

By: Representative Chism

To: Oil, Gas and Other Minerals

HOUSE BILL NO. 187

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

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

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

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

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

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

29 (5) A mineral servitude may be created by a landowner whose  
30 title terminates at a particular time or upon the occurrence of a



31 certain condition, but it is extinguished at the specified time or  
32 on occurrence of the condition divesting the title.

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

38 (7) A mineral servitude is extinguished by:

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

41 (b) Confusion;

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

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

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

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

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

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

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

60 (c) Conducted in such a manner that they constitute a  
61 single operation although actual drilling or mining is not  
62 conducted at all times.



63           (10) An interruption takes place on the date actual drilling  
64 or mining operations are begun on the land burdened by the  
65 servitude or, as provided in subsection (13) of this section, on a  
66 conventional or compulsory unit including all or a portion  
67 thereof. Preparations for the commencement of actual drilling or  
68 mining operations, such as geological or geophysical exploration,  
69 surveying, clearing of a site and the hauling and erection of  
70 materials and structures necessary to conduct operations do not  
71 interrupt prescription. Prescription begins anew from the last  
72 day on which actual drilling or mining operations are conducted.

73           (11) Actual drilling or mining operations begun within the  
74 prescriptive period interrupt prescription although the operations  
75 are not completed until after the date on which prescription would  
76 have accrued.

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

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

91           (14) When there exists on a tract of land burdened by a  
92 mineral servitude, or on a conventional or compulsory unit that  
93 includes all or part thereof, a shut-in well proved through  
94 testing by surface production to be capable of producing minerals  
95 in paying quantities, prescription is interrupted on the date



96 production is obtained by such testing. If only a part of the  
97 tract burdened by the servitude is included in such a unit and the  
98 unit well is on land other than that burdened by the servitude,  
99 the interruption of prescription extends only to that portion of  
100 the tract burdened by the servitude included in the unit.  
101 Prescription begins anew from the date on which the well is shut  
102 in after testing.

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

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

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

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

124 (19) After production has ceased and prescription has begun  
125 anew, it may be interrupted by good faith operation conducted in  
126 accordance with the general principles of subsections (9) through  
127 (11) of this section to restore production or to secure new  
128 production from the same well or mine, whether from the same



129 geological formation or one different from that previously  
130 producing.

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

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

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

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

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

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

160 (26) Adoption of the operations of another is accomplished  
161 when the servitude owner files for registry in the conveyance



162 records of the situs of his servitude an instrument describing the  
163 land subject to the servitude, identifying the operations,  
164 specifying the date on which the operation began and expressing  
165 the intent to adopt them as his own.

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

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

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

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

186 (31) The owner of a mineral servitude may adopt the  
187 operations of another even though his rights are under lease and  
188 his lessee is unwilling to share in the costs of development and  
189 operation. If the operations have resulted in production to which  
190 the servitude owner is entitled and the servitude owner's lessee  
191 refuses to participate in the operations after production is first  
192 obtained, the lessee is not entitled to participate in production  
193 from the operations except by express agreement with the mineral  
194 servitude owner. In the absence of agreement, the mineral lease,



195 if otherwise maintained according to its terms, remains in force  
196 except as to the well or wells or mine or mines as to which the  
197 servitude owner has asserted his claim and in which the lessee has  
198 refused to participate.

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

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

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

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

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

224 (37) An extended mineral servitude is subject to the rules  
225 relating to interruption of prescription.



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

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

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

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

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

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

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

