

83 WisACT 455

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1983 Senate Bill 480

Date of enactment: **May 10, 1984**
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1983 Wisconsin Act 455

AN ACT *to repeal* 700.30; and *to create* 59.51 (18), 706.01 (7m) and (8m) and 706.057 of the statutes; and *to affect* laws of 1973, chapter 260, section 2, *relating to* requiring the registration of interests in minerals which are separate from the surface of land.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.51 (18) of the statutes is created to read:

59.51 (18) Record and index statements of claim and perform other duties specified under s. 706.057 (7).

SECTION 2. 700.30 of the statutes is repealed.

SECTION 3. 706.01 (7m) and (8m) of the statutes are created to read:

706.01 (7m) "Interest in minerals" means any fee simple interest in minerals beneath the surface of land which is:

- (a) Separate from the fee simple interest in the surface of the land; and
- (b) Created by an instrument transferring, granting, assigning or reserving the minerals.

(8m) "Mineral" means a naturally occurring substance recognized by standard authorities as mineral, whether metalliferous or nonmetalliferous.

SECTION 4. 706.057 of the statutes is created to read:

706.057 Lapse and reversion of interests in minerals. (1) **APPLICABILITY.** This section does not apply to an interest in minerals which is owned by the same person who owns the fee simple interest in the surface of the land above the interest in minerals.

(2) **USE OF AN INTEREST IN MINERALS.** In this section, an interest in minerals is used if any of the following occur:

- (a) Any minerals are mined in exploitation of the interest in minerals.
- (b) A conveyance of mineral interests is recorded under this chapter.
- (c) Any other conveyance evidencing a transaction by which the interest in minerals is created, aliened, reserved, mortgaged or assigned is recorded under this chapter.
- (d) Property taxes are paid on the interest in minerals by the owner of the interest in minerals.
- (e) The owner of the interest in minerals records a statement of claim under sub. (4) or (5) concerning the interest in minerals.

(3) **LAPSE.** (a) Except as provided in par. (b) or (c), an interest in minerals lapses if the interest in minerals was not used during the previous 20 years.

(b) An interest in minerals which was not used during the 20-year period prior to the effective date of this paragraph (1983), does not lapse if the interest in minerals is used within 3 years after the effective date of this paragraph (1983).

(c) An interest in minerals which was used during the period from 17 to 20 years prior to the effective date of this paragraph (1983), does not lapse if the interest in minerals is used within 3 years after the effective date of this paragraph (1983).

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(4) **STATEMENT OF CLAIM; RECORDING; REQUIREMENTS.** If the owner of an interest in minerals uses the interest in minerals by recording a statement of claim, the statement of claim shall comply with this subsection. The statement of claim shall contain the name and address of the owner of the interest in minerals, a description of the location and boundary of the interest in minerals and a reference to the recorded instrument which created the interest in minerals. The statement of claim shall be recorded with the register of deeds for the county in which the interest in minerals is located.

(5) **CURE OF LAPSE.** The lapse of an interest in minerals under sub. (3) is cured if the owner of the interest in minerals records a statement of claim complying with all of the requirements of sub. (4) and if the statement of claim is recorded before a statement of claim is recorded under sub. (6).

(6) **CLAIM OF LAPSED INTEREST IN MINERALS.** The owner of the land under which a lapsed interest in minerals exists may claim that portion of the interest in minerals which lies beneath the owner's land by recording a statement of claim. The statement of claim shall contain the name and address of the owner of the land under which the lapsed interest in minerals is located and a description of the land under which the interest in minerals is located. The statement of claim shall be recorded with the register of deeds for the county in which the land is located.

(7) **STATEMENT OF CLAIM; RECORDING; REGISTER OF DEEDS' DUTY.** The register of deeds shall provide copies of the uniform form for statements of claim under subs. (4), (5) and (6). Upon receipt of a statement of claim under sub. (4), (5) or (6) in the office of the register of deeds, the register of deeds shall record the claim in a manner which will permit the existence of an interest in minerals to be determined by reference to the parcel or parcels of land above the interest in minerals. The claimant shall pay the recording fee under s. 59.57.

(9) **DETERMINATION OF OWNERSHIP.** (a) The owner of an interest in minerals which is the subject of a claim under sub. (6), within 3 years after the claim is recorded with the register of deeds, may bring an action for a declaratory judgment or declaration of interest on the ownership of the interest in minerals. The action shall be commenced in the circuit court in the county where the interest in minerals is located.

(b) 1. If the court finds that the owner of the interest in minerals used the interest in minerals within the time limits specified under sub. (3) or that the owner of the interest in minerals recorded a claim under sub. (5) before the surface owner recorded a claim under sub. (6), the court shall issue a judgment declaring that the interest in minerals is not lapsed.

2. If the court finds that the owner of the interest in minerals did not use the interest in minerals within the time limits specified under sub. (3) and that the surface owner's claim under sub. (6) was recorded before the claim under sub. (5), the court shall issue a judgment affirming the surface owner's claim.

(c) Upon the issuance of a judgment affirming the surface owner's claim or, if no action is brought under par. (a), at the end of the 3-year period after the surface owner's claim is recorded, the ownership of the interest in minerals reverts to the owner of the land under which the lapsed interest in minerals is located and title to the interest in minerals is merged with the title to the surface of the land.

(10) **WAIVER; LIMITATION.** No person may waive or agree to waive the provisions of this section and any waiver or agreement of this type is void.

SECTION 5. Laws of 1973, chapter 260, section 2 is repealed.

SECTION 6. Nonstatutory provisions; administration. (1) **NEWSPAPER NOTICE.** At least 3 years and not later than 3 years and one month after the effective date of this SECTION, the secretary of administration shall publish a class 1 notice, under chapter 985 of the statutes, in a sufficient number of newspapers with statewide circulation that the

notice is likely to be received by all persons in this state. The notice shall state that surface owners who do not own the minerals beneath their land may be able to claim the interest in minerals. The notice shall describe the circumstances in which the surface owner may file a claim and all of the procedures in section 706.057 of the statutes, as created by this act.

(2) **UNIFORM FORM.** As soon as possible after the effective date of this SECTION, the department of administration in cooperation with various registers of deeds shall prepare a uniform form for the statement of claim specified under section 706.057 (4), (5) and (6) of the statutes, as created by this act.

SECTION 7. Effective date. This act takes effect on July 1, 1984.
