

MINING AND GAS AND OIL PRODUCTION

CHAPTER 260

H. B. No. 926

(Glaspey, Backes, Stockman)

OIL AND GAS UNITIZATION

AN ACT

To create and enact sections 38-08-09.1, 38-08-09.2, 38-08-09.3, 38-08-09.4, 38-08-09.5, 38-08-09.6, 38-08-09.7, 38-08-09.8, 38-08-09.9, 38-08-09.10, 38-08-09.11, 38-08-09.12, 38-08-09.13, 38-08-09.14, 38-08-09.15, and 38-08-09.16 of the North Dakota Century Code, to provide for the unitized management, operation, and development of common sources of supply of oil and gas and to encourage cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the benefit of landowners, royalty owners, producers, and the general public, and for the protection of the correlative rights of all such persons; and to prescribe procedures for organizing such unit operations, providing for appeals to district courts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Section 38-08-09.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.1. Legislative Finding.) The legislature finds and determines that it is desirable and necessary, under the circumstances and for the purposes hereinafter set out, to authorize and provide for unitized management, operation, and further development of the oil and gas properties to which this Act is applicable, to the end that a greater ultimate recovery of oil and gas may be had therefrom, waste prevented, the drilling of unnecessary wells eliminated, and the correlative rights of the owners in a fuller and more beneficial enjoyment of the oil and gas rights be protected.

§ 2.) Section 38-08-09.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.2. Power and Authority of Commission.) The industrial commission of the state of North Dakota, hereinafter referred to as the "commission", is hereby vested with continuing jurisdiction, power and authority, including the right to describe and set forth in its orders all those things per-

taining to the plan of unitization which are fair, reasonable and equitable and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of this Act.

§ 3.) Section 38-08-09.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.3. Matters To Be Found by Commission—Requisites of Petition.) If upon the filing of a petition therefor and after notice and hearing, all in the form and manner and in accordance with the procedure and requirements hereinafter provided, the commission shall find:

1. That the unitized management, operation, and further development of a common source of supply of oil and gas or portion thereof is reasonably necessary in order to effectively carry on pressure-maintenance or repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil and gas from the common source of supply;
2. That one or more of said unitized methods of operation as applied to such common source of supply or portion thereof are feasible, will prevent waste and will with reasonable probability result in the increased recovery of substantially more oil and gas from the common source of supply than would otherwise be recovered;
3. That the estimated additional cost, if any, of conducting such operations will not exceed the value of the additional oil and gas so recovered; and
4. That such unitization and adoption of one or more of such unitized methods of operation is for the common good and will result in the general advantage of the owners of the oil and gas rights within the common source of supply or portion thereof directly affected,

it shall make a finding to that effect and make an order creating the unit and providing for the unitization and unitized operation of the common source of supply or portion thereof described in the order, all upon such terms and conditions, as may be shown by the evidence to be fair, reasonable, equitable, and which are necessary or proper to protect, safeguard, and adjust the respective rights and obligations of the several persons affected, including royalty owners, owners of overriding

royalties, oil and gas payments, carried interests, mortgagees, lien claimants, and others, as well as the lessees. The petition shall set forth a description of the proposed unit area with a map or plat thereof attached, must allege the existence of the facts required to be found by the commission as hereinabove provided and shall have attached thereto a proposed plan of unitization applicable to such proposed unit area and which the petitioner or petitioners consider to be fair, reasonable, and equitable.

§ 4.) Section 38-08-09.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.4. Order—Units and Unit Areas—Plan of Unitization.) The order of the commission shall define the area of the common source of supply or portion thereof to be included within the unit area and prescribe with reasonable detail the plan of unitization applicable thereto.

Each unit and unit area shall be limited to all or a portion of a single common source of supply.

A unit may be created to embrace less than the whole of a common source of supply only where it is shown by the evidence that the area to be so included within the unit area is of such size and shape as may be reasonably required for the successful and efficient conduct of the unitized method or methods of operation for which the unit is created, and that the conduct thereof will have no material adverse effect upon the remainder of such common source of supply.

