declarations of public policy and legislative findings; providing definitions; providing that, in
8 cases where one or more owners consent to the lawful use or development of coal land,
9 the operator's mining, use, or development of the coal estate is permissible, is not waste,
10 and is not trespass; providing that nonconsenting co-tenants are entitled to receive a
11 production royalty; requiring certain interests owned by unknown or unlocatable owners be
12 reserved, reported, and deposited in a fund administered by the State Treasurer; providing
13 a mechanism for surface owners to acquire title to certain severed coal interests; providing
14 limitations of liability for certain nonconsenting co-tenants; preserving certain common law
15 rights; requiring certain provisions be read in conjunction and not in conflict with the West
16 Virginia Uniform Unclaimed Property Act; providing certain reporting requirements and
17 administrative duties; creating the Unknown and Unlocatable Coal Interest Owners Fund,
18 to be administered by the State Treasurer; permitting investment of moneys in the fund
19 with the West Virginia Board of Treasury Investments; requiring payment of lawful claims of
20 unknown and unlocatable interest owners; permitting deduction of certain expenses;
21 requiring that certain funds be transferred to the Special Reclamation Fund; providing for
22 certain notice requirements; providing for the crediting of certain amounts to an owner's
23 account and payment of certain interest earned; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

CHAPTER 37. REAL PROPERTY.

ARTICLE 7. WASTE.

§37-7-2. Waste by ~~cotenant~~ co-tenant.

1 If a tenant in common, joint tenant, or parcener commits waste, he or she is liable to his or
2 her ~~cotenant~~ co-tenants, jointly or severally, for damages. The lawful use or development of oil or
3 natural gas and their constituents in compliance with the provisions of §37B-1-1, *et seq.* of this
4 code is not the commission of waste. The lawful mining, extraction, or production of coal in
5 compliance with the provisions of §37D-1-1, *et seq.* of this code is not the commission of waste.

CHAPTER 37D: COAL DEVELOPMENT.

ARTICLE 1. COAL CO-TENANCY MODERNIZATION AND MINERS PROTECTION

ACT.

§37D-1-1.	Short	title.
------------------	--------------	---------------

1 This article is known and may be cited as the Coal Co-tenancy Modernization and Miners
2 Protection Act.

§37D-1-2. Legislative findings; declaration of public policy.

1 The Legislature finds that it is the public policy of this state and in the public interest to:

2 (1) Promote the safe and efficient mining, extraction, and production of coal in this state;

3 (2) Protect the health and safety of coal miners;

4 (3) Prohibit the waste of coal;

5 (4) Encourage the maximum recovery of coal;

6 (5) Safeguard, protect, and enforce the correlative rights of coal producers and coal

7 owners;

8 (6) Protect the rights of surface owners; and

9 (7) Promote the execution and performance of contracts lawfully made.

§37D-1-3. Definitions.

1 As used in this article, the following words and phrases have the meanings ascribed to

2 them.

3 "Coal" means a sedimentary deposit composed predominantly of carbon that is readily
4 combustible and includes but is not limited to anthracite, bituminous, semibituminous,
5 subbituminous, and lignite coal.

6 "Coal land" means the coal estate in land containing coal, for which a present ownership
7 interest has been leased, purchased in fee, or otherwise acquired by an operator.

8 "Consenting co-tenant" means a tenant in common, joint tenant, or parcener having a
9 present ownership interest in coal land who consents in writing to the lawful production of the coal
10 land through a bona fide lease made in an arms-length transaction.

11 "Nonconsenting co-tenant" means a tenant in common, joint tenant, or parcener having a
12 present ownership interest in coal land who, for any reason, does not consent to the lawful use of
13 coal land agreed to by consenting co-tenants owning a present ownership interest in the coal.
14 Nonconsenting co-tenant includes, but is not limited to, an unknown or unlocatable interest owner.

15 "Operator" means any owner of an interest in the right to mine, develop, and produce coal
16 from coal land, and to appropriate the coal produced therefrom.

17 "Person" means any individual, corporation, partnership, joint venture, limited liability
18 company, association, receiver, trustee, executor, administrator, guardian, fiduciary, or other
19 representative of any kind, and includes any government or any political subdivision or any agency
20 thereof.

21 "Pro rata share" means the proportion that the net acreage of a nonconsenting co-tenant's
22 ownership interest bears to the total net acreage in a coal estate.

23 "Unknown or unlocatable interest owner" means a person vested with a present ownership
24 interest in coal land whose identity or present location cannot be determined from: (i) A diligent
25 search of the records of the sheriff, assessor, clerk of the county commission, and clerk of the
26 circuit court in each county in which the interest is located; (ii) a reasonable inquiry in the vicinity of
27 the owner's last known place of residence; (iii) a diligent inquiry into the known interest owners in

the same tract; and (iv) a reasonable attempt to locate or identify the person utilizing publicly available Internet resources. Unknown or unlocatable interest owner includes the person's unknown heirs, successors, and assigns.

