

Introduced by

Natural Resources Committee

(At the request of the Industrial Commission)

1 A BILL for an Act to create and enact chapter 38-11.2 of the North Dakota Century Code,
2 relating to damages to land surface caused by subsurface mineral extraction and related
3 exploration; to provide for a legislative council study; and to provide for a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 38-11.2 of the North Dakota Century Code is created and
6 enacted as follows:

7 **38-11.2-01. Definitions.** In this chapter, unless the context or subject matter otherwise
8 requires:

- 9 1. "Agricultural production" means the production of any grass or crop attached to the
10 surface of the land, whether or not the grass or crop is to be sold commercially,
11 and the production of any farm animals, whether or not the animals are to be sold
12 commercially.
- 13 2. "Drilling operations" means the drilling of a subsurface mineral extraction well and
14 the injection, production, and completion operations ensuing from the drilling which
15 require entry upon the surface estate, and includes subsurface mineral exploration
16 activities.
- 17 3. "Mineral developer" means the person who acquires the mineral estate or lease for
18 the purpose of extracting or using the subsurface minerals for nonagricultural
19 purposes.
- 20 4. "Mineral estate" means an estate in or ownership of all or part of the subsurface
21 minerals underlying a specified tract of land.
- 22 5. "Subsurface mineral" means any naturally occurring element or compound
23 recovered under the provisions of chapter 38-12, but for the purpose of this

chapter excludes coal, oil and gas, sand and gravel, and rocks crushed for sand and gravel.

6. "Subsurface mineral exploration activities" means any method of obtaining information relative to locating and defining subsurface minerals that results in surface disturbance.

7. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.

8. "Surface owner" means any person who holds record title to the surface of the land as an owner.

38-11.2-02. Inspection of well site. Upon request of another state agency, the surface owner, or an adjacent landowner, the state department of health shall conduct a site visit and evaluate site-specific environmental data as necessary to ensure compliance with applicable environmental protection laws and regulations relating to air, water, and land management under the jurisdiction of the department.

38-11.2-03. Notice of drilling operations - Penalties.

1. The mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of the operations, unless waived by agreement of both parties. Service of the notice of drilling operations must conform to personal service provisions in rule 4 of the North Dakota Rules of Civil Procedure. If the mineral developer fails to provide the proper notice, the surface owner may petition the industrial commission to fix a date for a hearing and give notice. Following the notice and hearing, the commission, as provided for in sections 38-08-16 and 38-08-17, may conduct investigations, restrain from further violation, and impose civil and criminal penalties.

2. This notice must be given to the record surface owner at that person's address as shown by the records of the county recorder at the time the notice is given.

3. This notice must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice must be a copy of this chapter.

- 1 4. If a mineral developer fails to give notice as provided under this section, the
2 surface owner may seek any appropriate relief in the court of proper jurisdiction
3 and may receive punitive as well as actual damages.

4 **38-11.2-04. Damage and disruption payments - Statute of limitations.**

- 5 1. The mineral developer shall pay the surface owner a sum of money equal to the
6 amount of damages sustained by the surface owner and the surface owner's
7 tenant, if any, for loss of agricultural production and income, lost land value, lost
8 use of and access to the surface owner's land, and lost value of improvements
9 caused by drilling operations. The amount of damages may be determined by any
10 formula agreeable between the surface owner and the mineral developer. When
11 determining damages, consideration must be given to the period of time during
12 which the loss occurs.
- 13 2. The surface owner may elect to be paid damages in annual installments over a
14 period of time.
- 15 3. The surface owner must be compensated for harm caused by subsurface mineral
16 exploration only by a single sum payment.
- 17 4. The payments contemplated by this section only cover land directly affected by
18 drilling operations.
- 19 5. Payments under this section are intended to compensate the surface owner for
20 damage and disruption. Any reservation or assignment of such compensation
21 apart from the surface estate except to a tenant of the surface estate is prohibited.
22 In the absence of an agreement between the surface owner and a tenant as to the
23 division of compensation payable under this section, the tenant is entitled to
24 recover from the surface owner that portion of the compensation attributable to the
25 tenant's share of the damages sustained.
- 26 6. To receive compensation under this section, any person shall notify the mineral
27 developer of the damages sustained by the person within two years after the injury
28 occurs or would become apparent to a reasonable person.

