

SUBSTITUTE FOR
HOUSE BILL NO. 5709

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 61503b and 61503c (MCL 324.61503b and
324.61503c), section 61503b as added by 1999 PA 246 and section
61503c as added by 1999 PA 247.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 61503b. (1) A person who enters into a gas lease as a
2 lessee after ~~the effective date of this section~~ MARCH 28, 2000
3 shall not deduct from the lessor's royalty any portion of post-
4 production costs unless the lease explicitly allows for the
5 deduction of postproduction costs. If a lease explicitly pro-
6 vides for the deduction of postproduction costs, the lessee may
7 only deduct postproduction costs for the following items, unless
8 the lease explicitly and specifically provides for the deduction
9 of other items:

1 (a) The reasonable costs of removal of carbon dioxide(CO2),
2 hydrogen sulfide (H2S), molecular nitrogen (N2), or othercon-
3 stituents, except water, the removal of which will enhancethe
4 value of the gas for the benefit of the lessor andlessee.

5 (b) Transportation costs after the point of entry intoany
6 of the following:

7 (i) An independent, nonaffiliated, third-party-owned pipe-
8 line system.

9 (ii) A pipeline systemowned by a gas distribution company
10 or any subsidiary of thegas distribution company, which is regu-
11 lated by the Michiganpublic service commission.

12 (iii) An affiliated pipeline system, if the rates chargedby
13 the pipeline system have been approved by the Michiganpublic
14 service commission, or if the rates charged are reasonable,as
15 compared to independent pipeline systems, based on thepipeline
16 system's location, distance, cost of service, and otherpertinent
17 factors.

18 (2) A lesseeshall not charge postproduction costs incurred
19 on gas producedfrom 1 drilling unit, pooled or communitized
20 area, or unit areaagainst a lessor's royalty for gas produced
21 from another drillingunit, pooled or communitized area, or unit
22 area. As used in thissubsection, "unit area" means the forma-
23 tion or formations thatare unitized and surface acreage that is
24 a part of the unitizedlands, as described in either of the
25 following:

26 (a) The plan for unit operations that is thesubject of the
27 supervisor's order as provided in section61706.

1 (b) An applicable agreement providing for unit operations.

2 (3) If a person who has entered into a gas lease as a lessee
3 prior to or after ~~the effective date of this section~~ MARCH 28,
4 2000 charges the lessor for any portion of postproduction costs,
5 the lessee shall notify the lessor in writing of the availability
6 of the following information and if the lessor requests in writ-
7 ing to receive this information, the lessee shall provide the
8 lessor, in writing, a specific itemized explanation of all post-
9 production costs to be assessed.

10 (4) A division order or other document that includes provi-
11 sions that stipulate how production proceeds are distributed,
12 received by the lessor from the lessee, shall not alter or define
13 the terms of a lease unless voluntarily and explicitly agreed to
14 by both parties in a signed document or documents in which the
15 parties expressly indicate their intention to amend the lease. A
16 lessee shall not precondition the payment of royalties upon the
17 lessor signing a division order or other document that stipulates
18 how production proceeds are distributed, except as provided in
19 this subsection. As a condition for the payment of royalties
20 under a lease other than a lease granted by the state of
21 Michigan, a lessee or other payor shall be entitled to receive a
22 signed division order from the payee containing only the follow-
23 ing provisions, unless other provisions have been voluntarily and
24 explicitly agreed to by both parties in a signed document or doc-
25 uments in which the parties expressly indicate their intention to
26 waive the provisions of this subsection:

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- 1 (a) The effective date of the division order.
- 2 (b) A description of the property from which the oil or gas
3 is being produced and the type of production.
- 4 (c) The fractional or decimal interest in production, or
5 both, claimed by the payee, the type of interest, the certifica-
6 tion of title to the share of production claimed, and, unless
7 otherwise agreed to by the parties, an agreement to notify the
8 payor at least 1 month in advance of the effective date of any
9 change in the interest in production owned by the payee and an
10 agreement to indemnify the payor and reimburse the payor for pay-
11 ments made if the payee does not have merchantable title to the
12 production sold.
- 13 (d) The authorization to suspend payment to the payee for
14 production until the resolution of any title dispute or adverse
15 claim asserted regarding the interest in production claimed by
16 the payee.
- 17 (e) The name, address, and taxpayer identification number of
18 the payee.
- 19 (f) A statement that the division order does not amend any
20 lease or operating agreement between the interest owner and the
21 lessee or operator or any other contracts for the purchase of oil
22 or gas.
- 23 Sec. 61503c. (1) Notwithstanding section 61522, a person
24 who knowingly violates section 61503a or 61503b is responsible
25 for the payment of a civil fine of not more than \$1,000.00. A
26 default in the payment of a civil fine or costs ordered under
27 this section or an installment of the fine or costs may be

1 remedied by any means authorized under the revised judicatureact
2 of 1961, 1961 PA 236, MCL 600.101 to600.9948.

3 (2) The attorney general or the lessor of a gas lease with
4 respect to his or her lease may bring an action in circuit court
5 for injunctive relief or damages, or both, against a person who
6 violates section 61503a or 61503b.

7 (3) If a person who has entered into a gas lease as a lessee
8 violates section 61503a or 61503b, each day the violation contin-
9 ues constitutes a separate offense only for 5 days; thereafter,
10 each day the violation continues does not constitute a separate
11 offense. If a person who has entered into a gas lease as a
12 lessee violates section 61503a or 61503b and such a violation
13 affects more than 1 lessor having an interest in the same well,
14 pooled unit, or unitized area, the violation as to all lessors
15 ~~shall constitute~~ CONSTITUTES only 1 offense.

16 (4) If a court finds that a lessee deducted postproduction
17 costs from a lessor's royalty contrary to section 61503b(1), the
18 lessor may recover as damages the amount of postproduction costs
19 deducted contrary to section 61503b(1) AND MAY ALSO RECOVER REA-
20 SONABLE ATTORNEY FEES INCURRED IN BRINGING THE ACTION UNLESS THE
21 LESSEE ENDEAVORED TO CURE THE ALLEGED VIOLATION PURSUANT TO SUB-
22 SECTION (5) PRIOR TO THE BRINGING OF THE ACTION. In addition, a
23 ~~party~~ LESSEE who prevails in litigation under this subsection
24 may recover reasonable attorney fees incurred in ~~bringing~~
25 DEFENDING an action under this subsection, if the court finds
26 that the position taken by the ~~nonprevailing party~~ LESSOR in
27 the litigation was frivolous.

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1 (5) A person shall not bring an action under this section
2 unless the person has first given the lessee written notice of
3 the alleged violation of section 61503a or 61503b, with reason-
4 ably comprehensive details, and allowed a period of at least 30
5 days for the lessee to cure the alleged violation.