

2016 Regular Session

SENATE BILL NO. 404

BY SENATOR PEACOCK (On Recommendation of the Louisiana State Law Institute)

SALES. Regulates unsolicited offers for the transfer and sale of mineral rights. (gov sig)

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AN ACT

To enact Part VI of Chapter 2 of Code Title VII of Code Book III Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2991.1 through 2991.11, relative to the sale of mineral rights by mail solicitation; to create the Sale of Mineral Rights by Mail Solicitation Act; to define sale of mineral rights by mail solicitation; to require sales of mineral rights by mail solicitation to be in proper form; to provide for required disclosures; to provide for rescission of sales of mineral rights by mail solicitation; to provide for the mechanics and effects of rescission; to provide for prohibited terms; to provide terms, conditions, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part VI of Chapter 2 of Code Title VII of Code Book III Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2991.1 through 2991.11, is hereby enacted to read as follows:

PART VI. SALE OF MINERAL RIGHTS BY MAIL SOLICITATION

§2991.1. Title

This Part shall be known and may be cited as the "Sale of Mineral

Rights by Mail Solicitation Act".

2016 Louisiana Comments

This Part, which is new, is designed to regulate certain transfers of mineral rights that place landowners and other persons with rights to minerals at risk of exploitation. As defined in R.S. 9:2991.2, a sale of mineral rights by mail solicitation is the creation or transfer of a mineral servitude or mineral royalty, or contract preparatory to such a transfer, that is initiated by an offer transmitted through the mail by the transferee and accompanied by a form of payment, such as a check or draft. An offer of this type may induce an owner to sell mineral rights without understanding the consequences of the transaction or at a price far below market value. Because the doctrine of lesion does not apply to transfers of mineral rights, owners have relatively little protection under existing law. This Part therefore permits a transferor of mineral rights in a sale of mineral rights by mail solicitation to rescind the transfer within sixty days after signing the instrument evidencing the agreement. This Part also requires that any instrument evidencing a sale of mineral rights contracted in this manner contain a disclosure statement describing this right of rescission. When the required disclosure is not included in the instrument, the transferor has the right to rescind the contract for three years after the date of signing the instrument. In such a case, the transferee is liable for attorney fees and court costs and may also be liable for additional damages at the discretion of the court.

§2991.2. Sale of mineral rights by mail solicitation defined

For purposes of this Part, a sale of mineral rights by mail solicitation is the creation or transfer of a mineral servitude or mineral royalty, or the granting of an option, right of first refusal, or contract to create or to transfer a mineral servitude or mineral royalty, that is contracted pursuant to an offer that is received by the transferor through the mail or by common carrier and is accompanied by any form of payment. As used in this Part, the term "mineral rights" does not include a mineral lease.

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(a) This Section narrowly defines the term "sale of mineral rights by mail solicitation" so as to affect only those transactions that are likely to place a landowner or other person with rights to minerals at risk of selling without understanding the consequences of the transaction or for a price far below market value. The risk of bargaining inequality is most significant when a transfer of mineral rights is initiated by an offer that is transmitted through the mail by the transferee and accompanied by a form of payment, such as a check or draft. In other circumstances, such as when the transferee makes an offer in person, or when a form of payment does not accompany a written offer, the risk of a hasty or misinformed acceptance is less pronounced.

(b) This Section specifically excludes a contract creating or transferring a mineral lease from the term "sale of mineral rights by mail solicitation." Unlike a sale or other transfer of mineral rights, a mineral lease does not completely divest the owner of an interest in the minerals. See, e.g., *Wall v. Leger*, 402 So. 2d 704, 709 (La. App. 1st Cir. 1981)("The grantor of a mineral servitude ceases to be the owner of the mineral rights; the lessor of a mineral lease continues to be the owner of the

1 mineral rights."). Moreover, the obligations imposed on mineral lessees by the
 2 Mineral Code provide significant protection against exploitation. See La. Rev. Stat.
 3 Ann. § 31:122. The importance of security of title to a mineral lessee who has
 4 expended or intends to expend significant amounts of capital in developing the
 5 leased premises also justifies the exemption of mineral leases from the ambit of this
 6 legislation.

