

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

# A Bill

HOUSE BILL 1004

5 By: Representative Reynolds  
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7

## For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR THE TERMINATION OF A  
10 SEVERED MINERAL RIGHT DUE TO NONUSE WITH  
11 OWNERSHIP REVERTING TO THE SURFACE OWNER; TO  
12 PROVIDE GUIDELINES FOR ASSESSING MINERAL RIGHTS;  
13 AND FOR OTHER PURPOSES.  
14

## Subtitle

15 TO PROVIDE FOR THE TERMINATION OF A  
16 SEVERED MINERAL RIGHT DUE TO NONUSE WITH  
17 OWNERSHIP REVERTING TO THE SURFACE OWNER  
18 AND TO PROVIDE GUIDELINES FOR ASSESSING  
19 MINERAL RIGHTS.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code Title 18, Chapter 60 is amended to add an  
26 additional subchapter to read as follows:

27 18-60-1001. Title.

28 This subchapter shall be known and may be cited as the "Termination of  
29 Mineral Rights Act".  
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31 18-60-1002. Definitions.

32 As used in this subchapter:

33 (1) "Mineral" means:

34 (A) Gas, oil, coal, or another gaseous, liquid, or solid  
35 hydrocarbon;

36 (B) Oil shale;



1                    (C) Cement material, sand and gravel, road material, or  
2 building stone;

3                    (D) A chemical substance;

4                    (E) Gemstone;

5                    (F) A metallic substance;

6                    (G) Fissionable or nonfissionable ore;

7                    (H) Colloidal or another clay;

8                    (I) Steam or other geothermal resource; and

9                    (J) Any other substance defined as a mineral by a law of  
10 this state;

11                    (2)(A) "Mineral right" means the interest or right created by an  
12 instrument transferring, either by grant, assignment, reservation, or  
13 otherwise, an interest or right of any kind in a mineral estate, however  
14 created and regardless of form, whether absolute or fractional, divided or  
15 undivided, corporeal or incorporeal.

16                    (B) "Mineral right" includes a fee simple or any lesser  
17 right or interest in a mineral, regardless of character, or any kind of  
18 royalty, production payment, executive right, nonexecutive right, leasehold,  
19 or lien, in a mineral, regardless of character;

20                    (3) "Person" means any individual, corporation, partnership,  
21 limited liability company, limited liability partnership, estate, trust,  
22 association, or any other legal entity; and

23                    (4) "Severed mineral right" means any mineral right that is  
24 separated from the surface rights by deed.

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26                    18-60-1003. Applicability.

27                    (a) This subchapter does not apply to a mineral right of:

28                    (1) The United States or a Native American tribe, except to the  
29 extent permitted by federal law; or

30                    (2) This state, an agency, or a political subdivision of this  
31 state, except to the extent permitted by state law other than this  
32 subchapter.

33                    (b) This subchapter does not affect water rights.

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35                    18-60-1004. Termination of a severed mineral right.

36                    (a) A severed mineral right that is not used for a period of twenty

1 (20) years, is terminated and the ownership reverts to the surface owner of  
 2 the property on or under which the mineral right is located.

3 (b) Subsection (a) of this section does not apply if a statement of  
 4 claim is filed under § 18-60-1005 or if the provisions of § 18-60-1006 have  
 5 been met.

6 (c) For the purpose of subsection (a) of this section, any of the  
 7 following actions taken by or under authority of the owner of a severed  
 8 mineral right in relation to any mineral that is part of the severed mineral  
 9 right constitutes use of the entire severed mineral right:

10 (1)(A) An active mineral operation on or below the surface of  
 11 the real property or other property unitized or pooled with the real  
 12 property, including production, geophysical exploration, exploratory or  
 13 developmental drilling, mining, exploitation, development, injection, and  
 14 storage.

15 (B) An active mineral operation constitutes use of any  
 16 severed mineral right owned by any person in any mineral that is the object  
 17 of the active mineral operation;

18 (2)(A) Payment of taxes on a separate assessment of the specific  
 19 severed mineral right or of a transfer or severance tax relating to the  
 20 severed mineral right.

21 (B) Payment of taxes in subdivision (c)(2)(A) of this  
 22 subsection must be made by the record owner of the severed mineral right or  
 23 the record owner's heir or legally authorized representative;

24 (3)(A) Recordation of an instrument that creates, reserves, or  
 25 otherwise evidences a claim to or the continued existence of the severed  
 26 mineral right, including an instrument that transfers, leases, or divides the  
 27 severed mineral right.

