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APPROVED AND SIGNED BY THE GOVERNOR

79 MAR 27 P11:46

Date 3-27-79

Time 9:30 a.m.

OFFICE
CLERK OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

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ENROLLED

SENATE BILL NO. 307

(By Mr. Huntton & Mr. Jones)

—•—

PASSED March 10, 1979

In Effect sixty days from Passage



No. 307

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ENROLLED

Senate Bill No. 307

(By MR. HANLON and MR. JONES)

[Passed March 10, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact section nine-a, article four, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; failure to sell oil or gas; demand for payment of delay rental; rebuttable presumption of intention to abandon well and well equipment; continuation or enforcement of certain oil or gas leases to be opposed to public policy.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article four, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. COVENANTS.

§36-4-9a. Cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; rebuttable presumption of intention to abandon well and well equipment.

- 1 Except in the case where operations for the drilling of
- 2 a well are being conducted thereunder, any undeveloped
- 3 lease for oil and/or gas in this state hereafter executed in
- 4 which the consideration therein provided to be paid for
- 5 the privilege of postponing actual drilling or development

6 or for the holding of said lease without commencing op-
7 erations for the drilling of a well, commonly called delay
8 rental, has not been paid when due according to the terms
9 of such lease, or the terms of any other agreement be-
10 tween lessor and leasee, shall be null and void as to such
11 oil and/or gas unless payment thereof shall be made
12 within sixty days from the date upon which demand for
13 payment in full of such delay rental has been made by the
14 lessor upon the lessee therein, as hereinafter provided.
15 except in such cases where a bona fide dispute shall
16 exist between lessor and lessee as to any amount due or
17 entitlement thereto or any part thereof under such lease.

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

29 The demand for payment referred to in the two pre-
30 ceding paragraphs shall be made by notice in writing and
31 shall be sufficient if served upon such person, firm, part-
32 nership, association, or corporation whether domestic or
33 foreign, whether engaged in business or dissolved, by
34 United States registered mail, return receipt requested, to
35 the lessee's last-known address.

36 A copy of such notice, together with the return receipt
37 attached thereto, shall be filed with the clerk of the
38 county commission in which such lease is recorded, or
39 in which such oil and/or gas property is located in whole
40 or in part, and upon payment of a fee of fifty cents for
41 each such lease, said clerk shall permanently file such
42 notice alphabetically under the name of the first lessor
43 appearing in such lease and shall stamp or write upon the
44 margin of the record in his office of such lease hereafter
45 executed the words "canceled by notice"; and as to any
46 such lease executed before the enactment of this statute

47 said clerk shall file such notice as hereinbefore provided
48 and shall stamp or write upon the margin of the record of
49 such lease in his office the words "enforcement barred by
50 notice."

51 The word "lessor" shall include the original lessor, as
52 well as his or its successors in title to the oil and/or gas
53 involved. The word "lessee" shall include the original
54 lessee, his or its assignee properly of record at the time
55 such demand is made, and his or its successors, heirs or
56 personal representatives. No assignee of such lease whose
57 assignment is not recorded in the proper county shall be
58 heard in any court of this state to attack the validity or
59 sufficiency of the notice hereinbefore mentioned.

60 There shall be a rebuttable legal presumption that the
61 failure of a person, firm, corporation, partnership or
62 association to produce and sell or produce and use for its
63 own purpose for a period of greater than twenty-four
64 months, subsequent to the first day of July, one thousand
65 nine hundred seventy-nine, oil and/or gas produced from
66 such leased premises constitutes an intention to abandon
67 any oil and/or gas well and oil and/or gas well equipment
68 situate on said leased premises, including casing, rods,
69 tubing, pumps, motors, lines, tanks, separators, and any
70 other equipment used in the production of any oil and/or
71 gas from any well or wells on said leasehold estate.

72 This rebuttable presumption shall not be created in
73 instances (i) of leases for gas storage purposes, or (ii)
74 where any shut-in royalty, flat rate well rental, delay
75 rental, or other similar payment designed to keep an oil
76 or gas lease in effect or to extend its term has been paid
77 or tendered, or (iii) where the failure to produce and
78 sell is the direct result of the interference or action of
79 the owner of such oil and/or gas or his subsequent lessee
80 or assignee. Additionally, no such presumption shall be
81 created when a delay in excess of twenty-four months
82 occurs because of any inability to sell any oil and/or gas
83 produced or because of any inability to deliver or other-
84 wise tender such oil and/or gas produced to any person,
85 firm, corporation, partnership or association.

86 In all instances when the owner of such oil and/or gas
87 or his subsequent lessee or assignee desires to terminate

88 the right, interest, or title of any person, firm, corpora-
89 tion, partnership or association in such oil and/or gas by
90 utilization of the presumption created in this section,
91 this presumption may not be utilized except in an action
92 or proceeding by the owner of the oil and/or gas or his
93 lessee or assignee in an action brought in the circuit court
94 for the judicial district in which the oil and/or gas prop-
95 erty is partially or wholly located. A certified copy of
96 a final order of the circuit court shall be mailed by the
97 clerk of such court to the deputy director for oil and gas
98 of the department of mines as defined in section one,
99 article four, chapter twenty-two of this code.

100 The continuation in force of any such lease after de-
101 mand for and failure to pay such delay rental or failure
102 to produce and sell, or to produce and use oil and gas for
103 a period of twenty-four months as hereinbefore set forth
104 is deemed by the Legislature to be opposed to public
105 policy against the general welfare. If any part of this
106 section shall be declared unconstitutional such declaration
107 shall not affect any other part thereof.

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[Enr. S. B. No. 307

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

James L. Davis
Chairman Senate Committee

Clarence C. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Shelton Jr.
Clerk of the Senate

D. Blankenship
Clerk of the House of Delegates

H. B. Hays Jr.
President of the Senate

Lyde H. Sedgwick
Speaker House of Delegates

The within *is approved* this the *27*
day of *March*, 1979.

John D. Relyea
Governor

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OFFICE OF THE GOVERNOR