

2023 Regular Session

HOUSE BILL NO. 455

BY REPRESENTATIVE COUSSAN

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MINERALS/RIGHTS: Provides relative to rights in minerals

1 AN ACT

2 To amend and reenact the heading of R.S. 31:11 and R.S. 31:39, 75, 79, 114, 138.1(A) and  
3 (B), 156, 164, 166, 175, 192, 204, and 206(A) and to repeal R.S. 9:5805, relative to  
4 security interests and other rights in minerals and their production and accounts; to  
5 provide relative to the encumbrance of production and accounts in minerals; to repeal  
6 a provision governing the accrual of liberative prescription against certain mineral  
7 or royalty rights; to provide for standardization of language and updates in  
8 terminology; to make technical corrections; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. The heading of R.S. 31:11 and R.S. 31:39, 75, 79, 114, 138.1(A) and (B),  
11 156, 164, 166, 175, 192, 204, and 206(A) are hereby amended and reenacted to read as  
12 follows:

13 §11. ~~Correlative rights of landowner and owner of a mineral right and between~~  
14 ~~owners of mineral rights~~ Reasonable regard for concurrent uses of the land  
15 burdened by mineral rights

16 \* \* \*

17 §39. Attempt to restore or secure new production as interruption of prescription  
18 After production has ceased and prescription has commenced anew, it may  
19 be interrupted by good faith ~~operation~~ operations conducted in accordance with the  
20 general principles of Articles 29 through 31 to restore production or to secure new

1 production from the same well or mine, whether from the same geological formation  
2 or one different from that previously producing.

3 \* \* \*

4 §75. Right to contract regarding rules of use

5 The rules of use regarding interruption of prescription on a mineral servitude  
6 may be restricted by agreement but ~~may~~ shall not be made less burdensome, except  
7 that parties may agree expressly and in writing, either in the act creating a servitude  
8 or otherwise, that an interruption of prescription resulting from unit operations or  
9 production shall extend to the entirety of the tract burdened by the servitude ~~tract~~  
10 regardless of the location of the well or of whether all or only part of the tract is  
11 included in the unit.

12 \* \* \*

13 §79. Prescription when after-acquired title doctrine applies; extinction of  
14 outstanding servitude

15 If the landowner who purported to create the servitude remains the owner of  
16 the land at the time of the extinction of the previously outstanding rights, the party  
17 in whose favor the doctrine operates has whatever time remains between the date of  
18 vesting of title in him and ten years from the date of the transaction by which ~~he~~ the  
19 party purported to ~~acquired~~ acquire in which to exercise his rights.

20 \* \* \*

21 §114. Nature of mineral lease; creation on noncontiguous tracts; effect of unit  
22 operations

23 A mineral lease is a contract by which the lessee is granted the right to  
24 explore for and produce minerals. A single lease may be created on two or more  
25 noncontiguous tracts of land, ~~and operations~~ Operations on or production from the  
26 land burdened by the lease or land unitized therewith sufficient to maintain the lease  
27 according to its terms will continue ~~it~~ the lease in force as to the entirety of the land  
28 burdened.

29 \* \* \*

1 §138.1. Division order; precedence of lease; penalties for failure to pay royalties  
2 due

3 A. For the purposes of the Article, a "division order" is an instrument setting  
4 forth the proportional ownership in ~~oil or gas~~ minerals or other substances, or the  
5 value thereof, ~~which division order that~~ that is prepared after examination of title and  
6 ~~which that~~ that is executed by the owners of the production or other persons having  
7 authority to act on behalf of the owners thereof.

8 B. A division order ~~may~~ shall not alter or amend the terms of the ~~oil and gas~~  
9 mineral lease. A division order that varies the terms of the ~~oil and gas~~ mineral lease  
10 is invalid to the extent of the variance, and the terms of the ~~oil and gas~~ mineral lease  
11 take precedence.

12 \* \* \*

13 §156. Interruption of possession by use or exercise of mineral rights

14 Possession of mineral rights under Article 154 or 155 is lost by adverse use  
15 or exercise of them according to their nature. Loss of possession occurs although the  
16 production or operations constituting the adverse use or exercise are not on the land  
17 being possessed. It is sufficient that the production or operations constitute a use of  
18 the mineral rights according to the title of the owner thereof. In the case of a mineral  
19 lease, the use or exercise must be such that it would interrupt the ~~liberative~~  
20 prescription of nonuse if the lessee had been the owner of a mineral servitude.

