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Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1241

Introduced by

Representatives Kempenich, Drovdal, Steiner

Senators Andrist, Wardner

A BILL for an Act to create and enact a new section to chapter 38-11.1, section 38-11.1-04.1, and a new section to chapter 47-16 of the North Dakota Century Code, relating to notice of oil and gas drilling operations, compensation for loss of agricultural production and income caused by oil and gas production, and definition of drilling; to amend and reenact sections 38-11.1-02, 38-11.1-04, 38-11.1-08, and 47-16-39.1 of the North Dakota Century Code, relating to damage and disruption payments for damages caused by oil and gas production, agreement with offer of settlement, and the obligation to pay oil and gas royalties; to repeal section 38-11.1-05 of the North Dakota Century Code, relating to notice of oil and gas drilling operations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~38-11.1-05~~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.

SECTION 2. AMENDMENT. Section 38-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-04. Damage and disruption payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for ~~loss of agricultural production and income,~~ lost land value, lost use of and access to the surface owner's land, and lost value of improvements caused by drilling operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining ~~damages~~damage and disruption payments, consideration must be given to the period of time during which the loss occurs and the surface owner ~~may elect to be paid damages in annual installments over a period of time; except that the surface owner~~ must be compensated for harm caused by exploration only by a single sum payment. The payments contemplated by this section only cover land directly affected by drilling operations. Payments under this section are intended to compensate the surface owner for damage and disruption; any reservation or assignment of such compensation apart from the surface estate except to a tenant of the surface estate is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

SECTION 3. Section 38-11.1-04.1 of the North Dakota Century Code is created and enacted as follows:

38-11.1-04.1. Notice of operations.

1. Before the initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the mineral developer shall provide at least seven days' notice by registered mail or hand delivery to the surface owner unless waived by mutual agreement of both parties. The notice must include:
   a. The name, address, telephone number, and, if available, the electronic mail address of the mineral developer or the mineral developer's designee;
   b. An offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations; and

c. A sketch of the approximate location of the proposed drilling site.

2. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice by registered mail or hand delivery of the oil and gas drilling operations contemplated at least twenty days before commencement of drilling operations unless mutually waived by agreement of both parties. If the mineral developer plans to commence drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time before commencement of drilling operations. The notice must include:

a. Sufficient disclosure of the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property;

b. A plat map showing the location of the proposed well; and

c. A form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under this chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide.

3. The notice required by this section must be given to the surface owner at the address shown by the records of the county treasurer's office at the time the notice is given and 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.

SECTION 4. AMENDMENT. Section 38-11.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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

Unless both parties provide otherwise by written agreement, at the time the notice required by ~~section 38-11.1-05~~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 ~~section 38-11.1-05~~subsection 2 of section 38-11.1-04.1 is given. The person seeking compensation may accept or reject any offer so made.

SECTION 5. A new section to chapter 38-11.1 of the North Dakota Century Code is created and enacted as follows:

Loss of production payments.

The mineral developer shall pay the surface owner a sum of money equal to the amount of damages sustained by the surface owner and the surface owner's tenant, if any, for loss of agricultural production and income caused by oil and gas production and completion operations. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. When determining damages for loss of production, consideration must be given to the period of time during which the loss occurs and the damages for loss of production must be paid annually unless the surface owner elects to receive a single lump sum payment. Payments under this section are intended to compensate the surface owner for loss of production. Any reservation or assignment of such compensation apart from the surface estate, except to a tenant of the surface estate, is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation payable under this section, the tenant is entitled to recover from the surface owner that portion of the compensation attributable to the tenant's share of the damages sustained.

SECTION 6. AMENDMENT. Section 47-16-39.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within

one hundred fifty days ~~from initial~~after oil or gas production is marketed from the unleased mineral interest owner's mineral interest, the operator thereafter shall pay interest on the unpaid royalties, without the requirement that the mineral owner or the mineral owner's assignee request the payment of interest, at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, in the event of a dispute of title existing that would affect distribution of royalty payments, or when a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute.

SECTION 7. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Drilling - Definition for oil and gas lease purposes.

Notwithstanding any provision in an oil and gas lease to the contrary, in any clause of an oil and gas lease which permits extension of the primary term of the lease, drilling means that an actual drilling rig, capable of drilling the well to the total proposed depth, whether total vertical depth in a vertical well or total measured depth in a horizontal well, is on location and actively drilling before the expiration of the primary term of the lease. The spud date of the well must be listed on the department of mineral resources rig list as being before the expiration of the primary term of the lease to extend the lease.

SECTION 8. REPEAL. Section 38-11.1-05 of the North Dakota Century Code is repealed.

SECTION 9. EFFECTIVE DATE. Sections 2 and 5 of this Act become effective for drilling operations commenced after July 31, 2011.