28 (B) Recordation of an instrument constitutes use of:

29 (i) Any recorded right or interest owned by any  
 30 person in any mineral that is the subject of the instrument; and

31 (ii) Any recorded severed mineral right in the  
 32 property owned by any party to the instrument; or

33 (4) Recordation of a judgment or decree that makes specific  
 34 reference to the severed mineral right.

35 (d) This section applies notwithstanding any provision to the contrary  
 36 in the instrument that creates, reserves, transfers, leases, divides, or

1 otherwise evidences the claim to or the continued existence of the severed  
2 mineral right or in another recorded document unless the instrument or other  
3 recorded document provides an earlier termination date.

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5 18-60-1005. Preservation of a severed mineral right by statement of  
6 claim.

7 (a)(1) An owner or other qualified person as described in subsection  
8 (b) of this section of a severed mineral right may record a statement of  
9 claim to preserve a severed mineral right before the end of the twenty-year  
10 period set forth in § 18-60-1004.

11 (2) The statement of claim to preserve a severed mineral right  
12 shall contain:

13 (A) The name and address of the owner of the severed  
14 mineral right; and

15 (B) An accurate legal description of the land on or under  
16 which the mineral right is located.

17 (3) The severed mineral right is preserved in each county in  
18 which the statement of claim to preserve a severed mineral right is recorded.

19 (b) The statement of claim to preserve a severed mineral right may be  
20 executed:

21 (1)(A) By the owner of the severed mineral right;

22 (B) By a legally authorized representative of the owner of  
23 the severed mineral right if the owner of the severed mineral right at the  
24 time of execution of the statement of claim to preserve a severed mineral  
25 right:

26 (i) Is under a disability or is unable to assert a  
27 claim on his or her own behalf; or

28 (ii) The owner's identity cannot be established or  
29 is uncertain;

30 (C) By a co-owner or the co-owner's legally authorized  
31 representative of the severed mineral right for the benefit of any co-owner  
32 of the severed mineral right; or

33 (D) By an owner or the owner's legally authorized  
34 representative of the severed mineral right for the benefit of any person  
35 claiming under the owner of the severed mineral right or a person under whom  
36 the owner of the severed mineral right claims.

1           (2) As used in this subdivision (b)(1) of this section, “legally  
2 authorized representative” means one who oversees the legal affairs of  
3 another including an executor or administrator of an estate, a court  
4 appointed guardian, or a power of attorney.

5           (c) The statement of claim to preserve a severed mineral right shall:

6           (1)(A) Contain the name of the owner or co-owners of the severed  
7 mineral right or other persons for whom the severed mineral right is to be  
8 preserved.

9           (B) If the identity of the owner or co-owners cannot be  
10 established or is uncertain, the statement of claim shall contain the name of  
11 the class of which the owner is a member; and

12           (2) Identify the severed mineral right or part of the severed  
13 mineral right to be preserved by one (1) of the following means:

14           (A) A reference to the location in the county recorder’s  
15 records of the instrument that creates, reserves, or otherwise evidences the  
16 severed mineral right or of the judgment or decree that confirms the severed  
17 mineral right;

18           (B)(i) An accurate legal description of the severed  
19 mineral right.

20           (ii) If the owner of a severed mineral right claims  
21 the severed mineral right under an instrument that is not of record or claims  
22 under a recorded instrument that does not specifically identify that owner:

23           (a) A legal description is not effective to  
24 preserve a severed mineral right unless accompanied by a reference to the  
25 name of the record owner under whom the owner of the severed mineral right  
26 claims; and

27           (b) The record of the notice of intent to  
28 preserve the severed mineral right must be indexed under the name of the  
29 record owner as well as under the name of the owner of the severed mineral  
30 right; or

31           (C)(i) A reference generally and without specificity to  
32 any severed mineral right of the owner in any real property situated in the  
33 county.

34           (ii) The reference described in subdivision  
35 (c)(2)(C)(i) of this section is not effective to preserve a particular  
36 severed mineral right unless there is, in the county, in the name of the

1 person claiming to be the owner of the severed mineral right a:

2 (a) Previously recorded instrument that  
 3 creates, reserves, or otherwise evidences the severed mineral right; or

4 (b) Judgment or decree that confirms the  
 5 severed mineral right.

