

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1692

4
5 By: Representatives Rodgers and Faris

For An Act To Be Entitled

9 "AN ACT TO CLEAR TITLE TO SURFACE LANDS BY CREATING A
10 PROCEDURE TO DETERMINE AND DECLARE MINERAL INTERESTS
11 DORMANT; TO ESTABLISH A RIGHT TO QUIET TITLE TO LANDS
12 SUBJECT TO DORMANT MINERAL INTERESTS; TO PRESCRIBE THE
13 METHODS OF ESTABLISHING THE USE OF THE MINERAL INTEREST
14 AND TO ALLOW FOR LATE NOTICE OF INTENT TO PRESERVE THE
15 MINERAL INTEREST; TO PROVIDE A TWO-YEAR PERIOD OF DELAY
16 FOR IMPLEMENTATION OF THESE RIGHTS; AND FOR OTHER
17 PURPOSES."

Subtitle

19 "TO CREATE A PROCEDURE TO CLEAR TITLE TO
20 SURFACE LANDS SUBJECT TO DORMANT MINERAL
21 INTERESTS AND LEGAL ACTION TO QUIET
22 TITLE TO DORMANT MINERAL INTERESTS."
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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27 SECTION 1. From and after the effective date of this act, it shall be
28 the public policy of this state to enable and encourage marketability of real
29 property and to mitigate the impact of dormant mineral interests on the full
30 use and development of both the surface estate and the mineral interests in
31 the property. This act shall be construed to effectuate this purpose to
32 provide a means for the termination of mineral interests in real property
33 which are dormant to such an extent that it impairs the marketability and
34 clouds the title of the property.

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36 SECTION 2. As used in this act, unless the context otherwise requires:

1 (1) "Mineral interest" means an interest in a mineral estate, however
2 created and regardless of form, whether absolute or fractional, divided or
3 undivided, corporeal or incorporeal, including a fee simple or any lesser
4 interest or any kind of royalty, production payment, executive right,
5 nonexecutive right, leasehold or security interest in minerals, regardless of
6 character, whether fugacious or nonfugacious, organic or inorganic.

7 (2) "Minerals" includes oil, gas, coal, other liquid, gaseous and
8 solid hydrocarbons, oil shale, sand and gravel, building stone, chemical
9 substances, gemstones, metallic ores, fissionable ores and nonfissionable
10 ores, colloidal or other clays, steam or other geothermal resources, and any
11 other substances defined as minerals by the law of this state.

12 (3) "Mineral estate" means any interest in or ownership of minerals
13 which are or may be situated in, on or under land, the fee estate of which is
14 owned by any other person or entity. The term "mineral estate" includes, but
15 is not limited to, a fee interest, a leasehold interest, a life use and any
16 term which is measured by the life of another or by the happening of a future
17 event, whether contingent or noncontingent, and includes any easement or
18 license in, over and across the land in which the minerals are located for the
19 purpose of obtaining access to and removing the minerals.

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21 SECTION 3. (a) This act shall not apply to:

22 (1) A mineral interest in the lands of the United States or any
23 of its agencies or departments, except to the extent permitted by federal law;

24 (2) A mineral interest in the lands of the state of Arkansas or
25 any of its agencies or departments of state government or of a municipality or
26 county government or other political subdivision of this state, except to the
27 extent permitted by state laws other than this act.

28 (b) This act shall not affect any interest to ground water or any
29 riparian's right to surface water in this state.

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31 SECTION 4. (a) The owner of the fee simple title to any real property
32 subject to a dormant mineral interest held by any other person or entity may
33 maintain an action to terminate the dormant mineral interest. A mineral
34 interest is dormant for the purpose of this act, if the interest is unused
35 within the meaning of subsection (c) of this section for a period of twenty
36 (20) years immediately preceding the commencement of the action. The action

1 shall be brought in the manner of and requires the same notice as an action to
2 quiet title to real property under Arkansas Code §§ 18-60-501, et seq., and
3 may be maintained whether the owner of the mineral interest or the whereabouts
4 of the owner is known or unknown. No disability or lack of knowledge of any
5 kind on the part of any person suspends the running of the twenty-year period.
6 If the court finds that the mineral interest described in the complaint is
7 unused within the meaning of subsection (c) of this section for twenty (20) or
8 more years preceding the commencement of the action, it shall enter a decree
9 declaring the dormant mineral interest to be extinguished and terminated.

10 (b) In an action to terminate a mineral interest pursuant to this act,
11 the chancery court, upon application of any person alleging to be an owner of
12 a mineral interest in the land described in the complaint shall permit the
13 person to record a late notice of intent to preserve the mineral interest in
14 accordance with Section 5 of this act. The court may award the plaintiff
15 payment of any litigation expenses. Litigation expenses means costs and
16 expenses as shall be determined by the court to have been reasonably and
17 necessarily incurred in the preparation for and the prosecution of the action,
18 including a reasonable attorney's fee. Upon the recordation of the late notice
19 of intent to preserve a mineral interest, the court shall dismiss the action,
20 unless the plaintiff, within fifteen (15) days of the court's order permitting
21 the recording of a late notice of intent, files a motion with the court for
22 permission to continue the action as an action to quiet title of the land or
23 interest described in the complaint. If the court grants the motion, the
24 action shall continue as an action to quiet the title to such land or interest
25 in the manner provided by law.

