CHAPTER 38-02
LODE AND MINING CLAIMS

38-02-01. Length of lode claim - Limitations.

The length of any lode claim located within this state may not exceed one thousand five hundred feet [457.2 meters] along the vein or lode.

38-02-02. Width of lode claims - Extension - Reduction.

The width of lode claims is one hundred fifty feet [45.72 meters] on each side of the center of the vein or crevice, except that any county, at any general election by a majority of the votes cast on the question at such election, may determine upon a greater width not exceeding three hundred feet [91.44 meters] on each side of the center of the vein or lode. By a like vote, any county may determine upon a width less than that specified in this section, except that a width of less than twenty-five feet [7.62 meters] on each side of the vein or lode is prohibited.

38-02-03. Discoverer of lode to file location certificate - Contents of certificate.

The discoverer of a lode, within sixty days from the date of discovery, shall record the discoverer's claim in the office of the recorder of the county in which such lode is situated by filing for record a location certificate containing all of the following:

1. The name of the lode.
2. The name of the locator.
3. The date of location.
4. The number of feet [meters] in length claimed on each side of the discovery shaft.
5. The number of feet [meters] width claimed on each side of the vein or lode.
6. The general course of the lode as near as may be.

Any certificate which does not contain such information and a description to identify the claim with reasonable certainty is void.

38-02-04. Duty of discoverer of lode before filing certificate of location.

Before filing a location certificate, the discoverer shall:

1. Locate the discoverer's claim by sinking a discovery shaft thereon sufficient to show a well-defined mineral vein or lode.
2. Post at the point of discovery on the surface a plain sign or notice containing the name of the lode, the name of the locator, the date of discovery, the number of feet [meters] claimed in length on either side of the discovery, and the number of feet [meters] in width claimed on each side of the lode.
3. Mark the surface boundaries of the lode as is provided in section 38-02-07.

38-02-05. Tunnel, opencuts, crosscuts, adits, or drilling equivalent to discovery shaft.

Any opencut, crosscut, or tunnel at a depth sufficient to disclose the mineral vein or lode, an adit of at least ten feet [3.05 meters] in along the lode from the point where the lode may be discovered, or the drilling of a hole or holes in the manner, and under the conditions and requirements hereinafter set forth, is equivalent to a discovery shaft. The hole or holes must be not less than one and one-half inches [3.81 centimeters] in diameter, must be sufficiently deep to reach and cut or expose the mineral vein or lode, and must be protected at the surface opening against injury to livestock. The discoverer shall designate one of the holes thus drilled as the discovery hole, in the event that more than one such hole has been drilled.

38-02-06. Discovery shaft to be sunk on lode within sixty days.

From the time of uncovering or disclosing a lode, the discoverer has sixty days within which to sink a discovery shaft thereon.

38-02-07. Surface boundaries of lode - How marked.

The surface boundaries of the lode must be marked by eight substantial posts hewed or blazed on the side facing the claim and plainly marked with the name of the lode and the corner, end, or side of the claim that they respectively represent and sunk in the ground as follows:

1. One at each corner.
2. One at the center of each side line.
3. One at each end of the lode.

If it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

38-02-08. What location in location certificate construed to contain.

The location as described in the location certificate of any lode claim must be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth the top or apex of which lies inside of such lines extended vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim. Such location may not include any portion of such lodes or ledges beyond the end lines of the claim, or the end lines continued, whether by dip or otherwise, nor beyond the side lines in any manner other than by the dip of the lode.

38-02-09. Location claim not extended beyond the exterior line.

If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.

38-02-10. Owner or occupant of surface may demand security from miner.

If the right to a mine is separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if such security is refused, may enjoin such miner from working until the same is given. The injunctional order must fix the amount of the bond.

38-02-11. Additional certificate to correct or extend boundaries may be filed by locator or assigns - Limitations.

If the locator of any mining claim, or the locator's assigns, shall apprehend that the original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or is desirous of changing the locator's surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, such locator or the locator's assigns may file an additional certificate subject to the provisions of this chapter. Such relocation may not interfere with the existing rights of others at the time of such relocation. No such relocation, nor the record thereof, may preclude the claimant from proving any such title as the claimant may have held under previous locations.

38-02-12. Amount of work to be done annually to hold possession of claim.

The amount of work to be done or the improvements to be made during each year to hold possession of a mining claim must be the same as that prescribed by the applicable laws of the United States. The period within which the work required to be done annually on any unpatented claim so located commences on the first day of January succeeding the date of the location of such claim.

38-02-13. Abandoned lode claims - Regulations governing relocation.

The relocation of an abandoned lode claim must be made by:

1. Sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or
2. Sinking the original shaft, cut, or adit to a sufficient depth to comply with sections 38-02-04 and 38-02-08, and the erection of new, or the adoption of the old, boundaries, and the renewal of any posts which have been removed or destroyed.

In either case, a new location stake must be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any part of the new location is located as abandoned property.

38-02-14. Certificate containing more than one location is void - Exception.

No location certificate may claim more than one location, whether the location is made by one or several locators. If the certificate purports to claim more than one location, it is absolutely void except as to the first location therein described. If the locations are described together in the certificate so that it is not clear which location first is described, the certificate is void as to all locations.

38-02-15. Actions relating to disputed mining property - Surveys ordered - Regulations governing.

In an action in any district court of this state wherein the title or right of possession to any mining claim is in dispute, the court, upon the application of any of the parties to such suit, may enter an order for such survey of the underground as well as the surface of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order must designate some competent surveyor who is not related to any of the parties to such suit and who is not interested in the result of the same. Upon the application of the party adverse to such application, the court may appoint some competent surveyor selected by such adverse applicant, who shall attend upon such survey and observe the method of making the same. Such second survey must be made at the cost of the party requesting it. Such order may specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, and such witnesses may enter into such property and examine the same. The court may cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of such property when such removal is shown to be necessary to a just determination of the question involved. No order may be made for a survey and inspection except upon notice of the application for such order of at least six days, and not then except by an agreement of the parties or upon the affidavit of two or more persons that such survey and inspection are necessary to the just determination of the suit. Such affidavit must state the facts in the case and wherein the necessity for the survey exists. Such order may not be made unless it appears that the party asking for the same had been refused the privilege of survey and inspection by the adverse party.

38-02-16. Writs of injunction for restitution of property issued by district courts - Circumstances - Effect.

Repealed by S.L. 1961, ch. 249, § 1.

38-02-17. Conspiracies and mobs against mines - Penalty.

Repealed by S.L. 1961, ch. 249, § 1.

38-02-18. Trial against conspiracies or mobs taking mining property - Proof required.

Repealed by S.L. 1961, ch. 249, § 1.