

HOUSE BILL NO. 1520

Introduced by

Representatives B. Anderson, Dyk, Hatlestad, Kempenich, Longmuir, J. Olson

Senators Bekkedahl, Rust

1 A BILL for an Act to create and enact a new subsection to section 38-08-04 and sections
2 38-08-06.5 and 38-08-06.6 of the North Dakota Century Code, relating to jurisdiction of the
3 industrial commission and payment for production from wells; to amend and reenact sections
4 38-08-02, 38-08-06.3, 47-16-39.1, 47-16-39.2, and 47-16-39.4 of the North Dakota Century
5 Code, relating to royalties; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Section 38-08-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **38-08-02. Definitions.**

10 As used in this chapter, unless the context otherwise requires:

- 11 1. "Abandoned pipeline" means an underground gathering pipeline that is no longer in
12 service, is physically disconnected from in-service facilities, and is not intended to be
13 reactivated for future use.
- 14 2. "Certificate of clearance" means a permit prescribed by the commission for the
15 transportation or the delivery of oil or gas or product and issued or registered in
16 accordance with the rule, regulation, or order requiring such permit.
- 17 3. "Commission" means the industrial commission.
- 18 4. "Costs of production" means all costs incurred for exploration, development, primary
19 or enhanced recovery, and abandonment operations including lease acquisition,
20 drilling and completion, pumping or lifting, recycling, gathering, compressing,
21 pressurizing, heater treating, dehydrating, separating, storing or transporting oil to
22 storage tanks or gas to the market pipeline, or other on-unit activities. The term does
23 not include the reasonable and actual direct costs associated with transporting the oil

1 from the storage tanks to the market or the gas from the point of entry into the market
2 pipeline or the processing of gas in a processing plant.

3 5. "Field" means the general area underlaid by one or more pools.

4 5-6. "Gas" means and includes all natural gas and all other fluid hydrocarbons not
5 hereinbelow defined as oil.

6 6-7. "Illegal gas" means gas which has been produced from any well within this state in
7 excess of the quantity permitted by any rule, regulation, or order of the commission, or
8 any gas produced or removed from the well premises in violation of any rule,
9 regulation, or order of the commission, or any gas produced or removed from the well
10 premises without the knowledge and consent of the operator.

11 7-8. "Illegal oil" means oil which has been produced from any well within the state in
12 excess of the quantity permitted by any rule, regulation, or order of the commission, or
13 any oil produced or removed from the well premises in violation of any rule, regulation,
14 or order of the commission, or any oil produced or removed from the well premises
15 without the knowledge and consent of the operator.

16 8-9. "Illegal product" means any product derived in whole or in part from illegal oil or illegal
17 gas.

18 9-10. "Lessee" means the person entitled under an oil and gas lease to drill and operate
19 wells and that pays the lessor a royalty and retains the remainder, known as the
20 working interest.

21 11. "Lessor" means the mineral owner that has executed a lease and that is entitled to the
22 payment of a royalty on production, free and clear of the costs of production.

23 12. "Oil" means and includes crude petroleum oil and other hydrocarbons regardless of
24 gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons
25 known as distillate or condensate recovered or extracted from gas, other than gas
26 produced in association with oil and commonly known as casinghead gas.

27 13. "Operator" means a person engaged in the business of drilling and producing wells for
28 oil and gas.

29 10-14. "Owner" means the person who has the right to drill into and produce from a pool and
30 to appropriate the oil or gas the person produces therefrom either for that person or
31 others or for that person and others.

