

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

HOUSE BILL No. 352

(By Mr. Blue, by request)



PASSED March, 5, 1947

In Effect from Passage



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AN ACT to amend and reenact article four, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended by chapter sixty-three, acts of the Legislature, regular session, one thousand nine hundred forty-three, providing for the cancellation for the non-payment of delay rental on oil and/or gas leases after demand therefor; also barring any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any oil and/or gas lease heretofore executed whereon delay rental has not been paid after demand therefor; and providing for the service and filing of notice of such demand; to be designated section nine-a.

Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended

by repealing the present section nine-a thereof, and substituting therefor a new section, to be designated section nine-a, to read as follows:

Section 9-a. *Cancellation of Oil and/or Gas Leases for Non-Payment of Delay Rental After Demand Therefor, and Barring Any Action or Proceeding in the Courts of this State for the Purpose of Enforcing or Perpetuating During the Term Thereof any Oil and/or Gas Lease Heretofore Executed for the Non-payment of Delay Rental After Demand Therefor.*—Except in the case where operations for the drilling of a well are being conducted thereunder, any undeveloped lease for oil and/or gas in this state hereafter executed in which the consideration therein provided to be paid for the privilege of postponing actual drilling or development or for the holding of said lease without commencing operations for the drilling of a well, commonly called delay rental, has not been paid when due according to the terms of such lease, or the terms of any other agreement between lessor and lessee, shall be null and void as to such oil and/or gas unless payment thereof shall be made within

19 sixty days from the date upon which demand for pay-
20 ment in full of such delay rental has been made by the
21 lessor upon the lessee therein, as hereinafter provided,
22 except in such cases where a bona fide dispute shall exist
23 between lessor and lessee as to any amount due under
24 such lease.

25 No person, firm, corporation, partnership or associa-
26 tion shall maintain any action or proceeding in the courts
27 of this state for the purpose of enforcing or perpetuating
28 during the term thereof any lease heretofore executed
29 covering oil and/or gas, as against the owner of such oil
30 and/or gas, or his subsequent lessee, if such person, firm,
31 corporation, partnership or association has failed to pay
32 to the lessor such delay rental in full when due according
33 to the terms thereof, for a period of sixty days after
34 demand for such payment has been made by the lessor
35 upon such lessee, as hereinafter provided.

36 The demand for payment referred to in the two pre-
37 ceding paragraphs shall be made by notice in writing and
38 shall be sufficient if served upon such person, firm, part-
39 nership, association, or corporation whether domestic or

40 foreign, whether engaged in business or dissolved, in the
41 manner provided for service of notice under article two,
42 chapter fifty-six of the code, or section seventy-one,
43 article one, chapter thirty-one of the code, or if the holder
44 of such lease be a nonresident of the state or cannot be
45 found within the state after diligent search, service
46 upon him may be had by publication at least once a week
47 for three successive weeks in any newspaper published
48 in the county wherein such oil and/or gas property is
49 situated, in whole or in part, or if no newspaper is pub-
50 lished in such county, then in any adjoining county.

51 A copy of such notice showing the required service or
52 publication thereof shall be filed with the clerk of the
53 county court in which such lease is recorded, or in which
54 such oil and/or gas property is located in whole or in
55 part, and upon payment of a fee of fifty cents for each
56 such lease, said clerk shall permanently file such notice
57 alphabetically under the name of the first lessor appear-
58 ing in such lease and shall stamp or write upon the
59 margin of the record in his office of such lease hereafter
60 executed the words "cancelled by notice"; and as to any

61 such lease executed before the enactment of this statute
62 said clerk shall file such notice as hereinbefore provided
63 and shall stamp or write upon the margin of the record
64 of such lease in his office the words "enforcement barred
65 by notice".

66 The word "lessor" shall include the original lessor, as
67 well as his or its successors in title to the oil and/or gas
68 involved. The word "lessee" shall include the original
69 lessee, his or its assignee properly of record at the time
70 such demand is made, and his or its successors, heirs, or
71 personal representatives. No assignee of such lease
72 whose assignment is not recorded in the proper county
73 shall be heard in any court of this state to attack the
74 validity or sufficiency of the notice hereinbefore men-
75 tioned.

76 The continuation in force of any such lease after de-
77 mand for and failure to pay such delay rental as herein-
78 before set forth is deemed by the legislature to be opposed
79 to public policy and against the general welfare. If any
80 part of this act shall be declared unconstitutional such
81 declaration shall not affect any other part thereof.

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

Forest L. McNeer
Chairman Senate Committee

R. S. Matthews
Chairman House Committee

Originated in the House of Delegates

Takes effect from passage.

Howard Myers
Clerk of the Senate

J. R. [unclear]
Clerk of the House of Delegates

Arnold M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 12th
day of March, 1947.

Clarence Medsker
Governor.



Filed in the Office of the Secretary of State
of West Virginia. **MAR 13 1947**
WM. S. O'BRIEN,
SECRETARY OF STATE