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for
Engrossed Committee Substitute HB 4268
“Cotenancy” Legislation

NOTE: The official “Enrolled” version of the bill is the official bill as it will be placed in the Code books. However, that version does not show changes from current law! Since the Senate did not amend the body of the bill, the “Engrossed Committee Substitute” as it came out of the House of Delegates is the actual new code language, and it shows the changes to existing code by underlining new code language and ~~overstriking~~ deleted code language. (It does not have the amended “title” to the bill that was made by the Senate.) Both versions are available on the Legislatures web site under “Bill Status”.

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WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4268

BY DELEGATES ANDERSON, KELLY, ZATEZALO,
WESTFALL, FAST, HIGGINBOTHAM, WARD, HOLLEN,
ATKINSON, FOSTER AND LANE

[Reported from Committee on the Judiciary; February

12, 2018.]

See "NOTE" on Table of Contents

1 A BILL to amend and reenact §22C-9-3 and §22C-9-4 of the Code of West Virginia, 1931, as
2 amended, to amend and reenact §37-7-2 of said code; and to amend said code by adding
3 thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5,
4 §37B-1-6, §37B-1-7, §37B-2-1, §37B-2-2, §37B-2-3, §37B-2-4, §37B-2-5, §37B-2-6,
5 §37B-2-7, §37B-2-8, and §37B-2-9, all relating generally to real property; providing an
6 exception to waste and trespass for certain oil or natural gas developments; providing
7 short titles; providing declarations of public policy and legislative findings; providing
8 definitions; providing that consent for the lawful use and development of oil or natural gas
9 mineral property by the persons owning an undivided three fourths of the royalty interests,
10 as defined, in an oil or natural gas mineral property is permissible, is not waste, and is not
11 trespass; providing that nonconsenting cotenants may elect a production royalty interest
12 or a working interest share of production; providing that interests owned by unknown or
13 unlocatable owners be reserved, reported, and deposited in a fund hereby created, known
14 as the Unknown and Unlocatable Interest Owners Fund, to be administered by the State
15 Treasurer in conjunction with the West Virginia Uniform Unclaimed Property Act until said
16 reserved interests are claimed or transferred to the Oil and Gas Reclamation Fund for the
17 plugging of oil and gas wells; providing methods for determination of leasehold and
18 contractual terms, including reviews and determinations by the Oil and Gas Conservation
19 Commission; empowering the Oil and Gas Conservation Commission to enforce certain
20 provisions hereof; providing liability protection for damages resulting from the lawful use
21 or development of oil or natural gas mineral property; requiring surface use agreements
22 in specified circumstances; providing a mechanism for surface owners to acquire title to
23 certain severed oil and gas interests; preserving common law rights; providing for
24 severability of provisions; providing reporting requirements and administrative duties,
25 including civil penalties for noncompliance under the West Virginia Uniform Unclaimed
26 Property Act; and providing for rule-making authority.

This bill "title" was changed before passage of the final "revolled" bill.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,
AUTHORITIES, COMMISSIONS AND COMPACTS.**

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section, the provisions of this article shall
2 apply to all lands located in this state, however owned, including any lands owned or administered
3 by any government or any agency or subdivision thereof, over which the state has jurisdiction
4 under its police power. The provisions of this article are in addition to and not in derogation of or
5 substitution for the provisions of §22-6-1 *et seq.* of this code.

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

7 (1) Shallow wells other than those utilized in secondary recovery programs as set forth in
8 in §22C-9-8 of this code and those provided for in §22C-9-4 of this code;

9 (2) Any well commenced or completed prior to March 9, 1972, unless such well is, after
10 completion (whether such completion is prior or subsequent to that date):

11 (A) Deepened subsequent to that date to a formation at or below the top of the uppermost
12 member of the "Onondaga Group"; or

13 (B) Involved in secondary recovery operations for oil under an order of the commission
14 entered pursuant to §22C-9-8 of this code;

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

17 (4) Free gas rights.

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

20 (1) Limit production or output, or prorate production of any oil or gas well, except as
21 provided in §22C-9-7(a)(6) of this code; or

22 (2) Fix prices of oil or gas.

