

SENATE BILL No. 271

By Joint Committee on Energy and Environmental Policy

1-11

1 AN ACT concerning property; relating to ownership of pore space.

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3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. (a) *As used in this section, "pore space" means*  
5 *openings between or within geologic material under surface lands,*  
6 *which may be referred to as voids or interstices.*

7 (b) The ownership of all pore space in all strata below the surface  
8 lands and waters of this state is declared to be vested in the several owners  
9 of the surface above the strata.

10 ~~(b)(c)~~ A conveyance of the surface ownership of real property shall be  
11 a conveyance of the pore space in all strata below the surface of such real  
12 property unless the ownership interest in such pore space previously has  
13 been severed from the surface ownership or is explicitly excluded in the  
14 conveyance. The ownership of pore space in strata may be conveyed in the  
15 manner provided by law for the transfer of mineral interests in real  
16 property. No agreement conveying mineral or other interests underlying  
17 the surface shall act to convey ownership of any pore space in the stratum  
18 unless the agreement explicitly conveys that ownership interest.

19 ~~(c) No provision of law, including a lawfully adopted rule or~~  
20 ~~regulation, requiring notice to be given to a surface owner, to an owner of~~  
21 ~~the mineral interest, or to both, shall be construed to require notice to~~  
22 ~~persons holding ownership interest in any pore space in the underlying~~  
23 ~~strata unless the law specifies notice to such persons is required.~~

24 ~~(d) Nothing in this section shall be construed to change or alter the~~  
25 ~~common law as of the effective date of this act, as it relates to the rights~~  
26 ~~belonging to, or the dominance of, the mineral estate. For the purpose of~~  
27 ~~determining~~ **To determine** the priority of subsurface uses between a  
28 severed mineral estate and pore space, the severed mineral estate is  
29 dominant regardless of whether ownership of the pore space is vested in  
30 the several owners of the surface or is owned separately from the surface  
31 **and regardless of whether a severed pore space interest is created prior**  
32 **to a severed mineral estate, except the use and acquisition of pore space**  
33 **owned, used or contracted for underground storage. For purposes of**  
34 **this subsection, a severed mineral estate includes the granting of an oil**  
35 **and gas lease or any other right to explore for, develop or produce oil**  
36 **and gas or any other mineral.**

1 (e) All instruments which transfer the rights to pore space under this  
2 section shall describe the scope of any right to use the surface estate. The  
3 owner of any pore space right shall have no right to use the surface estate  
4 beyond that set out in a properly recorded instrument *conveying the pore*  
5 *space*.

6 (f) Transfers of pore space rights made after the effective date of this  
7 act are null and void at the option of the owner of the surface estate if the  
8 transfer instrument does not contain a specific description of the location  
9 of the pore space being transferred. The description may include, but is not  
10 limited to, a subsurface geologic or seismic survey or a metes and bounds  
11 description of the surface lying over the transferred pore space. In the  
12 event a description of the surface is used, the transfer shall be deemed to  
13 include pore space at all depths underlying the described surface area  
14 unless specifically excluded. The validity of pore space rights under this  
15 subsection shall not affect the respective liabilities of any party and such  
16 liabilities shall operate in the same manner as if the pore space transfer  
17 were valid.

18 (g) Nothing in this section shall alter, amend, diminish or invalidate  
19 rights to the use of subsurface pore space that were acquired by contract or  
20 lease prior to the effective date of this act.

21 (g) *The state corporation commission shall promulgate rules and*  
22 *regulations to administer the provisions of this section, including, but*  
23 *not limited to, defining "usage of pore space."*

24 Sec. 2. This act shall take effect and be in force from and after its  
25 publication in the statute book.  
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