

SENATE BILL NO. 2374

Introduced by

Senators Piepkorn, Bekkedahl, Rust

Representatives Hatlestad, Longmuir, J. Olson

1 A BILL ~~for an Act to create and enact a new subsection to section 38-08-04 and section~~
2 ~~38-08-06.6 of the North Dakota Century Code, relating to jurisdiction of the industrial~~
3 ~~commission and payment for production from wells; to amend and reenact sections 38-08-06.3,~~
4 ~~47-16-39.1, 47-16-39.2, and 47-16-39.4 of the North Dakota Century Code, relating to royalties;~~
5 ~~and to provide a penalty.~~ for an Act to create and enact a new section to chapter 4.1-01 of the
6 North Dakota Century Code, relating to a postproduction royalty oversight program; and to
7 provide a report to the legislative management.

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

9 ~~— **SECTION 1.** A new subsection to section 38-08-04 of the North Dakota Century Code is~~
10 ~~created and enacted as follows:~~

11 ~~The commission may not determine the legal relationship between a lessor and a~~
12 ~~lessee or enforce lease terms or division orders.~~

13 ~~— **SECTION 2. AMENDMENT.** Section 38-08-06.3 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~— **38-08-06.3. Information statement to accompany payment to royalty owner - Penalty.**~~

16 ~~— 1. Any person who ~~that~~ makes a payment to an owner of a royalty ~~an~~ interest in land in~~
17 ~~this state for the purchase of oil or gas produced from that royalty interest shall provide~~
18 ~~with the payment to the royalty owner an information statement that, including a~~
19 ~~portable document format and comma-separated values file which are unlocked and~~
20 ~~editable by the recipient free of charge, which will allow the royalty owner to clearly~~
21 ~~identify clearly the amount of oil or gas sold and the amount and purpose of each~~
22 ~~deduction made from the gross amount due.~~

23 ~~— 2. The statement must be on forms approved by the industrial commission and contain~~
24 ~~the information that the commission prescribes by rule.~~

1 ~~3. The name, address, telephone number, electronic mail address, and, if available,~~
2 ~~facsimile number of the oil and gas operator and its designee must be made available~~
3 ~~by the operator or designee to the industrial commission.~~

4 ~~4. A person who~~that fails to comply with the requirements of this section is guilty of a
5 ~~class B misdemeanor.~~

6 ~~5. If the mineral owner, mineral owner's assignee, or the owner of an overriding royalty~~
7 ~~interest prevails in a proceeding under this section, the mineral owner, mineral owner's~~
8 ~~assignee, or the owner of an overriding royalty interest is entitled to recover court~~
9 ~~costs and reasonable attorney's fees.~~

10 ~~**SECTION 3.** Section 38-08-06.6 of the North Dakota Century Code is created and enacted~~
11 ~~as follows:~~

12 ~~**38-08-06.6. Ownership interest information statement – Penalty.**~~

13 ~~1. Within one hundred twenty days after the end of the month of the first sale of~~
14 ~~production from a well or change in the spacing unit of a well or a decimal interest in a~~
15 ~~mineral owner, the operator or payor shall provide the mineral owner with a statement~~
16 ~~identifying the spacing unit for the well, and the effective date of the spacing unit~~
17 ~~change or decimal interest change if applicable, the net mineral acres owned by the~~
18 ~~mineral owner, the gross mineral acres in the spacing unit, and the mineral owner's~~
19 ~~decimal interest that will be applied to the well.~~

20 ~~2. An address provided under section 38-08-06.3 also must provide where additional~~
21 ~~information may be obtained regarding how the operator or payor has calculated the~~
22 ~~mineral owner's decimal interest and for any questions pertaining to the information~~
23 ~~provided on the statement. Upon request of the mineral owner, the operator, payor, or~~
24 ~~the operator's or payor's agent must provide the relevant document number or book~~
25 ~~and page number of any recorded document and the county in which it was recorded~~
26 ~~which relates to the owner's decimal interest. If information is requested by certified~~
27 ~~mail, the answer must be mailed by certified mail within thirty days of receipt of the~~
28 ~~request.~~

