

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2344
(Senators Unruh, Cook, Schaible)
(Representatives Kempenich, Porter)

AN ACT to create and enact section 47-31-09 of the North Dakota Century Code, relating to injection or migration of substances into pore space; and to amend and reenact sections 38-08-25, 38-11.1-01, and 38-11.1-03 of the North Dakota Century Code, relating to pore space and oil and gas production.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-25 of the North Dakota Century Code is amended and reenacted as follows:

38-08-25. Hydraulic fracturing - Use of carbon dioxide - Designated as acceptable recovery ~~process~~processes.

1. Notwithstanding any other provision of law, the legislative assembly designates hydraulic fracturing, a mechanical method of increasing the permeability of rock to increase the amount of oil and gas produced from the rock, ~~an~~; and the use of carbon dioxide for enhanced recovery of oil, gas, and other minerals acceptable recovery ~~process~~processes in this state.
2. It is in the public interest to promote the use of carbon dioxide to benefit the state, to help ensure the viability of the state's coal and power industries, and to benefit the state economy. Carbon dioxide is a potentially valuable commodity, and increasing its availability is important for commercial, industrial, or other uses, including enhanced recovery of oil, gas, and other minerals.
3. It is in the public interest to encourage and authorize cycling, recycling, pressure maintenance, secondary recovery operations, and enhanced recovery operations utilizing carbon dioxide for the greatest possible economic recovery of oil and gas.
4. It is in the public interest for a person conducting operations authorized by the commission under this chapter to use as much of a subsurface geologic formation as reasonably necessary to allow for unit operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation authorized by this chapter.
5. Notwithstanding any other provision of law, a person conducting unit operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation authorized by the commission under this chapter may utilize subsurface geologic formations in the state for such operations or any other permissible purpose under this chapter. Any other provision of law may not be construed to entitle the owner of a subsurface geologic formation to prohibit or demand payment for the use of the subsurface geologic formation for unit operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation conducted under this chapter. As used in this section, "subsurface geologic formation" means any cavity or void, whether natural or artificially created, in a subsurface sedimentary stratum.
6. The commission may adopt and enforce rules and orders to effectuate the purposes of this section.

SECTION 2. AMENDMENT. Section 38-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-01. Legislative findings.

The legislative assembly finds the following:

1. It is ~~necessary to exercise the police power of~~ incumbent on the state to protect the public welfare of North Dakota which is largely dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production, while at the same time preserving and facilitating exploration through the utilization of subsurface pore space in accordance with an approved unitization or similar agreement, an oil and gas lease, or as otherwise permitted by law.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.
4. This chapter may not be construed to alter, amend, repeal, or modify the law concerning title to pore space under section 47-31-03.

SECTION 3. AMENDMENT. Section 38-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of an oil and gas well and the production and completion operations ensuing from the drilling which require entry upon the surface estate and which were commenced after June 30, 1979, and oil and gas geophysical and seismograph exploration activities commenced after June 30, 1983.
3. "Land" means the solid material of earth, regardless of ingredients, but excludes pore space.
4. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
- ~~4-5.~~ "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
- ~~5-6.~~ "Minerals" means oil and gas.
7. "Pore space" means a cavity or void, naturally or artificially created, in a subsurface sedimentary stratum.
- ~~6-8.~~ "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
- ~~7-9.~~ "Surface owner" means any person who holds record title to the surface ~~of the land as an owner~~ estate on which a drilling operation occurs or is conducted.

SECTION 4. Section 47-31-09 of the North Dakota Century Code is created and enacted as follows:

47-31-09. Injection of substances to facilitate production of oil, gas, or other minerals.

1. This chapter may not be construed to limit the rights or dominance of a mineral estate to drill or recomplete a well under chapter 38-08. Injection or migration of substances into pore space for disposal operations, for secondary or tertiary oil recovery operations, or otherwise to facilitate production of oil, gas, or other minerals is not unlawful and, by itself, does not constitute trespass, nuisance, or other tort.
2. This section and chapter 38-08 may not be construed to impair the obligations of any contract for use of the surface estate for disposal operations, provided the contract was entered before the effective date of the unit approved by the commission pursuant to sections 38-08-09 through 38-08-09.17, and provided the disposal well is located within the unit area of the approved unit.
3. This section and chapter 38-08 may not be construed to allow the operator of a disposal well where the contract has expired after the effective date of the unit approved by the commission pursuant to sections 38-08-09 through 38-08-09.17 to claim the surface owner should not be compensated as if the new contract for the disposal well on which the contract has expired had been entered after the effective date of the approved unit.
4. The owner of the surface estate upon which the surface location of a disposal well is located does not lose, and may not be deemed to have lost, a claim for trespass, nuisance, or other tort if the operator of the disposal well commences or continues operations of the disposal well in violation of subsections 2 or 3.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2344.

Senate Vote: Yeas 34 Nays 12 Absent 1

House Vote: Yeas 66 Nays 24 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State