WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 72

(By Mr. Leeroy and Mr. Jowers)

PASSED March 9, 1972
In Effect From Passage 22, 1972

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 9-29-72
AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating generally to the conservation of oil and gas; setting forth a declaration of public policy in this regard; making certain legislative findings with respect to deep oil or gas wells; providing certain definitions of terms; specifying the lands to which said article shall be applicable; providing certain exclusions; creating the West Virginia oil and gas conservation commission and providing for its authority and responsibility; authorizing the appointment of the oil and gas conservation commissioner and providing for his qualifications, compensation and expenses; relating to the membership of such commission, the qualifications and terms of its members, vacancies in such membership, meetings of the commission, the compensation and expenses of its members and general powers and duties of the commissioner; authorizing the commissioner to issue subpoenas and subpoenas duces tecum; authorizing the promulgation by the commissioner of reasonable rules and regulations; specifying certain notice requirements; making applicable certain provisions of the West Virginia rules of civil procedure for trial courts of record; prohibiting the waste of oil or gas; requiring the establishment of drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells; relating to the rights and duties of nonparticipating owners in the event of a pooled tract; relating to the recovery of oil and unit operations; validating unit agreements; establishing hearing procedures; authorizing the commissioner to hold hearings; providing a time and place for such hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hear-
ings and otherwise be applicable; providing for judicial
review of decisions of the commissioner entered following
such hearings; providing for appeals to the supreme court
of appeals; providing for legal counsel for the commis-
sioner; providing for injunctive relief; authorizing in-
junctive relief without bond or other undertaking; provid-
ing for a special oil and gas conservation tax; establishing
criminal penalties; providing for construction of article;
and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article four-a, to read
as follows:

ARTICLE 4A. OIL AND GAS CONSERVATION.

§22-4A-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this
state and in the public interest to:

1. Foster, encourage and promote exploration for and
development, production, utilization and conservation of
oil and gas resources;

2. Prohibit waste of oil and gas resources and un-
necessary surface loss of oil and gas and their constituents;

3. Encourage the maximum recovery of oil and gas;

and

4. Safeguard, protect and enforce the correlative
rights of operators and royalty owners in a pool of oil or
gas to the end that each such operator and royalty owner
may obtain his just and equitable share of production
from such pool of oil or gas.

(b) The Legislature hereby determines and finds that
oil and natural gas found in West Virginia in shallow
sands or strata have been produced continuously for
more than one hundred years; that oil and gas deposits
in such shallow sands or strata have geological and other
characteristics different than those found in deeper for-
mations; and that in order to encourage the maximum
recovery of oil and gas from all productive formations in
this state, it is not in the public interest, with the excep-
tion of shallow wells utilized in a secondary recovery
program, to enact new statutory provisions relating to
the exploration for or production from oil and gas from
shallow wells, as defined in section two of this article,
but that it is in the public interest to enact new statutory
provisions establishing regulatory procedures and prin-
ciples to be applied to the exploration for or production
of oil and gas from deep wells, as defined in said section
two.


(a) Unless the context in which used clearly requires
a different meaning, as used in this article:

(1) "Commission" means the oil and gas conservation
commission and "commissioner" means the oil and gas
conservation commissioner as provided for in section four
of this article;

(2) "Director" means the director of the department of
mines as defined in section one, article one of this chapter;

(3) "Deputy Director for Oil and Gas" means the dep-
uty director for oil and gas provided for in section one-a,
article four of this chapter;

(4) "Person" means any natural person, corporation,
partnership, receiver, trustee, executor, administrator,
guardian, fiduciary or other representative of any kind,
and includes any government or any political subdivision
or any agency thereof;

(5) "Operator" means any owner of the right to de-
velop, operate and produce oil and gas from a pool and
to appropriate the oil and gas produced therefrom, either
for himself or for himself and others; in the event that
there is no oil and gas lease in existence with respect
to the tract in question, the owner of the oil and gas
rights therein shall be considered as "operator" to the
extent of seven eighths of the oil and gas in that portion
of the pool underlying the tract owned by such owner,
and as "royalty owner" as to one eighth interest in such
oil and gas; and in the event the oil is owned separately
from the gas, the owner of the substance being produced
or sought to be produced from the pool shall be considered as “operator” as to such pool;

(6) “Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subdivision (5) of this section;

(7) “Independent Producer” means a person who is actively engaged in the production of oil and gas in West Virginia, but whose gross revenue from such production in West Virginia does not exceed five hundred thousand dollars per year.

