AN ACT

ENTITLED, An Act to provide for the creation of a trust account for unlocatable mineral interest owners.

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

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

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

Section 3. If the court determines the petitioner meets the burdens provided for in section 2 of this Act, the court shall declare a trust in favor of the unlocatable owner, shall appoint a trustee of the trust, and shall authorize the trustee to execute and deliver a mineral lease, a ratification, a division order, or any other related document or instrument on the terms and conditions as the court may approve.

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

trustee shall invest the funds in a prudent manner.

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

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

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

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I certify that the attached Act originated in the

HOUSE as Bill No. 1002

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1002
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State