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- 1 ~~41.15.~~ "Person" means and includes any natural person, corporation, limited liability
2 company, association, partnership, receiver, trustee, executor, administrator, guardian,
3 fiduciary, or other representative of any kind, and includes any department, agency, or
4 instrumentality of the state or of any governmental subdivision thereof; the masculine
5 gender, in referring to a person, includes the feminine and the neuter genders.
- 6 ~~42.16.~~ "Pipeline facility" means a pipeline, pump, compressor, storage, and any other facility,
7 structure, and property incidental and necessary or useful in the interconnection of a
8 pipeline or for the transportation, distribution, and delivery of energy-related
9 commodities to points of sale or consumption or to the point of distribution for
10 consumption located within or outside of this state.
- 11 ~~43.17.~~ "Pool" means an underground reservoir containing a common accumulation of oil or
12 gas or both; each zone of a structure which is completely separated from any other
13 zone in the same structure is a pool, as that term is used in this chapter.
- 14 ~~44.18.~~ "Producer" means the owner of a well or wells capable of producing oil or gas or both.
- 15 ~~45.19.~~ "Product" means any commodity made from oil or gas and includes refined crude oil,
16 crude tops, topped crude, processed crude, processed crude petroleum, residue from
17 crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil,
18 residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine,
19 wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one
20 or more liquid products or byproducts derived from oil or gas, and blends or mixtures
21 of two or more liquid products or byproducts derived from oil or gas, whether
22 hereinabove enumerated or not.
- 23 ~~46.20.~~ "Reasonable market demand" means the demand for oil or gas for reasonable current
24 requirements for consumption and use within and without the state, together with such
25 quantities as are reasonably necessary for building up or maintaining reasonable
26 working stocks and reasonable reserves of oil or gas or product.
- 27 ~~47.21.~~ "Reserve pit" means an excavated area used to contain drill cuttings accumulated
28 during oil and gas drilling operations and mud-laden oil and gas drilling fluids used to
29 confine oil, gas, or water to its native strata during the drilling of an oil and gas well.
- 30 22. "Royalty" means the mineral owner's share of production, free of the costs of
31 production.

1 ~~48-23.~~ "Underground gathering pipeline" means an underground gas or liquid pipeline with
2 associated above ground equipment which is designed for or capable of transporting
3 crude oil, natural gas, carbon dioxide, or water produced in association with oil and
4 gas which is not subject to chapter 49-22.1. As used in this subsection, "associated
5 above ground equipment" means equipment and property located above ground level,
6 which is incidental to and necessary for or useful for transporting crude oil, natural
7 gas, carbon dioxide, or water produced in association with oil and gas from a
8 production facility. As used in this subsection, "equipment and property" includes a
9 pump, a compressor, storage, leak detection or monitoring equipment, and any other
10 facility or structure.

11 ~~49-24.~~ "Waste" means and includes:

- 12 a. Physical waste, as that term is generally understood in the oil and gas industry.
- 13 b. The inefficient, excessive, or improper use of, or the unnecessary dissipation of
14 reservoir energy.
- 15 c. The locating, spacing, drilling, equipping, operating, or producing of any oil or gas
16 well or wells in a manner which causes, or tends to cause, reduction in the
17 quantity of oil or gas ultimately recoverable from a pool under prudent and proper
18 operations, or which causes or tends to cause unnecessary or excessive surface
19 loss or destruction of oil or gas.
- 20 d. The inefficient storing of oil.
- 21 e. The production of oil or gas in excess of transportation or marketing facilities or in
22 excess of reasonable market demand.

23 ~~20-25.~~ "Working interest" means the interest granted under an oil and gas lease, giving the
24 lessee the right to work on the leased property to search for, develop, and produce oil
25 and gas and the obligation to pay all costs of production.

26 26. The word "and" includes the word "or" and the use of the word "or" includes the word
27 "and". The use of the plural includes the singular and the use of the singular includes
28 the plural.

29 **SECTION 2.** A new subsection to section 38-08-04 of the North Dakota Century Code is
30 created and enacted as follows:

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

3 **SECTION 3. AMENDMENT.** Section 38-08-06.3 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **38-08-06.3. Information statement to accompany payment to royalty owner - Penalty.**

6 Any

7 1. Except as otherwise provided in subsection 2, any person whethat makes a payment
8 to an owner of a ~~royalty~~an interest in land in this state for the purchase of oil or gas
9 produced from that royalty interest shall provide with the payment to the royalty owner
10 an information statement that will allow the royalty owner to clearly identify the amount
11 of oil or gas sold and the amount and purpose of each deduction made for the
12 reasonable costs of drilling and completion of day-to-day well operations made from
13 the gross amount due.