7 **§2991.3. Exclusion of contracts initiated through personal contact**

8 **This Part does not apply to a sale of mineral rights by mail solicitation**
 9 **contracted subsequent to a prior personal contact that included a meaningful**
 10 **exchange between the transferor and the transferee.**

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12 This Part does not apply to a transfer of mineral rights that is contracted
 13 following prior personal contact that included a meaningful exchange between the
 14 transferor and the transferee, even if the transfer otherwise meets the definition of
 15 a "sale of mineral rights by mail solicitation" set forth in R.S. 9:2991.2. Contracts
 16 that are preceded by negotiations-whether in person, by telephone, or by written or
 17 electronic communication-do not involve the same potential for abuse associated
 18 with transfers initiated by unsolicited mail communications. The term "prior personal
 19 contact" does not require in-person negotiations or even significant negotiations
 20 between the parties or their representatives. However, it does require that a
 21 meaningful exchange take place between the transferor and transferee. Therefore,
 22 mass-mailings, automated telephone calls, and other communications that do not
 23 involve a meaningful exchange are not excluded under this Section.

24 **§2991.4. Form**

25 **A sale of mineral rights by mail solicitation shall be made by authentic**
 26 **act or by act under private signature signed by the transferor. The acceptance**
 27 **of any form of payment by the transferor or any action whereby the transferor**
 28 **otherwise manifests assent to the sale shall not satisfy the requirement of the**
 29 **transferor's signature.**

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31 According to Louisiana jurisprudence, an act under private signature may be
 32 valid even when signed by one party alone, provided that the party who did not sign
 33 the act otherwise exhibited some outward manifestation of acceptance beyond oral
 34 assent. See, e.g., *Milliman v. Peterman*, 519 So. 2d 238 (La. App. 5 Cir. 1988); see
 35 also La. Civ. Code art. 1837 cmt. (b) (1984) and the citations contained therein. In
 36 contrast, this Section requires that in a sale of mineral rights by mail solicitation the
 37 transferor must sign the instrument evidencing the agreement. The transferor's
 38 acceptance of any form of payment or performance of any action otherwise
 39 manifesting assent to the contract shall not suffice to satisfy the signature
 40 requirement.

41 **§2991.5. Required disclosure; form notice of rescission**

42 **An instrument evidencing a sale of mineral rights by mail solicitation**

1 shall contain on the first page, under the caption "The Seller's Right to Cancel",
 2 the following disclosure, or one substantially similar, in conspicuous and legible
 3 type that is not smaller than fourteen-point font and is in contrast by
 4 typography, layout, or color with any other printing on the instrument, with all
 5 relevant information provided by the transferee:

6 "THIS IS A [SALE] [CONTRACT REQUIRING THE SALE] OF
 7 YOUR VALUABLE MINERAL RIGHTS. If you sign and return this
 8 agreement, you may cancel it by mailing a notice to the buyer. You may
 9 use any written statement that indicates your intention to cancel, or you
 10 may sign and return the notice provided below.

11 Your notice must be mailed, no later than 60 days after you signed the
 12 agreement, to the following: [insert name and mailing address of the
 13 transferee]. Within 60 days after mailing your notice, you must return
 14 any payment you have received from the buyer, and the buyer must
 15 return your mineral rights and any royalties and other payments
 16 received since the sale. You may lose important rights if you do not file
 17 your notice in the conveyance records of the parish where the property
 18 is located within 90 days after this agreement is filed in the conveyance
 19 records.

20 NOTICE OF CANCELLATION

21 I, [insert name of transferor], wish to cancel the sale or contract
 22 requiring the sale of my mineral rights to [insert name of transferee].
 23 The affected mineral rights are all mineral rights that I transferred to
 24 the transferee in the following lands: [insert legal description of land].

25 _____
 26 Transferor's Signature

_____ Date"

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28 (a) The disclosure statement required by this Section is intended primarily to
 29 notify the transferor in a sale of mineral rights by mail solicitation that the
 30 transaction is a sale rather than another type of contract, such as a mineral lease. The
 31 required disclosure is intended also to inform the transferor of the right to rescind the

1 sale within sixty days after the date on which the transferor signed the agreement. To
 2 comply with this Section, the instrument evidencing a sale of mineral rights by mail
 3 solicitation must contain the disclosure statement provided by this Section or one
 4 substantially similar. De minimis variations from the required disclosure, such as
 5 typographical errors or slight deviations in wording, should not invalidate the
 6 disclosure, provided that the substance of the required disclosure is made. When a
 7 sale of mineral rights by mail solicitation is an option, right of first refusal, or
 8 contract to sell, the preparatory contract must contain the required disclosure.

9 (b) This Section requires that the transferee include in the disclosure
 10 statement a form notice of rescission that may be signed and returned by the
 11 transferor and also filed in the conveyance records of the parish in which the
 12 property is located. The transferee must include in the notice of rescission the names
 13 of the transferor and the transferee and a legal property description of the land that
 14 is subject to the affected mineral rights.

