

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2373**

BY DELEGATE MCGEEHAN

[Introduced January 14, 2019; 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, §55-  
 3 12A-4 and §55-12A-5 of said code, all relating to the procedure for claiming abandoned  
 4 mineral interests; creating a procedure to quiet title to abandoned mineral interests by  
 5 serving notice on a mineral rights owner; and requiring the filing of an affidavit with the  
 6 county clerk within 60 days thereafter.

*Be it enacted by the Legislature of West Virginia:*

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

8 ~~(2)~~ "Development of the minerals" or "mineral development" means: ~~(a)~~ (A) Mining coal by  
 9 any method; or ~~(b)~~ (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)~~ (C)

11 utilization of a gas-bearing formation as an underground gas storage reservoir within the meaning  
 12 of §22-9-1 *et seq.* of this code; or ~~(d)~~ (D) production of other minerals by any method.

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

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

22 ~~(5)~~ “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-3. Jurisdiction of the circuit court.**

1 [Repealed]

### **§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.~~

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

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

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

15 ~~(3) The lessee or the assignee or successor to the lessee, under a valid and subsisting~~  
16 ~~mineral lease, the lessor of which is a person entitled to file a petition by reason of subdivision (2)~~  
17 ~~of this subsection~~

18 Any mineral interest held by any person, other than the surface owner of the lands subject  
19 to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands  
20 subject to the interest if the requirements established in §55-12A-5 of this code are satisfied and  
21 none of the following applies:

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

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

28 (3) Within the 20 years immediately preceding the date on which notice is served or  
29 published under §55-12A-5 of this code, one or more of the following has occurred:

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

32 (B) There has been actual production or withdrawal of minerals by the holder from the  
33 lands covered by a lease to which the mineral interest is subject, from a mine a portion of which  
34 is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included  
35 in unit operations, in which the mineral interest is participating: *Provided*, That the instrument or  
36 order creating or providing for the pooling or unitization of oil or gas interests has been filed or  
37 recorded in the office of the county clerk of the county in which the lands that are subject to the  
38 pooling or unitization are located.

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

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

46 (E) A claim to preserve the mineral interest has been filed in accordance with §55-12A-5  
47 of this code.

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

**§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 ~~(b) 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.~~

31 ~~(c) If personal service of process is possible, it shall be made as provided by the West~~  
32 ~~Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the~~  
33 ~~petitioner shall (1) publish a Class III legal advertisement in compliance with the provisions of~~  
34 ~~article three, chapter fifty-nine of this code, and (2) no later than the first day of publication, file a~~  
35 ~~lis pendens notice in the county clerk's office of the county wherein the mineral estate or the larger~~  
36 ~~portion thereof lies. Both the advertisement and the lis pendens notice shall set forth (1) the names~~  
37 ~~of the petitioner and the defendants, as they are known to be by the exercise of reasonable~~  
38 ~~diligence by the petitioner, and their last known addresses, (2) the date and record data of the~~  
39 ~~instrument or other conveyance which immediately created the mineral interest, (3) an adequate~~  
40 ~~description of the land as contained therein, (4) the source of title of the last known owners of the~~  
41 ~~mineral interests, and (5) a statement that the action is brought for the purpose of authorizing the~~  
42 ~~execution and delivery of a valid and present mineral lease for development of the particular~~  
43 ~~minerals described in the petition, and thereafter, in the case of any defendant or heir, successor~~  
44 ~~or assign of any defendant who does not appear to claim ownership of the defendant's interest~~  
45 ~~within seven years after the date of the lease, for the court to order a conveyance of the~~  
46 ~~defendant's mineral interest under section seven of this article, subject to the lease, to the owner~~  
47 ~~of the surface overlying the mineral interest. In addition, the petitioner shall send notice by certified~~  
48 ~~mail, return receipt requested, to the last known address, if there be such, of all named~~  
49 ~~defendants. In addition, the court may in its discretion order advertisement elsewhere or by~~  
50 ~~additional means if there is reason to believe that additional advertisement might result in~~  
51 ~~identifying and locating the unknown or missing owners.~~

52 ~~(d) The circuit court shall appoint a guardian ad litem for any unknown or missing owner~~  
53 ~~or abandoning owner and their unknown heirs, successors and assigns not known to be alive.~~  
54 ~~The compensation and expenses of the guardian ad litem shall be fixed by the court and paid by~~  
55 ~~the petitioner under terms ordered by the court~~

1           (a) A claim to preserve a mineral interest from being deemed abandoned under §55-12A-  
2 4 of this code may be filed for record by its holder. The claim shall be recorded in accordance with  
3 §39-1-1 et seq. of this code, and shall consist of a notice that does all of the following:

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

6           (2) Describe the property and any covenants; and

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

9           (b) A claim that complies with §55-12A-5(a) of this preserves the rights of all holders of a  
10 mineral interest in the same lands.

11           (c) Any holder of an interest for use in underground gas storage operations may preserve  
12 the holder's interest, and those of any lessor of the interest, by a single claim, that defines the  
13 boundaries of the storage field or pool and its formations, without describing each separate  
14 interest claimed. The claim is prima-facie evidence of the use of each separate interest in  
15 underground gas storage operations.

