

SENATE BILL NO. 38

BY SENATOR HENSGENS

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AN ACT

To amend and reenact R.S. 30:10(A)(2)(a), the introductory paragraph of (i) and (aa) and (ee), (ii), and (iii), (b)(i), (ii)(aa), (bb), (dd), (ee), and (ff), and (iii), (e)(ii), (h), and (i) and (3) and (B), and to enact R.S. 30:10(A)(2)(a)(i)(ff) and (b)(ii)(gg), (hh), (ii), and (jj), (iv), (v), (vi), and (vii), and (C), relative to drilling units; to provide for definitions; to provide for procedures, obligations, and remedies; to provide for written notice; to provide for information required to be furnished; to provide for indemnification; to provide for changes of ownership; to provide for title opinions; to provide for subsequent unit operations; to provide terminology; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:10(A)(2)(a), the introductory paragraph of (i) and (aa) and (ee), (ii), and (iii), (b)(i), (ii)(aa), (bb), (dd), (ee), and (ff), and (iii), (e)(ii), (h), and (i) and (3) and (B) are hereby amended and reenacted and R.S. 30:10(A)(2)(a)(i)(ff) and (b)(ii)(gg), (hh), (ii), and (jj), (iv), (v), (vi), and (vii), and (C) are hereby enacted to read as follows:

§10. Agreements for drilling units; pooling interests; terms and conditions; expenses

A.

\* \* \*

(2)

\* \* \*

(a)(i) Any owner drilling, intending to drill, or who has drilled a unit well, a

1 substitute unit well, an alternate unit well, or a cross-unit well on any drilling unit  
 2 heretofore or hereafter created by the commissioner, may, by registered mail, return  
 3 receipt requested, or other form of guaranteed delivery and notification method, not  
 4 including electronic communication or mail, notify all other owners in the unit of the  
 5 drilling or the intent to drill and give each owner an opportunity to elect to  
 6 participate in the risk and expense of such well. Such notice shall **be called a "risk**  
 7 **charge notice" and shall** contain:

8 (aa) An authorization for expenditure form (AFE), which shall include a  
 9 detailed estimate or the actual amount of the cost of drilling, testing, completing, and  
 10 equipping such well. The AFE shall be dated within one hundred twenty days of the  
 11 date of the mailing of the **risk charge** notice.

12 \* \* \*

13 (ee) In the event that the well is being drilled or has been drilled at the time  
 14 of **mailing the risk charge** notice, then a copy of all available logs, core analysis,  
 15 production data, and well test data from the well which has not been made public.

16 **(ff) At the option of the drilling owner, a statement that payment in full**  
 17 **of the notified owner's share of costs as set forth in the AFE is required to be**  
 18 **included with any election to participate.**

19 (ii) An election to participate must be exercised by mailing written notice  
 20 thereof by registered mail, return receipt requested, or other form of guaranteed  
 21 delivery and notification method, not including electronic communication or mail,  
 22 to the owner drilling or intending to drill the proposed well within thirty days after  
 23 receipt of the initial **risk charge** notice. **If required by the drilling owner in**  
 24 **accordance with Subitem (i)(ff) of this Subparagraph, such an election to**  
 25 **participate shall include payment of the notified owner's share of costs as set**  
 26 **forth in the AFE.** Failure to give timely written notice of the election to participate  
 27 **or, if required by the drilling owner in accordance with Subitem (i)(ff) of this**  
 28 **Subparagraph, timely delivery of such payment of the notified owner's share of**  
 29 **the costs as set forth in the AFE** shall be deemed to be an election not to participate  
 30 and the owner shall be deemed a nonparticipating owner. **In cases where some or**

1 all of the AFE costs are estimated, financial adjustments shall be made between  
2 the drilling owner and the participating owners within sixty days of receipt of  
3 detailed invoices in order to account for the difference between any cost  
4 estimates and actual costs.

5 (iii) If the drilling of the proposed well is not commenced in accordance with  
6 the initial **risk charge** notice within ninety days after receipt of the initial **risk**  
7 **charge** notice, then the drilling owner shall send a supplemental **risk charge** notice  
8 in order for the provisions of this Subsection to apply.

