

SENATE BILL No. 391

By Senator Olson

2-7

1 AN ACT concerning oil and gas; relating to leases; civil procedure;
2 amending K.S.A. 55-201, 55-202 and 60-2106 and repealing the
3 existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) In any lease for the production of oil, gas or
7 other minerals that includes a provision to extend such lease as long as
8 such oil, gas or other minerals may be produced therefrom in paying
9 quantities, the lease shall be considered to be in paying quantities when
10 production allocable to the total original right of the lessee to share in
11 production under the lease is sufficient to induce a reasonably prudent
12 operator to initiate or continue production in an effort to secure a return on
13 the operator's investment or to minimize any loss. Unless contained in the
14 lease for the production of oil, gas or other minerals, no requirement that
15 the lease be in paying quantities shall be implied to extend the duration of
16 the lease.

17 (b) As used in this section, a "reasonably prudent operator" means an
18 operator that considers all matters, including, but not limited to: Depletion
19 of the reservoir, the selling price of oil or gas, time and expense of travel to
20 and from the wells within the property of the lease, the weather and land
21 conditions near the well, the relative profitability of nearby wells, the
22 operating and marketing costs of the lease, the net profit, the provisions of
23 the lease, a reasonable period of time under the circumstances and whether
24 the lease is being held for speculative purposes. Any costs incurred by the
25 operator only shall be used in determining if the lease is in paying
26 quantities if such costs are permitted as businesses expense deductions
27 pursuant to section 162(a) of the internal revenue code of 1986 as in effect
28 on the date of this act.

29 New Sec. 2. An operator of a well shall be relieved of liability for the
30 plugging of a well upon the duly recorded transfer, pursuant to article 22
31 of chapter 58 of the Kansas Statutes Annotated, of such well. The new
32 operator, or successor, shall assume all liability or the costs associated with
33 plugging such well.

34 Sec. 3. K.S.A. 55-201 is hereby amended to read as follows: 55-201.

35 (a) When any oil, gas or other mineral lease heretofore or hereafter given
36 on land situated in any county of Kansas and recorded therein shall

1 become forfeited it shall be the duty of the lessee, ~~his or her~~ *the lessee's*
2 successors or assigns, within ~~sixty~~ 60 days from the date of the taking
3 effect of this act, if the forfeiture occurred prior thereto, and within ~~sixty~~
4 60 days after the date of the forfeiture of any other lease, to have such
5 lease surrendered in writing, such surrender to be signed by the party
6 making the same, acknowledged and placed on record in the county where
7 the leased land is situated without cost to the owner thereof: ~~Provided,~~
8 ~~That, if the said~~ *unless such* lessee, ~~his or her~~ *the lessee's* successors or
9 assigns, shall fail or neglect to execute and record such surrender within
10 the time provided for, then the owner of ~~said~~ *such* land may serve upon
11 ~~said~~ *such* lessee, ~~his or her~~ *the lessee's* successors or assigns, in person or
12 by registered letter, at ~~his or her~~ *the lessee's* last-known address, or by
13 publication for three consecutive weeks in a newspaper of general
14 circulation in the county where the land is situated, a notice in writing in
15 substantially the following form:

16 "To _____: I, the undersigned, owner of the following described
17 land situated in _____ county, Kansas, to wit: (description of land)
18 upon which a lease, dated _____ day of _____, ~~19~~ 20__, was given to
19 _____, do hereby notify you that the terms of ~~said~~ *such* lease have
20 been broken by the owner thereof, that I hereby elect to declare and do
21 declare ~~the said~~ *such* lease forfeited and void and that, unless you do,
22 within ~~twenty~~ 20 days from this date, notify the register of deeds of ~~said~~
23 *such* county as provided by law that ~~said~~ *such* lease has not been forfeited,
24 I will file with ~~the said~~ *such* register of deeds an affidavit of forfeiture as
25 provided by law; and I hereby demand that you execute or have executed a
26 proper surrender of ~~said~~ *such* lease and that you put the same of record in
27 the office of the register of deeds of ~~said~~ *such* county within ~~twenty~~ 20
28 days from this date.

29 "Dated this _____ day of _____, ~~19~~ 20__.
30 _____."