14 2. A royalty owner may not be charged directly or indirectly for any capital costs
15 downstream of the well or for overhead, risk capital, interest charges, cost of money,
16 rate of return, or similar charges, whether actual or anticipated.

17 3. Royalties may not result in a negative payment and negative payment numbers may
18 not be carried forward. However, if the payor has made a verifiable mistake in
19 calculating a royalty owner's overriding royalty owner's decimal interest in a well, any
20 excessive payments made in the previous one hundred eighty days may be recouped
21 from future payments.

22 4. The statement must be on forms approved by the industrial commission and contain
23 the information ~~that~~prescribed by the commission ~~prescribes~~ by rule.

24 5. A person whethat fails to comply with the requirements of this section is guilty of a
25 class B misdemeanor.

26 6. If the plaintiff prevails in litigation filed under this section, the court shall award the
27 plaintiff:

28 a. Reasonable attorney's fees; and

29 b. If the actual damages to the plaintiff are less than two hundred dollars, an
30 additional amount so the total amount of damages equals two hundred dollars.

1 **SECTION 4.** Section 38-08-06.5 of the North Dakota Century Code is created and enacted
2 as follows:

3 **38-08-06.5. Royalty owner information statement.**

4 When payment is made for oil or gas production to an interest owner, whether pursuant to a
5 division order, lease, servitude, or other agreement, the following information must be included
6 on the check stub or on an attachment to the form of payment, and by electronic means,
7 including a portable document format or Microsoft Excel comma-separated values file, included
8 free of charge.

9 1. The lease, property, or well name or any lease, property, or well identification number
10 used to identify the lease, property, or well; provided, that if a lease, property, or well
11 identification number is used, the royalty owner initially must be provided the lease,
12 property, or well name to which the lease, property, or well name refers. The well
13 name must comply with the rules prescribed by the industrial commission and include
14 the well file number.

15 2. The month and year during which sales occurred for which payment is being made.

16 3. One hundred percent of the corrected volume of oil, regardless of ownership, which is
17 sold measured in barrels, and one hundred percent of the volume of either wet or dry
18 gas, regardless of ownership, which is sold or removed from the premises for the
19 purpose of sale, or sale of its contents and residue, measured in thousand cubic feet
20 [28.32 cubic meters].

21 4. The weighted average price per barrel received by the producer for all oil sold during
22 the period for which payment is made. The price must be the net price received by the
23 producer after all deductions.

24 5. The weighted average price per thousand cubic feet [28.32 cubic meters] received by
25 the producer for all gas sold and weighted average price per gallon received by the
26 producer for all natural gas liquids sold during the period for which payment is made.
27 The price must be the net price received by the producer after all deductions.

28 6. The total amount of state severance and other production taxes.

29 7. The producer's net value of total sales after taxes and deductions.

30 8. The amount and purpose of each owner deduction made, identified as transportation,
31 processing, compression, or administrative costs. Deductions and costs are limited to

- 1 day-to-day operating costs and exclude overhead, risk capital, interest charges, cost
2 of money, rate of return, or similar charges.
- 3 9. The amount and purpose of each owner adjustment or correction made. Adjustments
4 are not allowed after thirty-six months from the date of the first sale of the production
5 unless there has been a change in the spacing unit of a well or a change in the
6 decimal interest in a mineral owner.
- 7 10. The owner's interest in sales from the lease, property, or well expressed as a decimal.
8 The royalty owner's decimal must be reported as an aggregate sum of any split
9 decimals the payor includes or expressed as a single decimal which includes the
10 royalty owner's entire interest for each well.
- 11 11. The owner's share of the total value of sales before removing any taxes. The value
12 can be calculated before or after removing owner's deductions if it is clearly noted on
13 the royalty statement or included on an attachment to the royalty statement.
- 14 12. The owner's share of sales value less taxes and deductions.
- 15 13. An address as provided by the industrial commission indicating where additional
16 information may be obtained and any questions answered. If information is requested
17 by certified mail, the answer must be mailed by certified mail within thirty days of
18 receipt of the request.