9 (b)(i) Should a notified owner elect not to participate, or be deemed a  
10 nonparticipating owner, in the risk and expense of the unit well, substitute unit  
11 well, alternate unit well, or cross-unit well or should such owner elect to participate  
12 in the risk and expense of the proposed well but, except where the drilling owner  
13 has required payment with the election in accordance with Subitem (a)(i)(ff) of  
14 this Paragraph, then fail to pay his share of the estimated drilling costs determined  
15 by the AFE timely or fail to pay his share of actual reasonable drilling, testing,  
16 completing, equipping, and operating expenses within sixty days of receipt of  
17 detailed invoices, then such owner shall be deemed a nonparticipating owner, and the  
18 drilling owner shall, in addition to any other available legal remedies to enforce  
19 collection of such expenses, be entitled to own and recover out of production from  
20 such well allocable to the tract under lease to the nonparticipating owner such tract's  
21 allocated share of the actual reasonable expenditures incurred in drilling, testing,  
22 completing, equipping, and operating the well, including a charge for supervision,  
23 together with a risk charge. Should the drilling owner require payment with the  
24 election, failure to include payment in full with the election in accordance with  
25 Subitem (a)(i)(ff) of this Paragraph, regardless of the election, shall be deemed  
26 an election not to participate. Should a notified owner elect to participate by  
27 satisfying the requirements of this Paragraph and subsequently fails to pay any  
28 actual costs that were not previously paid by that owner as set forth in the AFE,  
29 the drilling owner, in addition to any other available legal remedies, shall be  
30 entitled to recover such unpaid costs out of production of such well. For purposes

1 of this Subparagraph, **and except where the drilling owner has required payment**  
2 **with the election in accordance with Subitem (a)(i)(ff) of this Paragraph,** the  
3 payment of estimated drilling costs shall be deemed timely if received by the drilling  
4 owner within sixty days of the actual spudding of the well or the receipt by the  
5 notified owner of the notice required by this Subsection, whichever is later. The risk  
6 charge for a unit well, substitute unit well, or cross-unit well that will serve as the  
7 unit well or substitute well for the unit shall be two hundred percent of such tract's  
8 allocated share of the cost of drilling, testing, and completing the well, exclusive of  
9 amounts the drilling owner remits to the nonparticipating owner for the benefit of the  
10 nonparticipating owner's royalty and overriding royalty owner. The risk charge for  
11 an alternate unit well or cross-unit well that will serve as an alternate unit well for  
12 the unit shall be one hundred percent of such tract's allocated share of the cost of  
13 drilling, testing, and completing such well, exclusive of amounts the drilling owner  
14 remits to the nonparticipating owner for the benefit of the nonparticipating owner's  
15 royalty and overriding royalty owner.

16 (ii)(aa) During the recovery of the actual reasonable expenditures incurred  
17 in drilling, testing, completing, equipping, and operating the well, the charge for  
18 supervision, and the risk charge, the nonparticipating owner **who has furnished the**  
19 **information set forth in Subitem (gg) of this Item,** shall be entitled to receive from  
20 the drilling owner for the benefit of his lessor royalty owner that portion of **the**  
21 **proceeds from the sale or other disposition of** production due to the lessor royalty  
22 owner under the terms of the contract or agreement creating the royalty between the  
23 **lessor** royalty owner and the nonparticipating owner reflected of record at the time  
24 of the ~~well proposal~~ **risk charge notice.**

25 (bb) In addition, during the recovery set forth in Subitem (aa) of this Item,  
26 the nonparticipating owner shall receive from the drilling owner for the benefit of the  
27 overriding royalty owner **a portion of the proceeds from the sale or other**  
28 **disposition of production that is** the lesser of: (I) the nonparticipating owner's total  
29 percentage of actual overriding royalty burdens associated with the existing lease or  
30 leases which cover each tract attributed to the nonparticipating owner reflected of

1 record at the time of the ~~well proposal~~ **risk charge notice**; or (II) the difference  
 2 between the weighted average percentage of the total actual **lessor** royalty and  
 3 overriding royalty burdens of the drilling owner's leasehold within the unit and the  
 4 **weighted average percentage of the total actual lessor royalty of the**  
 5 nonparticipating owner's ~~actual leasehold royalty burdens~~ **within the unit** reflected  
 6 of record at the time of the ~~well proposal~~ **risk charge notice**. **Payment of the**  
 7 **amount due shall be made in accordance with the terms of the contract or**  
 8 **agreement creating the overriding royalty.**