The plan of unitization for each such unit and unit area shall be one suited to the needs and requirements of the particular unit dependent upon the facts and conditions found to exist with respect thereto. In addition to such other terms, provisions, conditions and requirements found by the commission to be reasonably necessary or proper to effectuate or accomplish the purpose of this Act, and subject to the further requirements hereof, each such plan of unitization shall contain fair, reasonable, and equitable provisions for:

1. The efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the common source of supply affected. Under such a plan the actual operations within the unit area may be carried on in whole or in part by the unit itself, or by one or more of the lessees within the unit area as unit operator subject to the supervision and direction of the unit, dependent upon what is most beneficial or expedient. The designation of the unit operation shall be by a vote of the

working interest owners in the unit in a manner provided by the plan of unitization and not by the commission, and the unit operating agreement shall contain a provision that the owners of a simple majority of the working interest in the unit area may vote to change the unit operator;

2. The division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately-owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately-owned tracts to produce or receive, in lieu thereof, their fair, equitable, and reasonable share of the unit production or other benefits thereof. A separately-owned tract's fair, equitable, and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, or operating factors, as may be reasonably susceptible of determination. Unit production as that term is used in this Act shall mean and include all oil and gas produced from a unit area from and after the effective date of the order of the commission creating the unit regardless of the well or tract within the unit area from which the same is produced;
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 shall be made in the plan of unitization for carrying or otherwise financing lessees who are unable to promptly meet their financial obligations in connection with the unit;
4. The procedure and basis upon which wells, equipment, and other properties of the several lessees within the

unit area to be taken over and used for unit operations, including the method of arriving at the compensation therefor, or of otherwise proportionately equalizing or adjusting the investment of the several lessees in the project as of the effective date of unit operation;

5. The creation of an operating committee to have general overall management and control of the unit and the conduct of its business and affairs and the operations carried on by it, together with the creation or designation of such other subcommittees, boards, or officers to function under authority of the operating committee as may be necessary, proper or convenient in the efficient management of the unit, defining the powers and duties of all such committees, boards, or officers and prescribing their tenure and time and method for their selection;
6. The time when the plan of unitization shall become and be effective;
7. The time when and conditions under which and the method by which the unit shall or may be dissolved and its affairs wound up.

§ 5.) Section 38-08-09.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.5. Ratification or Approval of Plan by Lessees and Owners.) At the time of filing of the petition for the approval of a unit agreement and the filing of the unit agreement, the commission shall set a time and place for the hearing. At least 45 days prior to the hearing, the applicant or someone under his direction and control, shall give notice of the time and place of said hearing and shall mail, postage prepaid, a copy of the application and the proposed plan of unitization to each affected person owning an interest of record in the unit outline, at such person's last known post office address. In addition, such applicant shall file with the commission engineering, geological, and all other technical exhibits to be used at said hearing, and further, the notice shall so specify that such material is filed and is available for inspection. Service shall be complete in the mailing of the notice of hearing and unit agreement to each interest owner as hereinbefore prescribed at their last known address and the filing of an affidavit of mailing with the commission. No order of the commission creating a unit and prescribing the plan of unitization applicable thereto shall become effective unless and until the plan of unitization has been signed, or in writing ratified or approved by those persons who, under the commission's order, will be required to pay at least eighty percent of

the costs of the unit operation and also by the owners of at least eighty percent of the production or proceeds thereof that will be credited to interests which are free of cost such as royalties, overriding royalties, and production payments, and in addition it shall be required that when there is more than one person who will be obligated to pay costs of the unit operation, at least two nonaffiliated such persons and at least two of the persons owning production or proceeds thereof that will be credited to interests which are free of costs such as royalties, overriding royalties, and production payments, shall be required as voluntary parties, and the commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area. Where the plan of unitization has not been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area at the time the order creating the unit is made, the commission shall, upon petition and notice, hold such additional and supplemental hearings as may be requested or required to determine if and when the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area and shall, in respect to such hearings, make and enter a finding of its determination in such regard. In the event lessees and royalty owners, or either, owning the required percentage interest in and to the unit area have not so signed, ratified, or approved the plan of unitization within a period of six months from and after the date on which the order creating the unit is made, the order creating the unit shall cease to be of further force and effect and shall be revoked by the commission.

§ 6.) Section 38-08-09.6 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.6. Unlawful Operation.) From and after the effective date of an order of the commission creating a unit and prescribing the plan of unitization applicable thereto, the operation of any well producing from the common source of supply or portion thereof within the unit area defined in the order by persons other than the unit or persons acting under its authority or except in the manner and to the extent provided in such plan of unitization shall be unlawful and is hereby prohibited.

