

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1494

Introduced by

Representatives Rennerfeldt, Drovdal, Kempenich, S. Meyer

Senators Lyson, Wardner

1 A BILL for an Act to create and enact a new section to chapter 38-13 of the North Dakota
2 Century Code, relating to the appointment of a trustee for and disposition of the proceeds of
3 mineral interests whose owner is absent; and to amend and reenact subdivision c of
4 subsection 3 of section 38-08-08, subdivision c of subsection 3 of section 38-08-09.4, and
5 sections 38-13-02 and 38-18.1-03 of the North Dakota Century Code, relating to
6 nonparticipating owners in the development of oil and gas interests in spacing units and plans
7 of unitization and institution of proceedings to establish a mineral trust for absent owners and
8 termination of mineral interest.

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

10 **SECTION 1. AMENDMENT.** Subdivision c of subsection 3 of section 38-08-08 of the
11 North Dakota Century Code is amended and reenacted as follows:

12 c. The owner paying for the nonparticipating owner's share of the drilling and
13 operation of a well may recover from the nonparticipating owner a risk penalty
14 for the risk involved in drilling and completing the well only if the paying owner
15 has made an unsuccessful, good-faith attempt to have the unleased
16 nonparticipating owner execute a lease or to have the leased nonparticipating
17 owner join in and participate in the risk and cost of drilling the well. Before a
18 risk penalty may be imposed, the paying owner must notify the
19 nonparticipating owner with proof of service that the paying owner intends to
20 impose a risk penalty and that the nonparticipating owner may object to the
21 risk penalty by either responding in opposition to the petition for a risk penalty
22 or if no such petition has been filed, by filing an application or request for
23 hearing with the industrial commission. Bonuses, rental payments, royalties,
24 and other payments offered or made to a trustee or unlocatable owner under

1 chapter 38-13 may not be considered in determining whether an attempt to
2 have the unleased nonparticipating owner execute a lease or to have the
3 leased nonparticipating owner join in and participate in the risk and cost of
4 drilling the well under this subdivision is in good faith or is reasonable.

5 **SECTION 2. AMENDMENT.** Subdivision c of subsection 3 of section 38-08-09.4 of the
6 North Dakota Century Code is amended and reenacted as follows:

7 c. The owner paying for the nonparticipating owner's share of the unit expense
8 may recover from the nonparticipating owner a risk penalty for the risk
9 involved in the unit expense only if the paying owner has made an
10 unsuccessful, good-faith attempt to have the unleased nonparticipating owner
11 execute a lease or to have the leased nonparticipating owner join in and
12 participate in the risk of the unit expense. Before a risk penalty may be
13 imposed, the paying owner must notify the nonparticipating owner with proof
14 of service that the paying owner intends to impose a risk penalty and that the
15 nonparticipating owner may object to the risk penalty by either responding in
16 opposition to the petition for a risk penalty or if no such petition has been filed,
17 by filing an application or request for hearing with the industrial commission.
18 Bonuses, rental payments, royalties, and other payments offered or made to
19 a trustee or unlocatable owner under chapter 38-13 may not be considered in
20 determining whether an attempt to have the unleased nonparticipating owner
21 execute a lease or to have the leased nonparticipating owner join in and
22 participate in the risk and cost of drilling the well under this subdivision is in
23 good faith or is reasonable.

24 **SECTION 3. AMENDMENT.** Section 38-13-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **38-13-02. Who may institute proceedings.** The proceedings provided for by this
27 chapter may be instituted upon the petition of any one or more persons who own a mineral,
28 leasehold, or royalty interest in ~~said land~~ the same section as that of the unlocatable owner.

29 **SECTION 4.** A new section to chapter 38-13 of the North Dakota Century Code is
30 created and enacted as follows:

1 **Board of university and school lands may serve as trustee - Disposition of**
2 **income and royalties - Management by board of university and school lands -**
3 **Abandonment of mineral interest and proceeds.** The board of university and school lands
4 may be appointed and may serve as a trustee under this chapter. The board may charge and
5 deduct from earnings a reasonable fee for services provided under this chapter. All bonuses,
6 rental payments, and royalties paid to the board of university and school lands under this
7 chapter must be deposited in the common schools trust fund. Those funds and the mineral
8 interest must be held in trust for the owner or claimant until the trust is terminated by law or until
9 further order of the court. The board of university and school lands shall manage any mineral,
10 leasehold, or royalty interest for which it is appointed trustee in the same manner it manages
11 interests of a similar nature or kind and may execute oil, gas, or other mineral leases,
12 assignments, ratifications, division orders, or other documents as it deems appropriate.

13 **SECTION 5. AMENDMENT.** Section 38-18.1-03 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **38-18.1-03. When mineral interest deemed to be used.**

- 16 1. A mineral interest is deemed to be used when:
- 17 ~~1-~~ a. There are any minerals produced under that interest.
- 18 ~~2-~~ b. Operations are being conducted thereon for injection, withdrawal, storage, or
19 disposal of water, gas, or other fluid substances.
- 20 ~~3-~~ c. In the case of solid minerals, there is production from a common vein or seam
21 by the owners of such mineral interest.
- 22 ~~4-~~ d. The mineral interest on any tract is subject to a lease, mortgage, assignment,
23 or conveyance of the mineral interest recorded in the office of the recorder in
24 the county in which the mineral interest is located.
- 25 ~~5-~~ e. The mineral interest on any tract is subject to an order or an agreement to
26 pool or unitize, recorded in the office of the recorder in the county in which the
27 mineral interest is located.
- 28 ~~6-~~ f. Taxes are paid on the mineral interest by the owner or the owner's agent.
- 29 ~~7-~~ g. A proper statement of claim is recorded as provided by section 38-18.1-04.
- 30 ~~8-~~ h. The owner or lessee utilizes the mineral interest in a manner pursuant to, or
31 authorized by, the instrument creating the mineral interest.

- 1 2. A trust that has been created under chapter 38-13 does not satisfy the
- 2 requirements of this section and is not deemed to be used for purposes of this
- 3 section.