9 \* \* \*

10 (dd) Nothing in this Section shall relieve any lessee of its obligations to pay,  
 11 from the commencement of production, any lessor royalty and overriding royalty due  
 12 under the terms of his lease; and other agreements during the ~~recovery of actual well~~  
 13 **recoupment of recoverable** costs and the risk charge, or shall relieve any lessee of  
 14 ~~his~~ **its** obligation to pay all **lessor** royalty and overriding royalty due under the terms  
 15 of his lease and other agreements after the ~~recovery of the actual well~~ **recoupment**  
 16 **of recoverable** costs and the risk charge. ~~Except as provided in this Paragraph, the~~  
 17 ~~drilling owner's obligation to pay the royalty and the overriding royalty to the~~  
 18 ~~nonparticipating owner in no way creates an obligation, duty, or relationship between~~  
 19 ~~the drilling owner and any person to whom the nonparticipating owner is liable to,~~  
 20 ~~contractually or otherwise.~~ **The lessor royalty owner and overriding royalty**  
 21 **owner shall follow the same procedure and have the same remedies against the**  
 22 **nonparticipating owner provided in Part 6 of Chapter 7 of Title 31 of the**  
 23 **Louisiana Revised Statutes of 1950 or Part 2-A of Chapter 13 of Title 31 of the**  
 24 **Louisiana Revised Statutes of 1950.**

25 (ee) **Except as provided in this Paragraph, the drilling owner's obligation**  
 26 **to pay the lessor royalty and the overriding royalty to the nonparticipating**  
 27 **owner in no way creates an obligation, duty, or relationship between the drilling**  
 28 **owner and any person to whom the nonparticipating owner is liable,**  
 29 **contractually or otherwise.** In the event of nonpayment by the nonparticipating  
 30 owner of the **lessor** royalty and overriding royalty due, **and as a prerequisite to a**

1        **judicial demand for damages against the drilling owner**, the lessor royalty owner  
2        and overriding royalty owner shall provide written notice of such failure to the  
3        nonparticipating owner and drilling owner as a prerequisite to a ~~judicial demand for~~  
4        ~~damages~~. The lessor royalty owner and overriding royalty owner shall follow the  
5        same procedure and have the same remedies **against the drilling owner, except**  
6        **dissolution**, provided in Part 6 of Chapter 7 of Title 31 of the Louisiana Revised  
7        Statutes of 1950 or Part 2-A of Chapter 13 of Title 31 of the Louisiana Revised  
8        Statutes of 1950, ~~respectively, against the nonparticipating owner and the drilling~~  
9        ~~owner~~. **The written notice provided to the drilling owner by the lessor royalty**  
10       **owner or overriding royalty owner shall include a true and complete, or**  
11       **redacted, copy of the mineral lease or other agreement creating any lessor**  
12       **royalty or overriding royalty**. If the drilling owner provides sufficient proof of  
13       payment of the royalties to the nonparticipating owner, then the lessor royalty owner  
14       and overriding royalty owner shall have no cause of action against the drilling owner  
15       for nonpayment.

16                (ff) In the event of nonpayment by the drilling owner of the **lessor** royalty  
17        and overriding royalty due to the nonparticipating owner for the benefit of the lessor  
18        royalty owner and overriding royalty owner, and payment by the nonparticipating  
19        owner of **a good faith estimate of the lessor** royalty and overriding royalty due, the  
20        nonparticipating owner shall provide written notice of such failure to pay to the  
21        drilling owner as a prerequisite to a judicial demand for damages. The drilling owner  
22        shall have thirty days after receipt of the required notice within which to pay the  
23        royalties due or to respond in writing by stating a reasonable cause for nonpayment.  
24        If the drilling owner fails to make payment of the royalties or fails to state a  
25        reasonable cause for nonpayment within this period, the court may award to the  
26        nonparticipating owner as damages double the amount of royalties due, interest on  
27        that sum from the date due, and a reasonable attorney fee regardless of the cause for  
28        the original failure to pay royalties. If the drilling owner provides sufficient proof of  
29        payment of the royalties to the nonparticipating owner, then the nonparticipating  
30        owner shall have no cause of action against the drilling owner for nonpayment.