§ 7.) Section 38-08-09.7 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.7. Status and Powers of Unit — Liability for Expenses — Liens.) Each unit created under the provisions of this Act shall be a body politic and corporate, capable of suing, being sued, and contracting as such in its own name. Each such unit shall be authorized on behalf and for the account of all the owners of the oil and gas rights within the unit area, without profit to the unit, to supervise, manage, and conduct the further development and operations for the production of oil and gas from the unit area, pursuant to the powers conferred, and subject to the limitations imposed by the provisions of this Act and by the plan of unitization.

The obligation or liability of the lessee or other owners of the oil and gas rights in the several separately-owned tracts for the payment of unit expense shall at all times be several and not joint or collective and in no event shall a lessee or other owner of the oil and gas rights in the separately-owned tract be chargeable with, obligated or liable, directly or indirectly, for more than the amount apportioned, assessed or otherwise charged to his interest in such separately-owned tract pursuant to the plan of unitization and then only to the extent of the lien provided for in this Act.

Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the leasehold production (exclusive of such interests which are free of costs, such as royalties, overriding royalties, and production payments) in and to each separately-owned tract, the interest of the owners thereof in and to the unit production in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately-owned tract. The interest of the lessee or other persons who by lease, contract, or otherwise are obligated or responsible for the cost and expense of developing and operating a separately owned tract for oil and gas in the absence of unitization, shall, however, be primarily responsible for and charged with any assessment for unit expense made against such tract. Any land owner, royalty or any overriding royalty, or any production payment which is a part of the unit production allocated to each separately-owned tract shall in all events be regarded as royalty to be distributed to and among, or the proceeds thereof paid to the royalty owners free and clear of all unit expense and free of any lien thereof.

§ 8.) Section 38-08-09.8 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.8. Modification of Property Rights, Leases and Contracts—Title to Property—Distribution of Proceeds—Delivery in Kind—Effect of Operations—Matters Not Affected.) Prop-

erty rights, leases, contracts, and all other rights and obligations shall be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of this Act and to any valid and applicable plan of unitization or order of the commission made and adopted pursuant hereto, but otherwise to remain in full force and effect.

Nothing contained in this Act shall be construed to require a transfer to or vesting in the unit of title to the separately-owned tracts or leases thereon within the unit area, other than the right to use and operate the same to the extent set out in the plan of unitization; nor shall the unit be regarded as owning the unit production. The unit production and the proceeds from the sale thereof shall be owned by the several persons to whom the same is allocated under the plan of unitization. All property, whether real or personal, which the unit may in any way acquire, hold, or possess shall not be acquired, held, or possessed by the unit for its own account but shall be so acquired, held, and possessed by the unit for the account and as agent of the several lessees and shall be the property of such lessees as their interests may appear under the plan of unitization, subject, however, to the right of the unit to the possession, management, use, or disposal of the same in the proper conduct of its affairs.

The amount of the unit production allocated to each separately-owned tract within the unit, and only that amount, regardless of the well or wells in the unit area from which it may be produced, and regardless of whether it be more or less than the amount of the production from the well or wells, if any, on any such separately-owned tract, shall for all intents, uses, and purposes be regarded and considered as production from such separately-owned tract, and, except as may be otherwise authorized in this Act, or in the plan of unitization approved by the commission, shall be distributed among or the proceeds thereof paid to the several persons entitled to share in the production from such separately-owned tract in the same manner, in the same proportions, and upon the same conditions that they would have participated and shared in the production or proceeds thereof from such separately-owned tract had not said unit been organized, and with the same legal force and effect. If adequate provisions are made for the receipt thereof, the share of the unit production allocated to each separately-owned tract shall be delivered in kind to the persons entitled thereto by virtue of ownership of oil and gas rights therein or by purchase from such owners subject to the rights of the unit to withhold and sell the same in payment of unit expense pursuant to the plan of unitization, and subject further to the call of the unit on such proportions

of the gas for operating purposes as may be provided in the plan of unitization.

Operations carried on under and in accordance with the plan of unitization shall be regarded and considered as a fulfillment of and compliance with all of the provisions, covenants, and conditions, express or implied, of the several oil and gas mining leases upon lands included within the unit area, or other contracts pertaining to the development thereof, insofar as said leases or other contracts may relate to the common source of supply or portion thereof included in the unit area. Wells drilled or operated on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately-owned tract within such unit area.

