

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

576Y0095

HOUSE JUDICIARY ENGROSSED NO. **HB 1081** - 2/1/2017

Introduced by: Representative Johns and Senator Rusch

1 FOR AN ACT ENTITLED, An Act to revise certain provisions for establishing a trust for an
2 unlocatable mineral owner.

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

4 Section 1. That § 43-30B-1 be amended to read:

5 43-30B-1. A Any person ~~that owns a mineral interest, leasehold, or royalty interest~~
6 underlying a or entity who holds an interest in a particular tract of land may petition the court
7 ~~of proper jurisdiction~~ in the county where the ~~tract of land, or a part of the tract of land;~~ is
8 located to declare a trust in favor of ~~any other~~ an owner of ~~the same~~ a mineral interest, ~~leasehold,~~
9 ~~or royalty interest if the place of residence and present whereabouts~~ in the particular tract of land
10 if the location or identity of the owner ~~is unknown and cannot be reasonably ascertained~~
11 determined.

12 Section 2. That § 43-30B-2 be amended to read:

13 43-30B-2. ~~In requesting the creation of a trust provided for in § 43-30B-1, If~~ the petitioner
14 ~~shall show~~ can demonstrate that the ~~petitioner made a diligent but unsuccessful effort to locate~~
15 ~~the absent owner and that the~~ creation of a trust ~~and the appointment of a trustee~~ is in the best



1 interest of the ~~unlocatable~~ owner and that the petitioner cannot, after due diligence, locate or
2 identify the owner, the court may create a trust, as provided for in § 43-30B-1.

3 Section 3. That § 43-30B-3 be amended to read:

4 43-30B-3. If the court determines the petitioner meets the burdens provided for in § 43-30B-
5 2, the court shall declare a trust in favor of the ~~unlocatable~~ unlocated or unidentified mineral
6 owner, shall appoint a the county treasurer or another person or entity as trustee of the trust, and
7 shall authorize the trustee to execute and deliver a mineral lease, a ratification, a division order,
8 or any other related document or instrument on the such terms and conditions as the court may
9 approve. The county treasurer may decline to act as the trustee and in such event the court shall
10 appoint an alternate trustee. The court may issue other appropriate orders upon request of the
11 petitioner or trustee.

12 Section 4. That § 43-30B-4 be amended to read:

13 43-30B-4. ~~The~~ Except as otherwise provided in this chapter, the trustee shall administer the
14 trust in compliance with the provisions regulating trusts and trustees in title 55. The trustee may
15 engage agents to assist in the administration of the trust. Trustee or attorney fees, agent fees, and
16 any other administrative costs must be reasonable and may be paid from the trust proceeds if
17 approved upon approval by the court of proper jurisdiction. All bonuses, rental payments,
18 royalties, and other income shall be paid to the trustee until the trust is terminated and notice
19 of the termination is given to all interested parties. Upon receipt. If the county treasurer or other
20 county official or employee is the trustee, the trustee shall credit fifty percent of the moneys
21 trustee's fee shall be paid to the general fund of the county where the mineral is located to defray
22 the costs of administration. The. A county official acting as trustee shall account for, keep, and
23 invest the funds in a prudent the same manner as other county funds. If the bonuses, rental
24 payments, royalties, and other income paid to the trust are not sufficient to pay trustee fees,

1 agent fees, and any other administrative costs paid by the trustee, the petitioner shall indemnify
2 the fund for such costs and expenses.

3 Section 5. That § 43-30B-5 be amended to read:

4 43-30B-5. A trust in favor of an unlocatable owners is to or unidentifiable mineral owner
5 shall remain in force until ~~the unlocatable owner in question successfully claims the funds held~~
6 ~~in trust and files the notice as provided in § 43-30B-6. The trustee shall distribute all moneys~~
7 ~~remaining in the trust following distribution to the county and payment of trustee and attorney~~
8 ~~fees as provided in § 43-30B-4 to the person entitled to the money upon the order of a court of~~
9 ~~proper jurisdiction. A person who succeeds to ownership of a mineral interest by any means~~
10 ~~owns the mineral interest and the proceeds from the mineral interest from the date of succession.~~
11 ~~Funds held in trust pursuant to this chapter are subject to the laws governing abandoned property~~
12 ~~as provided in chapter 43-41B~~ an order of the court is entered, after such notice as may be
13 required by the court, finding that an owner has appeared and been identified. The court shall
14 fix the date upon which the owner is deemed to have owned the interest. The court shall
15 determine the division of the remaining funds of the trust, provide for the payment of fees and
16 expenses to dissolve and distribute the trust, and determine any other matters raised by the
17 petitioner, owner, or trustee.

18 Section 6. That § 43-30B-6 be amended to read:

19 43-30B-6. A person claiming ownership of a mineral interest, leasehold, or royalty interest
20 ~~that is the subject of a trust established pursuant to § 43-30B-1 may record with the recorder of~~
21 ~~each county where the land overlaying the mineral interest is located a notice containing the~~
22 ~~person's address with a description of the person's ownership interest. Recording the interest~~
23 ~~pursuant to this section creates a rebuttable presumption that the person owns the interest~~
24 ~~claimed. No act taken by or upon the permission of a trustee, petitioner, or court under this~~

1 chapter shall be considered use of a mineral interest under chapter 43-30A.

2 Section 7. That § 43-30B-7 be repealed.

3 ~~—43-30B-7. Notwithstanding the provisions of this chapter, the requirements of Title 55, or~~
4 ~~the requirements of chapter 43-41B, no action or proceeding may be maintained against a trustee~~
5 ~~of any trust created under the provisions of this chapter for breach of any duty imposed by this~~
6 ~~chapter, Title 55, or chapter 43-41B, absent a preliminary showing made by clear and~~
7 ~~convincing evidence that the actions of the trustee were reckless, grossly negligent, or~~
8 ~~intentional.~~