

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

SENATE BILL 879

By: Senator G. Jeffress

For An Act To Be Entitled

AN ACT TO PROTECT MINERAL DEVELOPMENT; TO PROTECT
A SURFACE OWNER; TO PROVIDE A JUDICIAL REMEDY FOR
A DISPUTE BETWEEN A MINERAL DEVELOPER AND A
SURFACE OWNER; TO PROVIDE A REMEDY FOR DAMAGE;
AND FOR OTHER PURPOSES.

Subtitle

THE ARKANSAS SURFACE USE AND MINERAL
DEVELOPMENT ACCOMMODATION ACT.

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. Title.

This subchapter may be cited and shall be known as the "Arkansas Surface Use and Mineral Development Accommodation Act".

18-11-702. Legislative findings.

The General Assembly finds that when a mineral estate is severed from a surface estate by grant or reservation, it is the public policy of this state to:

(1) Facilitate the responsible development of the surface and mineral estate by identifying as much as practicable the rights and burdens of the surface owner and the mineral developer;

(2) Encourage the accommodation of potentially conflicting interests through the agreement of the surface owner and the mineral



1 developer; and

2 (3) Provide an expeditious procedure for defining and
3 quantifying the rights and obligations of the surface owner and the mineral
4 developer when an uncertainty exists or a conflict arises.

5
6 18-11-703. Definitions.

7 As used in this subchapter:

8 (1) "Accommodation" means the exercise of a mineral development right
9 with due regard for the surface improvement or the surface use of the surface
10 owner if a technologically sound and an economically practicable mineral
11 development can be conducted without material injury to a proposed surface
12 improvement or surface use;

13 (2) "Mineral" means a gas, an oil, a coal, another gaseous, liquid, or
14 solid hydrocarbon, oil shale, cement material, sand and gravel, road
15 material, building stone, chemical substance, gemstone, metallic, fissionable
16 or nonfissionable ore, colloidal and other clay, steam and other geothermal
17 resource, or another substance defined as a mineral by a law of this state;

18 (3) "Mineral developer" means the owner of a severed mineral estate or
19 a lessee or other person who has a right of mineral development of the
20 severed mineral estate;

21 (4) "Mineral development" means the full range of activity from
22 exploration through production and reclamation associated with the location
23 and extraction of a mineral that may cause or causes physical damage to the
24 surface, including without limitation the:

25 (A) Processing and the transporting of a mineral if the
26 operation is conducted on the same surface tract from which the underlying
27 mineral is extracted; and

28 (B) Recovery of a mineral left in residue from a previous
29 extraction or processing operation;

30 (5) "Ongoing mineral development" means the:

31 (A) Continuation of a mineral development that is being
32 conducted on or under the surface;

33 (B) Mineral development that is identified in a work plan,
34 pooling or unitization agreement, or other document that has been approved by
35 the Oil and Gas Commission; or

36 (C) Resumption or extension of a mineral development within

twenty (20) years after the cessation of production;

(6) "Person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, an association, a joint venture, a government, a governmental subdivision or agency, or another legal or commercial entity;

(7) "Surface" means:

(A) The exposed area of real property;

(B) An improvement on the real property;

(C) The subjacent or the lateral support for real property; or

(D) An improvement or a part of the underground used by a surface owner as an adjunct to surface use;

(8)(A) "Surface owner" means a person who:

(i) Holds an interest of record in the surface estate; or

(ii) Is in possession of the surface and holds an unrecorded interest in the surface estate.

(B) "Surface owner" does not include an adverse claimant who does not hold title under a court adjudication; and

(9) "Surface improvement or surface use " means an existing or future surface use or improvement of the surface estate by the surface owner.

18-11-704. Easement for surface access and surface use.

(a) Unless the deed, lease, or other applicable instrument states otherwise, the severance of a mineral estate with a right of mineral development from the surface estate:

(1) Establishes the mineral estate as the dominant estate; and

(2) Creates an easement:

(A) On and through the surface estate for reasonable access to the minerals in place; and

(B) For reasonable use of the surface estate for mineral development.

(b) An easement under subsection (a) of this section is subject only to an:

(1) Accommodation to a surface improvement or surface use; or

(2) Agreement of the surface owner and the owner of the severed mineral estate.

1 18-11-705. Protection of mineral development.

2 If a mineral developer gives the surface owner a notice of a proposed
3 mineral development that includes a plan to accommodate the existing surface
4 improvement or surface use that is protected under § 18-11-704(b), the
5 mineral developer is not liable for a failure to accommodate a surface
6 improvement or surface use affected by the proposed plan unless:

7 (1) The surface owner:

8 (A) Serves on the mineral developer a written objection to the
9 plan within sixty (60) days after receiving the mineral developer's notice;
10 and

11 (B) Obtains a favorable determination in a proceeding under §
12 18-11-709; or

13 (2) The mineral developer makes a material deviation from the plan
14 that causes a material injury to a surface improvement or surface use of the
15 surface owner.

16
17 18-11-706. Protection of a surface use or an improvement.

18 (a)(1) A surface owner may protect a surface improvement or surface
19 use by giving the mineral developer notice of the proposed surface
20 improvement or surface use as provided in § 18-11-708.

21 (2) After the surface owner gives the notice under subsection
22 (a)(1) of this section, the mineral developer is liable for any damage or
23 injury that a subsequent mineral development causes to the surface
24 improvement or surface use unless:

25 (A) There is ongoing mineral development; or

26 (B) The mineral developer provides a written objection, as
27 provided in § 18-11-708, of the proposed surface improvement or surface use
28 to the surface owner within sixty (60) days after receiving the notice given
29 under subsection (a)(1) of this section.

