

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 86th General Assembly
3 Regular Session, 2007

A Bill

HOUSE BILL 2512

4
5 By: Representative Dunn
6
7

For An Act To Be Entitled

8
9 AN ACT TO PERMIT SURFACE OWNERS TO ACQUIRE
10 DORMANT MINERAL RIGHTS; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO PERMIT SURFACE OWNERS TO ACQUIRE
14 DORMANT MINERAL RIGHTS.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

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

21 18-60-1001. Title.

22 This subchapter shall be known and may be cited as the "Dormant Mineral
23 Interests Act".
24

25 18-60-1002. Findings and purpose.

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

30 (b) This subchapter shall be construed to effectuate its purpose to
31 provide a means for termination of dormant mineral interests that impair
32 marketability of real property.
33

34 18-60-1003. Definitions.

35 As used in this subchapter:

36 (1)(A) "Mineral interest" means an interest in a mineral estate,



1 however created and regardless of form, whether absolute or fractional,
2 divided or undivided, corporeal or incorporeal.

3 (B) "Mineral interest" includes a fee simple or any lesser
4 interest in minerals, regardless of character, or any kind of royalty,
5 production payment, executive right, nonexecutive right, leasehold, or lien,
6 in minerals, regardless of character; and

7 (2) "Minerals" includes:

8 (A) Gas, oil, coal, or another gaseous, liquid, and solid
9 hydrocarbon;

10 (B) Oil shale;

11 (C) Cement material, sand and gravel, road material, or
12 building stone;

13 (D) A chemical substance;

14 (E) Gemstone;

15 (F) A metallic substance;

16 (G) Fissionable or nonfissionable ore;

17 (H) Colloidal or another clay;

18 (I) Steam or other geothermal resource; and

19 (J) Any other substance defined as a mineral by a law of
20 this state.

21
22 18-60-1004. Applicability.

23 (a) This subchapter does not apply to a mineral interest of:

24 (1) The United States or an Indian tribe, except to the extent
25 permitted by federal law; or

26 (2) This state or an agency or political subdivision of this
27 state, except to the extent permitted by state law other than this
28 subchapter.

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

30
31 18-60-1005. Termination of dormant mineral interest.

32 (a)(1) The surface owner of real property subject to a mineral
33 interest may bring an action to terminate a mineral interest if the mineral
34 interest is dormant.

35 (2) A mineral interest is dormant for the purpose of this
36 subchapter if the mineral interest:

1 (A) Is unused within the meaning of subsection (b) of this
 2 section for a continuous period of ten (10) or more years immediately
 3 preceding commencement of the action to terminate the mineral interest; and

4 (B) Has not been preserved under § 18-60-1006.

5 (3)(A) The action to terminate the mineral interest shall be
 6 brought as an action to quiet title under § 18-60-501 et seq., except that
 7 the three-year redemption period under § 18-60-510 does not apply.

8 (B) The action to terminate the mineral interest may be
 9 brought whether or not the owner of the mineral interest or the owner's
 10 whereabouts is known or unknown.

11 (C) Disability or lack of knowledge of any kind on the
 12 part of any person does not suspend the running of the ten-year period under
 13 subdivision (a)(2)(A) of this section.

14 (b) For the purpose of this section, any of the following actions
 15 taken by or under authority of the owner of a mineral interest in relation to
 16 any mineral that is part of the mineral interest constitutes use of the
 17 entire mineral interest:

18 (1)(A) Active mineral operations on or below the surface of the
 19 real property or other property unitized or pooled with the real property,
 20 including production, geophysical exploration, exploratory or developmental
 21 drilling, mining, exploitation, and development, but not including injection
 22 of substances for purposes of disposal or storage.

23 (B) Active mineral operations constitute use of any
 24 mineral interest owned by any person in any mineral that is the object of the
 25 active mineral operations;

26 (2) Payment of taxes on a separate assessment of the mineral
 27 interest or of a transfer or severance tax relating to the mineral interest;

28 (3)(A) Recordation of an instrument that creates, reserves, or
 29 otherwise evidences a claim to or the continued existence of the mineral
 30 interest, including an instrument that transfers, leases, or divides the
 31 mineral interest.

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

33 (i) Any recorded interest owned by any person in any
 34 mineral that is the subject of the instrument; and

35 (ii) Any recorded mineral interest in the property
 36 owned by any party to the instrument; or

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

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

8
 9 18-60-1006. Preservation of mineral interest by notice.

10 (a)(1) An owner of a mineral interest may record at any time a notice
 11 of intent to preserve a mineral interest for all or part of the mineral
 12 interest.

13 (2) The mineral interest is preserved in each county in which
 14 the notice of intent to preserve a mineral interest is recorded.

15 (3) A mineral interest is not dormant if the notice of intent to
 16 preserve a mineral interest is recorded:

17 (A) Within ten (10) years immediately preceding
 18 commencement of the action to terminate the mineral interest; or

19 (B) Under § 18-60-1007 after commencement of the action to
 20 terminate the mineral interest.

21 (b)(1) The notice of intent to preserve a mineral interest may be
 22 executed by an owner of the mineral interest or by another person acting on
 23 behalf of the owner, including an owner who is under a disability or is
 24 unable to assert a claim on the owner's own behalf or whose identity can not
 25 be established or is uncertain at the time of execution of the notice of
 26 intent to preserve a mineral interest.

27 (2) The notice of intent to preserve a mineral interest may be
 28 executed by or on behalf of a co-owner for the benefit of any co-owner or by
 29 or on behalf of an owner for the benefit of any person claiming under the
 30 owner or persons under whom the owner claims.

31 (c) The notice of intent to preserve a mineral interest shall contain
 32 the name of the owner of the mineral interest or the co-owners or other
 33 persons for whom the mineral interest is to be preserved or, if the identity
 34 of the owner cannot be established or is uncertain, the name of the class of
 35 which the owner is a member, and shall identify the mineral interest or part
 36 of the mineral interest to be preserved by one (1) of the following means:

1 (1) A reference to the location in the county recorder's records
 2 of the instrument that creates, reserves, or otherwise evidences the mineral
 3 interest or of the judgment or decree that confirms the mineral interest;

4 (2)(A) A legal description of the mineral interest.

5 (B) If the owner of a mineral interest claims the mineral
 6 interest under an instrument that is not of record or claims under a recorded
 7 instrument that does not specifically identify that owner:

8 (i) A legal description is not effective to preserve
 9 a mineral interest unless accompanied by a reference to the name of the
 10 record owner under whom the owner of the mineral interest claims; and

11 (ii) The record of the notice of intent to preserve
 12 the mineral interest must be indexed under the name of the record owner as
 13 well as under the name of the owner of the mineral interest; or

14 (3)(A) A reference generally and without specificity to any
 15 mineral interest of the owner in any real property situated in the county.

16 (B) The reference described in subdivision (c)(3)(A) of
 17 this section is not effective to preserve a particular mineral interest
 18 unless there is, in the county, in the name of the person claiming to be the
 19 owner of the mineral interest a:

20 (i) Previously recorded instrument that creates,
 21 reserves, or otherwise evidences the mineral interest; or

22 (ii) Judgment or decree that confirms the mineral
 23 interest.

24
 25 18-60-1007. Late recording by mineral owner.

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

30 (b) In an action under this subchapter to terminate a mineral
 31 interest, the court shall permit the owner of the mineral interest to record
 32 a late notice of intent to preserve the mineral interest as a condition of
 33 dismissal of the action, upon payment into court for the benefit of the
 34 surface owner of the real property the litigation expenses attributable to
 35 the mineral interest or portion of the mineral interest as to which the
 36 notice of intent to preserve the mineral interest is recorded.

