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HOUSE JUDICIARY COMMITTEE
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TESTIMONY OF MATTHEW SAGSVEEN
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HOUSE BILL 1409

Chairman Klemin, members of the Committee.

I am Matthew Sagsveen, Assistant Attorney General and Director of the Attorney General's Natural Resources and Native American Affairs Legal Division. I appear here today on behalf of the Attorney General in a neutral capacity to discuss House Bill (HB) 1409, which pertains to the definition of the word "interest" in N.D.C.C. ch. 32-01.

House Bill 1409 adds a definition of the word "interest" to N.D.C.C. ch. 32-01. The definition does not contain any limitations on its applicability. The North Dakota Supreme Court has explained that "[w]hen the meaning of a word or phrase is defined in a section of [the North Dakota Century] Code, that definition applies to any use of the word or phrase in other sections of the Code, except when a contrary intent plainly appears." *State v. Glaser*, 2015 ND 31, ¶ 13, 858 N.W.2d 920 (alteration in original) (quoting *Northern Z-Ray CO., Inc. v. State*, 542 N.W.2d 733, 735-36 (N.D. 1996)). Therefore, where the word interest is undefined, or a contrary intent is not apparent, House Bill 1409 could be construed to modify the definition of the word throughout the entire Century Code.

We conducted a Westlaw search for the word interest limited to N.D.C.C. Title 32, and the word appears 196 times. The word interest appears 4,375 times throughout the Century Code. The word is used in many different contexts because the word has multiple meanings.

The second sentence of House Bill 1409 provides that a legal interest may be a legal interest or an equitable interest. It is generally true that courts distinguish between legal and equitable interests. For example, the North Dakota Supreme Court has described these interests in the context of standing:

A party is entitled to have a court decide the merits of a dispute only after demonstrating the party has standing to litigate the issues placed before the court A person cannot invoke the jurisdiction of the court to enforce private rights or maintain a civil action for the enforcement of those rights unless the person has in an individual or representative capacity some real interest in the cause of action, or a *legal or equitable right, title, or interest in the subject matter of the controversy*. Litigants cannot by consent, either passive or express, dispense with necessary parties, or confer upon a person who does not have a sufficient interest in a controversy entitlement to bring suit.

In re Estate of Bartelson, 2011 ND 219, ¶ 14, 806 N.W.2d 199 (emphasis added) (quoting *Nodak Mut. Ins. Co. v. Ward Cnty. Farm Bureau*, 2004 ND 60, ¶ 11, 676 N.W.2d 752). The North Dakota Supreme Court has also recently examined the difference between legal and equitable interests in the context of N.D.C.C. ch. 32-17. *Nelson v. Lindvig*, 2024 ND 208, 14 N.W.3d 66.

One problem with House Bill 1409 is the last sentence, which provides “[a] party with a legal interest in property or rights may be represented by a party who has an equitable interest in the subject property or rights of a judicial action.” It could be argued that this provision effectively enables non-lawyers to engage in the practice of law, and this conflicts with N.D.C.C. § 27-11-01, which prohibits persons from practicing law if they do not have a certificate of admission to the bar and a bar license.

More importantly, it could also be argued that this sentence statutorily confers consent by the owner of a legal interest to the owner of an equitable interest to represent the legal interest owner, without any adjudication of the legal interest holder. One specific example of where this would be problematic is in N.D.C.C. ch. 32-17. Section 32-17-01, N.D.C.C., provides:

32-17-01. Action to determine adverse claims.

An action may be maintained by any person having an estate or an interest in, or lien or encumbrance upon, real property, whether in or out of possession thereof and whether such property is vacant or unoccupied, against any person claiming an estate or interest in, or lien or encumbrance upon, the same, for the purpose of determining such adverse estate, interest, lien, or encumbrance.

The North Dakota Supreme Court has interpreted this provision to mean that only a person “with a valid interest in real property has standing to have a court decide the merits of a dispute regarding the property.” *Nelson v. Lindvig*, 2024 ND 208, ¶ 15, 14 N.W.3d 66 (citing *Finstad v. Gord*, 2014 ND 72, ¶ 23, 844 N.W.2d 913). If the definition of the word interest is applied to N.D.C.C. ch. 32-17, and interest includes “equitable interest”, the meaning of N.D.C.C. § 32-17-01 could be altered to allow strangers to title to assert ownership in mineral quiet title actions. This language could significantly impact the adjudication of mineral ownership in North Dakota.

The bill could also have other adverse effects on property ownership, liens, estate planning and inheritance, insurance, and other matters, but it is not feasible to review each of the 4,375 uses of the word interest in the Century Code.