HOUSE BILL NO. 187

AN ACT TO PROVIDE FOR THE CREATION AND OWNERSHIP OF A MINERAL SERVITUDE; TO DEFINE TERMS; TO ALLOW A PERSON THE RIGHT OF ENJOYMENT OF LAND BELONGING TO ANOTHER FOR THE PURPOSE OF EXPLORING FOR AND PRODUCING MINERALS AND REDUCING THEM TO POSSESSION AND OWNERSHIP UNDER CERTAIN CONDITIONS; TO PROVIDE FOR THE EXTINGUISHMENT OF A MINERAL SERVITUDE; TO REQUIRE CERTAIN PAYMENT OF COSTS OF OPERATION; TO PROVIDE THAT A LANDOWNER MAY EXTEND A MINERAL SERVITUDE BEYOND THE PRESCRIPTIVE DATE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) For purposes of this act, the term "mineral servitude" means the right of enjoyment of land belonging to another for the purpose of exploring for and producing minerals and reducing them to possession and ownership.

(2) The owner of a mineral servitude is under no obligation to exercise it. If he does, he is entitled to use only so much of the land as is reasonably necessary to conduct his operations. He is obligated, insofar as practicable, to restore the surface to its original condition at the earliest reasonable time.

(3) The owner of a mineral servitude may conduct his operations with the freedom and subject to the restrictions that apply to a landowner. He may protect his right against interference or damage by all of the means available to a landowner.

(4) Except as provided in subsection (5) of this section, a mineral servitude may be created only by a landowner who owns the right to explore for and produce minerals when the servitude is created.

(5) A mineral servitude may be created by a landowner whose title terminates at a particular time or upon the occurrence of a
certain condition, but it is extinguished at the specified time or on occurrence of the condition divesting the title.

(6) A usufructuary cannot establish a mineral servitude on the estate of which he has the usufruct even for the period of his usufruct. For purposes of this act the term "usufruct" means the right of using and enjoying all the advantages and profits of the property of another without altering or damaging the substance.

(7) A mineral servitude is extinguished by:

(a) Prescription resulting from nonuse for ten (10) years;

(b) Confusion;

(c) Renunciation of the servitude on the part of him to whom it is due, or the express remission of his right;

(d) Expiration of the time for which the servitude was granted, or the happening of the dissolving condition attached to the servitude; or

(e) Extinction of the right of him who established the servitude.

(8) Prescription of nonuse of a mineral servitude begins from the date on which it is created.

(9) The prescription of nonuse running against a mineral servitude is interrupted by good faith operations for the discovery and production of minerals. For purposes of this act, "good faith" means that the operations must be:

(a) Begun with reasonable expectation of discovering and producing minerals in paying quantities at a particular point or depth;

(b) Continued at the site chosen to that point or depth; and

(c) Conducted in such a manner that they constitute a single operation although actual drilling or mining is not conducted at all times.
An interruption takes place on the date actual drilling or mining operations are begun on the land burdened by the servitude or, as provided in subsection (13) of this section, on a conventional or compulsory unit including all or a portion thereof. Preparations for the commencement of actual drilling or mining operations, such as geological or geophysical exploration, surveying, clearing of a site and the hauling and erection of materials and structures necessary to conduct operations do not interrupt prescription. Prescription begins anew from the last day on which actual drilling or mining operations are conducted.

Actual drilling or mining operations begun within the prescriptive period interrupt prescription although the operations are not completed until after the date on which prescription would have accrued.

When prescription has begun anew following the cessation of drilling or mining operations, it may later be interrupted by a good faith attempt to complete the well or mine or place it in production conducted in accordance with the general principles stated in subsections (9) through (11) of this section.

Operations conducted on land other than that burdened by a mineral servitude and constituting part of a conventional or compulsory unit that includes only a part of the land burdened by the servitude will, if otherwise sufficient to interrupt prescription according to subsections (9) through (12) of this section, interrupt prescription only as to that portion of the tract burdened by the servitude included in the unit if such operations are for the discovery and production of minerals from the unitized sand or sands.

When there exists on a tract of land burdened by a mineral servitude, or on a conventional or compulsory unit that includes all or part thereof, a shut-in well proved through testing by surface production to be capable of producing minerals in paying quantities, prescription is interrupted on the date
production is obtained by such testing. If only a part of the tract burdened by the servitude is included in such a unit and the unit well is on land other than that burdened by the servitude, the interruption of prescription extends only to that portion of the tract burdened by the servitude included in the unit. Prescription begins anew from the date on which the well is shut in after testing.

(15) If the land, or part thereof, burdened by a mineral servitude is included in a conventional or compulsory unit on which there is a well located on other land within the unit capable of producing in paying quantities, as required by subsection (14) of this section, and shut in at the time the unit is created, prescription is interrupted on and begins anew from the effective date of the order or act creating the unit.

(16) Prescription of nonuse is interrupted by the production of any mineral covered by the act creating the servitude. The interruption occurs on the date on which actual production begins and prescription begins anew from the date of cessation of actual production.

(17) Production from a conventional or compulsory unit embracing all or part of the tract burdened by a mineral servitude interrupts prescription, but if the unit well is on land other than that burdened by the servitude, the interruption extends only to that portion of the servitude tract included in the unit.

(18) To interrupt prescription, it is not necessary that minerals be produced in paying quantities. It is necessary only that minerals actually be produced in good faith with the intent of saving or otherwise using them for some beneficial purpose.

