

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2890

2015 Carryover

(BY DELEGATES MCGEEHAN AND ZATEZALO)

[Introduced January 13, 2016; referred to the
Committee on Energy then the Judiciary.]

1 A BILL to repeal §55-12A-3, §55-12A-6, §55-12A-7, §55-12A-8 and §55-12A-9 of the Code of
 2 West Virginia, 1931, as amended, and to amend and reenact §55-12A-1, §55-12A-2,
 3 §55-12A-4 and §55-12A-5 of said code, all relating to the procedure for claiming
 4 abandoned mineral interests; creating a procedure to quiet title to abandoned mineral
 5 interests by serving notice on a mineral rights owner and filing an affidavit with the county
 6 clerk within sixty days thereafter.

Be it enacted by the Legislature of West Virginia:

1 That §55-12A-3, §55-12A-6, §55-12A-7, §55-12A-8 and §55-12A-9 of the Code of West
 2 Virginia, 1931, as amended, be repealed, and that §55-12A-1, §55-12A-2, §55-12A-4 and
 3 §55-12A-5 of said code be amended and reenacted, all to read as follows:

**ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY
 MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.**

§55-12A-1. Legislative intent.

1 It is the intent of the Legislature, ~~in empowering the circuit courts of the state, as provided~~
 2 ~~by this article,~~ to facilitate development of coal, oil, gas, and other minerals, as part of the public
 3 policy of the state, by removing certain barriers to such development caused by interests in
 4 minerals owned by unknown or missing owners or by abandoning owners.

§55-12A-2. Definitions.

1 As used in this article, the following definitions shall apply:

2 (1) "Abandoning owner" means any person, vested with title to any interest in minerals,
 3 who is proved to have abandoned the interest, that is, to have relinquished any right to possess
 4 or enjoy the interest with the expressed intention of terminating ownership of the interest, but
 5 without vesting the ownership in any other person.

6 ~~(2)~~ "Claim" means any affidavit or other information filed with the county clerk, pursuant to
7 this article, to assert a mineral interest.

8 ~~(2)~~ (3) "Development of the minerals" or "mineral development" means: (a) Mining coal
9 by any method; or (b) drilling for and producing oil or gas by conventional techniques, or by
10 enhanced recovery by injection of fluids of any kind into the producing formation; or (c) utilization
11 of a gas-bearing formation as an underground gas storage reservoir within the meaning of article
12 nine, chapter twenty-two of this code; or (d) production of other minerals by any method.

13 ~~(3)~~ (4) "~~Interest in minerals~~ Mineral interests" means any interest, real or personal, in coal,
14 oil, gas or any other mineral, for which interest the property taxes are not delinquent as of the
15 date of the filing of a petition under this article.

16 ~~(4)~~ (5) "Surface owner" or "owner of the surface" means any person vested with any
17 interest in fee in the surface estate overlying the particular minerals sought to be developed under
18 this article. A surface owner's rights under this article shall be subject to any deed of trust or
19 other security instrument, lien, surface lease, easement or other non possessory interest in the
20 surface owned by any other person; but such persons other than the surface owner shall have no
21 right to notice and no standing to appear and be heard hereunder.

22 ~~(5)~~ (6) "Unknown or missing owner" or "holder" means any person, vested with title to any
23 interest in minerals, whose present identity or location cannot be determined from the records of
24 the clerk of the county commission, the sheriff, the assessor and the clerk of the circuit court in
25 the county in which the interest is located or by diligent inquiry in the vicinity of the owner's last
26 known place of residence, and shall include such owner's heirs, successors and assigns not
27 known to be alive.

**§55-12A-4. When court may appoint special commissioner; persons authorized to
institute proceedings Abandonment of mineral interest and vesting in surface**

owner.