Nothing herein or in any plan of unitization shall be construed as increasing or decreasing the express or implied covenants of a lease in respect to a common source of supply or lands not included within the unit area of a unit.

§ 9.) Section 38-08-09.9 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.9. Enlargement of Area—Creation of New Units—Amendment of Plan.) The unit area of a unit may be enlarged at any time by the commission, subject to the limitations hereinbefore provided to include adjoining portions of the same common source of supply, including the unit area of another unit, and a new unit created for the unitized management, operation, and further development of such enlarged unit area, or the plan of unitization may be otherwise amended, all in the same manner, upon the same conditions and subject to the same limitations as herein provided with respect to the creation of a unit in the first instance, except, that where an amendment to a plan of unitization relates only to the rights and obligations as between lessees the requirement that the same be signed, ratified, or approved by royalty owners of record of not less than eighty percent of the unit area shall have no application.

§ 10.) Section 38-08-09.10 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.10. Reasonableness of Plan.) A plan of unitization shall not be considered fair and reasonable if it contains a provision for operating charges which include any part of district or central office expense other than reasonable overhead charges.

§ 11.) Section 38-08-09.11 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.11. Participating by Public Lands.) The proper board or officer of the state having the control and management of state land, and the proper board or officer of any political, municipal, or other subdivision or agency of the state, are hereby authorized and shall have the power on behalf of the state or of such political, municipal, or other subdivision or agency thereof, with respect to land or oil and gas rights, subject to the control and management of such respective body, board, or officer, to consent to or participate in any plan or program of unitization adopted pursuant to this Act.

§ 12.) Section 38-08-09.12 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.12. Receipts as Income.) Neither the unit production, nor proceeds from the sale thereof, nor other receipts shall be treated, regarded, or taxed as income or profits of the unit; but instead, all such receipts shall be the income of the several persons to whom or to whose credit the same are payable under the plan of unitization. To the extent the unit may receive or disburse said receipts it shall only do so as a common administrative agent of the persons to whom the same are payable.

§ 13.) Section 38-08-09.13 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.13. Definitions.) For the purposes of this Act, unless the context otherwise requires:

1. The term "lessee" refers not only to lessees under oil and gas leases but also includes owners of unleased mineral rights having the right to develop the same for oil and gas to the extent of a 7/8ths interest.
2. Any reference to a separately-owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas shall have reference thereto only in relation to the common source of supply or portion thereof embraced within the unit area of a particular unit.
3. The phrase "oil and gas" shall refer not only to oil and gas as such in combination one with the other, but shall have general reference to oil, gas, casinghead gas, casinghead gasoline, gas-distillate, or other hydrocarbons, or any combination or combinations thereof, which may be found in or produced from a common source of supply of oil, oil and gas or gas-distillate.

4. The term "person" shall mean and include any individual, corporation, partnership, common law or statutory trust, association of any kind, the state of North Dakota, or any subdivision or agency thereof acting in a proprietary capacity, guardian, executor, administrator, fiduciary of any kind, or any other entity or being capable of owning an interest in and to a common source of supply of oil and gas.
5. The term "unit expense" shall include and mean any and all cost and expense in the conduct and management of its affairs or the operations carried on by it.

§ 14.) Section 38-08-09.14 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.14. Severability of Provisions.) The provisions of this Act are declared to be severable, and, if any section, sentence, clause, or part thereof be held invalid or unconstitutional for any reason, such invalidity or unconstitutionality shall not be construed to affect the validity of the remaining provisions of this Act.

§ 15.) Section 38-08-09.15 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.15. Agreements Not Violative of Laws Governing Monopolies or Restraint of Trade.) No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties, entered into pursuant hereto or with a view or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations, or conspiracies in restraint of trade or commerce.

§ 16.) Section 38-08-09.16 of the North Dakota Century Code is hereby created and enacted to read as follows:

38-08-09.16. Appeals.) Any person adversely affected by an order of the commission made under this Act, may appeal from such order to the district court of the county in which the land or a part thereof involved in the unit lies, in the manner provided in section 38-08-14 of the North Dakota Century Code.

Approved March 20, 1965.