

BILL ANALYSIS

C.S.H.B. 4218
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding an ongoing issue in which oil and gas entities release overriding royalty interests in oil and gas leases only to later reacquire the same lease without the overriding interest. It has been suggested that because there is currently no mechanism through which a cause of action may be brought for this bad faith washout of a person's overriding royalty interest in an oil and gas lease, these practices will only continue to occur. C.S.H.B. 4218 seeks to address this issue by providing for a cause of action for a bad faith washout of overriding royalty interests.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.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 entitles the person to a remedy from that action if the person proves by a preponderance of the evidence the following:

- that the person owned or had a legal right to the overriding royalty interest;
- that the defendant had control over the oil and gas lease burdened by the overriding royalty interest;
- that the defendant caused a washout of the person's overriding royalty interest; and
- that the defendant acted in bad faith by knowingly or intentionally causing the washout.

The bill defines "bad faith" and "washout."

C.S.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. 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.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4218 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the date by which a person must bring an action under the bill's provisions from not later than the second anniversary of the date the washout occurred to not later than the second anniversary of the date the person obtained actual knowledge that the washout occurred.

The substitute does not include exemplary damages as a type of remedy that a party who prevails in such an action may recover. The substitute includes a definition for "bad faith."