

**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.

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

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

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

11 **SECTION 2. AMENDMENT.** Section 38-08-06.3 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **38-08-06.3. Information statement to accompany payment to royalty owner - Penalty.**

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

21 2. The statement must be on forms approved by the industrial commission and contain  
22 ~~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 ~~whethat~~ 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 orders~~ 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 ~~lease~~lands 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 ~~the~~and 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 ~~or~~along 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.