23 (d) Nothing contained in either this chapter or §22-1-1 *et seq.* may be construed so as to
24 require, prior to commencement of plugging operations, a lessee under a lease covering a well to
25 give or sell the well to any person owning an interest in the well, including, but not limited to, a
26 respective lessor, or agent of the lessor, nor shall the lessee be required to grant to a person
27 owning an interest in the well, including, but not limited to, a respective lessor, or agent of a lessor,
28 an opportunity to qualify under §22-6-26 of this code to continue operation of the well.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) The "oil and gas conservation commission" shall be composed of five members. The
2 director of the ~~Division~~ Department of Environmental Protection and the chief of the office of oil
3 and gas shall be members of the commission ex officio. The remaining three members of the
4 commission shall be appointed by the Governor, by and with the advice and consent of the
5 Senate, and may not be employees of the ~~Division~~ Department of Environmental Protection. Of
6 the three members appointed by the Governor, one shall be an independent producer and at least
7 one shall be a public member not engaged in an activity under the jurisdiction of the Public Service
8 Commission or the federal energy regulatory commission. The third appointee shall possess a
9 degree from an accredited college or university in petroleum engineering or geology and must be
10 a registered professional engineer with particular knowledge and experience in the oil and gas
11 industry and shall serve as commissioner and as chair of the commission.

12 (b) The members of the commission appointed by the Governor shall be appointed for
13 overlapping terms of six years each, except that the original appointments shall be for terms of
14 two, four and six years, respectively. Each member appointed by the Governor shall serve until
15 the members successor has been appointed and qualified. Members may be appointed by the

16 Governor to serve any number of terms. The members of the commission appointed by the
17 Governor, before performing any duty hereunder, shall take and subscribe to the oath required
18 by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership
19 appointed by the Governor shall be filled by appointment by the Governor for the unexpired term
20 of the member whose office is vacant and such appointment shall be made by the Governor within
21 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be
22 removed by the Governor in case of incompetency, neglect of duty, gross immorality or
23 malfeasance in office. A commission member's appointment shall be terminated as a matter of
24 law if that member fails to attend three consecutive meetings. The Governor shall appoint a
25 replacement within 30 days of the termination.

26 (c) The commission shall meet at such times and places as shall be designated by the
27 chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the
28 commission upon the written request of two members or upon the written request of the oil and
29 gas conservation commissioner or the chief of the office of oil and gas. Notification of each
30 meeting shall be given in writing to each member by the chair at least 14 calendar days in advance
31 of the meeting. Three members of the commission, at least two of whom are appointed members,
32 shall constitute a quorum for the transaction of any business.

33 (d) The commission shall pay each member the same compensation as is paid to
34 members of the Legislature for their interim duties as recommended by the citizens legislative
35 compensation commission and authorized by law for each day or portion thereof engaged in the
36 discharge of official duties and shall reimburse each member for actual and necessary expenses
37 incurred in the discharge of official duties.

38 (e) The commission is hereby empowered and it is the commission's duty to execute and
39 carry out, administer and enforce the provisions of this article in the manner provided herein.
40 Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority
41 over all persons and property necessary therefor. The commission is authorized to make such

42 investigation of records and facilities as the commission deems proper. In the event of a conflict
43 between the duty to prevent waste and the duty to protect correlative rights, the commission's
44 duty to prevent waste shall be paramount.

45 (f) Without limiting the commission's general authority, the commission shall have specific
46 authority to:

47 (1) Regulate the spacing of deep wells;

48 (2) Make and enforce reasonable rules and orders reasonably necessary to prevent
49 waste, protect correlative rights, govern the practice and procedure before the commission and
50 otherwise administer the provisions of this article;

51 (3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the
52 production of any books, records, maps, charts, diagrams and other pertinent documents, and
53 administer oaths and affirmations to such witnesses, whenever, in the judgment of the
54 commission, it is necessary to do so for the effective discharge of the commission's duties under
55 the provisions of this article; and

56 (4) Serve as technical advisor regarding oil and gas to the Legislature, its members and
57 committees, to the chief of office of oil and gas, to the ~~Division~~ Department of Environmental
58 Protection and to any other agency of state government having responsibility related to the oil
59 and gas industry.