30 (b) If the mineral developer provides an objection to the surface owner
31 under subsection (a)(2) of this section, the surface owner may protect his or
32 her surface improvement or surface use by:

33 (1) Entering into an agreement with the mineral developer; or

34 (2) Obtaining a favorable determination in a proceeding under §
35 18-11-709.

1 18-11-707. Modification of easement for surface access and use of the
2 surface.

3 A mineral developer's easement for surface access and reasonable use of
4 the surface estate and a mineral developer's obligation of accommodation are
5 subordinate to:

6 (1) A provision of a deed, lease, or other instrument that
7 expressly:

8 (A) Requires the payment of surface damages;

9 (B) Waives surface damages; or

10 (C) Protects the disruption of a surface use or a surface
11 improvement constructed before or after severance occurs or the obligation to
12 accommodate arises; or

13 (2) An agreement relating to a surface improvement or surface
14 use or damages.

15
16 18-11-708. Procedure for notice and objection.

17 A notice or objection to a surface owner or mineral developer under
18 this subchapter is sufficient if it:

19 (1) Is mailed by certified mail to the recipient's last known
20 address or personally delivered to the recipient;

21 (2) States the time period for making an objection under this
22 subchapter and the address to which an objection in writing may be mailed or
23 delivered; and

24 (3) Is accompanied appropriately by:

25 (A) The mineral developer's description of the proposed
26 mineral development, including a plan of accommodation for the existing
27 surface improvement or surface use; or

28 (B) The surface owner's proposed surface improvement or
29 surface use.

30
31 18-11-709. Determination whether accommodation is required.

32 (a) If the surface owner and mineral developer are unable to reach an
33 agreement, either may institute a proceeding in the circuit court where the
34 mineral interest rests on or under real property to determine whether an
35 accommodation is required under this subchapter.

36 (b) If the circuit court finds that mineral development in the

1 foreseeable future is:

2 (1) Probable based upon reasonably foreseeable economic
 3 conditions and technology and that technologically sound and economically
 4 practicable mineral development can be conducted without material injury to
 5 the surface improvement or surface use, the mineral developer:

6 (A) May exercise the development easement pertaining to
 7 the mineral estate without accommodation for the proposed surface improvement
 8 or surface use; and

9 (B) Is not liable for damages or injury to the proposed
 10 surface improvement or surface use; or

11 (2) Improbable based on reasonably foreseeable economic
 12 conditions and technology or the proposed surface improvement or surface use
 13 would not interfere materially with technologically sound and economically
 14 practicable mineral development, the mineral developer:

15 (A) May exercise the development easement pertaining to
 16 the mineral estate only with an accommodation for the proposed surface
 17 improvement or surface use; and

18 (B) Is liable under this subchapter for damage or injury
 19 to the surface owner for the proposed surface improvement or surface use.

20 (c) If the circuit court's determination under subsection (b) of this
 21 section authorizes a new surface improvement or surface use and the surface
 22 owner does not begin the proposed surface use or construction of the proposed
 23 surface improvement within three (3) years after the date of the
 24 determination, the mineral developer:

25 (1) Does not have to accommodate the proposed surface
 26 improvement or surface use; and

27 (2) Is not liable under this subchapter for damage or injury to
 28 the proposed surface improvement or surface use.

29 (d) The circuit court shall award to the prevailing party a reasonable
 30 attorney's fee and other expense incidental to the proceeding.

31
 32 18-11-710. Recordation.

33 (a) The written notice and written objection required by § 18-11-705
 34 or § 18-11-706 shall be recorded in each county in which the affected real
 35 property is located.

36 (b) A deed, lease, instrument, or agreement described in § 18-11-707

1 or a judgment under § 18-11-709 shall be recorded in each county in which the
2 affected real property is located.

3
4 18-11-711. Measure of damages for failure to accommodate –
5 Limitations.

6 (a) If a mineral developer fails to accommodate a surface improvement
7 or surface use protected under this subchapter, the surface owner may
8 initiate a cause of action in the circuit court where the mineral interest
9 rests on or under real property to recover damages for:

10 (1) The loss of the surface use in an amount that is the greater
11 of the loss of:

12 (A) Income for the period when the surface owner's use of
13 the surface or an improvement was interrupted; or

14 (B) The value of the surface owner's use of the surface or
15 an improvement during a period of interrupted use; and

16 (2) An injury to or the destruction of a surface improvement
17 that is the lesser of the:

18 (A) Loss of the fair market value of the surface
19 improvement; or

20 (B) Cost of repairing, relocating, or replacing the
21 surface improvement.

22 (b) A mineral developer may offset the value of a required reclamation
23 activity or a benefit conferred on the surface owner's property as the result
24 of mineral development against the amount of aggregate damages under
25 subsection (a) of this section.

26 (c) Unless provided otherwise in an agreement, the surface owner shall
27 not commence an action to recover damages under this section more than two
28 (2) years after the loss or injury under subsection (a) of this section is or
29 should have been discovered by the surface owner.

30
31 18-11-712. Reservation of rights.

32 Unless otherwise provided in this subchapter, this subchapter does not
33 limit the liability of the:

34 (1) Surface owner under other law for the impairment or the
35 obstruction of a mineral development; or

36 (2) Mineral developer under other law for the unreasonable or

the excessive use of the surface.

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