1            (gg) Each nonparticipating owner entitled to receive a portion of the  
2            proceeds from the sale or other disposition of production as provided in  
3            Subitems (aa) and (bb) of this Item shall furnish to the drilling owner both of  
4            the following:

5            (I) A true and complete, or redacted, copy of the mineral lease or other  
6            agreement creating any lessor royalty or overriding royalty for which the  
7            nonparticipating owner is entitled to receive a portion of the proceeds from the  
8            sale or other disposition of production; provided that a redacted copy may be  
9            submitted in lieu of a complete copy, if it contains in full the provisions dealing  
10           with the determination and calculation of the portion of proceeds from the sale  
11           or other disposition of production due to the lessor or overriding royalty owner.

12           (II) A sworn statement of the ownership of the nonparticipating owner  
13           as to each tract embraced within the unit in which the nonparticipating owner  
14           has an interest and the amounts of the lessor royalty and overriding royalty  
15           burdens for which the nonparticipating owner is entitled to receive a portion of  
16           the proceeds from the sale or other disposition of production. In its discretion,  
17           the nonparticipating owner may also provide to the drilling owner copies of any  
18           title opinions in its possession or portions thereof on which the statement of  
19           ownership is based in whole or in part; however doing so shall not relieve the  
20           nonparticipating owner of its obligation to provide the sworn statement  
21           described in this Subsubitem.

22           (hh) Each nonparticipating owner who has received from the drilling  
23           owner a portion of the proceeds from the sale or other disposition of production  
24           for the benefit of a lessor royalty owner or overriding royalty owner, based only  
25           on the information furnished pursuant to Subitem (gg) of this Item, shall  
26           indemnify and hold harmless the drilling owner from and against any claims  
27           asserted against the drilling owner related to any amounts paid to the  
28           nonparticipating owner. The nonparticipating owner shall also restore to the  
29           drilling owner any amounts paid by the drilling owner to the nonparticipating  
30           owner in reliance on the information furnished pursuant to Subitem (gg) of this

1 Item, if and to the extent determined to be incorrect.

2 (ii) No change or division of the ownership of a nonparticipating owner  
 3 who is receiving a portion of the proceeds from the sale or other disposition of  
 4 production from the drilling owner shall be binding upon the drilling owner for  
 5 the purpose of paying to the nonparticipating owner for the benefit of its lessor  
 6 royalty owner or overriding royalty owner, under Subitems (aa) and (bb) of this  
 7 Item, until such new nonparticipating owner acquiring any interest has  
 8 furnished the drilling owner at the drilling owner's address as reflected in the  
 9 records maintained by the office of conservation, with a certified copy of the  
 10 instrument or instruments, constituting the chain of title from the original  
 11 nonparticipating owner.

12 (jj) In the event that the drilling owner secures a title opinion from a  
 13 licensed Louisiana attorney covering a tract of land in a unit burdened by a  
 14 mineral lease, or other agreement, that creates any lessor royalty or overriding  
 15 royalty for which a nonparticipating owner is entitled to receive from the  
 16 drilling owner a portion of the proceeds from the sale or other disposition of  
 17 production, the actual reasonable costs incurred by the drilling owner in  
 18 obtaining the title examination and the title opinion may, at the drilling owner's  
 19 sole discretion, be chargeable as a cost recoverable by the drilling owner out of  
 20 the tract's allocable share of production. In such case, the drilling owner shall  
 21 provide the nonparticipating owner applicable excerpts of such title opinion.

22 (iii) Any owner not notified shall bear only his tract's allocated share of the  
 23 actual reasonable expenditures incurred in drilling, testing, completing, equipping,  
 24 and operating the unit well or in connection with any subsequent unit operation,  
 25 including a charge for supervision, which share shall be subject to the same  
 26 obligation and remedies and rights to own and recover out of production in favor of  
 27 the drilling party or parties owner as provided in this Subsection. ~~A participating~~  
 28 The drilling owner shall deliver to the owner ~~whom has not been notified,~~ for the  
 29 benefit of his lessor royalty owner or overriding royalty owner, the proceeds  
 30 attributable to ~~his~~ the lessor royalty and overriding royalty burdens as described in



1 this Section.

2 (iv) Any owner of a well described in Subparagraph (a) of this  
3 Paragraph who is conducting, intends to conduct, or has conducted a  
4 subsequent unit operation on such well may notify all other owners in the unit  
5 of the conducting or the intent to conduct such operation in the form and  
6 manner of the risk charge notice described in Subparagraph (a) of this  
7 Paragraph, and in that event, all of the provisions of this Paragraph shall be  
8 applicable to that subsequent unit operation to the same extent, and in the same  
9 manner, that they would apply to the drilling of a new well, subject to Items (v)  
10 and (vi) of this Subparagraph.