29 ~~3. A person who fails to comply with the requirements of this section is liable to the~~
30 ~~affected owner of an interest, except for the working interest, in the amount of five~~
31 ~~hundred dollars for each violation and an additional five hundred dollars for each~~

1 ~~month the court determines the person was not in compliance with this section or~~
2 ~~wrongfully withheld information under this section. If a mineral owner brings an action~~
3 ~~to enforce this section and prevails, the court shall award reasonable attorney's fees~~
4 ~~and court costs.~~

5 ~~4. The department of mineral resources shall make spacing information available,~~
6 ~~including any orders or cases pertaining to the spacing unit, free of charge on its~~
7 ~~website, to allow any individual mineral owner to verify the information provided on the~~
8 ~~statement. The department shall make orders and cases searchable by well name and~~
9 ~~legal description.~~

10 ~~SECTION 4. AMENDMENT.~~ Section 47-16-39.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 ~~47-16-39.1. Obligation to pay royalties -- Breach.~~

13 ~~1. The obligation arising under an oil and gas lease to pay oil or gas royalties to the~~
14 ~~mineral owner or, the mineral owner's assignee, or the owner of an overriding royalty~~
15 ~~interest, to deliver oil or gas to a purchaser to the credit of the mineral owner or the~~
16 ~~mineral owner's assignee, or to pay the market value thereof of the oil or gas is of the~~
17 ~~essence in the lease contract, and breach of the obligation may constitute grounds for~~
18 ~~the cancellation of the lease in cases in which it is determined by the court that the~~
19 ~~equities of the case require cancellation.~~

20 ~~2. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral~~
21 ~~owner or, the mineral owner's assignee, or the owner of an overriding royalty interest~~
22 ~~within one hundred fifty days after oil or gas produced under the lease is marketed and~~
23 ~~cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties~~
24 ~~to an unleased mineral interest owner within one hundred fifty days after oil or gas~~
25 ~~production is marketed from the unleased mineral interest owner's mineral interest, the~~
26 ~~operator thereafter shall pay interest on the unpaid royalties, without the requirement~~
27 ~~that the mineral owner or, the mineral owner's assignee, or the owner of an overriding~~
28 ~~royalty interest request the payment of interest, at the rate of eighteen percent per~~
29 ~~annum until paid. If the aggregate amount is less than fifty dollars, the operator may~~
30 ~~remit semiannually to a person entitled to royalties the aggregate of six months'~~

1 ~~monthly royalties. Payment of a claim for unpaid royalties does not relieve liability for~~
2 ~~unpaid interest and a separate action may be maintained for the interest.~~

3 ~~3. The district court for the county in which the oil or gas well is located has jurisdiction~~
4 ~~over any proceeding brought under this section. The prevailing party in any~~
5 ~~proceeding brought under this section is entitled to recover court costs and reasonable~~
6 ~~attorney's fees. If the mineral owner, mineral owner's assignee, or the owner of an~~
7 ~~overriding royalty interest prevails in any proceeding brought under this section, the~~
8 ~~mineral owner, mineral owner's assignee, or the owner of an overriding royalty interest~~
9 ~~is entitled to recover court costs and reasonable attorney's fees.~~

10 ~~4. This section does not apply if mineral owners or their assignees elect to take their~~
11 ~~proportionate share of production in kind, in the event of a dispute of title existing that~~
12 ~~would affect distribution of royalty payments, or if a mineral owner cannot be located~~
13 ~~after reasonable inquiry by the operator; however, the operator shall make royalty~~
14 ~~payments to those mineral owners whose title and for any ownership interest that is not~~
15 ~~in dispute.~~

16 ~~2.5. This section does not apply to obligations to pay oil and gas royalties under an oil and~~
17 ~~gas lease on minerals owned or managed by the board of university and school lands.~~