15 **§2991.6. Right to rescind; time for rescission**

16 **A. When an instrument evidencing a sale of mineral rights by mail**
 17 **solicitation contains the disclosure required by this Part, the transferor may**
 18 **rescind the agreement within a period of sixty days after the date on which the**
 19 **transferor signs it.**

20 **B. When an instrument evidencing a sale of mineral rights by mail**
 21 **solicitation does not contain the disclosure required by this Part, the transferor**
 22 **may rescind the agreement within a peremptive period of three years after the**
 23 **date on which the transferor signs it.**

24 **C. The timely rescission of a sale of mineral rights by mail solicitation**
 25 **that is an option, right of first refusal, or contract to sell also rescinds any act**
 26 **of transfer subsequently executed pursuant to such contract.**

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28 The transferor in a sale of mineral rights by mail solicitation may rescind the
 29 contract for any reason within sixty days after the date on which the contract is
 30 signed. By virtue of this rule, all sales of mineral rights by mail solicitation are
 31 subject to a minimum "cooling-off" period of sixty days. When an instrument
 32 evidencing a sale of mineral rights by mail solicitation does not contain the
 33 disclosure statement required by this Part, the period within which the transferor may
 34 rescind the sale is extended to three years. When the sale of mineral rights by mail
 35 solicitation is an option, right of first refusal, or contract to sell, the transferor's
 36 timely exercise of the right to rescind the preparatory contract also rescinds any
 37 subsequent act of transfer that is executed pursuant to the preparatory contract.

38 **§2991.7. Rescission; method of making; effects as to third persons**

39 **A. Rescission of a sale of mineral rights by mail solicitation must be**
 40 **made by written notice to the transferee and is effective between the parties**

1 when the notice of rescission is transmitted.

2 B. If the instrument evidencing a sale of mineral rights by mail
3 solicitation contains the disclosure required by this Part, a third person
4 acquiring an interest in mineral rights from the transferee is subject to the
5 effect of a notice of rescission filed within ninety days after the date of the filing
6 of the instrument. In all other cases, rescission may not impair the rights of any
7 third person who acquired an interest in the mineral rights prior to the time
8 that the notice of rescission was filed for registry.

9 C. A notice of rescission is without effect as to third persons unless it
10 contains the name of the transferee and the transferor.

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12 (a) Between the parties, rescission takes place of right immediately upon
13 transmission of the notice of rescission. Rescission does not have to be judicially
14 demanded or declared, nor is rescission delayed until the transferor has restored the
15 price paid to him. See R.S. 9:2991.9.

16 (b) Under this Section, when the instrument evidencing a sale of mineral
17 rights by mail solicitation contains the required disclosure, a third person acquiring
18 an interest in the mineral rights from the transferee does so subject to the right of the
19 original transferor to rescind the agreement, provided that the notice of rescission is
20 filed within ninety days after the date of the filing of the instrument. For all other
21 cases, this Section states an exception to Louisiana Civil Code Article 3339, under
22 which a termination of rights that depends upon the occurrence of a condition is
23 generally effective as to third persons although not evidenced of record. Thus, when
24 the instrument evidencing a sale of mineral rights by mail solicitation contains the
25 required disclosure but a notice of rescission is not filed within ninety days after the
26 date of the filing of the instrument, or when the instrument evidencing a sale of
27 mineral rights by mail solicitation does not contain the required disclosure, third
28 persons who acquire an interest in the mineral rights prior to the recordation of the
29 notice of rescission are protected from the effects of rescission.

30 (c) This Section does not address the situation in which the transferee sells
31 or grants a right in the mineral rights to another person who, under the law of
32 corporate veil-piercing and other similar theories, is a mere alter ego of the original
33 transferee. See, e.g., Warriner v. Russo, 308 So. 2d 499, 501 n.2 (La. App. 4th Cir.
34 1975).

35 §2991.8. Rescission; parties obligated to make payments

36 Rescission shall not be effective against a party obligated to make or in
37 fact making royalty or other payments until sixty days after that party is
38 furnished with a certified copy of the notice of rescission.

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1 This Section protects mineral lessees and other parties who are either
2 obligated to make or are in fact making royalty or other payments to an owner. The
3 mere recordation of a notice of rescission, in the absence of actual notice, to the party
4 making such payments, does not obligate that party to begin making payments to a
5 transferor who has rescinded a sale of mineral rights by mail solicitation.