§37D-1-4. Lawful use and development by co-tenants; reporting and remitting of interests of unknown or unlocatable interest owners; establishing terms and provisions for development; and merging of surface and coal.

(a) An operator's mining, use, or development of the coal estate is permissible, is not waste, and is not trespass if:

(1) The operator has made reasonable efforts to negotiate with all known, locatable owners of coal land; and

(2) At least three-fourths of the owners vested with a present ownership interest in the right to mine, develop, lease, operate, and produce coal have consented to the lawful use or development of the coal land.

(b) If the criteria in subdivisions (1) and (2) of subsection (a) of this section have been satisfied, any consenting co-tenant and his or her lessees, operators, agents, contractors, or assigns:

(1) Are not liable for damages for waste or trespass due to the lawful use or development of the coal estate;

(2) Shall pay any nonconsenting co-tenant in accordance with subsections (c) and (e) of this section;

(3) Shall reserve the amounts specified in subsections (d) and (e) of this section for the benefit of unknown or unlocatable interest owners; and

(4) Shall report and remit the reserved interests as provided in subsection (d) of this section.

(c) A nonconsenting co-tenant is entitled to receive a *pro rata* share of production royalty, paid on the gross proceeds received at the first point of sale to an unaffiliated third-party

purchaser, equal to the greater of:

(1) The highest royalty percentage paid to any consenting co-tenant in the same coal land;

or

(2) Six percent.

(d) An operator shall:

(1) Submit a report concerning each reserved interest for each unknown or unlocatable interest owner to the State Treasurer, as the unclaimed property administrator, not more than 120 days from the date upon which any amount is reserved for an unknown or unlocatable interest owner pursuant to subsections (a) and (b) of this section and §37D-2-1 et seq. of this code, and each calendar quarter thereafter;

(2) Concurrently with the report required in subdivision (1) of this subsection, remit the amount reserved in accordance with the provisions of §37D-2-1 et seq. and §36-8-1 et seq. of this code and as determined by the State Treasurer; and

(3) Submit any quarterly report and remittance required by this subsection by the first day of the month following each calendar quarter.

(e) Unless otherwise agreed to in writing or defined by this section, any nonconsenting co-tenant or unknown or unlocatable interest owner:

(1) Is subject to and shall benefit from the terms and provisions most favorable to the nonconsenting co-tenant or unknown or unlocatable interest owner that are contained in any lease executed by a consenting co-tenant; and

(2) Is not subject to nor liable under any warranty of title, jurisdictional or choice of law provision, or arbitration provision contained in any lease executed by a consenting co-tenant.

(f) A nonconsenting co-tenant may challenge an operator's representations regarding the highest royalty the operator has paid in the same coal estate pursuant to subsection (c) of this section, and the lease terms and provisions pursuant to subsection (e) of this section, by filing a petition for accounting in the circuit court in the county in which the coal estate is located. At the

operator's discretion, disclosure of the payment terms may be made under seal. While a petition is pending:

(1) Production of the coal estate may continue during the proceedings; and

(2) Proceedings regarding the petition shall be limited in scope to the disclosure of the payment terms or other terms and provisions the operator has made pertaining to the same coal land.

(g) After seven years from the date of the first report to the State Treasurer, a surface owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the coal estate. To the extent relevant and practical, the action shall follow the provisions of §55-12A-1 *et seq.* of this code.

(1) Upon presentation of proof sufficient in the court's discretion, a surface owner is entitled to receive a special commissioner's deed transferring title to the interest of any unknown or unlocatable interest owner in a coal estate which underlies the surface tract.

(2) A surface owner is entitled only to his or her proportionate share of all future proceeds and is not entitled to any of the accrued funds that have been remitted to the State Treasurer prior to the execution of the special commissioner's deed.

(3) An unknown or unlocatable interest owner is not entitled to any amounts paid to any grantee of the special commissioner's deed after that deed is recorded with the clerk of the county commission of the county in which the coal estate is located.

§37D-1-5. Limitations of liability for nonconsenting co-tenants.

A nonconsenting co-tenant including, but not limited to, any unknown or unlocatable interest owner:

(1) Is not liable for any bodily injury, property damage, warranty of title, or environmental claim arising out of site preparation, coal extraction, maintenance, reclamation, or any other operation regarding coal produced from the co-tenant's property; and

(2) Is liable for his or her intentional acts.

§37D-1-6. Surface use.

1 It is the intent of the Legislature in enacting this article to leave unchanged the common law
2 of this state as it relates to a coal owner's right to utilize the land surface for extracting coal.

ARTICLE 2. UNKNOWN AND UNLOCATABLE COAL INTEREST OWNERS ACT.

§37D-2-1. Short title.

1 This article shall be known and may be cited as the Unknown and Unlocatable Coal
2 Interest Owners Act.

§37D-2-2. Relationship between unknown and unlocatable interests and unclaimed property.

