

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1241

Introduced by

Representatives Kempenich, Drovdal, Steiner

Senators Andrist, Wardner

1 A BILL ~~for an Act to amend and reenact section 38-11.1-04 of the North Dakota Century Code,~~
2 ~~relating to minimum damage and disruption payments for oil and gas surface damages.~~for an
3 Act to create and enact a new section to chapter 38-11.1 and section 38-11.1-04.1 of the North
4 Dakota Century Code, relating to notice of oil and gas drilling operations and compensation for
5 loss of agricultural production and income caused by oil and gas production; and to amend and
6 reenact sections 38-11.1-04 and 47-16-39.1 of the North Dakota Century Code, relating to
7 damage and disruption payments for damages caused by oil and gas production and the
8 obligation to pay oil and gas royalties.

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

10 ~~— **SECTION 1. AMENDMENT.** Section 38-11.1-04 of the North Dakota Century Code is~~
11 ~~amended and reenacted as follows:~~

12 ~~— **38-11.1-04. Damage and disruption payments.**~~

13 ~~— The Subject to minimum damage and disruption payments, the mineral developer shall pay~~
14 ~~the surface owner a sum of money equal to the amount of damages sustained by the surface~~
15 ~~owner and the surface owner's tenant, if any, for loss of agricultural production and income, lost~~
16 ~~land value, lost use of and access to the surface owner's land, and lost value of improvements~~
17 ~~caused by drilling operations. The amount of damages may be determined by any formula~~
18 ~~mutually agreeable between the surface owner and the mineral developer, but the minimum~~
19 ~~amount of damages payable to the surface owner is twenty-five times the appraised value per~~
20 ~~acre of the property as determined by the most recent appraisal. When determining damages,~~
21 ~~consideration must be given to the period of time during which the loss occurs and the surface~~
22 ~~owner may elect to be paid damages in annual installments over a period of time; except that~~
23 ~~the surface owner must be compensated for harm caused by exploration only by a single sum~~
24 ~~payment. The payments contemplated by this section only cover land directly affected by drilling~~

1 ~~operations. Payments under this section are intended to compensate the surface owner for~~
2 ~~damage and disruption; any reservation or assignment of such compensation apart from the~~
3 ~~surface estate except to a tenant of the surface estate is prohibited. In the absence of an~~
4 ~~agreement between the surface owner and a tenant as to the division of compensation payable~~
5 ~~under this section, the tenant is entitled to recover from the surface owner that portion of the~~
6 ~~compensation attributable to the tenant's share of the damages sustained.~~

7 **SECTION 1. AMENDMENT.** Section 38-11.1-04 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **38-11.1-04. Damage and disruption payments.**

10 The mineral developer shall pay the surface owner a sum of money equal to the amount of
11 damages sustained by the surface owner and the surface owner's tenant, if any, for ~~loss of~~
12 ~~agricultural production and income~~, lost land value, lost use of and access to the surface
13 owner's land, and lost value of improvements caused by drilling operations. The amount of
14 damages may be determined by any formula mutually agreeable between the surface owner
15 and the mineral developer. When determining ~~damages~~damage and disruption payments,
16 consideration must be given to the period of time during which the loss occurs and the surface
17 owner ~~may elect to be paid damages in annual installments over a period of time; except that~~
18 ~~the surface owner~~ must be compensated for harm caused by exploration only by a single sum
19 payment. The payments contemplated by this section only cover land directly affected by drilling
20 operations. Payments under this section are intended to compensate the surface owner for
21 damage and disruption; any reservation or assignment of such compensation apart from the
22 surface estate except to a tenant of the surface estate is prohibited. In the absence of an
23 agreement between the surface owner and a tenant as to the division of compensation payable
24 under this section, the tenant is entitled to recover from the surface owner that portion of the
25 compensation attributable to the tenant's share of the damages sustained.