(8) “Oil” means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(9) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (8) of this section;

(10) “Pool” means an underground accumulation of petroleum in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be present in the same district or on the same geologic structure;

(11) “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;

(12) “Shallow well” means any well drilled and completed in a formation above the top of the uppermost member of the “Onondaga Group” or at a depth less than six thousand feet, whichever is shallower;

(13) “Deep well” means any well drilled and completed in a formation at or below the top of the upper-
most member of the “Onondaga Group” or at a depth of or greater than six thousand feet, whichever is shallower;

(14) “Drilling unit” means the acreage on which one well may be drilled;

(15) “Waste” means and includes: (a) Physical waste, as that term is generally understood in the oil and gas industry; (b) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or (c) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool;

(16) “Correlative rights” means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof; and

(17) “Just and equitable share of production” means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts.

(b) Unless the context clearly indicates otherwise, the use of the word “and” and the word “or” shall be interchangeable, as, for example, “oil and gas” shall mean oil or gas or both.

§22-4A-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of article four of this chapter.

(b) This article shall not apply to or affect:

(1) Shallow wells other than those utilized in secondary
recovery program as set forth in section eight of this article.

(2) Any well commenced or completed prior to the effective date of this article, unless such well is, after completion (whether such completion is prior or subsequent to the effective date of this article), (i) deepened subsequent to the effective date of this article to a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower or (ii) involved in secondary recovery operations for oil under an order of the commissioner entered pursuant to section eight of this article;

(3) Gas storage operations or any well employed to inject gas into or withdraw gas from a gas storage reservoir or any well employed for storage observation; or

(4) Free gas rights.

(c) The provisions of this article shall not be construed to grant to the commissioner authority or power to:

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in subdivision (6), subsection (a), section seven of this article; or

(2) Fix prices of oil or gas.

§22-4A-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; commissioner's qualifications; general powers and duties.

(a) There is hereby created the "West Virginia Oil and Gas Conservation Commission" which shall be composed of five members. The director of the department of natural resources and the deputy director for oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the governor, by and with the advice and consent of the Senate. Of the three members appointed by the governor, one shall be an independent producer and at least one shall be a public member not engaged in full-time em-
ployment in an activity under the jurisdiction of the public service commission or the federal power commission. As soon as practical after appointment of the members of the commission, the governor shall call a meeting of the commission to be convened at the state capitol for the purpose of organizing and electing a chairman.

(b) The members of the commission appointed by the governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the governor shall serve until his successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section five, article four of the constitution of West Virginia. Vacancies in the membership appointed by the governor shall be filled by appointment by him for the unexpired term of the member whose office shall be vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall meet at such times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner. Notification of each meeting shall be given in writing to each member by the chairman at least five days in advance of the meeting. Any three members, one of which may be the chairman, shall constitute a quorum for the transaction of any business as herein provided for. A majority of the commission shall be required to determine any issue brought before it.

(d) Each member of the commission appointed by the governor shall receive thirty-five dollars per diem not
to exceed one hundred days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

(e) The commission shall appoint the oil and gas conservation commissioner, fix his salary within available funds, and advise him regarding his duties and authority under this article and consult with him prior to his reaching any final decisions and entering orders hereunder. However, the commissioner has full and final authority under this article with the commission serving in an advisory capacity to him. The commissioner shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry.

(f) The oil and gas commissioner is hereby empowered and it shall be his duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the commissioner shall have jurisdiction and authority over all persons and property necessary therefor. The commissioner is authorized to make such investigation of records and facilities as he deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commissioner's duty to prevent waste shall be paramount. He shall serve as secretary of the oil and gas conservation commission.

(g) Without limiting his general authority, the commissioner shall have specific authority to:

(1) Regulate the spacing of deep wells;

(2) Make and enforce reasonable rules and regulations and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commissioner and otherwise administer the provisions of this article;
(3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the commissioner, it is necessary to do so for the effective discharge of his duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the deputy director for oil and gas, to the department of natural resources and to any other agency of state government having responsibility related to the oil and gas industry.

§22-4A-5. Rules and regulations; notice requirements.

(a) The commissioner may promulgate such reasonable rules and regulations as he may deem necessary or desirable to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon him under the provisions of this article and for securing uniformity of procedure in the administration of the provisions of article three, chapter twenty-nine-a of this code.