60 (g) The commission may delegate to the commission staff the authority to approve or deny
61 an application for new well permits, to establish drilling units or special field rules if:

62 (1) The application conforms to the rules of the commission; and

63 (2) No request for hearing has been received.

64 (h) The commission may not delegate its authority to:

65 (1) Propose legislative rules;

66 (2) Approve or deny an application for new well permits, to establish drilling units or special
67 field rules if the conditions set forth in subsection (g) of this section are not met; or

68 (3) Approve or deny an application for the pooling of interests within a drilling unit.
69 (i) Any exception to the field rules or the spacing of wells which does not conform to the
70 rules of the commission, and any application for the pooling of interests within a drilling unit, must
71 be presented to and heard before the commission.

72 (i) The commission is hereby empowered and it is the commission's duty to execute and
73 carry out, administer, and enforce the relevant provisions of §37B-1-1 et seq. of this code
74 concerning mineral development by cotenants for all wells at all depths. The commission has
75 jurisdiction and authority over all persons and property necessary therefor. The commission is
76 authorized to make such investigation of records and facilities as the commission deems proper.

CHAPTER 37. REAL PROPERTY

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant.

1 If a tenant in common, joint tenant, or parcener ~~commit~~ commits waste, he or she shall be
2 is liable to his or her cotenants, jointly or severally, for damages. The lawful use or development
3 of oil or natural gas and their constituents in compliance with the provisions of §37B-1-1 et seq.
4 of this code is not the commission of waste.

CHAPTER 37B. MINERAL DEVELOPMENT

ARTICLE 1. MINERAL DEVELOPMENT BY A MAJORITY OF COTENANTS.

§37B-1-1. Short title.

1 This article shall be known as the Cotenancy Modernization and Majority Protection Act.

§37B-1-2. Declaration of public policy; legislative findings.

1 It is declared to be the public policy of this state and in the public interest to:

2 (1) Foster, encourage and promote exploration for and development, production, and
3 conservation of oil, natural gas and their constituents;

4 (2) Prohibit waste of oil, natural gas, and their constituents and unnecessary surface loss
5 of oil, natural gas, and their constituents;

6 (3) Encourage the maximum recovery of oil, natural gas, and their constituents;

7 (4) Safeguard, protect and enforce the correlative rights of operators and mineral owners
8 in that each such operator and mineral owner may obtain his or her just and equitable share of
9 production;

10 (5) Safeguard, protect and enforce the integrity of the passive royalty owner's interest in
11 his or her minerals.

12 (6) Safeguard, protect and enforce the rights of surface owners; and

13 (7) Protect and enforce the clear provisions of contracts lawfully made.

§37B-1-3. Definitions.

1 As used in this article:

2 "Consenting Cotenant" means a tenant in common, joint tenant, or parcener having an
3 interest in the mineral property who consents in writing to a lawful use of the mineral property
4 through a bona fide lease made in an arms-length transaction.

5 "Nonconsenting Cotenant" means an owner who for any reason chooses not to consent
6 to a lawful use of the mineral property agreed to by the consenting cotenants owning,
7 cumulatively, at least an undivided three-fourths interest in and to the mineral property.

8 "Operator" means any owner of at least an undivided three-fourths interest of the right to
9 develop, operate and produce oil, natural gas, or their constituents, and to appropriate the oil,
10 natural gas, or their constituents produced therefrom.

11 "Person" means any individual, corporation, partnership, joint venture, limited liability
12 company, association, receiver, trustee, executor, administrator, guardian, fiduciary or other
13 representative of any kind, and includes any government or any political subdivision or any
14 agency thereof.

15 “Post-production expense” means an expense or cost subsequent to production including,
16 but not limited to, an expense or cost related to severance taxes, pipelines, surface facilities,
17 telemetry, gathering, dehydration, transportation, fractionation, compression, manufacturing,
18 processing, treating or marketing of oil or natural gas and their constituents.

