

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 650

BY SENATOR NELSON

[Passed March 05, 2022; in effect 90 days from passage]

1 AN ACT to amend and reenact §37B-1-4 of the Code of West Virginia, 1931, as amended, relating
2 generally to altering the applicability of the Cotenancy Modernization and Majority
3 Protection Act; eliminating the pre-condition for applicability of the act which requires
4 seven or more royalty owners; and correcting internal citations.

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

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

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

17 payments or other non-royalty mineral payments, calculated on a weighted-average net mineral
18 acre basis; or

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

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

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

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

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2022.

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Governor