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the commissioner by (1) personal or substituted service and if such cannot be had then by (2) certified United States mail, addressed, postage prepaid, to the last known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested, and if there be no known mailing address or if the notice is not so delivered then by (3) publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by such order is situate. In addition, the commissioner shall mail a copy of such notice all other persons who have specified to the commissioner an address to
which all such notices may be mailed. The notice shall
issue in the name of the state, shall be signed by the com-
missioner, shall specify the style and number of the pro-
ceeding, the time and place of any hearing, and shall
briefly state the purpose of the proceeding. Personal or
substituted service and proof thereof may be made by an
officer authorized to serve process or by an agent of the
commissioner in the same manner as is now provided by
the "West Virginia Rules of Civil Procedure for Trial
Courts of Record" for service of process in civil actions
in the various courts of this state. A certified copy of any
pooling order entered under the provisions of this article
shall be presented by the commissioner to the clerk of the
county court of each county wherein all or any portion of
the pooled tract is located, for recordation in the record
book of such county in which oil and gas leases are nor-
mally recorded. Such recording of such order from the
time noted thereon by such clerk shall be notice of the
order to all persons.

§22-4A-6. Waste of oil or gas prohibited.

Waste of oil or gas is hereby prohibited.

§22-4A-7. Drilling units and the pooling of interests in drill-
ing units in connection with deep oil or gas wells.

(a) Drilling units.

(1) After one deep well has been drilled establishing
a pool, an application to establish drilling units may be
filed with the commissioner by the operator of such dis-
covery deep well or by the operator of any lands directly
and immediately affected by the drilling of such discovery
deep well, or subsequent deep wells in said pool, and the
commissioner shall promptly schedule a hearing on said
application. Each application shall contain such informa-
tion as the commissioner may prescribe by reasonable
rules and regulations promulgated by him in accordance
with the provisions of section five of this article.

(2) Upon the filing of an application to establish
drilling units, notice of the hearing shall be given by the
commissioner. Each notice shall specify the date, time and
place of hearing, describe the area for which a spacing
order is to be entered, and contain such other information as is essential to the giving of proper notice.

(3) On the date specified in such notice, the commissioner shall hold a public hearing to determine the area to be included in his spacing order and the acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from the outside boundary of the unit at which a deep well may be drilled thereon. At such hearing the commissioner shall consider:

(i) The surface topography and property lines of the lands underlaid by the pool to be included in such order;

(ii) The plan of deep well spacing then being employed or proposed in such pool for such lands;

(iii) The depth at which production from said pool has been found;

(iv) The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil;

(v) The maximum area which may be drained efficiently and economically by one deep well; and

(vi) Any other available geological or scientific data pertaining to said pool which may be of probative value to the commissioner in determining the proper deep well drilling units therefor.

To carry out the purposes of this article, the commissioner shall, upon proper application, notice and hearing as herein provided, and if satisfied after such hearing that drilling units should be established, enter an order establishing drilling units of a specified and approximately uniform size and shape for each pool subject to the provisions of this section.

(4) When it is determined that an oil or gas pool underlies an area for which a spacing order is to be entered, the commissioner shall include in his order all lands determined or believed to be underlaid by such pool and exclude all other lands.

(5) No drilling unit established by the commissioner shall be smaller than the maximum area which can be drained efficiently and economically by one deep well:
Provided, That if at the time of a hearing to establish drilling units, there is not sufficient evidence from which to determine the area which can be drained efficiently and economically by one deep well, the commissioner may enter an order establishing temporary drilling units for the orderly development of the pool pending the obtaining of information necessary to determine the ultimate spacing for such pool.

(6) An order establishing drilling units shall specify the minimum distance from the nearest outside boundary of the drilling unit at which a deep well may be drilled. The minimum distance provided shall be the same in all drilling units established under said order with necessary exceptions for deep wells drilled or being drilled at the time of the filing of the application. If the commissioner finds that a deep well to be drilled at or more than the specified minimum distance from the boundary of a drilling unit would not be likely to produce in paying quantities or will encounter surface conditions which would substantially add to the burden or hazard of drilling such deep well, or that a location within the area permitted by the order is prohibited by the lawful order of any state agency or court, the commissioner is authorized after notice and hearing to make an order permitting the deep well to be drilled at a location within the minimum distance prescribed by the spacing order. In granting exceptions to the spacing order, the commissioner may restrict the production from any such deep well so that each person entitled thereto in such drilling unit shall not produce or receive more than his just and equitable share of the production.

(7) An order establishing drilling units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commissioner, from time to time, to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. An order establishing drilling units may be modified by the commissioner to permit the drilling of additional deep wells on a reasonably uniform pattern at a uniform minimum distance from the nearest unit boundary as provided
above. Any order modifying a prior order shall be made only after application by an interested operator and notice and hearing as prescribed herein for the original order. However, drilling units established by order shall not exceed one hundred sixty acres for an oil well or six hundred forty acres for a gas well.

