

Sixty-second  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1241**

Introduced by

Representatives Kempenich, Drovdal, Steiner

Senators Andrist, Wardner

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

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

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

10 **38-11.1-04. Damage and disruption payments.**

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

under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

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

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

1. Before the initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the mineral developer shall provide at least seven days' notice by registered mail or hand delivery to the surface owner unless waived by mutual agreement of both parties. The notice must include:
  - a. The name, address, telephone number, and, if available, the electronic mail address of the mineral developer or the mineral developer's designee;
  - b. An offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations; and
  - c. A sketch of the approximate location of the proposed drilling site.
2. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice by registered mail or hand delivery of the oil and gas drilling operations contemplated at least twenty days before commencement of drilling operations unless mutually waived by agreement of both parties. If the mineral developer plans to commence drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time before commencement of drilling operations. The notice must include:
  - a. Sufficient disclosure of 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;
  - b. A plat map showing the location of the proposed well; and
  - c. A form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under this chapter, including the

1                   right to request the state department of health to inspect and monitor the well site  
2                   for the presence of hydrogen sulfide.

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

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

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

12        **Loss of production payments.**

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

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

29        **47-16-39.1. Obligation to pay royalties - Breach.**

30        The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral  
31 owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the

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