

Senate Bill 288

By: Senators Mullis of the 53rd, Staton of the 18th and Whitehead, Sr. of the 24th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 44-5-168 of the Official Code of Georgia Annotated, relating to
2 adverse possession of mineral rights, so as to provide for the automatic reversion of mineral
3 rights to the fee owner of the real property if the owner of the mineral rights has not paid the
4 taxes due on such mineral rights for 20 years; to provide for a method of proof for such
5 reversion; to provide an exception; to provide for related matters; to repeal conflicting laws;
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 44-5-168 of the Official Code of Georgia Annotated, relating to adverse
10 possession of mineral rights, is amended by revising the Code section as follows:

11 "44-5-168.

12 (a) Whenever mineral rights are conveyed or whenever real property is conveyed in fee
13 simple but the mineral rights to such property are reserved by the grantor, the owner of the
14 real property in fee simple or his or her heirs or assigns may gain title to such mineral
15 rights by adverse possession if the owner of the mineral rights or his or her heirs or assigns
16 have neither worked nor attempted to work the mineral rights nor paid any taxes due on
17 them for a period of seven years since the date of the conveyance and for seven years
18 immediately preceding the filing of the petition provided for in subsection (b) of this Code
19 section.

20 (b) In order to obtain absolute title to mineral rights in the circumstances described in
21 subsection (a) of this Code section:

22 (1) The owner of the real property in fee simple or his or her heirs or assigns may file in
23 the superior court for the county where the land is located a petition requesting relief in
24 the nature of declaratory judgment. The petition:

25 (A) Shall contain all essential, required paragraphs, including jurisdiction;

1 (B) Shall contain the name and last known address of the grantor of the property
 2 reserving the mineral rights and the names and last known addresses of his or her heirs
 3 or assigns or any other person known by the plaintiff to have an interest in the mineral
 4 rights;

5 (C) Shall show:

6 (i) That the plaintiff or his or her predecessors in title were granted and obtained a
 7 deed for the property in question;

8 (ii) That the conveyance reserved mineral rights or that the plaintiff or his or her
 9 predecessors in title conveyed the mineral rights and reserved or retained the fee
 10 simple title to the real property; and

11 (iii) That, for a period of seven years preceding the filing of the petition after the
 12 conveyance, the owner of the mineral rights or his or her heirs or assigns have neither
 13 worked nor attempted to work the mineral rights nor paid taxes on them; and

14 (D) Shall include any and all prayers regarding the land that the plaintiff may desire.
 15 Specifically, the petition may pray that the court find that the plaintiff has obtained title
 16 to the mineral rights through adverse possession and that the plaintiff be granted title
 17 to mineral rights;

18 (2) Upon a finding in the plaintiff's favor, the court shall issue a judgment and decree
 19 declaring that the mineral rights involved have been lost and that the plaintiff has gained
 20 absolute title to such mineral rights; and

21 (3) Service shall be perfected in the same manner as service on defendants in an in rem
 22 proceeding, including service by publication.

23 (c)(1) Whenever mineral rights are conveyed or whenever real property is conveyed in
 24 fee simple but the mineral rights to such property are reserved by the grantor, such
 25 mineral rights shall be totally defeased and shall vest in the current owner of the real
 26 property in fee simple, automatically, by operation of law, if the owner of the mineral
 27 rights interest has not paid state and county property taxes due on such mineral rights for
 28 a period of 20 consecutive years since the date of the conveyance or reservation and no
 29 tax has been paid since such 20 year anniversary date and July 1, 2007, if such
 30 anniversary date occurred prior to July 1, 2007.

31 (2) On and after July 1, 2007, any mineral rights owner's failure to pay such tax as set
 32 forth in paragraph (1) of this subsection shall constitute a per se presumption of fact and
 33 law that:

34 (A) Such mineral rights owner has abandoned all right, title, and interest in and to the
 35 mineral rights to the current fee owner, and such abandonment has been effective for
 36 a period of at least 20 years;

1 (B) The current fee owner has, by adverse possession, obtained all right, title, and
2 interest in and to such mineral rights interest; and

3 (C) The mineral rights interest has vested in the current fee simple owner and has
4 merged with the fee simple title by operation of law.

5 (3) No further action by the current fee simple owner shall be required to establish the
6 vesting of the mineral rights interest in and to the current fee simple owner.