19 **SECTION 5.** Section 38-08-06.6 of the North Dakota Century Code is created and enacted
20 as follows:

21 **38-08-06.6. Ownership interest information statement - Penalty.**

- 22 1. Within one hundred twenty days after the end of the month of the first sale of
23 production from a well or change in the spacing unit of a well or a decimal interest in a
24 mineral owner, the operator or payor shall provide the mineral owner with a statement
25 identifying the spacing unit for the well, and the effective date of the spacing unit
26 change or decimal interest change if applicable, the net mineral acres owned by the
27 mineral owner, the gross mineral acres in the spacing unit, and the mineral owner's
28 decimal interest that will be applied to the well.
- 29 2. An address provided under section 38-08-06.5 also must provide where additional
30 information may be obtained regarding how the operator or payor has calculated the
31 mineral owner's decimal interest and for any questions pertaining to the information

1 provided on the statement. Upon request of the mineral owner, the operator, payor, or
2 the operator's or payor's agent must provide the relevant document number or book
3 and page number of any recorded document and the county in which it was recorded
4 which relates to the owner's decimal interest. If information is requested by certified
5 mail, the answer must be mailed by certified mail within thirty days of receipt of the
6 request.

7 3. A person who fails to comply with the requirements of this section is guilty of a class B
8 misdemeanor and is liable to the affected owner of an interest, except for the working
9 interest, in the amount of five hundred dollars for each violation and an additional five
10 hundred dollars for each month that elapses until the information is provided.

11 4. The department of mineral resources shall make spacing information available,
12 including any orders or cases pertaining to the spacing unit, free of charge on its
13 website, to allow any individual mineral owner to verify the information provided on the
14 statement. The department shall make orders and cases searchable by well name and
15 legal description.

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

18 **47-16-39.1. Obligation to pay royalties - Breach.**

- 19 1. The obligation arising under an oil and gas lease to pay oil or gas royalties to the
20 mineral owner ~~or~~ the mineral owner's assignee, or the owner of an overriding royalty
21 interest, to deliver oil or gas to a purchaser to the credit of the mineral owner or the
22 mineral owner's assignee, or to pay the market value ~~thereof~~ of the oil or gas is of the
23 essence in the lease contract, and breach of the obligation may constitute grounds for
24 the cancellation of the lease in cases in which it is determined by the court that the
25 equities of the case require cancellation.
- 26 2. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral
27 owner ~~or~~ the mineral owner's assignee, or the owner of an overriding royalty interest
28 within one hundred fifty days after oil or gas produced under the lease is marketed and
29 cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties
30 to an unleased mineral interest owner within one hundred fifty days after oil or gas
31 production is marketed from the unleased mineral interest owner's mineral interest, the

1 operator thereafter shall pay interest on the unpaid royalties, without the requirement
2 that the mineral owner or, the mineral owner's assignee, or the owner of an overriding
3 royalty interest request the payment of interest, at the rate of eighteen percent per
4 annum until paid. Any interest due continues to accrue until the operator pays the
5 mineral owner, mineral owner's assignee, or the owner of an overriding royalty
6 interest. The statute of limitations for interest continues to run until the interest on
7 unpaid royalties is paid under this section. If the aggregate amount is less than fifty
8 dollars, the operator may remit semiannually to a person entitled to royalties the
9 aggregate of six months' monthly royalties.

10 3. The district court for the county in which the oil or gas well is located has jurisdiction
11 over any proceeding brought under this section. The prevailing party in any
12 proceeding brought under this section is entitled to recover court costs and reasonable
13 attorney's fees.