16           (d) A mineral interest may be preserved indefinitely from being deemed abandoned under  
17 §55-12A-4 of this code by the occurrence of any of the circumstances described in §55-12A-  
18 4(a)(3) of this code, including, but not limited to, successive filings of claims to preserve mineral  
19 interests under this section.

20           (e) Before a mineral interest becomes vested under §55-12A-4 of this code in the owner  
21 of the surface of the lands subject to the interest, the owner of the surface of the lands subject to  
22 the interest shall do both of the following:

23           (1) Serve notice by certified mail, return receipt requested, to each holder or each holder's  
24 successors or assignees, at the last known address of each, of the owner's intent to declare the  
25 mineral interest abandoned. If service of notice cannot be completed to any holder, the owner  
26 shall publish notice of the owner's intent to declare the mineral interest abandoned at least once



27 in a newspaper of general circulation in each county in which the land that is subject to the interest  
28 is located. The notice shall contain all of the information specified in §55-12A-5(f) of this code;  
29 and

30 (2) At least 30, but not later than 60 days after the date on which the notice required under  
31 §55-12A-5(e)(1) of this code is served or published, as applicable, file in the office of the county  
32 clerk of each county in which the surface of the land that is subject to the interest is located an  
33 affidavit of abandonment that contains all of the information specified in §55-12A-5(g) of this code.

34 (f) The notice required under §55-12A-5(e)(1) of this code shall contain all of the following:

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

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

39 (3) A description of the mineral interest to be abandoned. The description shall include the  
40 volume and page number of the recorded instrument on which the mineral interest is based.

41 (4) A statement attesting that nothing specified in §55-12A-4(a)(3) of this code has  
42 occurred within the 20 years immediately preceding the date on which notice is served or  
43 published under §55-12A-5(e) of this code; and

44 (5) A statement of the intent of the owner of the surface of the lands subject to the mineral  
45 interest to file in the office of the county clerk an affidavit of abandonment at least 30, but not later  
46 than 60 days after the date on which notice is served or published, as applicable.

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

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

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

52 (3) A statement that the mineral interest has been abandoned pursuant to §55-12A-4(a)  
53 of this code;

54 (4) A recitation of the facts constituting the abandonment; and

55 (5) A statement that notice was served on each holder or each holder's successors or  
56 assignees or published in accordance with §55-12A-5(e) of this code.

57 (h)(1) If a holder or a holder's successors or assignees claim that the mineral interest that  
58 is the subject of a notice under §55-12A-5(e) of this code has not been abandoned, the holder or  
59 the holder's successors or assignees, not later than 60 days after the date on which the notice  
60 was served or published, as applicable, shall file in the office of the county clerk of each county  
61 where the land that is subject to the mineral interest is located one of the following:

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

63 (B) An affidavit that identifies an event described in §55-12A-4(a)(3) of this code that has  
64 occurred within the 20 years immediately preceding the date on which the notice was served or  
65 published under §55-12A-5(e) of this code.

66 (2) The holder or the holder's successors or assignees shall notify the person who served  
67 or published the notice under §55-12A-5(e) of this code of the filing under this division.

68 (3) If a holder or a holder's successors or assignees who claim that the mineral interest  
69 that is the subject of a notice under §55-12A-5(e) of this code has not been abandoned fails to file  
70 a claim to preserve the mineral interest, files such a claim more than 60 days after the date on  
71 which the notice was served or published under that subsection, fails to file an affidavit that  
72 identifies an event described in §55-12A-4(a)(3) of this code that has occurred within the 20 years  
73 immediately preceding the date on which the notice was served or published under §55-12A-5(e)  
74 of this code, or files such an affidavit more than 60 days after the date on which the notice was  
75 served or published under that division, the owner of the surface of the land subject to the interest  
76 who is seeking to have the interest deemed abandoned and vested in the owner shall file in the

77 office of the county clerk of each county where the land that is subject to the mineral interest is  
 78 located a notice of failure to file. The notice shall contain all of the following:

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

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

82 (C) The statement: "This mineral interest abandoned pursuant to affidavit of abandonment  
 83 recorded in volume, page"; and

84 (4) Immediately after the notice of failure to file a mineral interest is recorded, the mineral  
 85 interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the  
 86 record of the mineral interest shall cease to be notice to the public of the existence of the mineral  
 87 interest or of any rights under it. In addition, the record shall not be received as evidence in any  
 88 court in this state on behalf of the former holder or the former holder's successors or assignees  
 89 against the owner of the surface of the lands formerly subject to the interest. However, the  
 90 abandonment and vesting of a mineral interest pursuant this article only shall be effective as to  
 91 the property of the owner that filed the affidavit of abandonment under §55-12A-5(e) of this code.

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

**§55-12A-6. Appointment of a special commissioner; sale of lease; special commissioner's report; when court not to authorize lease; investment of lease proceeds; search for owner; period during which unknown or missing owner or abandoning owner may establish identity and title.**

1 [Repealed]

**§55-12A-7. When special commissioner may convey title in mineral interest to surface owner; form of deed; payment to surface owner; final report of special commissioner.**

1 [Repealed]

**§55-12A-8. Petitioner's attorneys' fees, expenses and court costs.**

1 [Repealed]

**§55-12A-9. Limitation of action by unknown or missing owner or abandoning owner.**

1 [Repealed]

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

The bill repeals §55-12A-3, §55-12A-6, §55-12A-7, §55-12A-8 and §55-12A-9.

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