19 “Prorata share” means the allocation of revenues and costs attributable to the lawful use
20 of a mineral property that is calculated based on the proportion that the net acreage of such
21 ownership interest bears to the total net acreage in the mineral property, in a development or
22 production unit that includes, all or part of, that mineral property.

23 “Royalty owner” means any owner in place of oil or natural gas and their constituents,
24 owners of oil or natural gas leasing rights, and owners vested with any leasehold estate less than
25 25 percent of the total, to the extent that the owners are not an operator as defined in this section.
26 A royalty owner does not include a person whose interest is limited to: (A) A working interest in a
27 wellbore only; (B) overriding royalties; (C) nonparticipating royalty interests; (D) nonexecutive
28 mineral interests; or (E) net profit interests.

29 “Unknown or unlocatable interest owner” means a person vested with a present ownership
30 interest in the oil or natural gas and their constituents in place in a mineral property whose present
31 identity or location cannot be determined from:

32 (A) A reasonable review of the records of the clerk of the county commission, the sheriff,
33 the assessor, and the clerk of the circuit court in the county or counties in which the interest is
34 located, and includes unknown heirs, successors and assigns known to be alive;

35 (B) A reasonable inquiry in the vicinity of the owner’s last known place of residence;

36 (C) A diligent inquiry into known interest owners in the same tract; and

37 (D) A reasonable review of available Internet resources commonly utilized by the industry.

§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) In cases where there are seven or more royalty owners, if an operator or owner makes
2 or has made reasonable efforts to negotiate with all royalty owners in an oil or natural gas mineral
3 property and royalty owners vested with at least three fourths of the right to develop, operate, and
4 produce oil, natural gas, or their constituents consent to the lawful use or development of the oil
5 or natural gas mineral property, the operator's or owner's use or development of the oil or natural
6 gas mineral property is permissible, is not waste, and is not trespass. In that case, the consenting
7 cotenants and their lessees, operators, agents, contractors or assigns are not liable for damages
8 for waste or trespass due to the lawful use or development and shall pay the nonconsenting
9 cotenants in accordance with subsections (b) and (c) of this section, reserve the amounts
10 specified in subsection (d) of this section for the benefit of unknown or unlocatable interest
11 owners, and report and remit the 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 prorata 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 prorata 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 such 45-day period, he
30 or she shall be deemed to have made the election set forth in subdivision (1), subsection (b) of
31 this section. Within thirty days after a nonconsenting cotenant has chosen or is deemed to have
32 chosen the production royalty option, the nonconsenting cotenant shall have the right to appeal
33 to the Commission regarding the issue of whether there has been compliance with subdivision
34 (1) of subsection (b) of this section, to verify the highest royalty paid in the same mineral property
35 and the value for the lease bonus and delay rental payments: *Provided, however,* That the
36 operations upon the 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 further*, That consenting cotenants and
57 their lessees, operators, agents, contractors or assigns shall only develop the specifically targeted
58 stratigraphic formation and 100 feet above and below said formation; nonconsenting cotenants
59 and unknown or unlocatable interest owners will retain all rights to all other formations unless or
60 until reasonable efforts are made to renegotiate under this section for each additional formation.
61 If a consenting cotenant has made a lease only for the targeted formation, in that case the
62 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 (7) years from the date of the first report to the Treasurer, a bonafide
75 surface owner may file an action to quiet title to the interests of all unknown and unlocatable
76 interest owners of the oil and natural gas estate underlying the surface tract. To the extent
77 relevant and practical, such action shall follow the provisions of W.Va. Code §55-12A-1 *et seq.*

78 Upon presentation of sufficient proof, a bonafide surface owner shall be entitled to receive a
79 special commissioner's deed transferring title to the interest of any or all unknown or unlocatable
80 interest owners in an oil and natural gas estate which underlies the surface tract. The surface
81 owner shall only be entitled to their proportionate share of all future proceeds and is not entitled
82 to any of the accrued funds which have been remitted to the Treasurer prior to the execution of
83 the special commissioner's deed. The unknown or unlocatable interest owners are not entitled to
84 any amounts paid to the grantees of the special commissioner's deed after delivery of said deed.

