

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 646

BY SENATOR CARMICHAEL

[Introduced February 20, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §37-7-2 of the Code of West Virginia, 1931, as amended, relating
 2 to the prevention of waste by cotenants; providing that consent to a lawful use of mineral
 3 property by a majority of cotenants is not waste and does not constitute a trespass;
 4 providing that cotenant is not liable for damages as a result of the lawful use of mineral
 5 property consented to by a majority of the ownership interest when an accounting is
 6 provided and a pro rata share of revenues and costs are distributed to or reserved for
 7 each cotenant, as applicable; allowing joint development of oil and natural gas wells by
 8 horizontal drilling under certain circumstances; addressing production royalties where
 9 multiple contiguous leases are developed; and providing for severability of provisions.

Be it enacted by the Legislature of West Virginia:

1 That §37-7-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 to read as follows:

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant; lawful use; trespass; development; severability.

1 (a) If a tenant in common, joint tenant, or parcener ~~commit~~ commits waste, he or she ~~shall~~
 2 ~~be~~ is liable to his or her cotenants, jointly or severally, for damages.

3 (b) If the tenants in common, joint tenants or parceners representing a majority of the
 4 ownership interest in mineral property consent to a lawful use of the mineral property, that use is
 5 permissible, is not waste, and is not a trespass. In that case, the cotenant, and their lessees,
 6 operators, agents, contractors or assigns, are not liable for damages if:

7 (1) An accounting of a pro rata share of the revenues and costs resulting from the lawful
 8 use is provided to each cotenant equal to its proportionate ownership interest in the property; and

9 (2) Pro rata shares of each cotenant are distributed or, in the case of a cotenant that
 10 cannot be located, are reserved for that cotenant.

11 (c) Without limiting subsection (b) of this section, operators of oil and natural gas wells
 12 should maximize efficient extraction of oil and natural gas reserves and prevent waste by using

13 horizontal drilling technology where practical based on the geology and the nature of the reserves.
14 Where an operator or operators have the right to develop multiple contiguous oil and gas leases
15 separately, the operator may develop these leases jointly by horizontal drilling unless the
16 development is expressly prohibited by the terms of a lease. The operator's use of any surface
17 tract overlying the jointly developed leases shall be permissible for that joint development. In
18 determining the royalty where multiple contiguous leases are developed, in the absence of an
19 agreement by all affected royalty owners, the production shall be allocated to each lease in the
20 proportion that the net acreage of each lease bears to the total net acreage of the jointly developed
21 tracts.

22 (d) The provisions of this section are severable and, accordingly, if any part of this section
23 is adjudged to be unconstitutional or invalid, that determination does not affect the continuing
24 validity of the remaining provisions of this section.

NOTE: The purpose of this bill is to provide that a lawful use of mineral property that has been consented to by a majority of the ownership interests in the property is permissible, is not waste, and is not a trespass. The bill provides that cotenants are not liable for damages for the use of their mineral property when an accounting is provided and the pro rata share of revenues and costs are distributed to each cotenant or reserved for unlocatable cotenants. The bill promotes efficient extraction of oil and gas resources and prevents waste by authorizing the development of horizontal drilling of multiple adjacent leases held by the same operator. Finally, the bill provides that the provisions of this section are severable.

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