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

19 2-5. This section does not apply to obligations to pay oil and gas royalties under an oil and
20 gas lease on minerals owned or managed by the board of university and school lands.

21 6. Payments made under this section must identify interest and royalty amounts
22 separately.

23 7. As used in this section:

24 a. "Royalty" means the mineral owner's share of production, free from the costs of
25 production.

26 b. "Overriding royalty" means a share of production, free of the costs of production,
27 in favor of a person other than the lessor of the lease.

28 8. A claim for relief for compensation brought under this chapter must be commenced
29 within the limitations period provided under section 28-01-15.

30 **SECTION 7. AMENDMENT.** Section 47-16-39.2 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **47-16-39.2. Inspection of production and royalty payment records - Penalty.**

2 1. A royalty owner, a royalty owner's assignee, an unleased mineral interest owner, or a
3 designated representative, upon written notice, is entitled to inspect and copy the oil
4 and gas production and royalty payment records ~~for the lease~~ of the person obligated
5 to pay royalties under the lease or ~~division orders~~ as required by section 47-16-39.1.

6 The person obligated to pay royalties under the lease shall make that person's oil and
7 gas royalty payment and production records available for inspection and copying at
8 that person's usual and customary place of business within the United States. Upon
9 request of a royalty owner, records available in an electronic format must be
10 electronically transmitted to the royalty owner. A royalty owner may bring an action to
11 compel the person obligated to pay royalties to allow inspection and copying of oil and
12 gas production royalty payment records. In order for the royalty owner to prevail in
13 such an action, the royalty owner must establish that:

- 14 a. The royalty owner ~~or the royalty owner's assignee~~ complied with the notice
15 requirements of this section;
- 16 b. The notice specified the ~~lease~~lands involved, the time period under review and
17 the records requested;
- 18 c. The royalty owner notified the person obligated to pay royalties at the address
19 printed on the information statement as prescribed by rules adopted by the
20 industrial commission pursuant to section 38-08-06.3; and
- 21 d. The person obligated to pay royalties denied inspection of the records or failed to
22 respond within thirty days of service of the notice.

23 2. The district court for the county in which the oil or gas well is located has jurisdiction
24 over all proceedings brought pursuant to this section. If the royalty owner ~~or the royalty~~
25 ~~owner's assignee~~ is successful in any proceeding brought pursuant to this section, the
26 district court shall allow the royalty owner ~~or the royalty owner's assignee~~ to recover
27 court costs; reasonable costs, fees, disbursements, and expenses incurred by the
28 royalty owner ~~or the royalty owner's assignee or a designated representative~~ in
29 inspecting and copying the oil and gas production and royalty payment records of the
30 person obligated to pay royalties ~~under the lease~~; and reasonable attorney's fees. The
31 district court shall assess a civil penalty of two thousand dollars per day for any period

1 the court determines royalty record payment records requested under this section
2 were wrongfully withheld.

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

5 a. The records in subsection 1 must be sent electronically, or in a manner
6 acceptable to the board, to a location designated by the board.

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

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

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

19 b. The civil penalty under subdivision a ceases to accrue on the date the
20 proceedings are initiated under subsection 1.

21 **SECTION 8. AMENDMENT.** Section 47-16-39.4 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **47-16-39.4. Resolution of spacing unit ownership interest disputes - Penalty.**

24 1. If the mineral owner and mineral developer disagree over the mineral owner's
25 ownership interest in a spacing unit, the mineral developer shall furnish the mineral
26 owner with a description of the conflict including the document number or book and
27 page number of any recorded documents relevant to the dispute and the proposed
28 resolution ~~or~~along with that portion of the title opinion that concerns the disputed
29 interest, if available to the mineral developer.

30 2. A mineral developer shall pay the mineral owner five hundred dollars per day for each
31 day the court determines the mineral developer was not in compliance with this

1 section or wrongfully withheld information under this section. If a mineral owner brings
2 an action to enforce this section and prevails, the court shall award reasonable
3 attorney's fees and court costs.