(8) After the date of the notice of hearing called to establish drilling units, no additional deep well shall be commenced for production from the pool until the order establishing drilling units has been made, unless the commencement of the deep well is authorized by order of the commissioner.

(9) The commissioner shall, within forty-five days after the filing of an application to establish drilling units for a pool subject to the provisions of this section, either enter an order establishing such drilling units or dismiss the application.

(10) As part of the order establishing a drilling unit, the commissioner shall prescribe just and reasonable terms and conditions upon which the royalty interests in the unit shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent order integrating the royalty interests.

(b) Pooling of interests in drilling units.

(1) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, and after notice and hearing, the commissioner shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for sharing production therefrom. Each such pooling order shall be upon terms and conditions which are just and reasonable. In no event shall drilling be initiated on the tract of an unleased royalty owner without his written consent.

(2) All operations, including, but not limited to, the
commencement, drilling or operation of a deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a deep well drilled thereon.

(3) Any pooling order under the provisions of this subsection (b) shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging and abandoning such deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net oil or gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including a reasonable charge for supervision and for interest on past-due accounts, by all those who elect to participate therein.

(4) No drilling or operation of a deep well for the production of oil or gas shall be permitted upon or within any tract of land unless the operator shall have first obtained the written consent and easement therefor, duly acknowledged and placed of record in the office of the county clerk, for valuable consideration of all owners of the surface of such tract of land, which consent shall describe with reasonable certainty, the location upon such tract, of the location of such proposed deep well, a certified copy of which consent and easement shall be submitted by the operator to the commission.

(5) Upon request, any such pooling order shall provide just and equitable alternatives whereby an owner of an operating interest who does not elect to participate in
the risk and cost of the drilling of a deep well may elect:

(i) Option 1. To surrender his interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration, which, if not agreed upon, shall be determined by the commissioner;
or

(ii) Option 2. To participate in the drilling of the deep well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the commissioner to be just and reasonable.

(6) In the event a nonparticipating owner elects Option 2, and an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a deep well for the benefit of such nonparticipating owner as provided in the pooling order, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(7) If a dispute shall arise as to the costs of drilling and operating a deep well, the commissioner shall determine and apportion the costs, within ninety days from the date of written notification to the commissioner of the existence of such dispute.

§22-4A-8. Secondary recovery of oil; unit operations.

1 Upon the application of any operator in a pool productive of oil and after notice and hearing, the commissioner may enter an order requiring the unit operation of such pool in connection with a program of secondary recovery
of oil, and providing for the unitization of separately
owned tracts and interests within such pool, but only after
finding that: (1) The order is reasonably necessary for the
prevention of waste and the drilling of unnecessary deep
wells; (2) the proposed plan of secondary recovery will
increase the ultimate recovery of oil from the pool to
such an extent that the proposed secondary recovery
operation will be economically feasible; (3) the produc-
tion of oil from the unitized pool can be allocated in such
a manner as to insure the recovery by all operators of
their just and equitable share of such production; and (4)
the operators of at least three fourths of the acreage (cal-
culating partial interests on a pro rata basis for operator
interests on any parcel owned in common) and the
royalty owners of at least three fourths of the acreage
(calculating partial interests on a pro rata basis for
royalty interests on any parcel owned in common) in
such pool have approved the plan and terms of unit opera-
tion to be specified by the commissioner in its order, such
approval to be evidenced by a written contract setting
forth the terms of the unit operation and executed by
said operators and said royalty owners, and filed with the
commissioner on or before the day set for hearing. The
order requiring such unit operation shall designate one
operator in the pool as unit operator and shall also make
provision for the proportionate allocation to all operators
of the costs and expenses of the unit operation, including
reasonable charges for supervision and interest on past-
due accounts, which allocation shall be in the same pro-
portion that the separately owned tracts share in the pro-
duction of oil from the unit. In the absence of an agree-
ment entered into by the operators and filed with the
commissioner providing for sharing the costs of capital
investment in wells and physical equipment, and intangi-
able drilling costs, the commissioner shall provide by
order for the sharing of such costs in the same proportion
as the costs and expenses of the unit operation: Provided,
That any operator who has not consented to the unitiza-
tion shall not be required to contribute to the costs or
expenses of the unit operation, or to the cost of capital
investment in wells and physical equipment, and intangi-
ble drilling costs, except out of the proceeds from the sale of the production accruing to the interest of such operator: Provided, however, That no credit to the well costs shall be adjusted on the basis of less than the average well costs within the unitized area: Provided further, That no order entered under the provisions of this section requiring unit operation shall vary or alter any of the terms of any contract entered into by operators and royalty owners under the provisions of this section.


