



# HOUSE BILL No. 5709

May 2, 2000, Introduced by Rep. DeVuyst and referred to the Committee on Conservation and Outdoor Recreation.

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: —,  
8 ~~unless the lease explicitly and specifically provides for the~~  
9 ~~deduction of other items:~~

1 (a) The reasonable costs of removal of carbon dioxide (CO<sub>2</sub>),  
2 hydrogen sulfide (H<sub>2</sub>S), molecular nitrogen (N<sub>2</sub>), or other con-  
3 stituents, except water, the removal of which will enhance the  
4 value of the gas for the benefit of the lessor and lessee.

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

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

9 (ii) A pipeline system owned by a gas distribution company  
10 or any subsidiary of the gas distribution company, which is regu-  
11 lated by the Michigan public service commission.

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

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

26 (a) The plan for unit operations that is the subject of the  
27 supervisor's order as provided in section 61706.

(b) An applicable agreement providing for unit operations.

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

(4) A division order or other document that includes provisions that stipulate how production proceeds are distributed, received by the lessor from the lessee, shall not alter or define the terms of a lease unless voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to amend the lease. A lessee shall not precondition the payment of royalties upon the lessor signing a division order or other document that stipulates how production proceeds are distributed, except as provided in this subsection. As a condition for the payment of royalties under a lease other than a lease granted by the state of Michigan, a lessee or other payor shall be entitled to receive a signed division order from the payee containing only the following provisions, unless other provisions have been voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to waive the provisions of this subsection:

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 judicature act  
2 of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

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 IN GOOD FAITH TO CURE THE ALLEGED VIOLATION  
22 PURSUANT TO SUBSECTION (5) PRIOR TO THE BRINGING OF THE ACTION.  
23 In addition, a ~~party~~ LESSEE who prevails in litigation under  
24 this subsection may recover reasonable attorney fees incurred in  
25 ~~bringing~~ DEFENDING an action under this subsection, if the  
26 court finds that the position taken by the ~~nonprevailing party~~  
27 LESSOR in the litigation was frivolous.

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.