

Sixty-first  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1071

Introduced by

Representatives Drovdal, S. Meyer, Froseth

Senator Lyson

1 A BILL for an Act to amend and reenact subsection 1 of section 38-08-08 and section  
2 47-16-39.1 of the North Dakota Century Code, relating to the provisions of pooling orders and  
3 the failure to pay royalties to unleased mineral interest owners.

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

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 38-08-08 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 1. When two or more separately owned tracts are embraced within a spacing unit, or  
8 when there are separately owned interests in all or a part of the spacing unit, then  
9 the owners and royalty owners thereof may pool their interests for the development  
10 and operation of the spacing unit. In the absence of voluntary pooling, the  
11 commission upon the application of any interested person shall enter an order  
12 pooling all interests in the spacing unit for the development and operations thereof.  
13 Each such pooling order must be made after notice and hearing, and must be  
14 upon terms and conditions that are just and reasonable, and that afford to the  
15 owner of each tract or interest in the spacing unit the opportunity to recover or  
16 receive, without unnecessary expense, that owner's just and equitable share.  
17 Operations incident to the drilling of a well upon any portion of a spacing unit  
18 covered by a pooling order must be deemed, for all purposes, the conduct of such  
19 operations upon each separately owned tract in the drilling unit by the several  
20 owners thereof. That portion of the production allocated to each tract included in a  
21 spacing unit covered by a pooling order must, when produced, be deemed for all  
22 purposes to have been produced from such tract by a well drilled thereon. For the  
23 purposes of this section and section 38-08-10, any unleased mineral interest  
24 pooled by virtue of this section before August 1, 2009, is entitled to a cost-free

1 royalty interest equal to the acreage weighted average royalty interest of the  
2 leased tracts within the spacing unit, but in no event may the royalty interest of an  
3 unleased tract be less than a one-eighth interest. An unleased mineral interest  
4 pooled after July 31, 2009, is entitled to a cost-free royalty interest equal to the  
5 acreage weighted average royalty interest of the leased tracts within the spacing  
6 unit or, at the operator's election, a cost-free royalty interest of sixteen percent.

7 The remainder of the unleased interest must be treated as a lessee or cost-bearing  
8 interest. ~~Any unleased mineral interest pooled prior to July 1, 1983, is entitled to~~  
9 ~~the cost free royalty interest and working interest as provided in this section from~~  
10 ~~and after July 1, 1983.~~

11 **SECTION 2. AMENDMENT.** Section 47-16-39.1 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **47-16-39.1. Obligation to pay royalties - Breach.** The obligation arising under an oil  
14 and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee,  
15 or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's  
16 assignee, or to pay the market value thereof is of the essence in the lease contract, and breach  
17 of the obligation may constitute grounds for the cancellation of the lease in cases where it is  
18 determined by the court that the equities of the case require cancellation. If the operator under  
19 an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's  
20 assignee within one hundred fifty days after oil or gas produced under the lease is marketed  
21 and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an  
22 unleased mineral interest owner within one hundred fifty days from initial oil or gas production  
23 from the unleased mineral interest owner's mineral interest, the operator shall pay interest on  
24 the unpaid royalties at the rate of eighteen percent per annum until paid, except that the  
25 commissioner of university and school lands may negotiate a rate to be no less than the prime  
26 rate as established by the Bank of North Dakota plus four percent per annum with a maximum  
27 of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the  
28 board of university and school lands. Provided, that the operator may remit semiannually to a  
29 person entitled to royalties the aggregate of six months' monthly royalties where the aggregate  
30 amount is less than fifty dollars. The district court for the county in which the oil or gas well is  
31 located has jurisdiction over all proceedings brought pursuant to this section. The prevailing

Sixty-first  
Legislative Assembly

1 party in any proceeding brought pursuant to this section is entitled to recover any court costs  
2 and reasonable attorney's fees. This section does not apply when mineral owners or their  
3 assignees elect to take their proportionate share of production in kind or, in the event of a  
4 dispute of title existing that would affect distribution of royalty payments, or when a mineral  
5 owner cannot be located after reasonable inquiry by the operator; however, the operator shall  
6 make royalty payments to those mineral owners whose title and ownership interest is not in  
7 dispute.