

BILL ANALYSIS

Senate Research Center
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H.B. 4218
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Natural Resources & Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas courts have repeatedly looked at the concept of a "bad faith washout" of a royalty owner's rights. Essentially, a bad faith washout is when a lessee cancels an oil and gas lease in order to wipe out an overriding royalty owner's interest, then taking another lease on the same property under which they do not have to pay the overriding royalty interest owner anything. It is detrimental to the royalty owner and quite frankly adverse to basic contract tenets and fairness. While the courts keep seeing these types of situations they have repeatedly stated it is hard to identify and hard to prove without legislative guidance.

H.B. 4218 adds the definition of a bad faith washout to the Property Code and provides a remedy for such action.

Specifically, H.B. 4218 amends the Property Code to authorize a person to bring a cause of action for a bad faith washout of the person's overriding royalty interest in an oil and gas lease in a district court of a county in which any part of the property subject to the lease is located. The bill also entitles the person to a remedy from that action in specific situations.

Furthermore, H.B. 4218 requires the person to bring the action not later than the second anniversary of the date the person obtained actual knowledge that the washout occurred. Additionally, the bill authorizes an owner who prevails in the action to recover actual damages, court costs and attorney's fees, and the enforcement of a constructive trust on the oil and gas lease or mineral estate acquired to accomplish the washout of the overriding royalty interest. These remedies are cumulative of other remedies provided by common law or statute.

H.B. 4218 amends current law relating to a cause of action for the bad faith washout of an overriding royalty interest in an oil and gas lease.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Property Code, by adding Chapter 31, as follows:

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

Sec. 31.001. DEFINITIONS. Defines "bad faith" and "washout."

Sec. 31.002. CAUSE OF ACTION FOR BAD FAITH WASHOUT. Authorizes a person to bring a cause of action for a bad faith washout of the person's overriding royalty interest in an oil and gas lease. Provides that the person is entitled to a remedy under this chapter if the person proves by a preponderance of the evidence that:

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

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

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

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

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

Sec. 31.004. REMEDIES; COSTS AND FEES. (a) Authorizes an owner of an overriding royalty interest who prevails in an action under this chapter to recover actual damages, enforcement of a constructive trust on the oil and gas lease or mineral estate acquired to accomplish the washout of the overriding royalty interest, and court costs and attorney's fees.

(b) Provides that the remedies provided by this chapter are cumulative of other remedies provided by common law or statute.

Sec. 31.005. LIMITATION ON FILING ACTION. Requires a person to bring an action under this chapter not later than the second anniversary of the date the person obtained actual knowledge that the washout occurred.

SECTION 2. Makes application of Chapter 31, Property Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2021.