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H. B. 2890

(By Delegates McGeehan and Zatezalo)
[Introduced February 24, 2015; referred to the
Committee on Energy then the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

That §55-12A-3, §55-12A-6, §55-12A-7, §55-12A-8 and §55-12A-9 of the Code of West Virginia, 1931, as amended, be repealed, and that §55-12A-1, §55-12A-2, §55-12A-4 and §55-12A-5 of said code be amended and reenacted, all to read as follows: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

5 **§55-12A-2. Definitions.**

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

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

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

13 ~~(2)~~ (3) "Development of the minerals" or "mineral development" means: (a) Mining coal by
 14 any method; or (b) drilling for and producing oil or gas by conventional techniques, or by enhanced
 15 recovery by injection of fluids of any kind into the producing formation; or (c) utilization of a
 16 gas-bearing formation as an underground gas storage reservoir within the meaning of article nine,
 17 chapter twenty-two of this code; or (d) production of other minerals by any method.

18 ~~(3)~~ (4) ~~"Interest in minerals~~ Mineral interests" means any interest, real or personal, in coal,
 19 oil, gas or any other mineral, for which interest the property taxes are not delinquent as of the date
 20 of the filing of a petition under this article.

21 ~~(4)~~ (5) "Surface owner" or "owner of the surface" means any person vested with any interest
 22 in fee in the surface estate overlying the particular minerals sought to be developed under this article.

1 A surface owner's rights under this article shall be subject to any deed of trust or other security
 2 instrument, lien, surface lease, easement or other non possessory interest in the surface owned by any
 3 other person; but such persons other than the surface owner shall have no right to notice and no
 4 standing to appear and be heard hereunder.

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

11 ~~§55-12A-4. When court may appoint special commissioner, persons authorized to institute~~
 12 ~~proceedings~~ **Abandonment of mineral interest and vesting in surface owner.**

13 ~~(a) If the title to any mineral interest is vested in an unknown or missing owner or an~~
 14 ~~abandoning owner and it is proved that the development of the minerals would be advantageous to~~
 15 ~~a prudent owner, and if it appears that the development of the minerals furthers the public policy~~
 16 ~~stated in section one of this article, the circuit court of the county having jurisdiction under section~~
 17 ~~three of this article shall have the power to appoint a special commissioner and authorize the special~~
 18 ~~commissioner to sell, execute and deliver a valid lease of the mineral interest on terms and~~
 19 ~~conditions customary in the area for the mineral interest to be leased. The lease shall continue in full~~
 20 ~~force and effect so long as there are operations under its terms unless the lease has previously expired~~
 21 ~~by its own terms.~~ Any mineral interest held by any person, other than the surface owner of the lands
 22 subject to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands

1 subject to the interest if the requirements established in section five of this article are satisfied and
2 none of the following applies:

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

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

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

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

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

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

21 (D) A drilling or mining permit has been issued to the holder, provided that an affidavit that
22 states the name of the permit holder, the permit number, the type of permit, and a legal description

1 of the lands affected by the permit has been filed or recorded, pursuant to any applicable
2 requirements of chapter twenty-two-c of this code, in the office of the county clerk of the county in
3 which the lands are located.

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

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

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

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

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

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

17 **~~§55-12A-5. Persons to be joined as defendants; Contents of verified petition claim; notice~~**
18 **~~guardian ad litem.~~**

19 ~~(a) The person filing a petition under this article shall join as defendants to the action all~~
20 ~~unknown or missing owners or abandoning owners having record title to the particular minerals~~
21 ~~sought to be developed, and the unknown heirs, successors and assigns of all such owners not known~~
22 ~~to be alive. All persons not in being who might have some contingent or future interest therein, and~~

1 all persons whether in being or not in being, having any interest, present, future or contingent, in the
2 mineral interests sought to be leased, shall be fully bound by the proceedings hereunder.

3 ~~The petition shall be verified. It shall contain allegations of the facts showing (1) the~~
4 ~~entitlement of the petitioner to file the petition, (2) an identification of the defendants and the~~
5 ~~mineral interest of each as far as practical under the circumstances, (3) a description of the tract of~~
6 ~~land which is the subject of the petition, (4) the interest in the particular minerals sought to be~~
7 ~~developed, (5) the nature of the proposed development of the minerals, (6) the efforts to locate~~
8 ~~unknown or missing owners, if any, (7) the relinquishment by abandoning owners, if any, of any~~
9 ~~right to possess or enjoy their interest with the expressed intention of terminating ownership of the~~
10 ~~interest, but without vesting the ownership in any other person, (8) such other information known~~
11 ~~to the petitioner which might be helpful in identifying or locating the present owners thereof, and,~~
12 ~~as exhibits to the petition, (9) a certified copy of the most recent recorded instrument embracing the~~
13 ~~interest to be leased, (10) such additional instruments as are necessary to show the vesting of title~~
14 ~~to the minerals in the last record owner thereof, and (11) a certified copy of any competing lease or~~
15 ~~easement of record, that is to say, a lease or easement from landowners who are not defendants,~~
16 ~~embracing all or part of the tract of land which is the subject of the petition, for any mineral~~
17 ~~development by the lessee or easement owner of record of the minerals sought by the petition; and~~
18 ~~the petition may contain allegations of the facts showing that (12) mineral development would be~~
19 ~~advantageous to the defendants and would further the public policy stated in section one of this~~
20 ~~article; and the prayer shall be for the court to order the sale of a lease covering the subject mineral~~
21 ~~interest under section six of this article, and thereafter, in the case of any defendant or heir, successor~~
22 ~~or assign of any defendant who does not appear to claim ownership of the defendant's interest for~~

