

1 AN ACT

2 relating to a cause of action for the bad faith washout of an
3 overriding royalty interest in an oil and gas lease.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Title 4, Property Code, is amended by adding
6 Chapter 31 to read as follows:

7 CHAPTER 31. BAD FAITH WASHOUT OF OVERRIDING ROYALTY INTEREST IN OIL
8 AND GAS LEASE

9 Sec. 31.001. DEFINITIONS. In this chapter:

10 (1) "Bad faith" means the conscious taking of action
11 for the purpose of washing out all or part of an overriding royalty
12 interest.

13 (2) "Washout" means the elimination or reduction of an
14 overriding royalty interest in an oil and gas lease by the
15 forfeiture or surrender of the oil and gas lease by a lessee or the
16 lessee's successors or assigns and the subsequent reacquisition of
17 a lease, or all or part of the mineral estate associated with the
18 lease, by the lessee or the lessee's successors, assigns,
19 contractors, or subsidiaries on all or part of the same land, free
20 of the overriding royalty interest.

21 Sec. 31.002. CAUSE OF ACTION FOR BAD FAITH WASHOUT. A
22 person may bring a cause of action for a bad faith washout of the
23 person's overriding royalty interest in an oil and gas lease. The
24 person is entitled to a remedy under this chapter if the person

1 proves by a preponderance of the evidence that:

2 (1) the person owned or had a legal right to the
3 overriding royalty interest;

4 (2) the defendant had control over the oil and gas
5 lease burdened by the overriding royalty interest;

6 (3) the defendant caused a washout of the person's
7 overriding royalty interest; and

8 (4) the defendant acted in bad faith by knowingly or
9 intentionally causing the washout.

10 Sec. 31.003. VENUE. An owner of an overriding royalty
11 interest in an oil and gas lease may bring an action under this
12 chapter in a district court of a county in which any part of the
13 property subject to the oil and gas lease is located.

14 Sec. 31.004. REMEDIES; COSTS AND FEES. (a) An owner of an
15 overriding royalty interest who prevails in an action under this
16 chapter may recover:

17 (1) actual damages;

18 (2) enforcement of a constructive trust on the oil and
19 gas lease or mineral estate acquired to accomplish the washout of
20 the overriding royalty interest; and

21 (3) court costs and attorney's fees.

22 (b) The remedies provided by this chapter are cumulative of
23 other remedies provided by common law or statute.

24 Sec. 31.005. LIMITATION ON FILING ACTION. A person must
25 bring an action under this chapter not later than the second
26 anniversary of the date the person obtained actual knowledge that
27 the washout occurred.

1 SECTION 2. Chapter 31, Property Code, as added by this Act,
2 applies only to a washout that occurs on or after the effective date
3 of this Act. A washout that occurred before that date is governed
4 by the law in effect immediately before the effective date of this
5 Act, and that law is continued in effect for that purpose.

6 SECTION 3. This Act takes effect September 1, 2021.

H.B. No. 4218

President of the Senate

Speaker of the House

I certify that H.B. No. 4218 was passed by the House on April 21, 2021, by the following vote: Yeas 148, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 4218 was passed by the Senate on May 27, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor