

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.

State of Arkansas

As Engrossed: H3/10/09 H3/12/09

87th General Assembly

# A Bill

Regular Session, 2009

HOUSE BILL 1941

By: Representative Reynolds

## For An Act To Be Entitled

AN ACT TO MERGE AN ABANDONED SEVERED MINERAL INTEREST WITH ITS SURFACE ESTATE; TO PROVIDE A METHOD TO PRESERVE A SEVERED MINERAL INTEREST; TO PROVIDE PROTECTION TO A MINERAL OPERATOR; AND FOR OTHER PURPOSES.

## Subtitle

AN ACT TO MERGE AN ABANDONED SEVERED MINERAL INTEREST WITH ITS SURFACE ESTATE; TO PRESERVE A SEVERED MINERAL INTEREST; AND TO PROTECT A MINERAL OPERATOR.

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

SECTION 1. Arkansas Code Title 18, Chapter 11 is amended to add an additional subchapter to read as follows:

### 18-11-701. Policy.

(a) It is the public policy of this state to enable and encourage marketability of real property and to mitigate the adverse effect of abandoned severed mineral interests on the full use and development of both the surface estate and the mineral estate in real property while maintaining certainty of title to the mineral estate for existing and future mineral operations.

(b) This subchapter shall be construed to effectuate its purpose to provide a means for termination of an abandoned severed mineral interest that



1 impairs the marketability of real property.

2  
3 18-11-702. Definitions.

4 As used in this subchapter:

5 (1) "Abandoned severed mineral interest" means a severed mineral  
6 interest that is:

7 (A)(i) Unused for at least a twenty-year period  
8 immediately preceding the commencement of a termination action under § 18-11-  
9 704.

10 (ii) A disability or lack of knowledge on the part  
11 of any person with an interest in the severed mineral interest does not  
12 affect the running of the twenty-year period; and

13 (B) Has not been preserved under § 18-11-706 or § 18-11-  
14 707;

15 (2) "Mineral" means natural gas, oil, coal, methane produced  
16 from coal formations, other gaseous liquid and solid hydrocarbons, oil shale,  
17 cement material, sand and gravel, road material, building stone, chemical  
18 substance, gemstone, metallic ore, fissionable and nonfissionable ores,  
19 colloidal or other clay, steam or other geothermal resource, brine, or any  
20 other substance defined as a mineral by the Arkansas Code;

21 (3)(A) "Mineral operation" means an activity conducted on or  
22 below the surface of real property for the exploration, development, or  
23 production of a mineral.

24 (B) "Mineral operation" includes a geophysical  
25 exploration, exploratory or developmental drilling activity, completion  
26 activity, surface or subsurface mining activity, and any ancillary operation.

27 (C) "Mineral operation" does not include the injection of  
28 any substance for the disposal or storage of that substance;

29 (4) "Receiver's lease" means an oil and gas lease or other  
30 mineral lease executed by a receiver appointed by a court of competent  
31 jurisdiction to execute a lease on behalf of the owner of an abandoned  
32 severed mineral interest; and

33 (5) "Severed mineral interest" means an interest in a mineral  
34 estate however created and regardless of form and whether absolute or  
35 fractional, divided or undivided, corporeal or incorporeal, including a fee  
36 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 that is owned by a person who does not own any interest in the surface of the real property underlain by the mineral estate.

18-11-703. Application.

This subchapter:

(1) Does not apply to a severed mineral interest of:

(A) The United States except to the extent permitted by federal law; or

(B) This state or an agency or political subdivision of this state unless otherwise permitted by state law;

(2) Does not apply to a severed mineral interest in a county where brine, natural gas, methane, or oil was produced in a commercially paying quantity before 1995;

(3) Does not affect water rights; and

(4) Is not intended to affect the meaning of the term "mineral" or "mineral interest" as those terms may be defined elsewhere in the Arkansas Code.

18-11-704. Termination of an abandoned severed mineral interest.

(a)(1) The surface owner of real property that is subject to a severed mineral interest may terminate an abandoned severed mineral interest by filing an action in the circuit court of the county where the abandoned severed mineral interest is located.

(2) The surface owner shall make a party to the action any person that is either:

(A) Designated by the Oil and Gas Commission as the operator of a well or proposed well within a drilling unit containing all or a portion of the real property burdened by the abandoned severed mineral interest; or

(B) A record owner of an interest in a receiver's lease.

(b)(1) In an action under subsection (a) of this section where it is alleged that the owner of the abandoned severed mineral interest cannot be personally served with process, the surface owner shall attach to his or her petition an affidavit:

(A) By a person who is experienced, trained, or educated

1 in conducting a search for the owner of a severed mineral interest; and

2 (B) That describes the effort that the affiant made to  
3 locate the owner of the severed mineral interest.

4 (2) If the court finds that a diligent effort to locate the  
5 owner of the severed mineral interest has been made, it shall authorize the  
6 surface owner to serve the owner of the severed mineral interest by  
7 publication of a warning order weekly for at least two (2) consecutive weeks  
8 in a newspaper of general circulation in the county where the severed mineral  
9 interest is located.

10 (c) The court shall afford any party an opportunity to offer proof of  
11 the use or the nonuse of the severed mineral interest.

12 (d) An action of the court that terminates an abandoned severed  
13 mineral interest shall contain findings of fact that specifically describe  
14 the efforts made to locate and serve any owner of the abandoned severed  
15 mineral interest who was not personally served with process.

16 (e) The recordation of a court order that terminates an abandoned  
17 severed mineral interest merges the abandoned severed mineral interest,  
18 including all express and implied surface rights and obligations that pertain  
19 to that severed mineral interest, with the surface estate.

20  
21 18-11-705. Presumption of use.

22 (a) Any of the following actions taken by or on behalf of the owner of  
23 a severed mineral interest in relation to any mineral that is part of the  
24 severed mineral interest constitutes use of the severed mineral interest:

25 (1)(A) An active mineral operation on or below the surface of  
26 the real property or other property unitized or pooled with the real property  
27 if it is conducted by the owner of the severed mineral interest or by another  
28 person under an oil and gas lease, other mineral lease, or other express  
29 agreement that authorizes the operation that was executed by the owner of  
30 the severed mineral interest or his or her attorney or legal representative.

31 (B)(i) A use under subdivision (a)(1)(A) of this section  
32 also constitutes a use of any severed mineral interest owned by the owner of  
33 the severed mineral interest and by any other owner of the severed mineral  
34 interest whose interest derives from the same instrument, devise, or  
35 inheritance as the owner of the severed mineral interest.

36 (ii) However, the use is limited to only those

1 minerals that are:

2 (a) The object of the active mineral  
3 operation; or

4 (b) Otherwise covered by the oil and gas  
5 lease, other mineral lease, or other express agreement authorizing the  
6 mineral operation;

7 (2)(A) Receipt by the owner of the severed mineral interest of a  
8 royalty, including a shut-in royalty, or any other proceeds of production  
9 resulting from a mineral operation whether or not the owner of the severed  
10 mineral interest or the attorney or legal representative of the owner of the  
11 severed mineral interest executed the oil and gas lease, other mineral lease,  
12 or other express agreement permitting that operation.

13 (B) A use under subdivision (a)(2)(A) of this section also  
14 constitutes a use by a co-owner of the severed mineral interest whose  
15 interest derives from the same instrument, devise, or inheritance as does the  
16 owner of the severed mineral interest.

17 (ii) However, the use is limited to only those  
18 minerals that are the object of the royalty payment.

19 (C) If the title of an owner of a severed mineral interest  
20 is not marketable, the deposit of the royalty or other proceeds described in  
21 subdivision (a)(2) of this section into a bank account that is separately  
22 maintained for the benefit of the owner of the severed mineral interest and  
23 any other similarly situated mineral owner constitutes receipt of those  
24 payments by the owner of the severed mineral interest;

25 (3)(A) A payment of an ad valorem tax on a separate assessment  
26 of the severed mineral interest by or on behalf of an owner of the severed  
27 mineral interest.

28 (B) The payment of an ad valorem tax constitutes a use of  
29 the entire severed mineral interest assessed;

30 (4)(A) Recordation of an instrument that transfers, leases, or  
31 divides the severed mineral interest.

32 (B) Recordation of an instrument constitutes use of any  
33 recorded severed mineral interest in the property that is owned by:

34 (i) A party to the instrument; or

35 (ii) Another owner of the severed mineral interest  
36 that has a recorded interest in a severed mineral that is the subject of the

1 instrument; and

2 (5) Either:

3 (A) Entry of a judgment or decree by a court of record  
4 within the county in which the severed mineral interest is located; or

5 (B) The recording within the county in which the severed  
6 mineral interest is located of a judgment or decree of a court of another  
7 county in this state that makes specific reference to the severed mineral  
8 interest.

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

15  
16 18-11-706. Preservation of a severed mineral interest.

17 (a)(1) The owner of a severed mineral interest may file for  
18 recordation a notice of intent to preserve a severed mineral interest at any  
19 time with the circuit clerk of the county in which the severed mineral  
20 interest is located.

21 (2) The severed mineral interest is preserved in each county in  
22 which a notice is recorded.

23 (3) A severed mineral interest is not abandoned if the notice is  
24 recorded within twenty (20) years immediately preceding commencement of the  
25 action to terminate the severed mineral interest.

26 (b)(1) The notice of intent to preserve a severed mineral interest may  
27 be executed by a co-owner or an owner of the severed mineral interest or a  
28 person acting on behalf of a co-owner or an owner of the severed mineral  
29 interest.

30 (2) A notice of intent to preserve a severed mineral interest  
31 executed by or on behalf of:

32 (A) A co-owner of the severed mineral interest inures to  
33 the benefit of any co-owner of the severed mineral interest; and

34 (B) An owner of a severed mineral interest inures to the  
35 benefit of any person claiming under the owner of the severed mineral  
36 interest or other person under whom the owner of the severed mineral interest

1 claims.

2 (c) The notice of intent to preserve a severed mineral interest shall:

3 (1) Contain the name of the:

4 (A) Owner of the severed mineral interest, the co-owner of  
5 the severed mineral interest, or other person for whom the severed mineral  
6 interest is to be preserved; or

7 (B) Class of which the owner of the severed mineral  
8 interest is a member if the identity of the owner of the severed mineral  
9 interest cannot be established or is uncertain; and

10 (2) Identify the severed mineral interest or portion of the  
11 severed mineral interest to be preserved by:

12 (A) A reference to the location in the records of the  
13 instrument that creates, reserves, or otherwise evidences the severed mineral  
14 interest or of the judgment or decree that confirms the severed mineral  
15 interest;

16 (B) A description of the severed mineral interest that is  
17 sufficient to put a third party on notice that the notice of intent to  
18 preserve the severed mineral interest includes the real property covered by  
19 the severed mineral interest; or

20 (C)(i) A general reference to the severed mineral interest  
21 of the owner in any real property situated in the county.

22 (ii) However, a reference under subdivision  
23 (c)(2)(C)(i) is not effective to preserve a severed mineral interest unless  
24 there is in the county in the name of the person claiming to be the owner of  
25 the severed mineral interest:

26 (a) A previously recorded instrument that  
27 creates, reserves, or otherwise evidences that severed mineral interest;

28 (b) A judgment or decree that confirms the  
29 interest and name of the person claiming to be the owner of the severed  
30 mineral interest; or

31 (c) An affidavit, proof of heirship, or other  
32 document that identifies the person claiming to be the owner of the severed  
33 mineral interest as an heir, devisee, or other successor in interest to a  
34 person identified in subdivision (c)(2)(C)(ii)(a) or (b) of this section.

35  
36 18-11-707. Late recording by an owner of a severed mineral interest.

1       (a) As used in this section, "litigation expense" means a cost or  
2 expense, including a reasonable attorney's fee, that the court determines to  
3 be reasonable and necessary for the preparation and commencement of an action  
4 under this subchapter.

5       (b)(1) In an action to terminate an abandoned severed mineral interest  
6 under this subchapter, the court shall dismiss the action if the owner of the  
7 severed mineral interest:

8               (A) Has filed a notice of intent to preserve the severed  
9 mineral interest after the twenty-year period; and

10              (B) Reimburses the petitioner his or her litigation  
11 expense attributable to the severed mineral interest covered by the recorded  
12 late notice of intent to preserve a severed mineral interest.

13       (2) However, subdivision (b)(1) does not apply in any action in  
14 which a severed mineral interest has been unused for forty (40) years or more  
15 immediately preceding commencement of the action.

16  
17       18-11-708. Protection of a mineral operator.

18       (a)(1) Notwithstanding anything in this subchapter to the contrary, a  
19 person who conducts or participates in a mineral operation on or within real  
20 property burdened by an abandoned severed mineral interest or on or within  
21 any real property pooled under an integration order issued by the Oil and Gas  
22 Commission before the entry of a decree of abandonment of that severed  
23 mineral interest or under a receiver's lease filed before the entry of a  
24 decree of abandonment of that severed mineral interest shall continue to  
25 enjoy the benefit of the integration order or receiver's lease.

26       (2)(A) A surface owner who obtains a decree of abandonment of a  
27 severed mineral interest takes ownership of that abandoned severed mineral  
28 interest subject to any integration order or receiver's lease.

29       (B) However, the surface owner under subdivision (a)(2)(A)  
30 of this section is entitled to receive payments allocable to that severed  
31 mineral interest as follows:

32              (i) All payments, including any royalty or other  
33 proceeds of production of minerals, after the effective date of the decree of  
34 abandonment are payable to the surface owner; and

35              (ii) Except to the extent that a payment has become  
36 subject to a claim of the state under any applicable law of escheat, any



1 payment, including a royalty or other proceeds of production of mineral that  
2 has been held in suspense for the period before the effective date of the  
3 decree of abandonment, is payable to the surface owner.

4 (3) Any payments that are allocable to a severed mineral  
5 interest that are not identified as being payable to the surface owner under  
6 subdivision (a)(2)(B) of this section are payable to the owner of the severed  
7 mineral interest or any person claiming through the owner of the severed  
8 mineral interest, subject to a claim of the state under any applicable law of  
9 escheat.

10 (b)(1) A person who conducts or participates in a mineral operation on  
11 or within real property burdened by an abandoned severed mineral interest or  
12 on or within any real property pooled under an integration order issued by  
13 the commission is not obligated to make payment to a surface owner until  
14 sixty (60) days after he or she receives a certified copy of the final court  
15 order terminating the abandoned severed mineral interest.

16 (2) Interest does not accrue on any payment until after the time  
17 for payment under subdivision (b)(1).

18 (3) Otherwise, a person who receives a certified copy of the  
19 final court order terminating the severed mineral interest shall comply with  
20 subsection (a) of this section.

21 (c) Any person who makes a payment, including any royalties or other  
22 proceeds of production of minerals, to a surface owner in reliance on a court  
23 order terminating an abandoned severed mineral interest is not:

24 (1) Liable to the owner of the severed mineral interest or any  
25 person claiming through that owner of the severed mineral interest for any  
26 such payment; and

27 (2) Required to inquire into the validity of the court order.

28  
29 18-11-709. Transitional provisions.

30 (a) Except as otherwise provided in this section, this subchapter  
31 applies to all severed mineral interests, whether created before, on, or  
32 after the effective date of this subchapter.

33 (b) An action may not be maintained to terminate a severed mineral  
34 interest under to this subchapter until two (2) years after the effective  
35 date of this subchapter.

36 (c) This subchapter does not limit or affect any other procedure for

terminating an abandoned severed mineral interest from title to real  
property.

*/s/ Reynolds*