

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1391 Session of  
2015

---

INTRODUCED BY EVERETT, BAKER, MAJOR, PICKETT, BOBACK, MILLARD,  
BARRAR, McNEILL, HELM, MOUL, D. COSTA, METZGAR, DIAMOND,  
JAMES, WATSON, VITALI, O'NEILL, D. PARKER, QUINN, MURT,  
REGAN, R. BROWN, ELLIS, WHEELAND, GODSHALL, GABLER, HARPER,  
TALLMAN, REESE, RADER, FARRY, M. K. KELLER, PEIFER, MASSER,  
KAUFFMAN, HEFFLEY, STAATS, MUSTIO, TOPPER AND DAVIS,  
JUNE 29, 2015

---

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
JUNE 29, 2015

---

AN ACT

1 Amending the act of July 20, 1979 (P.L.183, No.60), entitled "An  
2 act regulating the terms and conditions of certain leases  
3 regarding natural gas and oil," further providing for  
4 definitions; providing for minimum royalty payment for  
5 unconventional gas well production; further providing for  
6 apportionment; and providing for remedy for failure to pay  
7 the minimum royalty on unconventional gas wells.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Section 1.2 of the act of July 20, 1979 (P.L.183,  
11 No.60), known as the Oil and Gas Lease Act, added July 9, 2013  
12 (P.L.473, No.66), is amended to read:

13 Section 1.2. Definitions.

14 The following words and phrases when used in this act shall  
15 have the meanings given to them in this section unless the  
16 context clearly indicates otherwise:

17 "Check stub." The financial record attached to a check.

1 "Division order." An agreement signed by an interest owner  
2 directing the distribution of proceeds from the sale of oil,  
3 gas, casing head gas or other related hydrocarbons. The order  
4 shall direct and authorize the payor to make payment for the  
5 products taken in accordance with the division order.

6 "Interest owner." A person or entity who is legally entitled  
7 to payment from the proceeds derived from the sale of oil or gas  
8 from an oil or gas well located in this Commonwealth.

9 "Lessee." An operator.

10 "Lessor." An interest owner.

11 "Mcf." A unit of measurement expressed by 1,000 cubic feet.

12 "Operator." A person or entity granted the right pursuant to  
13 a lease or other such agreement by an interest owner or lessor  
14 to develop oil, natural gas or gas of any other designation  
15 existing below a specific tract of real property.

16 "Production unit." A defined area of land comprised of all  
17 or defined portions of a number of adjoining properties where  
18 royalty interests are joined into a single unit for operation  
19 and development of unconventional gas wells and where royalty  
20 payments are divided among the royalty owners according to a  
21 division order or unitization agreement. In the absence of an  
22 agreement by all interest owners in a production unit, the  
23 royalty payment to each interest owner in a unit shall be  
24 calculated based on the percentage of acreage of each owner in  
25 the unit.

26 "Royalty." A lessor's ownership interest in the oil, natural  
27 gas or gas of any other designation existing below a specific  
28 tract of real property.

29 "Royalty payment." A payment made by a lessee to a lessor in  
30 accordance with a lease or other such agreement conveying the

1 right to remove or recover oil, natural gas or gas of any other  
2 designation.

3 "Unconventional formation." A geological shale formation  
4 existing below the base of the Elk Sandstone or its geologic  
5 equivalent stratigraphic interval where natural gas or gas of  
6 other designations generally cannot be produced at economic flow  
7 rates or in economic volumes except by vertical or horizontal  
8 well bores stimulated by hydraulic fracture treatments or by  
9 using multilateral well bores or other techniques to expose more  
10 of the formation to the well bore.

11 "Unconventional gas well." A bore hole drilled or being  
12 drilled for the purpose of or to be used for the production of  
13 natural gas or gas of other designations from an unconventional  
14 formation.

15 Section 2. The act is amended by adding a section to read:  
16 Section 1.4. Minimum royalty payment for unconventional gas  
17 well production.

18 The minimum royalty payment to a lessor for unconventional  
19 gas well production shall not be less than one-eighth of the  
20 lessor's percentage ownership in the production from the  
21 production unit calculated on the total price received by the  
22 operator for the production in an arm's-length transaction. No  
23 deductions of any costs shall result in a royalty payment less  
24 than the one-eighth as provided in this section. The requirement  
25 for a minimum royalty payment shall apply to all existing and  
26 future leases for unconventional gas well production and shall  
27 commence upon the effective date of this section.

28 Section 3. Section 2.1 of the act, added July 9, 2013  
29 (P.L.473, No.66), is amended to read:  
30 Section 2.1. Apportionment.

1       Where an operator has the right to develop multiple  
2 contiguous leases separately, the operator may develop those  
3 leases jointly by horizontal drilling unless expressly  
4 prohibited by a lease. In determining the royalty where multiple  
5 contiguous leases are developed, in the absence of an agreement  
6 by all affected royalty owners, the production shall be  
7 allocated to each lease [in such proportion as the operator  
8 reasonably determines to be attributable to each lease] based on  
9 the percentage of acreage of each lease within the production  
10 unit.

11       Section 4. The act is amended by adding a section to read:  
12 Section 4. Remedy for failure to pay the minimum royalty on  
13 unconventional gas wells.

14       (a) Civil action and venue.--A lessor who is party to a  
15 lease for an unconventional gas well may file an action for  
16 failure to pay the minimum royalty under this act in the court  
17 of common pleas of the county where the unconventional gas well  
18 is located or the county in this Commonwealth in which the  
19 lessor resides.

20       (b) Burden of proof.--Demonstration by a lessor who is party  
21 to a lease for an unconventional gas well that the lessee has  
22 made a royalty payment which is less than the value of one-  
23 eighth royalty of all oil, natural gas or gas of any other  
24 designation removed or recovered from the subject real property  
25 sold at an arm's-length transaction shall create a presumption  
26 that a violation of this act has occurred. This presumption may  
27 be rebutted by the lessee with clear and convincing evidence  
28 that the minimum royalty was paid.

29       (c) Effect of notice and failure to cure.--In any action in  
30 which a court finds that the lessee who is party to a lease for

1 an unconventional gas well has violated the terms of this act by  
2 making a royalty payment which is less than the amount required  
3 by this act, the lessor shall be entitled to the remedies  
4 specified in subsections (d) and (e) if, before filing suit, the  
5 lessor gave to the lessee 60 days' written notice by certified  
6 mail of the deficiency and the lessee failed to cure it.

7 (d) Additional remedies.--In addition to actual damages and  
8 any other remedy deemed appropriate by the court, the court  
9 shall award reasonable attorney fees and costs in bringing the  
10 action, including expert witness fees, to the lessor.

11 (e) Treble damages.--In cases where the court finds that the  
12 lessee acted willfully in failing to pay the minimum royalty or  
13 where a lessee has been previously found to have failed to pay  
14 the minimum royalty, the court may award treble damages.

15 (f) Other remedies not precluded.--The remedies provided in  
16 this section are not exclusive of, do not require exhaustion of  
17 and shall be in addition to any other remedies provided by the  
18 lease, by law or in equity.

19 Section 5. This act shall take effect in 60 days.