18 ~~6. Payments made under this section must identify interest and royalty amounts~~
19 ~~separately.~~

20 ~~7. A claim for relief for compensation brought under this chapter must be commenced~~
21 ~~within the limitations period provided under section 28-01-15.~~

22 ~~**SECTION 5. AMENDMENT.** Section 47-16-39.2 of the North Dakota Century Code is~~
23 ~~amended and reenacted as follows:~~

24 ~~**47-16-39.2. Inspection of production and royalty payment records -- Penalty.**~~

25 ~~1. A royalty owner, a royalty owner's assignee, an unleased mineral interest owner, or a~~
26 ~~designated representative, upon written notice, is entitled to inspect and copy the oil~~
27 ~~and gas production and royalty payment records for the lease of the person obligated~~
28 ~~to pay royalties under the lease or division order as required by section 47-16-39.1.~~
29 ~~The person obligated to pay royalties under the lease shall make that person's oil and~~
30 ~~gas royalty payment and production records available for inspection and copying at~~
31 ~~that person's usual and customary place of business within the United States. Upon~~

1 ~~request of a royalty owner, records available in an electronic format must be~~
2 ~~electronically transmitted to the royalty owner. A royalty owner may bring an action to~~
3 ~~compel the person obligated to pay royalties to allow inspection and copying of oil and~~
4 ~~gas production royalty payment records. In order for the royalty owner to prevail in~~
5 ~~such an action, the royalty owner must establish that:~~

6 ~~— a. — The royalty owner or the royalty owner's assignee complied with the notice~~
7 ~~requirements of this section;~~

8 ~~— b. — The notice specified the leaselands involved, the time period under review and~~
9 ~~the records requested;~~

10 ~~— c. — The royalty owner notified the person obligated to pay royalties at the address~~
11 ~~printed on the information statement as prescribed by rules adopted by the~~
12 ~~industrial commission pursuant to section 38-08-06.3; and~~

13 ~~— d. — The person obligated to pay royalties denied inspection of the records or failed to~~
14 ~~respond within thirty days of service of the notice.~~

15 ~~— 2. — The district court for the county in which the oil or gas well is located has jurisdiction~~
16 ~~over all proceedings brought pursuant to this section. If the royalty owner or the royalty~~
17 ~~owner's assignee is successful in any proceeding brought pursuant to this section, the~~
18 ~~district court shall allow the royalty owner or the royalty owner's assignee to recover~~
19 ~~court costs; reasonable costs, fees, disbursements, and expenses incurred by the~~
20 ~~royalty owner or the royalty owner's assignee or a designated representative in~~
21 ~~inspecting and copying the oil and gas production and royalty payment records of the~~
22 ~~person obligated to pay royalties under the lease; and reasonable attorney's fees. The~~
23 ~~district court shall assess a civil penalty of two thousand dollars per day for any period~~
24 ~~the court determines royalty record payment records requested under this section~~
25 ~~were wrongfully withheld.~~

26 ~~— 3. — If a royalty owner, a royalty owner's assignee, or a designated representative is the~~
27 ~~board of university and school lands:~~

28 ~~— a. — The records in subsection 1 must be sent electronically, or in a manner~~
29 ~~acceptable to the board, to a location designated by the board.~~

1 ~~_____ b. Notwithstanding subsection 2, at the discretion of the board, a proceeding~~
2 ~~brought under this section may be brought in the district court of Burleigh County~~
3 ~~or in the county in which the oil or gas well is located.~~

4 ~~_____ 4. If the board of university and school lands is successful in any proceeding brought~~
5 ~~under this section, the district court shall allow the board to recover court costs;~~
6 ~~reasonable costs, fees, disbursements, and expenses incurred by the board in~~
7 ~~inspecting theand copying the oil and gas production and royalty payment records of~~
8 ~~the person obligated to pay royalties under the lease; and reasonable attorney's fees.~~