1 The provisions of this article shall be read and applied in conjunction with and not in conflict
2 with the provisions of the West Virginia Uniform Unclaimed Property Act in §36-8-1 *et seq.* of this
3 code.

§37D-2-3. Definitions.

1 As used in this article:

2 (1) Terms and phrases have the meanings provided in §36-8-1 *et seq.* and §37D-1-1 *et*
3 *seq.* of this code;

4 (2) "Fund" means the Unknown and Unlocatable Coal Interest Owners Fund created in
5 §37D-2-5 of this article; and

6 (3) "Reserved interests" means all amounts payable for the use, development, extraction,
7 production, or sale of coal due to an unknown or unlocatable interest owner. Reserved interests
8 includes all royalties and any other amounts due and payable to an unknown or unlocatable
9 interest owner based on the mining, extraction, production, or sale of coal.

§37D-2-4. Report of unknown and unlocatable interest owners.

1 (a) A holder shall:

2 (1) Make a report to the administrator each calendar quarter concerning reserved interests
3 for each unknown or unlocatable interest owner;

4 (2) Concurrently with the report required by subdivision (1) of this subsection, remit to the
5 administrator the amount of the reserved interests; and

6 (3) Submit the report and remittances required by this subsection by the first day of the
7 month following each calendar quarter.

8 (b) A report required by this section shall contain:

9 (1) A full legal description of the coal interest and any other information that identifies the
10 interest;

11 (2) If known, the name, last known address, and Social Security number or taxpayer
12 identification number of any unknown or unlocatable interest owner or apparent owner;

13 (3) Any date on which reserved interests became payable with respect to the property; and

14 (4) Any other information the administrator may prescribe by rule as necessary for the
15 administration of this article.

16 (c) Prior to the date a report is due to be filed, the holder of reserved interests may request
17 the administrator extend the filing deadline. The administrator may grant an extension for good
18 cause.

19 (d) A holder is not liable to any person for wrongful use or appropriation of an interest
20 owner's personal information by another person described in the reports required by this section.

21 (e) A holder's obligations regarding any unknown or unlocatable interest owner, as
22 required by this chapter, are satisfied when the report and remittances required by this section are
23 submitted to the administrator.

§37D-2-5. Unknown and Unlocatable Coal Interest Owners Fund; duties of the State
Treasurer.

1 (a) The Unknown and Unlocatable Coal Interest Owners Fund is created in the State
2 Treasury as a special revenue and interest-bearing account to be administered by the State
3 Treasurer for the purposes prescribed in this article.

4 (b) The administrator shall deposit all moneys received pursuant to §37D-1-1 et seq. and

§37D-2-1 et seq. of this code into the fund. All expenditures from the fund shall be in accordance with this article.

(c) The administrator shall invest the moneys in the fund with the West Virginia Board of Treasury Investments. All earnings shall accrue to the fund and are available for expenditure in accordance with this article.

(d) The administrator shall pay all lawful claims of unknown and unlocatable interest owners from the fund.

(e) The administrator may expend moneys from the fund for the following expenses:

(1) Expenses incurred identifying, locating, and returning property to owners, including without limitation the costs of postage, publication, and real estate or coal title investigations within this state and in other jurisdictions;

(2) Reasonable administrative fees, not to exceed 4 percent; and

(3) Expenses incurred in examining the holders' reports and collecting the reserved interests.

(f) The administrator shall determine the amount that is transferrable from the fund after: (i) Deducting the claims paid and the expenses provided in subsection (e) of this section; and (ii) maintaining a sum of money which the administrator estimates will be needed to pay claims and expenses duly allowed from the reserved interests received and deposited into the fund. Beginning July 1, 2027, and semiannually on or before January 1 and July 1 thereafter, the administrator shall transfer the amount he or she determines is transferrable to the Special Reclamation Fund created in section §22-3-11 of this code and expended for the purposes provided by that section.

(g) At least 60 days prior to the seven-year anniversary of the first report to the administrator concerning the property of an unknown or unlocatable interest owner, the administrator shall publish a notice in a newspaper of general circulation in each county of this state where the coal is located once a week for two successive weeks as defined by §59-3-1 of this

code. The publication shall provide notice of the impending seven-year anniversary to all possible surface owners and unknown or unlocatable interest owners.

§37D-2-6. Crediting interest to an owner's account.

(a) The administrator shall credit the amount of interest earned to each owner's account and shall pay the interest earned when a claim is paid on that account, except as provided in subsection (b) of this section.

(b) The administrator is not required to pay the owner any income or gain realizing or accruing on the account after the third anniversary of the payment of the owner's interest to the administrator.

(c) This section does not entitle an owner to interest on property that did not realize or accrue income or gain while in the administrator's possession.

§37D-2-7. Rules.

(a) The administrator shall propose rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code to implement the provisions of this article.

(b) The Legislature finds that an emergency exists and, therefore, on or before September 1, 2026, the administrator shall promulgate an emergency rule to implement the provisions of this article in accordance with §29A-3-1 *et seq.* of this code.