

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 554

BY SENATORS SMITH, CLEMENTS, PITSENBARGER,

ROBERTS, TRUMP, ROMANO, AND HAMILTON

[Introduced January 21, 2020; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on the Judiciary]

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.

1 (a) Not more than 30 days after the termination, expiration or cancellation of an oil or
 2 natural gas lease, the lessee, shall deliver to the lessor, without cost to the lessor, or his or her
 3 successors or assigns, a properly executed and notarized release of such lease in recordable
 4 form.

5 (b) If the lessee fails to provide a timely release as required by subsection (a) of this
 6 section, the lessor, or his or her successors or assigns, may serve notice on the lessee of lessee's
 7 failure to provide such release. The notice shall contain the following:

8 (1) A statement that:

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 subsection (a) of this section;
12 and

13 (C) If the release, or a written challenge to such termination, expiration or cancelation, is
14 not received by lessor, or its successors or assigns, from the lessee within 30 days from receipt
15 of this notice, the lessor, or his or her successors or assigns, shall have the right to file an affidavit
16 of termination, expiration, or cancellation under subsection (e) of this section;

17 (2) The name and address of the lessor or his or her successors or assigns;

18 (3) A brief description of the land covered by the lease including, but without limitation, the
19 state, county, tax district, tax map and parcel, watershed, historical farm name, or other identifying
20 information;

21 (4) If there is a well on the land covered by the lease, the name or API number of the well,
22 if known to the lessor or his or her successors or assigns;

23 (5) If located in a unit, the name of the unit, if known to the lessor or his or her successors
24 or assigns; and

25 (6) The recording information for the lease, or a memorandum of lease, in the public
26 records of the county or counties, along with the execution date of the lease, and the identity of
27 the original lessor and lessee under the lease.

28 (c) Service of notice under subsection (b) of this section shall be effected either personally
29 or by certified mail to the lessee's last known business address, or, if service cannot reasonably
30 be made by those means, by publication once a week for two weeks in a newspaper of general
31 circulation in the county or counties in which the lands covered by the lease are located.

32 (d) If, after receiving a notice of termination, expiration, or cancellation under subsection
33 (b) of this section, 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

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 subsection
38 (b) of this section and fails to receive a timely challenge from the lessee under subsection (d) of
39 this section may record an affidavit of termination, expiration, or cancellation of an oil or natural
40 gas lease in the office of the county clerk in the county or counties where the lands covered by
41 the lease are situated. The county clerk of each county shall accept all such affidavits and shall
42 enter and record them in the official records of that county and shall index each in the indices
43 under the names, as they appear in the affidavit, of the original lessor, the original lessee, the
44 lessor seeking 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 subsection (g) of this section, 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 API number of the well, if known to the
55 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;

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