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 7 18-60-1006. Failure to file a statement of claim.

8 Failure to file a statement of claim to preserve a severed mineral  
 9 right within the time provided in § 18-60-1005 does not cause a severed  
 10 mineral right to be extinguished if the owner of the severed mineral right:

11 (1) Was at the time of the expiration of the period specified in  
 12 § 18-60-1005 the owner of ten (10) or more mineral rights in the county in  
 13 which the severed mineral right is located; and

14 (2) Filed the statement of claim required under this subchapter:

15 (A) Not more than sixty (60) days after publication of  
 16 notice as specified in § 18-60-1007 of this subchapter; and

17 (B) If a notice referred to in subdivision (2)(A) of this  
 18 section is not published, not more than sixty (60) days after receiving  
 19 actual knowledge that the mineral right had lapsed.

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 21 18-60-1007. Notice.

22 (a) Upon the lapse of a severed mineral right as provided in § 18-60-  
 23 1004, a person who succeeds to the ownership of the mineral right may give  
 24 notice of the lapse of the mineral right by:

25 (1) Publishing notice in a newspaper of general circulation in  
 26 the county in which the mineral right is located; and

27 (2) If the address of the severed mineral right owner or owners  
 28 is shown of record or can be determined upon reasonable inquiry, by mailing  
 29 via certified mail and via regular mail to the last known address of each  
 30 owner, not more than ten (10) days after publication of the notice, a copy of  
 31 the notice to the owner or owners of the severed mineral right.

32 (b) The notice required under subsection (a) of this section must  
 33 state:

34 (1) The name of each owner of the severed mineral right, as  
 35 shown of record;

36 (2) A legal description of the land;

1           (3) The name of the person giving the notice; and

2           (4) That the severed mineral right has lapsed.

3           (c) If a copy of the notice and an affidavit of the mailing of the  
 4 notice required under subsection (a) of this section are promptly filed in  
 5 the office of the recorder in the county where the land is located, the  
 6 record is prima facie evidence in a legal proceeding that notice was given.

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 8           18-60-1008. Effect of termination.

9           (a) The merger of severed mineral rights with the surface estate does  
 10 not extinguish current or delinquent tax assessments against the mineral  
 11 rights.

12           (b) A court order terminating a severed mineral right merges the  
 13 terminated severed mineral right, including express and implied appurtenant  
 14 surface rights, obligations, and taxes, with the surface estate in shares  
 15 proportionate to the ownership of the surface estate, subject to any existing  
 16 lien for taxes or an assessment.

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 18           18-60-1009. Dormant mineral interest record.

19           Upon the filing of the statement of claim specified in § 18-60-1005 or  
 20 the proof of service of notice specified in § 18-60-1007 of this subchapter  
 21 in the assessor’s office for the county where a mineral interest is located,  
 22 the recorder shall:

23           (a) Indicate that a statement of claim or affidavit of publication and  
 24 service of notice has been made by a notation on:

25                   (1) The corresponding surface assessment; and

26                   (2) Any instrument that may have been created for the original  
 27 mineral interest; and

28           (b) Record the filing in a book to be kept for that purpose, to be  
 29 known as the “Dormant Mineral Interest Record” and to be filed by legal  
 30 description of the surface estate.

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 32           18-60-1010. Savings and transitional provisions.

33           (a) Except as otherwise provided in this section, this subchapter  
 34 applies to any severed mineral right, whether created before, on, or after  
 35 the effective date of this subchapter.

36           (b) An action may not be brought under this subchapter to terminate a

1 severed mineral right until two (2) years after the effective date of this  
2 subchapter.

3 (c) This subchapter does not limit or affect any other procedure  
4 provided by law for clearing an abandoned mineral right from title to real  
5 property.

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7 SECTION 2. Arkansas Code § 26-26-1110, pertaining to mineral rights,  
8 is amended to add an additional subsection to read as follows:

9 (c) When a lapsed severed mineral right or interest is merged with the  
10 surface estate pursuant to an action taken under the Termination of Mineral  
11 Rights Act, § 18-60-1001 et seq.:

12 (1) Any mineral right assessed in subsection (a) of this section  
13 before the merger remains with the surface estate under § 18-60-1008; and

14 (2) Following the merger, the separate assessment of the mineral  
15 right under subsection (a) of this section shall cease.

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