1 No agreement between or among operators, lessees or other owners of oil or gas rights in oil and gas properties, entered into pursuant to the provisions of this article or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate the statutory or common law of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.


(a) Upon receipt of an application for an order of the commissioner for which a hearing is required by the provisions of this article, the commissioner shall set a time and place for such hearing not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the commissioner upon his own motion or for good cause shown by any party to the hearing. All interested parties shall be entitled to be heard at any hearing conducted under the provisions of this article.

(b) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this subsection.

(c) Any such hearing shall be conducted by the commissioner. For the purpose of conducting any such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum which
shall be issued and served within the time, for the
fees and shall be enforced, as specified in section one,
article five of said chapter twenty-nine-a, and all of the
said section one provisions dealing with subpoenas and
subpoenas duces tecum shall apply to subpoenas and
subpoenas duces tecum issued for the purpose of a hear-
ing hereunder.
(d) At any such hearing any interested person may
represent himself or be represented by an attorney at
law admitted to practice before any circuit court of this
state. Upon request by the commissioner, he shall be rep-
resented at such hearing by the attorney general or his
assistants without additional compensation. The com-
missioner, with the written approval of the attorney gen-
eral, may employ special counsel to represent the com-
missioner at any such hearing.
(e) After any such hearing and consideration of all of
the testimony, evidence and record in the case, the com-
missioner shall render his decision in writing. The written
decision of the commissioner shall be accompanied by
findings of fact and conclusions of law as specified in sec-
tion three, article five, chapter twenty-nine-a of this code,
and a copy of such decision and accompanying findings
and conclusions shall be served by certified mail, return
receipt requested, upon all interested persons and their
attorney of record, if any.
(f) The decision of the commissioner shall be final un-
less reversed, vacated or modified upon judicial review
thereof in accordance with the provisions of section eleven
of this article.
§22-4A-11. Judicial review; appeal to supreme court of ap-
peals; legal representation for commissioner.
(a) Any person adversely affected by a decision of the
commissioner rendered after a hearing held in accordance
with the provisions of section ten of this article shall be
entitled to judicial review thereof. All of the pertinent
provisions of section four, article five, chapter twenty-
ine-a of this code shall apply to and govern such judicial
review with like effect as if the provisions of said section
four were set forth in extenso in this section.
(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the commissioner in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner at any such appeal proceedings.

§22-4A-12. Injunctive relief.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner, the commissioner may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section fourteen of this article.

(b) Upon application by the commissioner, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated
by the commissioner hereunder and all orders and final decisions of the commissioner. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The commissioner shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner in any such proceedings.

(e) If the commissioner shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the commissioner might have brought suit. The commissioner shall be made a party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner. The application shall proceed and in-
junctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the commissioner.


Owners of leases on oil or gas for the exploration, development or production of oil or natural gas shall pay to the commission a special oil and gas conservation tax of three cents for each acre under lease, excluding from the tax the first twenty-five thousand acres. The commission shall deposit with the treasurer of the state of West Virginia, to the credit of the special oil and gas conservation fund, all taxes collected hereunder. The special oil and gas conservation fund shall be a special fund and shall be administered by the commission for the sole purpose of carrying out all costs necessary to carry out the provisions of this article. This tax shall be paid as provided herein annually on or before the first day of July, one thousand nine hundred seventy-two, and on or before the first day of July in each succeeding year.


(a) Any person who violates any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or any final decision of the commissioner, other than a violation covered by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and each day that a violation continues shall constitute a new and separate violation.

(b) Any person who, for the purpose of evading any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or final decision of the commissioner, shall make or cause to be made any false entry or statement in a report required under the provisions of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or final decision of the commissioner, or shall make or cause to be made any false entry in any record, account or memorandum re-
quired under the provisions of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or any final decision of the commissioner, or who shall omit, or cause to be omitted, from any such record, account or memorandum, full, true and correct entries, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other persons in the violation of any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order of final decision of the commissioner, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.


Except as provided in subsection (c), section three of this article, this article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Russell J. Breaux
Chairman Senate Committee

Lyle H. Pitthoge
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Bonnie M. McDaniel
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 27th day of March, 1972.

Andrew H. Rome
Governor