(19) After production has ceased and prescription has begun anew, it may be interrupted by good faith operation conducted in accordance with the general principles of subsections (9) through (11) of this section to restore production or to secure new production from the same well or mine, whether from the same
geological formation or one different from that previously producing.

(20) An interruption of prescription applies to all types of minerals covered by the act creating the servitude and to all modes of its use.

(21) When prescription is interrupted, it begins anew from the last day on which operations are conducted in good faith to secure or restore production in paying quantities with reasonable expectation of success.

(22) Except as provided in subsections (24) through (32) of this section, use of a mineral servitude must be by the owner of the servitude, his representative or employee or some other person acting on his behalf.

(23) A person is acting on behalf of the servitude owner only when there is a legal relationship between him and the servitude owner, such as co-ownership or agency, or when there is clear and convincing evidence that he intended to act for the servitude owner. Silence or inaction by the servitude owner will not suffice to establish that a person is acting on behalf of the servitude owner.

(24) A mineral servitude owner may adopt operations or production by a person other than those designated by subsection (22) of this section if his servitude includes the right to conduct operations of the kind involved.

(25) An adoption must be made within three (3) years of the servitude owner's knowledge of such operations or production and in any event before the date on which his rights would otherwise prescribe. This limitation does not affect the prescription applicable to any action that the servitude owner may have against another for the wrongful appropriation of his rights of exploration or of production belonging to him.

(26) Adoption of the operations of another is accomplished when the servitude owner files for registry in the conveyance.
records of the situs of his servitude an instrument describing the
land subject to the servitude, identifying the operations,
specifying the date on which the operation began and expressing
the intent to adopt them as his own.

(27) When drilling or mining operations or actual production
otherwise sufficient to interrupt prescription takes place on a
compulsory unit including all or a part of the land burdened by a
mineral servitude, an interruption of prescription takes place
without formal adoption by the owner of the servitude.

(28) Except as provided in this article, upon filing for
registry of the instrument required by subsection (26) of this
section, the servitude owner becomes obligated to pay his
proportionate share of the reasonable, actual costs of development
and operation of the well or mine. He is not obligated to do so
if the operations adopted were conducted by a possessor in legal
or moral bad faith and resulted in production to which the
servitude owner is entitled.

(29) If the operations adopted were unsuccessful, the
servitude owner is not only obligated to pay costs as required by
subsection (28) of this section, he also waives any right to
damages against the party conducting the operations.

(30) The servitude owner may adopt the operations of another
as a matter of right. Consent of the party conducting them is not
required.

(31) The owner of a mineral servitude may adopt the
operations of another even though his rights are under lease and
his lessee is unwilling to share in the costs of development and
operation. If the operations have resulted in production to which
the servitude owner is entitled and the servitude owner's lessee
refuses to participate in the operations after production is first
obtained, the lessee is not entitled to participate in production
from the operations except by express agreement with the mineral
servitude owner. In the absence of agreement, the mineral lease,
if otherwise maintained according to its terms, remains in force
except as to the well or wells or mine or mines as to which the
servitude owner has asserted his claim and in which the lessee has
refused to participate.

(32) Although the servitude owner fails to adopt operations
by another, he may claim the proportion of production allocable to
his interest which was obtained before the lapse of three (3)
years from his knowledge of the operations resulting in production
or the date on which his servitude prescribed, whichever occurs
first. If he does so, he is obligated to pay his proportionate
share of the cost of development and operation accrued before the
date on which his servitude prescribed unless the person
conducting the operations was in legal or moral bad faith.

(33) Subsections (24) through (32) of this section provide
the only means by which the prescription of nonuse may be
interrupted by operations conducted by persons other than those
designated in subsection (22) of this section.

(34) The prescription of nonuse may be interrupted by a
gratuitous or onerous acknowledgment by the owner of the land
burdened by a mineral servitude. An acknowledgement must be in
writing and, to affect third parties, must be filed for registry.

(35) An acknowledgement must express the intent of the
landowner to interrupt prescription and clearly identify the party
making it and the mineral servitude or servitudes acknowledged.

(36) A landowner may extend a mineral servitude beyond the
prescriptive date for a period less than that which would result
from an interruption by an acknowledgement. The extension must
meet all of the requirements for an acknowledgment and must
specify the period for which the servitude is extended.

(37) An extended mineral servitude is subject to the rules
relating to interruption of prescription.
ST: Mineral servitude; create for purpose of exploring and producing minerals on land belonging to another.

(38) The prescription of nonuse is not suspended by the minority or other legal disability of the owner of a mineral servitude.

(39) If the owner of a mineral servitude is prevented from using it by an obstacle that he can neither prevent nor remove, the prescription of nonuse does not run as long as the obstacle remains.

(40) An obstacle to drilling or mining operations or to production of any mineral covered by an act creating a mineral servitude suspends the running of prescription as to all minerals covered by the act.

(41) Issuance of a compulsory unitization order establishing a unit that includes all or part of a tract burdened by a mineral servitude does not constitute an obstacle to its use.

(42) Except as provided in subsection (43) of this section, the rights and obligations of the owner of a mineral servitude are indivisible.

(43) A single mineral servitude is created by an act that affects a continuous body of land although individual tracts or parcels within the whole are separately described.

SECTION 2. This act shall take effect and be in force from and after July 1, 2001.