§37B-1-5. Limitations of liability for certain cotenants.

1 Nonconsenting cotenants who elect to receive a production royalty pursuant to §37B-1-
2 4(b)(1) of this code and unknown or unlocatable interest owners shall have no liability for bodily
3 injury, property damage, warranty of title, or environmental claims, arising out of site preparation,
4 mineral extraction, maintenance, reclamation, and other operations with respect to minerals
5 produced from the cotenant's property, except nonconsenting cotenants and unknown or
6 unlocatable interest owners are liable for their intentional acts.

§37B-1-6. Surface use.

1 (a) When any tract of mineral property where an interest in the oil or natural gas in place
2 is owned by a nonconsenting cotenant is used or developed pursuant to §37B-1-4 of this code,
3 in no event shall drilling be initiated upon, or other surface disturbance occur, without the surface
4 owner's consent regardless of whether such surface owner possesses any actual ownership in
5 the mineral interest: *Provided*, That this subsection shall not require surface owner consent for
6 tracts on which surface disturbance does not occur or tracts otherwise subject to an existing
7 surface use agreement, oil and gas lease which includes surface use rights, or other valid
8 contractual arrangement in which the owner has granted rights to the operator to use the surface
9 for horizontal drilling or any other use for which this article is used.

10 (b) Except as specifically described in subsection (a) of this section, nothing contained in
11 this chapter is intended to alter in any way, and this chapter shall not diminish or increase, the

12 rights of the owners of the surface overlying the minerals developed in this state. Except as
13 specifically described in subsection (a) of this section, in enacting this chapter in 2018, it is the
14 intention of the Legislature to leave unchanged the common law of this state as it relates to the
15 mineral owner's right to utilize the surface for the extraction of minerals.

§37B-1-7. Severability.

1 The provisions of this article are severable and accordingly, if any part of this article is
2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity
3 of the remaining provisions of this article.

ARTICLE 2. UNKNOWN AND UNLOCATABLE INTEREST OWNERS ACT.

§37B-2-1. Short title.

1 This article shall be known and may be cited as the "Unknown and Unlocatable Interest
2 Owners Act."

§37B-2-2. Relationship between unknown and unlocatable interest provisions and
unclaimed property provisions.

1 The provisions of this article shall be read in conjunction and not in conflict with the
2 provisions of the West Virginia Uniform Unclaimed Property Act in §36-8-1 et seq. of this code.

§37B-2-3. Definitions.

1 Terms used in this article shall have the meanings as provided in §36-8-1 et seq. and
2 §37B-1-1 et seq. of this code. In addition, as used in this article:

3 "Reserved interests" means all amounts payable for the use, development, extraction,
4 production or sale of minerals due for an unknown or unlocatable interest owner. The term
5 includes amounts payable:

6 (i) For the acquisition and retention of a mineral lease, including bonuses, royalties,
7 compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

8 (ii) For the extraction, production or sale of minerals, including net revenue interests,
9 royalties, overriding royalties, extraction payments and production payments; and

10 (iii) Under an agreement or option, including a joint operating agreement, unit agreement,
11 pooling agreement and farm-out agreement.

§37B-2-4. Report of unknown and unlocatable interest owners.

1 (a) The holder shall make a report to the administrator each calendar quarter concerning
2 each reserved interest for each unknown or unlocatable interest owner and shall concurrently
3 remit the amount reserved to the administrator. The quarterly report and remittances shall be
4 submitted by the first day of the month following each calendar quarter.

5 (b) The report shall contain:

6 (1) A full legal description of the real property interest and any other information that
7 identifies the interest, including without limitation, division orders;

8 (2) If known, the name, last known address, and social security number or taxpayer
9 identification number of the unknown or unlocatable interest owner or apparent owner;

10 (3) The date or dates on which the reserved interest became payable with respect to the
11 property; and

12 (4) All other information the administrator by rule prescribes as necessary for the
13 administration of this article.

14 (c) Before the date for filing the report, the holder of the reserved interests may request
15 the administrator extend the time for filing the report. The administrator may grant the extension
16 for good cause.