1 ~~(a) If the title to any mineral interest is vested in an unknown or missing owner or an~~
2 ~~abandoning owner and it is proved that the development of the minerals would be advantageous~~
3 ~~to a prudent owner, and if it appears that the development of the minerals furthers the public policy~~
4 ~~stated in section one of this article, the circuit court of the county having jurisdiction under section~~
5 ~~three of this article shall have the power to appoint a special commissioner and authorize the~~
6 ~~special commissioner to sell, execute and deliver a valid lease of the mineral interest on terms~~
7 ~~and conditions customary in the area for the mineral interest to be leased. The lease shall~~
8 ~~continue in full force and effect so long as there are operations under its terms unless the lease~~
9 ~~has previously expired by its own terms. Any mineral interest held by any person, other than the~~
10 ~~surface owner of the lands subject to the interest, shall be deemed abandoned and vested in the~~
11 ~~owner of the surface of the lands subject to the interest if the requirements established in section~~
12 ~~five of this article are satisfied and none of the following applies:~~

13 (1) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in
14 connection with an interest in coal. However, if a mineral interest includes both coal and other
15 minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned
16 and vest in the surface owner.

17 (2) The mineral interest is held by the United States, this state, or any political subdivision,
18 body politic, or agency of the United States or this state.

19 (3) Within the twenty years immediately preceding the date on which notice is served or
20 published under section five of this article, one or more of the following has occurred:

21 (A) The mineral interest has been the subject of a title transaction that has been filed or
22 recorded in the office of the county clerk of the county in which the lands are located.

23 (B) There has been actual production or withdrawal of minerals by the holder from the

24 lands covered by a lease to which the mineral interest is subject, from a mine a portion of which
 25 is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included
 26 in unit operations, in which the mineral interest is participating: *Provided*, That the instrument or
 27 order creating or providing for the pooling or unitization of oil or gas interests has been filed or
 28 recorded in the office of the county clerk of the county in which the lands that are subject to the
 29 pooling or unitization are located.

30 (C) The mineral interest has been used in underground gas storage operations by the
 31 holder.

32 (D) A drilling or mining permit has been issued to the holder, provided that an affidavit that
 33 states the name of the permit holder, the permit number, the type of permit, and a legal description
 34 of the lands affected by the permit has been filed or recorded, pursuant to any applicable
 35 requirements of chapter twenty-two-c of this code, in the office of the county clerk of the county
 36 in which the lands are located.

37 (E) A claim to preserve the mineral interest has been filed in accordance with section five
 38 of this article.

39 (F) In the case of a separated mineral interest, a separately listed tax parcel number has
 40 been created for the mineral interest in the county assessor's tax list and the county treasurer's
 41 duplicate tax list in the county in which the lands are located.

42 ~~(b) A petition to the circuit court for the appointment of a special commissioner may be~~
 43 ~~instituted by any person who is:~~

44 ~~(1) Vested with an interest in fee in the surface estate overlying the particular minerals~~
 45 ~~sought to be developed; or~~

46 ~~(2) Vested with an interest in fee in the particular minerals sought to be developed; or~~

47 ~~(3) The lessee or the assignee or successor to the lessee, under a valid and subsisting~~

48 mineral lease, the lessor of which is a person entitled to file a petition by reason of subdivision (2)
49 of this subsection.

**§55-12A-5. Persons to be joined as defendants; Contents of verified petition claim;
notice guardian ad litem.**

1 (a) ~~The person filing a petition under this article shall join as defendants to the action all~~
2 ~~unknown or missing owners or abandoning owners having record title to the particular minerals~~
3 ~~sought to be developed, and the unknown heirs, successors and assigns of all such owners not~~
4 ~~known to be alive. All persons not in being who might have some contingent or future interest~~
5 ~~therein, and all persons whether in being or not in being, having any interest, present, future or~~
6 ~~contingent, in the mineral interests sought to be leased, shall be fully bound by the proceedings~~
7 ~~hereunder.~~

