



## Oil and Gas ADVISORY ■

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### Texas Legislature Creates Cause of Action for Bad-Faith Washout

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Historically, the Texas Legislature has imposed no duty on operators to their overriding royalty interest owners when releasing their leases. Absent an anti-washout clause, operators could release leases subject to overriding royalties and later lease the same minerals without the overriding interest burden. But the Texas Legislature just created a “cause of action for the bad faith washout of an overriding royalty interest in an oil and gas lease.” Specifically, [House Bill 450](#) provides that a person may bring suit when the person can establish 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.

The bill defines a “washout” as “the elimination or reduction of an overriding royalty interest in an oil and gas lease by the forfeiture or surrender of the oil and gas lease by a lessee or the lessee’s successors or assigns and the subsequent reacquisition of a lease, or all or part of the mineral estate associated with the lease, by the lessee or the lessee’s successors, assigns, contractors, or subsidiaries on all or part of the same land, free of the overriding royalty interest.”

A prevailing plaintiff is entitled to (1) actual damages; (2) 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 (3) court costs and attorneys’ fees. The bill takes effect September 1, 2023, and has no retroactive effect.

Going forward, operators should be sure to comply with the act and take caution in releasing leases subject to an overriding interest. For questions on this and related issues, be sure to contact Alston & Bird’s Oil & Gas Team.

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