26 (c) Any of the following acts taken in relation to a mineral interest
27 shall constitute use of that mineral interest for the purpose of this section,
28 if the act was performed by or under authority of the owner of the mineral
29 interest:

30 (1) Production, geophysical exploration, exploratory or
31 developmental drilling, mining, exploitation, development or other active
32 mineral operations on or below the surface of real property which is subject
33 to the mineral interest. Active mineral operations constitute use of any
34 mineral interest owned by any person in any mineral that is the object of the
35 operations. However, injection of substances or materials for the purpose of
36 disposal or storage is not an active mineral operation within the meaning of

1 this subdivision.

2 (2) Payment of taxes on a separate property tax assessment of the
 3 mineral interest or payment of a severance tax relating to the mineral
 4 interest or its production.

5 (3) Recordation of an instrument that transfers, leases, conveys,
 6 assigns or divides a mineral interest, or creates a security interest or lien
 7 against a mineral interest, including an instrument that evidences a transfer
 8 of the title to the mineral interest.

9 (4) Recordation of an instrument, a late notice of intent, for
 10 the purpose of preserving and keeping effective a mineral interest in
 11 accordance with Section 5 of this act.

12 (5) Recordation of a certified copy of a judgment or decree which
 13 makes specific reference to the mineral interest, provided, the judgment makes
 14 reference to or includes a legal description of the fee estate which is
 15 subject to the mineral interest and the names of all record owners of the fee
 16 simple estate and is recorded by the county recorder.

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18 SECTION 5. (a) Any person claiming any kind of mineral interest may
 19 preserve and keep effective that interest by recording a late notice of intent
 20 to preserve the mineral interest, or a part thereof. The mineral interest
 21 shall be preserved in each county in which the notice is recorded. A mineral
 22 interest is not dormant for the purposes of this act, if a notice in
 23 accordance with this section is recorded within twenty (20) years immediately
 24 preceding commencement of an action to terminate the mineral interest, or
 25 pursuant to subsection (b) of Section 4 of this act after commencement of the
 26 action. The notice may be recorded by the owner of the mineral interest or by
 27 any other person acting on behalf of any mineral interest owner who is:

28 (1) Under a disability;

29 (2) Unable to assert a claim with respect to the mineral interest
 30 on his own behalf; or

31 (3) One of a class whose identity cannot be established or is
 32 uncertain at the time of recording the notice.

33 (b) The notice may be executed by or on behalf of a co-owner for the
 34 benefit of any or all co-owners or on behalf of the owner for the benefit of
 35 any or all persons claiming under the owner or persons under whom the owner
 36 claims.

1 (c) To be effective and to be entitled to recordation, the notice
 2 referred to in Section 4 of this act shall contain the following:

3 (1) An accurate and full description of all land affected by the
 4 notice, which description shall be set forth in particular terms, and not by
 5 general inclusions; but, if the mineral interest asserted under Section 4 is
 6 founded upon a recorded instrument which creates, reserves or evidences the
 7 mineral interest, the description of the land affected by the notice may be
 8 the same as the description of the land subject to the mineral interest as
 9 contained in that recorded instrument.

10 (2) The then owner or owners of record of the fee simple interest
 11 of the land described in and affected by the notice.

12 (3) A full and complete description of the mineral interest which
 13 is claimed.

14 (4) A reference to any recorded instrument or instruments which
 15 created, reserved or otherwise evidenced the mineral interest, stating the
 16 names of the parties to each instrument, the date of each instrument and where
 17 the instrument is recorded in the land records of the county, or if the
 18 mineral interest claimed was not created by or reserved in or evidenced by a
 19 recorded instrument, the basis of the claimant's title in the mineral interest
 20 described in the notice shall be set forth with particularity.

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22 SECTION 6. A court order or decree extinguishing and terminating a
 23 mineral interest, when recorded, merges the terminated mineral interest,
 24 including express and implied appurtenant surface rights and obligations, with
 25 the surface estate in shares proportionate to the ownership of the surface
 26 estate, subject to existing tax liens or assessments.

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28 SECTION 7. (a) Except as otherwise provided in this act, from and after
 29 January 1, 1998, this act shall apply to all mineral interests, whether
 30 created before, on or after January 1, 1998.

31 (b) An action may not be maintained to terminate a mineral interest
 32 pursuant to this act until two years after January 1, 1998.

33 (c) This act does not limit or affect any other procedure provided by
 34 law for extinguishing or forfeiting abandoned or forfeited mineral interest
 35 leases.

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1 SECTION 8. All provisions of this act of general and permanent nature
2 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
3 Revision Commission shall incorporate the same in the Code.

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5 SECTION 9. If any provisions of this act or the application thereof to
6 any person or circumstance is held invalid, the invalidity shall not affect
7 other provisions or applications of the act which can be given effect without
8 the invalid provisions or application, and to this end the provisions of this
9 act are declared to be severable.

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11 SECTION 10. All laws and parts of laws in conflict with this act are
12 hereby repealed.

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