

ACT No. 88

2023 Regular Session

HOUSE BILL NO. 455

BY REPRESENTATIVE COUSSAN

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AN ACT

To amend and reenact the heading of R.S. 31:11 and R.S. 31:39, 75, 79, 114, 138.1(A) and (B), 156, 164, 166, 175, 192, 204, and 206(A) and to repeal R.S. 9:5805, relative to security interests and other rights in minerals and their production and accounts; to provide relative to the encumbrance of production and accounts in minerals; to repeal a provision governing the accrual of liberative prescription against certain mineral or royalty rights; to provide for standardization of language and updates in terminology; to make technical corrections; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The heading of R.S. 31:11 and R.S. 31:39, 75, 79, 114, 138.1(A) and (B), 156, 164, 166, 175, 192, 204, and 206(A) are hereby amended and reenacted to read as follows:

§11. ~~Correlative rights of landowner and owner of a mineral right and between owners of mineral rights~~ Reasonable regard for concurrent uses of the land burdened by mineral rights

* * *

§39. Attempt to restore or secure new production as interruption of prescription
After production has ceased and prescription has commenced anew, it may be interrupted by good faith ~~operation~~ operations conducted in accordance with the general principles of Articles 29 through 31 to restore production or to secure new production from the same well or mine, whether from the same geological formation or one different from that previously producing.

* * *

1 §75. Right to contract regarding rules of use

2 The rules of use regarding interruption of prescription on a mineral servitude
3 may be restricted by agreement but ~~may~~ shall not be made less burdensome, except
4 that parties may agree expressly and in writing, either in the act creating a servitude
5 or otherwise, that an interruption of prescription resulting from unit operations or
6 production shall extend to the entirety of the tract burdened by the servitude ~~tract~~
7 regardless of the location of the well or of whether all or only part of the tract is
8 included in the unit.

9 * * *

10 §79. Prescription when after-acquired title doctrine applies; extinction of
11 outstanding servitude

12 If the landowner who purported to create the servitude remains the owner of
13 the land at the time of the extinction of the previously outstanding rights, the party
14 in whose favor the doctrine operates has whatever time remains between the date of
15 vesting of title in him and ten years from the date of the transaction by which ~~he~~ the
16 party purported to ~~acquired~~ acquire in which to exercise his rights.

17 * * *

18 §114. Nature of mineral lease; creation on noncontiguous tracts; effect of unit
19 operations

20 A mineral lease is a contract by which the lessee is granted the right to
21 explore for and produce minerals. A single lease may be created on two or more
22 noncontiguous tracts of land, ~~and operations~~ Operations on or production from the
23 land burdened by the lease or land unitized therewith sufficient to maintain the lease
24 according to its terms will continue ~~it~~ the lease in force as to the entirety of the land
25 burdened.

26 * * *

27 §138.1. Division order; precedence of lease; penalties for failure to pay royalties
28 due

29 A. For the purposes of the Article, a "division order" is an instrument setting
30 forth the proportional ownership in ~~oil or gas~~ minerals or other substances, or the

1 value thereof, ~~which division order~~ that is prepared after examination of title and
2 ~~which~~ that is executed by the owners of the production or other persons having
3 authority to act on behalf of the owners thereof.

4 B. A division order ~~may~~ shall not alter or amend the terms of the ~~oil and gas~~
5 mineral lease. A division order that varies the terms of the ~~oil and gas~~ mineral lease
6 is invalid to the extent of the variance, and the terms of the ~~oil and gas~~ mineral lease
7 take precedence.

8 * * *

9 §156. Interruption of possession by use or exercise of mineral rights

10 Possession of mineral rights under Article 154 or 155 is lost by adverse use
11 or exercise of them according to their nature. Loss of possession occurs although the
12 production or operations constituting the adverse use or exercise are not on the land
13 being possessed. It is sufficient that the production or operations constitute a use of
14 the mineral rights according to the title of the owner thereof. In the case of a mineral
15 lease, the use or exercise must be such that it would interrupt the ~~liberative~~
16 prescription of nonuse if the lessee had been the owner of a mineral servitude.

17 * * *

18 §164. Creation of mineral servitude by co-owner of land

19 A co-owner of land may create a mineral servitude out of his undivided
20 interest in the land, and prescription commences from the date of its creation. One
21 who acquires a mineral servitude from a co-owner of land ~~may~~ shall not exercise his
22 right without the consent of co-owners owning at least an undivided seventy-five
23 percent interest in the land, provided that ~~he~~ the servitude owner has made every
24 effort to contact such co-owners and, if contacted, has offered to contract with them
25 on substantially the same basis that ~~he~~ the servitude owner has contracted with
26 another co-owner. A co-owner of the land who does not consent to the exercise of
27 such rights has no liability for the costs of development and operations, except out
28 of his share of production.