21 \* \* \*

22 §164. Creation of mineral servitude by co-owner of land

23 A co-owner of land may create a mineral servitude out of his undivided  
24 interest in the land, and prescription commences from the date of its creation. One  
25 who acquires a mineral servitude from a co-owner of land ~~may~~ shall not exercise his  
26 right without the consent of co-owners owning at least an undivided seventy-five  
27 percent interest in the land, provided that ~~he~~ the lessee or permittee has made every  
28 effort to contact such co-owners and, if contacted, has offered to contract with them  
29 on substantially the same basis that ~~he~~ the lessee or permittee has contracted with  
30 another co-owner. A co-owner of the land who does not consent to the exercise of

1 such rights has no liability for the costs of development and operations, except out  
2 of his share of production.

3 \* \* \*

4 §166. Granting of mineral lease by co-owner of land

5 A co-owner of land may grant a valid mineral lease or a valid lease or permit  
6 for geological surveys, by means of a torsion balance, seismographic explosions,  
7 mechanical device, or any other method, as to his undivided interest in the land, but  
8 the lessee or permittee ~~may~~ shall not exercise his rights thereunder without consent  
9 of co-owners owning at least an undivided seventy-five percent interest in the land,  
10 provided that ~~he~~ the lessee or permittee has made every effort to contact such co-  
11 owners and, if contacted, has offered to contract with them on substantially the same  
12 basis that ~~he~~ the lessee or permittee has contracted with another co-owner. A co-  
13 owner of the land who does not consent to the exercise of such rights has no liability  
14 for the costs of development and operations ~~or other costs,~~ except out of his share of  
15 production.

16 \* \* \*

17 §175. Co-owner of mineral servitude may not operate independently

18 A co-owner of a mineral servitude ~~may~~ shall not conduct operations on the  
19 property subject to the servitude without the consent of co-owners owning at least  
20 an undivided seventy-five percent interest in the servitude, provided that ~~he~~ the  
21 lessee or permittee has made every effort to contact such co-owners and, if  
22 contacted, has offered to contract with them on substantially the same basis that ~~he~~  
23 the lessee or permittee has contracted with another co-owner. Operations as used in  
24 this Section shall include geological surveys, by means of a torsion balance,  
25 seismographic explosions, mechanical device, or any other method. A co-owner of  
26 the servitude who does not consent to such operations has no liability for the costs  
27 of development and operations except out of his share of production.

28 \* \* \*

1           §192. ~~When~~ Right of usufructuary of land ~~entitled~~ to grant lease

2                     If the land subject to the usufruct, or any part thereof, is subject to a lease  
3           granted by the landowner prior to the creation of the usufruct, the usufructuary is  
4           entitled only to royalties on actual or constructive production allocable to him under  
5           Article 191. If such a lease terminates, or if the land or any part thereof is not under  
6           lease at the time the usufruct is created, the usufructuary's right of use and enjoyment  
7           includes the right to execute leases as to any rights to which ~~he~~ the usufructuary is  
8           entitled under Article 190 and, accordingly, to retain bonuses, rentals, or other  
9           payments, or the proportionate part thereof, ~~allocable to payments, or the~~  
10          ~~proportionate part thereof,~~ allocable to his interest under Article 191. Such a lease  
11          executed by the usufructuary ~~may~~ shall not extend beyond the period of his usufruct.

12   \*       \*       \*

13          §204. ~~Mortgage may include pledge; effect of pledge~~ Security interest in minerals  
14                     and proceeds thereof