7 (4) Such presumptions of fact and law shall be conclusive unless and until rebutted by
8 a preponderance of evidence in an action for a declaratory judgment, filed in the superior
9 court of the county in which the real property is located by the person who was the owner
10 at the time of the defeasance and vesting as set forth in paragraph (1) of this subsection
11 of the mineral rights. The mineral rights owner cannot maintain such declaratory
12 judgment action by paying the taxes after such 20 year anniversary date, but can only
13 maintain such action by rebutting the presumption that the taxes were not in fact paid.

14 (5) At any time after such effective anniversary date, the fee simple owner may proceed
15 to foreclose on all rights any mineral rights owner might have to file a declaratory
16 judgment action seeking to rebut the presumptions established by paragraphs (1) through
17 (4) of this subsection, and thereby redeem his or her mineral rights interest as provided
18 in paragraph (4) of this subsection, by retaining any attorney who is an active member of
19 the State Bar of Georgia to execute and file with the clerk of the county where the fee
20 simple property is located, in its deed records, an affidavit which shows:

21 (A) Such attorney has conducted an examination of the history of the property and the
22 county's deed and tax records and clearly states that the records reflect that no attempt
23 has been made by the owner of the mineral rights interest to extract the minerals or
24 work the claim and that no taxes have been paid on the mineral rights during the
25 required 20 year period;

26 (B) Such attorney has caused to be published in the county organ a legal notice which
27 provides:

28 (i) Contact information for the attorney;

29 (ii) The name of the current fee simple record owner and deed book and page number
30 of the vesting deed;

31 (iii) The name of the record owner of the mineral rights and the deed book and page
32 number wherein the mineral rights were obtained or other instrument of record
33 identifying information;

34 (iv) That the record fee simple owner intends to foreclose on all redemption rights
35 of the owner of the mineral rights; and

36 (v) That the owner of the mineral rights must file a declaratory judgment action with
37 the superior court no later than 30 days from the stated date of the first publication or

1 the right of redemption will be foreclosed and the mineral rights interest forever
 2 extinguished;

3 (C) A statement that such attorney has mailed a notice, with a copy of this Code
 4 section attached, by certified mail to the last known address of the owner of the mineral
 5 rights interest as reflected on the county's deed, tax, or probate records containing all
 6 of the information required by subparagraphs (A) and (B) of this paragraph, or a
 7 statement that, after a diligent search, no such address could be found; and

8 (D) A statement that such attorney has examined the superior court docket after the
 9 thirtieth day following such notice and no such declaratory judgment has been filed.

10 Any such affidavit, upon being filed in the deed records, shall constitute conclusive
 11 evidence in equity and law of the facts which justify the presumptions of fact and law as
 12 described in paragraphs (1) through (4) of this subsection becoming conclusive, and may
 13 only be rebutted upon a showing of actual fraud in the submission of the affidavit or a
 14 mistake of fact as specified in paragraph (4) of this subsection in a declaratory judgment
 15 action.

16 (6) None of the provisions of this subsection nor any other provision of this Code section
 17 shall be applicable to nor available for use adversely against the owner or holder of any
 18 mineral rights interest who is a governmental entity, land trust, nonprofit organization
 19 holding the mineral rights deed or reservation in the public interest, or any other
 20 organization or entity that is not subject to state or county property taxes on such mineral
 21 rights.

22 (7) The remedies provided by this subsection are intended to be independent of and
 23 supplemental to any and all remedies provided by any other provisions of this Code
 24 section and in no way are intended to limit or cause an election of remedies otherwise
 25 available under this Code section.

26 ~~(e)~~(d) Nothing in this Code section shall restrict the court from granting further plenary
 27 relief, whether legal or equitable; and the failure of the petition in the plaintiff's favor shall
 28 not affect the right of the plaintiff to any other relief, legal or equitable, to which he or she
 29 may be entitled.

30 ~~(d)~~(e) Any person named in the petition or any person having an interest in the mineral
 31 rights shall have the right to intervene in a case brought under this Code section.

32 ~~(e)~~(f) In order to maintain the status quo pending the adjudication of the questions or to
 33 preserve equitable rights, the court may grant injunctions and other interlocutory
 34 extraordinary relief.

35 ~~(f)~~(g) Nothing in this Code section shall apply to a lease for a specific number of years nor
 36 to an owner of mineral rights who has leased the mineral rights in writing to a licensed
 37 mining operator as defined in Part 3 of Article 2 of Chapter 4 of Title 12."

1

SECTION 2.

2 All laws and parts of laws in conflict with this Act are repealed.