8 ~~The petition shall be verified. It shall contain allegations of the facts showing (1) the~~
9 ~~entitlement of the petitioner to file the petition, (2) an identification of the defendants and the~~
10 ~~mineral interest of each as far as practical under the circumstances, (3) a description of the tract~~
11 ~~of land which is the subject of the petition, (4) the interest in the particular minerals sought to be~~
12 ~~developed, (5) the nature of the proposed development of the minerals, (6) the efforts to locate~~
13 ~~unknown or missing owners, if any, (7) the relinquishment by abandoning owners, if any, of any~~
14 ~~right to possess or enjoy their interest with the expressed intention of terminating ownership of~~
15 ~~the interest, but without vesting the ownership in any other person, (8) such other information~~
16 ~~known to the petitioner which might be helpful in identifying or locating the present owners thereof,~~
17 ~~and, as exhibits to the petition, (9) a certified copy of the most recent recorded instrument~~
18 ~~embracing the interest to be leased, (10) such additional instruments as are necessary to show~~
19 ~~the vesting of title to the minerals in the last record owner thereof, and (11) a certified copy of any~~
20 ~~competing lease or easement of record, that is to say, a lease or easement from landowners who~~

21 are not defendants, embracing all or part of the tract of land which is the subject of the petition,
22 for any mineral development by the lessee or easement owner of record of the minerals sought
23 by the petition; and the petition may contain allegations of the facts showing that (12) mineral
24 development would be advantageous to the defendants and would further the public policy stated
25 in section one of this article; and the prayer shall be for the court to order the sale of a lease
26 covering the subject mineral interest under section six of this article, and thereafter, in the case
27 of any defendant or heir, successor or assign of any defendant who does not appear to claim
28 ownership of the defendant's interest for seven years after the date of the lease, for the court to
29 order a conveyance of the defendant's mineral interest under section seven of this article, subject
30 to the lease, to the owner of the surface overlying the mineral interest. A claim to preserve a
31 mineral interest from being deemed abandoned under section four of this article may be filed for
32 record by its holder. The claim shall be recorded in accordance with article one, chapter
33 thirty-nine of this code, and shall consist of a notice that does all of the following:

34 (1) States the nature of the mineral interest claimed and any recording information upon
35 which the claim is based;

36 (2) Describe the property and any covenants;

37 (3) States that the holder does not intend to abandon, but instead to preserve, the holder's
38 rights in the mineral interest.

39 (b) The petition shall be verified. ~~It shall contain allegations of the facts showing (1) the~~
40 ~~entitlement of the petitioner to file the petition, (2) an identification of the defendants and the~~
41 ~~mineral interest of each as far as practical under the circumstances, (3) a description of the tract~~
42 ~~of land which is the subject of the petition, (4) the interest in the particular minerals sought to be~~
43 ~~developed, (5) the nature of the proposed development of the minerals, (6) the efforts to locate~~
44 ~~unknown or missing owners, if any, (7) the relinquishment by abandoning owners, if any, of any~~

45 ~~right to possess or enjoy their interest with the expressed intention of terminating ownership of~~
46 ~~the interest, but without vesting the ownership in any other person, (8) such other information~~
47 ~~known to the petitioner which might be helpful in identifying or locating the present owners thereof,~~
48 ~~and, as exhibits to the petition, (9) a certified copy of the most recent recorded instrument~~
49 ~~embracing the interest to be leased, (10) such additional instruments as are necessary to show~~
50 ~~the vesting of title to the minerals in the last record owner thereof, and (11) a certified copy of any~~
51 ~~competing lease or easement of record, that is to say, a lease or easement from landowners who~~
52 ~~are not defendants, embracing all or part of the tract of land which is the subject of the petition,~~
53 ~~for any mineral development by the lessee or easement owner of record of the minerals sought~~
54 ~~by the petition; and the petition may contain allegations of the facts showing that (12) mineral~~
55 ~~development would be advantageous to the defendants and would further the public policy stated~~
56 ~~in section one of this article; and the prayer shall be for the court to order the sale of a lease~~
57 ~~covering the subject mineral interest under section six of this article, and thereafter, in the case~~
58 ~~of any defendant or heir, successor or assign of any defendant who does not appear to claim~~
59 ~~ownership of the defendant's interest for seven years after the date of the lease, for the court to~~
60 ~~order a conveyance of the defendant's mineral interest under section seven of this article, subject~~
61 ~~to the lease, to the owner of the surface overlying the mineral interest. A claim that complies~~
62 ~~with subsection (a) of this section preserves the rights of all holders of a mineral interest in the~~
63 ~~same lands.~~

