

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

283U0076

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1002** - 02/05/2013

Introduced by: Representatives Hoffman, Hawley, Magstadt, Olson (Betty), Rozum, Schrempp, and Solum and Senators Rampelberg, Maher, Rhoden, Sutton, and Tieszen at the request of the Interim Oil and Gas Study Committee

1 FOR AN ACT ENTITLED, An Act to provide for the creation of a trust account for unlocatable  
2 mineral interest owners.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. A person that owns a mineral interest, leasehold, or royalty interest underlying  
5 a tract of land may petition the court of proper jurisdiction in the county where the tract of land,  
6 or a part of the tract of land, is located to declare a trust in favor of any other owner of the same  
7 mineral interest, leasehold, or royalty interest if the place of residence and present whereabouts  
8 of the owner is unknown and cannot be reasonably ascertained.

9 Section 2. In requesting the creation of a trust provided for in section 1 of this Act, the  
10 petitioner shall show that the petitioner made a diligent but unsuccessful effort to locate the  
11 absent owner and that the creation of a trust and the appointment of a trustee is in the best  
12 interest of the unlocatable owner.

13 Section 3. If the court determines the petitioner meets the burdens provided for in section  
14 2 of this Act, the court shall declare a trust in favor of the unlocatable owner, shall appoint a



1 trustee of the trust, and shall authorize the trustee to execute and deliver a mineral lease, a  
2 ratification, a division order, or any other related document or instrument on the terms and  
3 conditions as the court may approve.

4 Section 4. The trustee shall administer the trust in compliance with the provisions regulating  
5 trusts and trustees in Title 55. Trustee or attorney fees may be paid from the trust proceeds if  
6 approved by the court of proper jurisdiction. All bonuses, rental payments, royalties, and other  
7 income shall be paid to the trustee until the trust is terminated and notice of the termination is  
8 given to all interested parties. Upon receipt, the trustee shall credit fifty percent of the moneys  
9 paid to the general fund of the county where the trustee is located to defray the costs of  
10 administration. The trustee shall invest the funds in a prudent manner.

11 Section 5. A trust in favor of unlocatable owners is to remain in force until the unlocatable  
12 owner in question successfully claims the funds held in trust and files the notice as provided in  
13 section 6 of this Act. The trustee shall distribute all moneys remaining in the trust following  
14 distribution to the county and payment of trustee and attorney fees as provided in section 4 of  
15 this Act to the person entitled to the money upon the order of a court of proper jurisdiction. A  
16 person who succeeds to ownership of a mineral interest by any means owns the mineral interest  
17 and the proceeds from the mineral interest from the date of succession. Funds held in trust  
18 pursuant to this Act are subject to the laws governing abandoned property as provided in chapter  
19 43-41B.

20 Section 6. A person claiming ownership of a mineral interest, leasehold, or royalty interest  
21 that is the subject of a trust established pursuant to section 1 of this Act may record with the  
22 recorder of each county where the land overlaying the mineral interest is located a notice  
23 containing the person's address with a description of the person's ownership interest. Recording  
24 the interest pursuant to this section creates a rebuttable presumption that the person owns the

1 interest claimed.

2 Section 7. Notwithstanding the provisions of this Act, the requirements of Title 55, or the  
3 requirements of chapter 43-41B, no action or proceeding may be maintained against a trustee  
4 of any trust created under the provisions of this Act for breach of any duty imposed by this Act,  
5 Title 55, or chapter 43-41B, absent a preliminary showing made by clear and convincing  
6 evidence that the actions of the trustee were reckless, grossly negligent, or intentional.