

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Senator Gordon

SENATE BILL 181

"AN ACT RELATING TO THE TERMINATION OF DORMANT MINERAL INTERESTS."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. STATEMENT OF POLICY

(a) The public policy of this State is to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development, of both surface estate and mineral interests in real property.

(b) This Act shall be construed to effectuate its purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

SECTION 2. DEFINITIONS.

As used in this Act:

(a) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, or leasehold, or lien in minerals, regardless of character.

(b) "Minerals" includes gas, oil, coal, other gaseous liquid and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic ore, fissionable and non-fissionable ores, colloidal or other clay, steam or other geothermal resource, bromine, and any other substance defined as a mineral by the law of this State.

SECTION 3. EXCLUSIONS.

(a) This Act does not apply to:

(1) A mineral interest of the United States, except to the extent permitted by federal law.

(2) A mineral interest of this State or an agency or political subdivision of this State, except to the extent permitted by state law other than this Act.

(b) This Act does not affect water rights.

(c) This Act does not affect the meaning of the terms "minerals" or "mineral interest" for purposes other than this Act.

SECTION 4. TERMINATION OF DORMANT MINERAL INTEREST.

(a) (1) The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purpose of this Act if the interest is unused within the meaning of this Act for twenty (20) years immediately preceding commencement of the action and has not been preserved pursuant to Section 5 of this Act. The action shall be in the nature of and require the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts is known. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the twenty-year period.

(2) A court order terminating the mineral interest, when recorded, merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate, in shares proportionate to the ownership of the surface estate.

(b) (1) Any person who purchases a mineral interest at a tax sale may maintain an action to establish title to the mineral interest pursuant to this Act if the former owner failed to take any action constituting use under this Act for a period of twenty (20) years immediately preceding commencement of the action and failed to preserve the interest pursuant to Section 5 of this Act. A person who purchases a mineral interest at a tax sale may maintain an action pursuant to this subsection notwithstanding any defect in the person's tax deed. The action shall be in the nature of and require the same notice as is required in an action to quiet title. The action may be maintained whether or not the former owner of the mineral interest or the former owner's whereabouts is known. Disability or lack of knowledge of any kind on the part

of any person does not suspend the running of the twenty-year period.

(2) This subsection shall provide an additional method for a person who purchases a mineral interest at a tax sale to quiet title and the provisions of this Act shall not invalidate any tax deed.

(c) For the purpose of this section, any of the following actions taken by or on behalf of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

(1) Active mineral operations, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation and development on or below the surface of the real property or other property unitized or pooled with the real property, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

(2) Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest. Payment of taxes constitutes use of the mineral interest assessed.

(3) Recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the interest. Recordation of an instrument constitutes use of (i) any recorded interest owned by any person in any mineral that is the subject of the instrument, and (ii) any recorded mineral interest in the property owned by any party to the instrument.

(4) Recordation of a judgment or decree that makes specific reference to the mineral interest.

(d) This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

SECTION 5. PRESERVATION OF MINERAL INTEREST.

(a) The owner of a mineral interest may record at any time a notice of intent to preserve the mineral interest or a part thereof. The notice shall

be filed with the circuit clerk of the county in which the mineral interest is located. The mineral interest is preserved in each county in which the notice is recorded. A mineral interest is not dormant if the notice is recorded within twenty (20) years immediately preceding commencement of the action to terminate the mineral interest.

(b) The notice may be executed by an owner of the mineral interest or by another person acting on behalf of the owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims.

(c) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the mineral interest is to be preserved or, if the identify of the owner cannot be established or is uncertain, the name of the class of which the owner is a member, and must identify the mineral interest or part thereof to be preserved by one of the following means:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest.

(2) A legal description of the mineral interest. If the owner of a mineral interest claims the mineral interest under an instrument that is not of record or claims under a recorded instrument that does not specifically identify that owner, a legal description is not effective to preserve the mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims. In such a case, the record of the notice of intent to preserve the mineral interest shall be indexed under the name of the record owner as well as the name of the owner of the mineral interest.

(3) A reference generally and without specificity to any or all mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, (i) a previously recorded instrument that creates, reserves, or

otherwise evidences that interest or (ii) a judgment or decree that confirms the interest.

SECTION 6. LATE RECORDING BY MINERAL OWNER.

(a) In this section, "litigation expenses" means costs and expenses that the court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney's fees.

(b) In an action to terminate a mineral interest pursuant to this Act, the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action, upon payment into court for the benefit of the surface owner of the real property the litigation expenses attributable to the mineral interest or portion thereof as to which the notice is recorded.

(c) This section does not apply in any action in which a mineral interest has been unused within the meaning of Section 4(c) for forty (40) years or more immediately preceding commencement of the action.

SECTION 7. SAVINGS AND TRANSITIONAL PROVISIONS.

(a) Except as otherwise provided in this section, this Act applies to all mineral interests, whether created before, on, or after its effective date.

(b) An action may not be maintained to terminate a mineral interest pursuant to this Act until two (2) years after the effective date of this Act.

(c) This Act does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

SECTION 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

SECTION 9. SEVERABILITY CLAUSE.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