15                     ~~A. A mortgage of mineral rights entered into prior to the time Chapter 9 of~~  
16          ~~the Louisiana Commercial Laws becomes effective may also provide for the pledge~~  
17          ~~of minerals subsequently produced to the extent of the mortgagor's interest therein~~  
18          ~~or of the proceeds accruing from the sale or other disposition thereof. Delivery of~~  
19          ~~the minerals or proceeds is unnecessary and, upon execution of such an act of~~  
20          ~~mortgage containing the pledge, the pledgee is possessed of them and is entitled to~~  
21          ~~receive all amounts accruing to them. Such a pledge entered into prior to the time~~  
22          ~~Chapter 9 of the Louisiana Commercial Laws becomes effective is effective as to~~  
23          ~~third persons when the act of mortgage containing the pledge is properly filed for~~  
24          ~~registry. A person who pays, delivers, or accounts to a pledgor, under a contract or~~  
25          ~~agreement in existence at the time the act of mortgage is filed for registry, for~~  
26          ~~minerals produced, or proceeds from the sale thereof, or royalties, rentals, or other~~  
27          ~~sums which the pledgee is entitled to receive under the pledge, may make the~~  
28          ~~payments or deliver or account for such minerals to the pledgor without liability to~~  
29          ~~the pledgee until such person has been delivered a certified copy of the act of pledge~~  
30          ~~or until he has acknowledged in writing to the pledgee notice of the pledge. The~~

1 ~~privilege enjoyed by the pledgee shall attach to all minerals severed or the proceeds~~  
2 ~~thereof in the hands of the pledgor as long as they can be identified. The pledgor~~  
3 ~~shall promptly account to the pledgee for them unless excused from doing so by the~~  
4 ~~act of pledge. The pledge stipulated in the act of mortgage of mineral rights is~~  
5 ~~extinguished when the mortgage is extinguished.~~

6 ~~B. Pledges of minerals produced or the proceeds from the sale or other~~  
7 ~~disposition thereof entered into after Chapter 9 of the Louisiana Commercial Laws~~  
8 ~~(R.S. 10:9-101, et seq.) becomes effective are effective between the parties and as~~  
9 ~~to third parties as provided in Chapter 9.~~

10 The Uniform Commercial Code - Secured Transactions governs the manner  
11 of creation of security interests in minerals produced and the proceeds from their sale  
12 or other disposition, as well as the rights of the holders of these security interests  
13 against obligors and third persons.

14 Comments - 2023

15 As Article 203 provides, the mineral right itself, whether a mineral servitude,  
16 mineral lease, or mineral royalty, is encumbered by a mortgage. This Article  
17 recognizes that the physical minerals produced, and accounts resulting from their  
18 sale, are "as extracted collateral" encumbered by a security interest under the  
19 Uniform Commercial Code - Secured Transactions, R.S. 10:9-101 et seq., except that  
20 bonuses, delay rentals, royalties, and shut-in payments payable under a mineral lease  
21 to an owner of land or holder of a mineral servitude, as well as other payments to  
22 them that are classified as rent under the Mineral Code, are not subject to the  
23 Uniform Commercial Code but instead are encumbered by a pledge under Chapter  
24 2 of Title XX-A of Book III of the Civil Code.

25 \* \* \*

26 §206. Obligation of owner of expired mineral right to furnish recordable act  
27 evidencing extinction or expiration of right; mineral lease

28 A. Except as provided in Paragraph B of this Article, when a mineral right  
29 is extinguished by the accrual of ~~liberative~~ prescription of nonuse, expiration of its  
30 term, or otherwise, the former owner shall, within thirty days after written demand  
31 by the person in whose favor the right has been extinguished or terminated, furnish  
32 ~~him~~ the person with a recordable act evidencing the extinction or expiration of the  
33 right.

34 \* \* \*

## 1 Comments - 2023

2 At the time of adoption of the Louisiana Mineral Code, effective January 1,  
3 1975, the Civil Code identified two kinds of prescription. Former Civil Code Article  
4 3457 provided that “*Prescription* is a manner of acquiring the ownership of property,  
5 or discharging debts, by the effect of time, and under the conditions regulated by  
6 law. Each of these prescriptions has its special and particular definition.” The  
7 prescription that resulted in the “discharging of debts” was called liberative  
8 prescription, or *liberandi causa*. Consequently, it was, at that time, appropriate that  
9 Articles 156 and 206(A) of the Mineral Code made reference to “liberative  
10 prescription.”

11 In 1982, however, the law of prescription was comprehensively revised and  
12 reenacted by Act No. 187 of the 1982 Regular Session of the Legislature. Civil Code  
13 Article 3445 now states that “There are three kinds of prescription: acquisitive  
14 prescription, liberative prescription, and prescription of nonuse.” However, the Act  
15 did not revise articles of the Mineral Code that made reference to “liberative  
16 prescription.”