29 * * *

1 §166. Granting of mineral lease by co-owner of land

2 A co-owner of land may grant a valid mineral lease or a valid lease or permit
 3 for geological surveys, by means of a torsion balance, seismographic explosions,
 4 mechanical device, or any other method, as to his undivided interest in the land, but
 5 the lessee or permittee ~~may~~ shall not exercise his rights thereunder without consent
 6 of co-owners owning at least an undivided seventy-five percent interest in the land,
 7 provided that ~~he~~ the lessee or permittee has made every effort to contact such co-
 8 owners and, if contacted, has offered to contract with them on substantially the same
 9 basis that ~~he~~ the lessee or permittee has contracted with another co-owner. A co-
 10 owner of the land who does not consent to the exercise of such rights has no liability
 11 for the costs of development and operations ~~or other costs~~, except out of his share of
 12 production.

13 * * *

14 §175. Co-owner of mineral servitude may not operate independently

15 A co-owner of a mineral servitude ~~may~~ shall not conduct operations on the
 16 property subject to the servitude without the consent of co-owners owning at least
 17 an undivided seventy-five percent interest in the servitude, provided that ~~he~~ the co-
 18 owner has made every effort to contact such other co-owners and, if contacted, has
 19 offered to contract with them on substantially the same basis that ~~he~~ the co-owner
 20 has contracted with another co-owner. Operations as used in this Section shall
 21 include geological surveys, by means of a torsion balance, seismographic explosions,
 22 mechanical device, or any other method. A co-owner of the servitude who does not
 23 consent to such operations has no liability for the costs of development and
 24 operations, except out of his share of production.

25 * * *

26 §192. ~~When~~ Right of usufructuary of land ~~entitled~~ to grant lease

27 If the land subject to the usufruct, or any part thereof, is subject to a lease
 28 granted by the landowner prior to the creation of the usufruct, the usufructuary is
 29 entitled only to royalties on actual or constructive production allocable to him under
 30 Article 191. If such a lease terminates, or if the land or any part thereof is not under

1 lease at the time the usufruct is created, the usufructuary's right of use and enjoyment
 2 includes the right to execute leases as to any rights to which ~~he~~ the usufructuary is
 3 entitled under Article 190 and, accordingly, to retain bonuses, rentals, or other
 4 payments, or the proportionate part thereof, ~~allocable to payments, or the~~
 5 ~~proportionate part thereof~~, allocable to his interest under Article 191. Such a lease
 6 executed by the usufructuary ~~may~~ shall not extend beyond the period of his usufruct.

7 * * *

8 §204. ~~Mortgage may include pledge; effect of pledge~~ Security interest in minerals
 9 and proceeds thereof

10 ~~A. A mortgage of mineral rights entered into prior to the time Chapter 9 of~~
 11 ~~the Louisiana Commercial Laws becomes effective may also provide for the pledge~~
 12 ~~of minerals subsequently produced to the extent of the mortgagor's interest therein~~
 13 ~~or of the proceeds accruing from the sale or other disposition thereof. Delivery of~~
 14 ~~the minerals or proceeds is unnecessary and, upon execution of such an act of~~
 15 ~~mortgage containing the pledge, the pledgee is possessed of them and is entitled to~~
 16 ~~receive all amounts accruing to them. Such a pledge entered into prior to the time~~
 17 ~~Chapter 9 of the Louisiana Commercial Laws becomes effective is effective as to~~
 18 ~~third persons when the act of mortgage containing the pledge is properly filed for~~
 19 ~~registry. A person who pays, delivers, or accounts to a pledgor, under a contract or~~
 20 ~~agreement in existence at the time the act of mortgage is filed for registry, for~~
 21 ~~minerals produced, or proceeds from the sale thereof, or royalties, rentals, or other~~
 22 ~~sums which the pledgee is entitled to receive under the pledge, may make the~~
 23 ~~payments or deliver or account for such minerals to the pledgor without liability to~~
 24 ~~the pledgee until such person has been delivered a certified copy of the act of pledge~~
 25 ~~or until he has acknowledged in writing to the pledgee notice of the pledge. The~~
 26 ~~privilege enjoyed by the pledgee shall attach to all minerals severed or the proceeds~~
 27 ~~thereof in the hands of the pledgor as long as they can be identified. The pledgor~~
 28 ~~shall promptly account to the pledgee for them unless excused from doing so by the~~
 29 ~~act of pledge. The pledge stipulated in the act of mortgage of mineral rights is~~
 30 ~~extinguished when the mortgage is extinguished.~~

1 In 1982, however, the law of prescription was comprehensively revised and
 2 reenacted by Act No. 187 of the 1982 Regular Session of the Legislature. Civil Code
 3 Article 3445 now states that “There are three kinds of prescription: acquisitive
 4 prescription, liberative prescription, and prescription of nonuse.” However, the Act
 5 did not revise articles of the Mineral Code that made reference to “liberative
 6 prescription.”

7 The references in Articles 156 and 206(A) to “liberative prescription” have
 8 been revised to refer to “prescription of nonuse” as being the relevant regime of
 9 prescription pertinent to the mineral servitude and mineral royalty. Accordingly,
 10 Comments to Mineral Code Articles 16, 28, 54, 59, 85, 105, 156, 157, and 162 are
 11 no longer accurate to the extent that they refer to liberative prescription.

12 Section 2. R.S. 9:5805 is hereby repealed in its entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____