6 **§2991.9. Effects of rescission**

7 **A. A transferor who exercises the right to rescind under this Part shall**
8 **return to the transferee within sixty days after rescission any payments made**
9 **by the transferee. A transferor's failure to return such payments gives rise to**
10 **a cause of action for return of the payments but does not prevent rescission.**

11 **B. A transferee against whom the right to rescind is exercised under this**
12 **Part shall pay to the transferor within sixty days after rescission any royalties**
13 **and other payments received by the transferee plus interest on those royalties**
14 **and other payments from the date received by the transferee.**

15 **C. When an instrument evidencing a sale of mineral rights by mail**
16 **solicitation does not contain the disclosure required by this Part, a transferee**
17 **against whom the right to rescind is exercised shall be liable for attorney fees**
18 **and court costs. In such a case, in addition to restoring any royalties or other**
19 **payments due to the transferor, a court may further award as damages an**
20 **amount up to twice the sum of royalties and other payments received by the**
21 **transferee.**

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23 (a) When the transferor exercises the right to rescind, the parties must be
24 restored to the situation that existed before the contract was made. See La. Civ. Code
25 art. 2033.

26 (b) Failure to include the required disclosure in the instrument evidencing a
27 sale of mineral rights by mail solicitation subjects the transferee to liability for
28 attorney fees and court costs. In addition to restoring any royalties or other payments
29 due to the transferor plus interest on that sum, the court has discretion, based on the
30 nature of the transferee's conduct, to award damages in an amount up to double the
31 amount of royalties or other payments received by the transferee. For example, if the
32 amount of royalties due to the transferor is \$1,000, the court may award up to an
33 additional \$2,000 as damages.

34 **§2991.10. Prohibited terms**

35 **The following provisions, if included in or accompanying an instrument**
36 **evidencing a sale of mineral rights by mail solicitation, are absolutely null:**

1 **(1) A provision requiring the agreement to be governed or interpreted**
 2 **by the laws of another jurisdiction or requiring a suit to be brought in a forum**
 3 **or jurisdiction outside of this state.**

4 **(2) A provision stipulating any venue to the extent inconsistent with the**
 5 **applicable provisions of the Code of Civil Procedure.**

6 **(3) A provision requiring the transferor to indemnify the transferee for**
 7 **any loss related to the transferor's right to rescind.**

8 **(4) A provision authorizing the transferee to act as a mandatary of the**
 9 **transferor.**

10 **(5) A provision that excludes, limits, waives, or otherwise modifies the**
 11 **obligations of the transferee described in this Part.**

12 **§2991.11. Reservation**

13 **Nothing in this Part shall be construed to limit any other remedies or**
 14 **grounds for rescission provided by law.**

15 Section 2. This Act shall become effective upon signature by the governor or, if not
 16 signed by the governor, upon expiration of the time for bills to become law without signature
 17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 19 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by McHenry Lee.

DIGEST

SB 404 Reengrossed

2016 Regular Session

Peacock

Proposed law creates the Sale of Mineral Rights by Mail Solicitation Act.

Proposed law provides that the act does not apply to a sale of mineral rights by mail solicitation contracted subsequent to a prior personal contact that included a meaningful exchange between the transferor and the transferee.

Proposed law requires a disclosure on an instrument evidencing a sale of mineral rights by mail solicitation.

Proposed law provides that when an instrument evidencing the sale of mineral rights by mail solicitation contains the required disclosure, the transferor may rescind the agreement within 60 days after the date on which the transferor signs it. If the instrument does not contain the required disclosure, the transferor may rescind the agreement within three years after the

date on which the transferor signs it.

Proposed law provides that when the instrument evidencing the sale of mineral rights by mail solicitation contains the required disclosure, a third person acquiring an interest in mineral rights from the transferee is subject to the effect of a notice of rescission filed within 90 days after the date of the filing of the instrument.

Proposed law provides that rescission will not be effective against a party to make royalty payments until 60 days after that party is furnished with a certified copy of the notice of rescission.

Proposed law requires a transferor who exercises the right to rescind to return any payments made by the transferee within 60 days.

Proposed law requires that when the right to rescind is exercised, the transferee must return any royalties or other payments, including interest, received by the transferee to the transferor within 60 days.

Proposed law provides that when the instrument does not contain the disclosure requirement, the transferee will be liable for attorney and court costs and allows the court to award further damages of an amount up to twice the sum of royalties and other payments received by the transferee.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2991.1 - 2991.11)