17 The references in Articles 156 and 206(A) to “liberative prescription” have  
18 been revised to refer to “prescription of nonuse” as being the relevant regime of  
19 prescription pertinent to the mineral servitude and mineral royalty. Accordingly,  
20 Comments to Mineral Code Articles 16, 28, 54, 59, 85, 105, 156, 157, and 162 are  
21 no longer accurate to the extent that they refer to liberative prescription.

22 Section 2. R.S. 9:5805 is hereby repealed in its entirety.

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 DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 455 Original

2023 Regular Session

Coussan

**Abstract:** Provides relative to rights in minerals and production and accounts thereof.

Present law (R.S. 31:11(Heading)) characterizes the concept described in present law (R.S. 31:11) as "correlative rights".

Proposed law replaces "correlative rights" with "reasonable regard".

Present law (R.S. 31:39) provides relative to the interruption of prescription after production has ceased and prescription has commenced anew with respect to wells or mines.

Proposed law retains present law and clarifies language.

Present law (R.S. 31:75) provides for freedom of contract regarding rules of use related to interruption of prescription on a mineral servitude.

Proposed law retains present law and clarifies language.

Present law (R.S. 31:79) provides relative to prescription when the after-acquired title doctrine applies and extinction of an outstanding servitude.

Proposed law retains present law and corrects a grammatical error.

Present law (R.S. 31:114) provides that a single mineral lease may be granted on two or more noncontiguous tracts of land and further provides that operations on land burdened by a mineral lease or unitized by the lease are sufficient to maintain the lease with respect to the entirety of the land burdened by the lease.

Proposed law clarifies that present law is applicable to leases burdening contiguous tracts. Proposed law also clarifies that production likewise suffices to maintain such lease.

Present law (R.S. 31:138.1(A)) defines "division order".

Proposed law clarifies that the concept of a "division order" as provided in present law is not limited in application to an instrument setting forth proportional ownership merely in oil and gas but rather in any minerals or other substances.

Present law (R.S. 31:138.1(B)) prohibits the alteration of the terms of an oil and gas lease by a division order.

Proposed law clarifies that a division order cannot change the terms of a mineral lease.

Present law (R.S. 31:156) provides relative to interruption of possession of mineral rights by use or exercise of mineral rights.

Proposed law retains present law and updates terminology to accurately describe the applicable prescriptive regime, which is prescription of nonuse, instead of liberative prescription.

Present law (R.S. 31:164) provides relative to the creation of a mineral servitude by a co-owner of land and the exercise of rights requiring consent of other co-owners.

Proposed law clarifies present law and responsibilities of the lessee or permittee.

Present law (R.S. 31:166) provides relative to the grant of a mineral lease by a co-owner of land and the exercise of rights requiring consent of other co-owners.

Proposed law clarifies present law and responsibilities of the lessee or permittee.

Present law (R.S. 31:175) provides that a co-owner of a mineral servitude may not operate independently, and includes requirements of consent of other co-owners, and a definition of operations.

Proposed law clarifies present law and the responsibilities of the lessee or permittee.

Present law (R.S. 31:192) sets forth when the usufructuary of land is entitled to grant a lease and what the usufructuary is entitled to.

Proposed law clarifies present law and removes a provision that addresses bonuses, rentals, and payments the usufructuary is entitled to retain; specifically, that are allocable to payments or a proportionate part.

Present law (R.S. 31:204) provides relative to the encumbrance of mineral and related rights in the form of pledge, as well as the effects of a pledge of minerals produced.

Proposed law clarifies present law and removes obsolete temporal language. Adds a provision that specifies that the Uniform Commercial Code - Secured Transaction governs the creation of security interests in minerals and their proceeds as well as the rights of security interest holders against obligors and third persons.

Present law (R.S. 31:206(A)) provides relative to the extinguishment of a mineral right by the accrual of prescription.



Proposed law retains present law and updates terminology to accurately describe the applicable prescriptive regime.

Present law (R.S. 9:5805) provides relative to the accrual of prescription against mineral and related rights related to the minority or other legal disability of any owner.

Proposed law repeals present law as obsolete and redundant.

(Amends R.S. 31:11(Heading) and 39, 75, 79, 114, 138.1(A) and (B), 156, 164, 166, 175, 192, 204, and 206(A); Repeals R.S. 9:5805)