64 (c) ~~If personal service of process is possible, it shall be made as provided by the West~~
65 ~~Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the~~
66 ~~petitioner shall (1) publish a Class III legal advertisement in compliance with the provisions of~~
67 ~~article three, chapter fifty-nine of this code, and (2) no later than the first day of publication, file a~~
68 ~~lis pendens notice in the county clerk's office of the county wherein the mineral estate or the larger~~

69 ~~portion thereof lies. Both the advertisement and the lis pendens notice shall set forth (1) the~~
70 ~~names of the petitioner and the defendants, as they are known to be by the exercise of reasonable~~
71 ~~diligence by the petitioner, and their last known addresses, (2) the date and record data of the~~
72 ~~instrument or other conveyance which immediately created the mineral interest, (3) an adequate~~
73 ~~description of the land as contained therein, (4) the source of title of the last known owners of the~~
74 ~~mineral interests, and (5) a statement that the action is brought for the purpose of authorizing the~~
75 ~~execution and delivery of a valid and present mineral lease for development of the particular~~
76 ~~minerals described in the petition, and thereafter, in the case of any defendant or heir, successor~~
77 ~~or assign of any defendant who does not appear to claim ownership of the defendant's interest~~
78 ~~within seven years after the date of the lease, for the court to order a conveyance of the~~
79 ~~defendant's mineral interest under section seven of this article, subject to the lease, to the owner~~
80 ~~of the surface overlying the mineral interest. In addition, the petitioner shall send notice by~~
81 ~~certified mail, return receipt requested, to the last known address, if there be such, of all named~~
82 ~~defendants. In addition, the court may in its discretion order advertisement elsewhere or by~~
83 ~~additional means if there is reason to believe that additional advertisement might result in~~
84 ~~identifying and locating the unknown or missing owners. Any holder of an interest for use in~~
85 ~~underground gas storage operations may preserve the holder's interest, and those of any lessor~~
86 ~~of the interest, by a single claim, that defines the boundaries of the storage field or pool and its~~
87 ~~formations, without describing each separate interest claimed. The claim is prima-facie evidence~~
88 ~~of the use of each separate interest in underground gas storage operations.~~

89 (d) ~~The circuit court shall appoint a guardian ad litem for any unknown or missing owner~~
90 ~~or abandoning owner and their unknown heirs, successors and assigns not known to be alive.~~
91 ~~The compensation and expenses of the guardian ad litem shall be fixed by the court and paid by~~
92 ~~the petitioner under terms ordered by the court. A mineral interest may be preserved indefinitely~~

93 from being deemed abandoned under section four of this article by the occurrence of any of the
94 circumstances described in subdivision three, subsection (a), section four of this article, including,
95 but not limited to, successive filings of claims to preserve mineral interests under this section.

96 (e) Before a mineral interest becomes vested under section four of this article in the
97 owner of the surface of the lands subject to the interest, the owner of the surface of the lands
98 subject to the interest shall do both of the following:

99 (1) Serve notice by certified mail, return receipt requested, to each holder or each holder's
100 successors or assignees, at the last known address of each, of the owner's intent to declare the
101 mineral interest abandoned. If service of notice cannot be completed to any holder, the owner
102 shall publish notice of the owner's intent to declare the mineral interest abandoned at least once
103 in a newspaper of general circulation in each county in which the land that is subject to the interest
104 is located. The notice shall contain all of the information specified in subsection (f) of this section.

105 (2) At least thirty, but not later than sixty days after the date on which the notice required
106 under subdivision (1) of this subsection is served or published, as applicable, file in the office of
107 the county clerk of each county in which the surface of the land that is subject to the interest is
108 located an affidavit of abandonment that contains all of the information specified in subsection (g)
109 of this section.