1 ~~seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral~~
2 ~~interest under section seven of this article, subject to the lease, to the owner of the surface overlying~~
3 ~~the mineral interest. A claim to preserve a mineral interest from being deemed abandoned under~~
4 ~~section four of this article may be filed for record by its holder. The claim shall be recorded in~~
5 ~~accordance with article one, chapter thirty-nine of this code, and shall consist of a notice that does~~
6 ~~all of the following:~~

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

9 ~~(2) Describe the property and any covenants;~~

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

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

1 to the minerals in the last record owner thereof, and (11) a certified copy of any competing lease or
2 easement of record, that is to say, a lease or easement from landowners who are not defendants,
3 embracing all or part of the tract of land which is the subject of the petition, for any mineral
4 development by the lessee or easement owner of record of the minerals sought by the petition; and
5 the petition may contain allegations of the facts showing that (12) mineral development would be
6 advantageous to the defendants and would further the public policy stated in section one of this
7 article; and the prayer shall be for the court to order the sale of a lease covering the subject mineral
8 interest under section six of this article, and thereafter, in the case of any defendant or heir, successor
9 or assign of any defendant who does not appear to claim ownership of the defendant's interest for
10 seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral
11 interest under section seven of this article, subject to the lease, to the owner of the surface overlying
12 the mineral interest. A claim that complies with subsection (a) of this section preserves the rights
13 of all holders of a mineral interest in the same lands.

14 (c) If personal service of process is possible, it shall be made as provided by the West
15 Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the
16 petitioner shall (1) publish a Class III legal advertisement in compliance with the provisions of article
17 three, chapter fifty-nine of this code, and (2) no later than the first day of publication, file a lis
18 pendens notice in the county clerk's office of the county wherein the mineral estate or the larger
19 portion thereof lies. Both the advertisement and the lis pendens notice shall set forth (1) the names
20 of the petitioner and the defendants, as they are known to be by the exercise of reasonable diligence
21 by the petitioner, and their last known addresses, (2) the date and record data of the instrument or
22 other conveyance which immediately created the mineral interest, (3) an adequate description of the

1 land as contained therein, (4) the source of title of the last known owners of the mineral interests,
2 and (5) a statement that the action is brought for the purpose of authorizing the execution and
3 delivery of a valid and present mineral lease for development of the particular minerals described
4 in the petition, and thereafter, in the case of any defendant or heir, successor or assign of any
5 defendant who does not appear to claim ownership of the defendant's interest within seven years after
6 the date of the lease, for the court to order a conveyance of the defendant's mineral interest under
7 section seven of this article, subject to the lease, to the owner of the surface overlying the mineral
8 interest. In addition, the petitioner shall send notice by certified mail, return receipt requested, to the
9 last known address, if there be such, of all named defendants. In addition, the court may in its
10 discretion order advertisement elsewhere or by additional means if there is reason to believe that
11 additional advertisement might result in identifying and locating the unknown or missing owners.
12 Any holder of an interest for use in underground gas storage operations may preserve the holder's
13 interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the
14 storage field or pool and its formations, without describing each separate interest claimed. The claim
15 is prima-facie evidence of the use of each separate interest in underground gas storage operations.
16 (d) ~~The circuit court shall appoint a guardian ad litem for any unknown or missing owner or~~
17 ~~abandoning owner and their unknown heirs, successors and assigns not known to be alive. The~~
18 ~~compensation and expenses of the guardian ad litem shall be fixed by the court and paid by the~~
19 ~~petitioner under terms ordered by the court.~~ A mineral interest may be preserved indefinitely from
20 being deemed abandoned under section four of this article by the occurrence of any of the
21 circumstances described in subdivision three, subsection (a), section four of this article, including,
22 but not limited to, successive filings of claims to preserve mineral interests under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (B) An affidavit that identifies an event described in subdivision three, subsection (a), section
2 four of this article that has occurred within the twenty years immediately preceding the date on which
3 the notice was served or published under subsection (e) of this section.

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

6 (3) If a holder or a holder's successors or assignees who claim that the mineral interest that
7 is the subject of a notice under subsection (e) of this section has not been abandoned fails to file a
8 claim to preserve the mineral interest, files such a claim more than sixty days after the date on which
9 the notice was served or published under subsection (e) of this section, fails to file an affidavit that
10 identifies an event described in subdivision (3), subsection (a), section four of this article that has
11 occurred within the twenty years immediately preceding the date on which the notice was served or
12 published under subsection (e) of this section, or files such an affidavit more than sixty days after
13 the date on which the notice was served or published under that division, the owner of the surface
14 of the land subject to the interest who is seeking to have the interest deemed abandoned and vested
15 in the owner shall file in the office of the county clerk of each county where the land that is subject
16 to the mineral interest is located a notice of failure to file. The notice shall contain all of the
17 following:

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

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

21 (C) The statement: "This mineral interest abandoned pursuant to affidavit of abandonment
22 recorded in volume __, page __"

1 (4) Immediately after the notice of failure to file a mineral interest is recorded, the mineral
2 interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the
3 record of the mineral interest shall cease to be notice to the public of the existence of the mineral
4 interest or of any rights under it. In addition, the record shall not be received as evidence in any
5 court in this state on behalf of the former holder or the former holder's successors or assignees
6 against the owner of the surface of the lands formerly subject to the interest. However, the
7 abandonment and vesting of a mineral interest pursuant this article only shall be effective as to the
8 property of the owner that filed the affidavit of abandonment under subsection (e) of this section.
9 (i) For purposes of a recording under this section, a county clerk may charge a reasonable 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.