

00.0000.00000

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1510
(AS AMENDED)

Introduced by

Representatives Klemin, Cory, Karls, J. Olson

Senator Sickler

1 A BILL for an Act to amend and reenact section 38-11.1-09 of the North Dakota Century Code,
2 relating to legal fees and costs a surface owner or mineral developer may be awarded in cases
3 relating to the development of minerals.

4

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

6

7 **SECTION 1. AMENDMENT.** Section 38-11.1-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9

10 **38-11.1-09. Rejection – Legal action – Fees and costs.**

11 1. If the ~~person~~ surface owner seeking compensation rejects the offer of the mineral
12 developer made in accordance with section 38-11.1-08, that person the surface owner may
13 bring an action for compensation in the court of proper jurisdiction.

14 2. If the amount of compensation awarded by the court to the surface owner is greater than
15 that which had been offered by the mineral developer to the surface owner prior to the
16 commencement of litigation, the court shall award the surface owner reasonable attorneys'
17 fees and costs assessed by the court.

18 3. If the amount of compensation awarded by the court to the surface owner is less than that
19 which had been offered by the mineral developer to the surface owner prior to the
20 commencement of litigation, the surface owner shall not be entitled to any attorneys' fees
21 or costs assessed by the court.

22 4. If the surface owner rejects an offer of settlement made by the mineral developer after the
23 commencement of litigation, and the amount of compensation awarded by the court to the
24 surface owner is greater than the offer of settlement, the surface owner shall be entitled
25 to an award of reasonable attorneys' fees and costs assessed by the court.

CHAPTER 38-11.1
OIL AND GAS PRODUCTION DAMAGE COMPENSATION

38-11.1-01. Legislative findings.

The legislative assembly finds the following:

1. It is 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.

38-11.1-02. Purpose and interpretation.

It is the purpose of this chapter to provide the maximum amount of constitutionally permissible protection to surface owners and other persons from the undesirable effects of development of minerals. This chapter is to be interpreted in light of the legislative intent expressed herein. Sections 38-11.1-04 and 38-11.1-04.1 must be interpreted to benefit surface owners, regardless of whether the mineral estate was separated from the surface estate and regardless of who executed the document which gave the mineral developer the right to conduct drilling operations on the land. Sections 38-11.1-06 through 38-11.1-10 must be interpreted to benefit all persons.

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.
5. "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
6. "Minerals" means oil and gas.
7. "Pore space" means a cavity or void, naturally or artificially created, in a subsurface sedimentary stratum.
8. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
9. "Surface owner" means any person who holds record title to the surface estate on which a drilling operation occurs or is conducted.

- is deemed to have been received seven days after mailing by registered mail or immediately upon hand delivery.
4. If a mineral developer fails to give notice as provided in this section, the surface owner may seek appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

38-11.1-05. Notice of drilling operations.

Repealed by S.L. 2011, ch. 265, § 7.

38-11.1-06. Protection of surface and ground water - Other responsibilities of mineral developer.

If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where geophysical or seismograph activities are or have been conducted or within one mile [1.61 kilometers] of an oil or gas well site has been disrupted, or diminished in quality or quantity by the drilling operations and a certified water quality and quantity test has been performed by the person who owns an interest in real property within one year preceding the commencement of drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use from an underground source has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.

A tract of land is not bound to receive water contaminated by drilling operations on another tract of land, and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.

The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations. This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

38-11.1-07. Notification of injury - Statute of limitations.

Any person, to receive compensation, under sections 38-11.1-08 and 38-11.1-09, shall notify the mineral developer of the damages sustained by the person within two years after the injury occurs or would become apparent to a reasonable person. Any claim for relief for compensation brought under this chapter must be commenced within the limitations period provided in section 28-01-16.

38-11.1-08. Agreement - Offer of settlement.

Unless both parties provide otherwise by written agreement, at the time the notice required by subsection 2 of section 38-11.1-04.1 is given, the mineral developer shall make a written offer of settlement to the person seeking compensation for damages when the notice required by subsection 2 of section 38-11.1-04.1 is given. The person seeking compensation may accept or reject any offer so made.