110 (f) The notice required under subdivision (1), subsection (e) of this section shall contain
111 all of the following:

112 (1) The name of each holder and the holder's successors and assignees, as applicable;

113 (2) A description of the surface of the land that is subject to the mineral interest. The
114 description shall include the volume and page number of the recorded deed or other recorded
115 instrument under which the owner of the surface of the lands claims title.

116 (3) A description of the mineral interest to be abandoned. The description shall include the

117 volume and page number of the recorded instrument on which the mineral interest is based.

118 (4) A statement attesting that nothing specified in subdivision (3), subsection (a), section
119 four of this article has occurred within the twenty years immediately preceding the date on which
120 notice is served or published under subsection (e) of this section;

121 (5) A statement of the intent of the owner of the surface of the lands subject to the mineral
122 interest to file in the office of the county clerk an affidavit of abandonment at least thirty, but not
123 later than sixty days after the date on which notice is served or published, as applicable.

124 (g) An affidavit of abandonment shall contain all of the following:

125 (1) A statement that the person filing the affidavit is the owner of the surface of the lands
126 subject to the interest;

127 (2) The volume and page number of the recorded instrument on which the mineral interest
128 is based;

129 (3) A statement that the mineral interest has been abandoned pursuant to subsection (a),
130 section four of this article;

131 (4) A recitation of the facts constituting the abandonment;

132 (5) A statement that notice was served on each holder or each holder's successors or
133 assignees or published in accordance with subsection (e) of this section.

134 (h)(1) If a holder or a holder's successors or assignees claim that the mineral interest that
135 is the subject of a notice under subsection (e) of this section has not been abandoned, the holder
136 or the holder's successors or assignees, not later than sixty days after the date on which the
137 notice was served or published, as applicable, shall file in the office of the county clerk of each
138 county where the land that is subject to the mineral interest is located one of the following:

139 (A) A claim to preserve the mineral interest in accordance with this section;

140 (B) An affidavit that identifies an event described in subdivision three, subsection (a),

141 section four of this article that has occurred within the twenty years immediately preceding the
142 date on which the notice was served or published under subsection (e) of this section.

143 (2) The holder or the holder's successors or assignees shall notify the person who served
144 or published the notice under subsection (e) of this section of the filing under this division.

145 (3) If a holder or a holder's successors or assignees who claim that the mineral interest
146 that is the subject of a notice under subsection (e) of this section has not been abandoned fails
147 to file a claim to preserve the mineral interest, files such a claim more than sixty days after the
148 date on which the notice was served or published under subsection (e) of this section, fails to file
149 an affidavit that identifies an event described in subdivision (3), subsection (a), section four of this
150 article that has occurred within the twenty years immediately preceding the date on which the
151 notice was served or published under subsection (e) of this section, or files such an affidavit more
152 than sixty days after the date on which the notice was served or published under that division,
153 the owner of the surface of the land subject to the interest who is seeking to have the interest
154 deemed abandoned and vested in the owner shall file in the office of the county clerk of each
155 county where the land that is subject to the mineral interest is located a notice of failure to file.
156 The notice shall contain all of the following:

157 (A) A statement that the person filing the notice is the owner of the surface of the lands
158 subject to the mineral interest;

159 (B) A description of the surface of the land that is subject to the mineral interest;

160 (C) The statement: "This mineral interest abandoned pursuant to affidavit of abandonment
161 recorded in volume ____, page ____"

162 (4) Immediately after the notice of failure to file a mineral interest is recorded, the mineral
163 interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the
164 record of the mineral interest shall cease to be notice to the public of the existence of the mineral

165 interest or of any rights under it. In addition, the record shall not be received as evidence in any
166 court in this state on behalf of the former holder or the former holder's successors or assignees
167 against the owner of the surface of the lands formerly subject to the interest. However, the
168 abandonment and vesting of a mineral interest pursuant this article only shall be effective as to
169 the property of the owner that filed the affidavit of abandonment under subsection (e) of this
170 section.

171 (i) For purposes of a recording under this section, a county clerk may charge a reasonable
172 fee.

NOTE: The purpose of this bill is to create a procedure to streamline the process to claim abandoned mineral interests.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.