9 ~~_____ a. The district court also shall assess a civil penalty of two thousand dollars per day~~
10 ~~for each day the person obligated to pay royalties under the lease failed to send~~
11 ~~the oil and gas royalty payment and production records to the board in~~
12 ~~accordance with subsection 1.~~

13 ~~_____ b. The civil penalty under subdivision a ceases to accrue on the date the~~
14 ~~proceedings are initiated under subsection 1.~~

15 ~~_____ **SECTION 6. AMENDMENT.** Section 47-16-39.4 of the North Dakota Century Code is~~
16 ~~amended and reenacted as follows:~~

17 ~~_____ **47-16-39.4. Resolution of spacing unit ownership interest disputes - Penalty.**~~

18 ~~_____ 1. If the mineral owner and mineral developer disagree over the mineral owner's~~
19 ~~ownership interest in a spacing unit, the mineral developer shall furnish the mineral~~
20 ~~owner with a description of the conflict including the document number or book and~~
21 ~~page number of any recorded documents relevant to the dispute and the proposed~~
22 ~~resolution oralong with that portion of the title opinion that concerns the disputed~~
23 ~~interest, if available to the mineral developer.~~

24 ~~_____ 2. A mineral developer shall pay the mineral owner five hundred dollars per day for each~~
25 ~~day the court determines the mineral developer was not in compliance with this~~
26 ~~section or wrongfully withheld information under this section. If a mineral owner brings~~
27 ~~an action to enforce this section and prevails, the court shall award reasonable~~
28 ~~attorney's fees and court costs.~~

29 **SECTION 1.** A new section to chapter 4.1-01 of the North Dakota Century Code is created
30 and enacted as follows:

Postproduction royalty oversight program - Report.

1. The commissioner shall establish a program providing technical assistance and support to mineral owners, lease owners, and mineral companies relating to royalty payment issues.
2. The commissioner may contract for ombudsmen to be a resource for technical assistance and followup on royalty payment issues.
3. The program may provide technical education, support, and outreach on royalty payment related matters in coordination with other entities.
4. The commissioner may contract with local individuals, deemed trustworthy by the mineral owners, lease owners, and mineral companies, to be ombudsmen. The commissioner is not subject to the provisions of chapter 54-44.4 when contracting for the services of ombudsmen.
5. The names of landowners, mineral owners, lease owners, and mineral companies that receive assistance under the program are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
6. The commissioner shall submit expenses related to the implementation of the program to the industrial commission for reimbursement.
7. The ombudsmen may act as a central point of contact on inquiries from mineral owners, lease owners, or mineral companies relating to royalty payment issues. Upon receipt of an inquiry from a mineral or lease owner, the ombudsman shall gather the appropriate information and contact history from the royalty owner and gather the information necessary from the oil and gas operator to connect the parties or determine what information is needed to resolve the inquiry or determine the facts.
8. The ombudsman shall maintain a list of key contacts for each oil and gas operator with active wells in the state, including the name, address, telephone number, and electronic mail address of the individual. A royalty payor shall verify the accuracy of the payor's key contact information and update the ombudsmen in the event of a change in key contact information.
9. The commissioner shall maintain a royalty owner information website that may include contact information of royalty payors, information on general royalty ownership and the royalty payment process, and frequently asked questions related to royalty issues.

- 1 10. By June first of each even-numbered year, the commissioner shall provide a report to
2 the legislative management. The report may include:
3 a. A summary of the nature of the inquiries and resolutions received through the
4 program.
5 b. Timeliness of responses received by ombudsmen from royalty payors.
6 c. Key issues that have been identified as common communication challenges
7 between royalty owners and operators.
8 d. Areas where education and awareness of the oil and gas industry processes
9 relating to royalty payment and royalty statements, division orders, ownership
10 calculation, and title defects and opinions may be useful.
11 e. An assessment on the type, quality, and validity of royalty owner inquiries.
12 f. Any barriers to access to information for royalty owners.