29 **38-11.2-05. Agreement - Offer of settlement.** Unless both parties provide otherwise
30 by written agreement, the mineral developer shall make a written offer of settlement to the

1 person seeking compensation for damages when the notice required by section 38-11.2-03 is
2 presented. The person seeking compensation may accept or reject any offer so made.

3 **38-11.2-06. Rejection - Legal action - Fees and costs.** If the person seeking
4 compensation rejects the offer of the mineral developer, that person may bring an action for
5 compensation in the court of proper jurisdiction. If the amount of compensation awarded by the
6 court is greater than that which had been offered by the mineral developer, the court shall
7 award the person seeking compensation double attorney's fees, any costs assessed by the
8 court, and interest on the amount of the final compensation awarded by the court from the day
9 drilling operations are commenced. The rate of interest awarded must be the prime rate
10 charged by the Bank of North Dakota on the date of the judgment.

11 **38-11.2-07. Protection of surface and ground water - Other responsibilities of**
12 **mineral developer.**

- 13 1. The mineral developer shall conduct or have conducted an inventory of water wells
14 located within one-half mile [804.67 meters] of where subsurface mineral
15 exploration activities are conducted, if such exploration activities appear
16 reasonably likely to encounter ground water, or within one mile [1.61 kilometers] of
17 a subsurface mineral production site.
- 18 2. The mineral developer shall conduct or have conducted a certified water quality
19 and quantity test within one year preceding the commencement of subsurface
20 mineral production operations on each water well or water supply located on the
21 involved real property and as identified by the surface owner of that real property.
- 22 3. If the domestic, livestock, or irrigation water supply of any person who owns an
23 interest in real property within one-half mile [804.67 meters] of where subsurface
24 mineral exploration activities are or have been conducted or within one mile [1.61
25 kilometers] of a subsurface mineral production site has been disrupted, or
26 diminished in quality or quantity by the drilling operations, the person who owns an
27 interest in real property is entitled to recover the cost of making such repairs,
28 alterations, or construction that will ensure the delivery to the surface owner of that
29 quality and quantity of water available to the surface owner prior to the
30 commencement of drilling operations.

- 1 4. Any person who owns an interest in real property who obtains all or a part of that
2 person's water supply for domestic, agricultural, industrial, or other beneficial use
3 has a claim for relief against a mineral developer to recover damages for disruption
4 or diminution in quality or quantity of that person's water supply proximately
5 caused from drilling operations conducted by the mineral developer.
- 6 5. Prima facie evidence of injury under this section may be established by a showing
7 that the mineral developer's drilling operations penetrated or disrupted an aquifer
8 in such a manner as to cause a diminution in water quality or quantity within the
9 distance limits imposed by this section.
- 10 6. An action brought under this section when not otherwise specifically provided by
11 law must be brought within six years of the time the action has accrued. For
12 purposes of this section, the claim for relief is deemed to have accrued at the time
13 it is discovered or might have been discovered in the exercise of reasonable
14 diligence.
- 15 7. A tract of land is not bound to receive water contaminated by drilling operations on
16 another tract of land and the owner of a tract has a claim for relief against a
17 mineral developer to recover the damages proximately resulting from natural
18 drainage of waters contaminated by drilling operations.
- 19 8. The mineral developer is also responsible for all damages to person or property
20 resulting from the lack of ordinary care by the mineral developer or resulting from a
21 nuisance caused by drilling operations.
- 22 9. This section does not create a cause of action if an appropriator of water can
23 reasonably acquire the water under the changed conditions and if the changed
24 conditions are a result of the legal appropriation of water by the mineral developer.

25 **38-11.2-08. Application of chapter.** The remedies provided by this chapter do not
26 preclude any person from seeking other remedies allowed by law. This chapter does not apply
27 to the operation, maintenance, or use of a motor vehicle upon the highways of this state as
28 these terms are defined in section 39-01-01.

29 **SECTION 2. LEGISLATIVE COUNCIL STUDY - ALTERNATIVES TO**
30 **SETTLEMENTS WHEN REJECTED.** During the 2009-10 interim, the legislative council shall
31 consider studying alternatives to damage and disruption payment settlement if the person

Sixty-first
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- 1 seeking compensation rejects the offer of the mineral developer. The legislative council shall
- 2 report its findings and recommendations, together with any legislation required to implement
- 3 the recommendations, to the sixty-second legislative assembly.