31 And the owner of said land may after twenty days from the date of
32 service, registration or first publication of ~~said~~ *such* notice, file with the
33 register of deeds of the county where ~~said~~ *such* land is situated an affidavit
34 setting forth, that the affiant is the owner of ~~said~~ *such* land; that the lessee,
35 or ~~his or her~~ *the lessee's* successors or assigns has failed and neglected to
36 comply with the terms of ~~said~~ *the* lease, reciting the facts constituting such
37 failure; that the same has been forfeited and is void; and setting out in ~~said~~
38 *such* affidavit a copy of the notice served, as above provided and the
39 manner and time of the service thereof. If the lessee, ~~his or her~~ *the lessee's*
40 successors or assigns, shall within ~~thirty~~ 30 days after the filing of such
41 affidavit, give notice in writing to the register of deeds of the county where
42 ~~said~~ *such* land is located that ~~said~~ *such* lease has not been forfeited and that
43 ~~said~~ *such* lessee, ~~his or her~~ *the lessee's* successors or assigns, still claim

1 that ~~said~~ the lease is in full force and effect, then ~~the said~~ the affidavit shall
2 not be recorded, but the register of deeds shall notify the owner of the land
3 of the action of the lessee, ~~his or her~~ the lessee's successors or assigns, and
4 the owner of the land shall be entitled to the remedies now provided by
5 law for the cancellation of such disputed lease. If the lessee, ~~his or her~~ the
6 lessee's successor or assigns, shall not notify the register of deeds, as
7 above provided, then the register of deeds shall record ~~said~~ the affidavit,
8 and thereafter the record of the ~~said~~ lease shall not be notice to the public
9 of the existence of ~~said~~ such lease or of any interest therein or rights
10 thereunder, and ~~said~~ the record shall not be received in evidence in any
11 court of the state on behalf of the lessee, ~~his or her~~ the lessee's successors
12 or assigns, against the lessor, ~~his or her~~ the lessee's successors or assigns.

13 (b) *Notwithstanding the provisions of subsection (a), an owner of*
14 *land with an oil, gas or other mineral lease shall not file an action against*
15 *the lessee until the owner of such land has owned the land for one year.*

16 Sec. 4. K.S.A. 55-202 is hereby amended to read as follows: 55-202.
17 Should the owner of such lease neglect or refuse to execute a release as
18 provided by this act, then the owner of the leased premises may sue in any
19 court of competent jurisdiction to obtain such release, and the owner may
20 also recover in such action of the lessee, ~~his or her~~ the lessee's successors
21 or assigns, the sum of ~~one hundred dollars~~ \$100 as damages; and ~~all costs,~~
22 ~~together with a reasonable attorney's fee for preparing and prosecuting the~~
23 ~~suit, and he or she may also recover~~ any additional damages that the
24 evidence in the case will warrant , *not to include attorney fees*. In all such
25 actions, writs of attachment may issue as in other cases.

26 Sec. 5. K.S.A. 60-2106 is hereby amended to read as follows: 60-
27 2106. (a) *Opinions*. It shall be the duty of the judges of an appellate court
28 to prepare and file with the papers in each case, the opinion of the court
29 upon the questions of law arising in the case, within 60 days after the
30 decision of the same; and the opinion so filed shall be treated as a part of
31 the record in the case, but no costs shall be charged therefor, except for
32 copies thereof ordered by a party, and no mandate shall be sent to the court
33 below, until the opinion provided for by this section has been filed.

34 A memorandum opinion may be prepared in any case where no new
35 question of law is decided or which is otherwise considered as having no
36 value as a precedent. Such a memorandum opinion need not contain a
37 syllabus or statement of facts. In all other cases a formal opinion shall be
38 prepared.

39 (b) *Syllabus*. Each formal opinion shall contain a syllabus of the
40 points of law decided, which shall be confined to those questions
41 necessarily arising from the facts in the case.

42 (c) *Judgment and mandate*. The supreme court may by rule provide
43 for post decision motions for rehearing or other relief. When under such

1 rule a decision of an appellate court becomes final, such court shall
2 promptly cause to be transmitted to the clerk of the district court its
3 mandate containing such directions as are appropriate under the decision.
4 A copy of the opinion of the court shall accompany and be a part of the
5 mandate. The clerk of the district court shall make a notation thereof on
6 the appearance docket. Such mandate and opinion, without further order of
7 the judge, shall thereupon be a part of the judgment of the court if it is
8 determinative of the action, or shall be controlling in the conduct of any
9 further proceedings necessary in the district court.

10 (d) As a part of a remedy, preliminary decision or final decision in
11 which a statute or legislative enactment of this state has been held
12 unconstitutional as a violation of article 6 of the Kansas constitution, the
13 appellate court or any master or other person or persons appointed by the
14 appellate court to hear or determine a cause or controversy or to make or
15 enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253,
16 and amendments thereto, or any other provision of law, shall not have the
17 authority to order a school district or any attendance center within a school
18 district to be closed or enjoin the use of all statutes related to the
19 distribution of funds for public education.

20 (e) *Any decision by the appellate court that discusses chapter 55 of*
21 *the Kansas Statutes Annotated shall be published upon request of a party*
22 *to the action.*

23 Sec. 6. K.S.A. 55-201, 55-202 and 60-2106 are hereby repealed.

24 Sec. 7. This act shall take effect and be in force from and after its
25 publication in the statute book.