26 **SECTION 2.** Section 38-11.1-04.1 of the North Dakota Century Code is created and
27 enacted as follows:

28 **38-11.1-04.1. Notice of operations.**

29 1. Before the initial entry upon the land for activities that do not disturb the surface,
30 including inspections, staking, surveys, measurements, and general evaluation of
31 proposed routes and sites for oil and gas drilling operations, the mineral developer

1 shall provide at least seven days' notice by registered mail or hand delivery to the
2 surface owner unless waived by mutual agreement of both parties. The notice must
3 include:

- 4 a. The name, address, telephone number, and, if available, the electronic mail
5 address of the mineral developer or the mineral developer's designee;
6 b. An offer to discuss and agree to consider accommodating any proposed changes
7 to the proposed plan of work and oil and gas operations before commencement
8 of oil and gas operations; and
9 c. A sketch of the approximate location of the proposed drilling site.

10 2. Except for exploration activities governed by chapter 38-08.1, the mineral developer
11 shall give the surface owner written notice by registered mail or hand delivery of the oil
12 and gas drilling operations contemplated at least twenty days before commencement
13 of drilling operations unless mutually waived by agreement of both parties. If the
14 mineral developer plans to commence drilling operations within twenty days of the
15 termination date of the mineral lease, the required notice under this section may be
16 given at any time before commencement of drilling operations. The notice must
17 include:

- 18 a. Sufficient disclosure of the plan of work and operations to enable the surface
19 owner to evaluate the effect of drilling operations on the surface owner's use of
20 the property;
21 b. A plat map showing the location of the proposed well; and
22 c. A form prepared by the director of the oil and gas division advising the surface
23 owner of the surface owner's rights and options under this chapter, including the
24 right to request the state department of health to inspect and monitor the well site
25 for the presence of hydrogen sulfide.

26 3. The notice required by this section must be given to the surface owner at the address
27 shown by the records of the county treasurer's office at the time the notice is given
28 and is deemed to have been received seven days after mailing by registered mail or
29 immediately upon hand delivery.

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

4 **SECTION 3.** A new section to chapter 38-11.1 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Loss of production payments.**

7 The mineral developer shall pay the surface owner a sum of money equal to the amount of
8 damages sustained by the surface owner and the surface owner's tenant, if any, for loss of
9 agricultural production and income caused by oil and gas production and completion
10 operations. The amount of damages may be determined by any formula mutually agreeable
11 between the surface owner and the mineral developer. When determining damages for loss of
12 production, consideration must be given to the period of time during which the loss occurs and
13 the damages for loss of production must be paid annually unless the surface owner elects to
14 receive a single lump sum payment. Payments under this section are intended to compensate
15 the surface owner for loss of production. Any reservation or assignment of such compensation
16 apart from the surface estate, except to a tenant of the surface estate, is prohibited. In the
17 absence of an agreement between the surface owner and a tenant as to the division of
18 compensation payable under this section, the tenant is entitled to recover from the surface
19 owner that portion of the compensation attributable to the tenant's share of the damages
20 sustained.

21 **SECTION 4. AMENDMENT.** Section 47-16-39.1 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **47-16-39.1. Obligation to pay royalties - Breach.**

24 The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral
25 owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the
26 mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the
27 essence in the lease contract, and breach of the obligation may constitute grounds for the
28 cancellation of the lease in cases where it is determined by the court that the equities of the
29 case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas
30 royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days
31 after oil or gas produced under the lease is marketed and cancellation of the lease is not sought

1 or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within
2 one hundred fifty days from initial oil or gas production from the unleased mineral interest
3 owner's mineral interest, the operator shall pay interest on the unpaid royalties, without the
4 requirement that the mineral owner or the mineral owner's assignee request the payment of
5 interest. at the rate of eighteen percent per annum until paid, except that the commissioner of
6 university and school lands may negotiate a rate to be no less than the prime rate as
7 established by the Bank of North Dakota plus four percent per annum with a maximum of
8 eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board
9 of university and school lands. Provided, that the operator may remit semiannually to a person
10 entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount
11 is less than fifty dollars. The district court for the county in which the oil or gas well is located
12 has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any
13 proceeding brought pursuant to this section is entitled to recover any court costs and
14 reasonable attorney's fees. This section does not apply when mineral owners or their assignees
15 elect to take their proportionate share of production in kind, in the event of a dispute of title
16 existing that would affect distribution of royalty payments, or when a mineral owner cannot be
17 located after reasonable inquiry by the operator; however, the operator shall make royalty
18 payments to those mineral owners whose title and ownership interest is not in dispute.