

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1218
(Representatives Skarphol, Grande, Rennerfeldt, Wald)
(Senators Lyson, Wardner)

AN ACT to amend and reenact subsection 3 of section 38-08-08 and subsection 3 of section 38-08-09.4 of the North Dakota Century Code, relating to carrying or otherwise financing nonparticipating owners in the development of oil and gas interests in spacing units and plans of unitization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 38-08-08 of the North Dakota Century Code is amended and reenacted as follows:

3. In addition to any costs and charges recoverable under subsections 1 and 2, if ~~a lessee owning the owner of~~ an interest in a spacing unit elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating ~~lessee's owner's~~ share of the drilling and operation of a well may recover from the nonparticipating ~~lessee owner~~ a risk penalty for the risk involved in drilling the well. The recovery of a risk penalty is as follows:
 - a. If the nonparticipating owner's interest in the spacing unit is derived from a lease or other contract for development, the risk penalty is ~~one~~ two hundred percent of the nonparticipating ~~lessee's owner's~~ share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty or overriding royalty. ~~No risk penalty may be assessed against an unleased mineral interest.~~
 - b. If the nonparticipating owner's interest in the spacing unit is not subject to a lease or other contract for development, the risk penalty is fifty percent of the nonparticipating owner's share of the reasonable actual costs of drilling and completing the well and may be recovered out of production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty provided for in subsection 1.
 - c. The owner paying for the nonparticipating owner's share of the drilling and operation of a well may recover from the nonparticipating owner a risk penalty for the risk involved in drilling and completing the well only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease or to have the leased nonparticipating owner join in and participate in the risk and cost of drilling the well. Before a risk penalty may be imposed, the paying owner must notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty or if no such petition has been filed, by filing an application or request for hearing with the industrial commission.

SECTION 2. AMENDMENT. Subsection 3 of section 38-08-09.4 of the North Dakota Century Code is amended and reenacted as follows:

3. The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms, and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests

made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and legal rate of interest as may be fair to all concerned, reasonable provision must be made in the plan of unitization for carrying or otherwise financing lessees owners who are unable to promptly meet their financial obligations in connection with the unit and, in addition to the unit expense assessed against each tract and chargeable to each owner, the recovery of a risk penalty from each owner electing not to participate in the unit expense. The recovery of the risk penalty is as follows:

- a. If the nonparticipating owner's interest in the unit is derived from a lease or other contract for development, the risk penalty is two hundred percent of the nonparticipating owner's share of the unit expense and may be recovered out of, and only out of, production from the unit, exclusive of any royalty or overriding royalty.
- b. If the nonparticipating owner's interest in the unit is not subject to a lease or other contract for development, the penalty is fifty percent of the nonparticipating owner's share of the unit expense and may be recovered out of production from the unit exclusive of any royalty provided for in section 38-08-09.13.
- c. The owner paying for the nonparticipating owner's share of the unit expense may recover from the nonparticipating owner a risk penalty for the risk involved in the unit expense only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease or to have the leased nonparticipating owner join in and participate in the risk of the unit expense. Before a risk penalty may be imposed, the paying owner must notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty or if no such petition has been filed, by filing an application or request for hearing with the industrial commission.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1218.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 46 Nays 1 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State