17 (d) The holder is not liable to any person for the wrongful use or appropriation of personal
18 information of interest owners by another person described in the reports required under this
19 section.

20 (e) With respect to all unknown or unlocatable interest owners, all obligations under this
21 chapter of the holder are satisfied once an adequate report is filed and reserved interests are
22 remitted to the administrator.

§37B-2-5. Unknown and unlocatable interest owners fund; duties of the State Treasurer.

1 (a) The Unknown and Unlocatable Interest Owners Fund is created in the State Treasury
2 as a special revenue and interest-bearing account to be administered by the State Treasurer for
3 the purposes prescribed in this article.

4 (b) The administrator shall deposit all moneys received pursuant to §37B-1-1 et seq. and
5 §37B-2-1 et seq. of this code into the fund. All expenditures from the fund shall be in accordance
6 with this article and as otherwise determined by the Legislature.

7 (c) The administrator may invest the moneys in the fund with the West Virginia Board of
8 Treasury Investments. All earnings shall accrue to the fund and are available for expenditure in
9 accordance with this article.

10 (d) The administrator shall pay all lawful claims of unknown and unlocatable interest
11 owners from the fund.

12 (e) The administrator may deduct the following expenses from the fund:

13 (1) Expenses incurred identifying, locating, and returning the property to owners, including
14 without limitation the costs of mailing, publication, and real estate title investigations within this
15 state and in other jurisdictions;

16 (2) Reasonable service charges; and

17 (3) Expenses incurred in examining the reports of the holder and in collecting the reserved
18 interest from the holders.

19 (f) After deducting the claims paid and the expenses specified in subsection (e) of this
20 section and maintaining a sum of money which the administrator estimates will be needed to pay
21 claims and expenses duly allowed from the reserved interests received and deposited in the fund,
22 the administrator shall determine the amount that is transferrable from the Fund. Beginning July
23 1, 2023, and every six months thereafter, the administrator shall transfer 50 percent of the amount
24 the administrator determines is transferrable to the Oil And Gas Reclamation Fund established
25 under §22-6-29 of this code and expended for the purposes provided by that section and §22-10-

26 6 of this code, and 50 percent of the revenue shall be deposited into the Public Employees
27 Insurance Agency Stability Fund and expended pursuant to §11B-2-32 of this code.

28 (g) At least sixty days prior to the seven year anniversary of the first report to the
29 administrator concerning the property of an unknown or unlocatable interest owner, the
30 administrator shall publish a notice in a newspaper of general circulation in each county of this
31 state where the minerals are located once a week for two successive weeks as provided by the
32 West Virginia Rules of Civil Procedure. Said publication should provide notification of the
33 impending seven year anniversary to all possible surface owners and unknown or unlocatable
34 interest owners.

§37B-2-6. Crediting of interest to owner's account.

1 (a) The administrator shall credit the amount of interest earned to each owner's account
2 and shall pay the interest earned when a claim is paid on that account.

3 (b) In no event shall the administrator be required to pay the owner any income or gain
4 realized or accruing on the account after the third anniversary of the payment of the owner's
5 interest to the administrator.

6 (c) Nothing in this section shall be construed to entitle an owner to interest on property
7 which did not realize or accrue income or gain while in possession of the administrator.

§37B-2-7. Rules.

1 On or before July 1, 2018, the administrator shall promulgate emergency legislative rules
2 in accordance with the provisions of §29A-3-15 of this code. The administrator shall propose
3 legislative rules for promulgation in accordance with the requirements of the Secretary of State
4 and the provisions of §29A-1-1 *et seq.* of this code to otherwise effectuate the purposes of this
5 article.

§37B-2-8. Severability clause.

1 The provisions of this article are severable and accordingly, if any part of this article is
2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity
3 of the remaining provisions of this article.

§37B-2-9. Effective date.

1 This article shall take effect on July 1, 2018.

NOTE: The purpose of this bill is to provide an exception to waste and trespass for certain oil and natural gas use and development to encourage the efficient economic development of oil and natural gas resources.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.