11 (v) The risk charge for any subsequent unit operation shall be one  
12 hundred percent of the tract's allocated share of the actual reasonable  
13 expenditures incurred in conducting the subsequent unit operation, including  
14 a charge for supervision, regardless of whether the wellbore on which such  
15 operations were conducted is a unit well, alternate unit well, substitute unit well,  
16 or cross-unit well.

17 (vi) The notice to be provided by the drilling owner to the other owners  
18 in the unit pursuant to Item (iv) of this Subparagraph shall contain:

19 (aa) A detailed description identifying the well to which the subsequent  
20 unit operation relates, the work associated therewith, and the new location and  
21 objective depth of the well if changed as a result of such work.

22 (bb) A copy of the order of the commissioner creating the drilling unit  
23 to which the subsequent unit operation relates.

24 (cc) An AFE that shall include a detailed estimate, or the actual amount,  
25 of the cost of conducting the subsequent unit operation and that is dated within  
26 one hundred twenty days of the date of the mailing of the notice.

27 (dd) An estimate of the notified owner's approximate percentage of well  
28 participation.

29 (ee) A copy of all available logs, core analysis, production data, and well  
30 test data with respect to the well that has not been made public.

1                    (vii) If, on the date of the notice of the subsequent unit operation, there  
2                    are still amounts uncollected on a risk charge from a nonparticipating owner  
3                    for the drilling of, or a previous operation on, the wellbore for which the notice  
4                    is sent, the drilling owner may recoup a risk charge from that nonparticipating  
5                    owner on the costs of the noticed subsequent unit operation only if the drilling  
6                    owner sends that nonparticipating owner a notice of the subsequent unit  
7                    operation. The notice may offer that nonparticipating owner the opportunity to  
8                    participate in the subsequent unit operation upon payment to the drilling  
9                    owner, within sixty days of the date of receipt of the notice, of the  
10                    nonparticipating owner's entire outstanding balance due for all previous  
11                    operations on the wellbore, including any amounts uncollected on a risk charge.  
12                    If the drilling owner sends the nonparticipating owner the notice, the drilling  
13                    owner may, in addition to recouping the costs of a subsequent unit operation,  
14                    recoup a risk charge on the costs of the subsequent unit operation from the  
15                    production from the well attributable to the tract under lease to that  
16                    nonparticipating owner if it fails to elect timely to participate in the subsequent  
17                    unit operation, or if it fails to pay timely the entire outstanding balance due for  
18                    all previous operations on the wellbore, or if it fails to pay timely its share of the  
19                    estimated costs of the subsequent unit operation determined by the AFE.

\* \* \*

(e)

\* \* \*

23                    (ii) Notwithstanding the provisions of Subparagraph (b) of this Paragraph, the  
24                    lessor royalty owner and overriding royalty owner shall receive that portion of  
25                    production **proceeds** due to them under the terms of the contract creating the royalty.

\* \* \*

27                    (h) The owners in the unit to whom the **risk charge** notice provided for  
28                    ~~hereinabove~~ **in this Section** may be sent, are the owners of record as of the date on  
29                    which the **risk charge** notice is sent.

(i) Failure of the drilling owner to provide ~~written~~ **to an owner a risk charge**

1 notice as required by Subparagraph (a) of this Paragraph ~~to an owner~~ shall not affect  
 2 the validity of the ~~written~~ **risk charge** notice properly provided to any other owner  
 3 in the unit.

4 (3) If there is included in any unit created by the commissioner of  
 5 conservation one or more unleased interests for which the party or parties entitled to  
 6 market production therefrom have not made arrangements to separately **sell or**  
 7 **otherwise** dispose of the share of such production attributable to such tract, and the  
 8 unit operator ~~proceeds with the sale of~~ **sells or otherwise disposes of such** unit  
 9 production, then the unit operator shall pay to such party or parties such tract's pro  
 10 rata share of the proceeds of the sale **or other disposition** of production within one  
 11 hundred eighty days of such sale **or other disposition**.

12 B. Should the owners of separate tracts embraced within a drilling unit fail  
 13 to agree upon the pooling of the tracts and the drilling of a well on the unit, and  
 14 should it be established by final and unappealable judgment of court that the  
 15 commissioner is without authority to require pooling as provided for in Subsection  
 16 A **of this Section**, then, subject to all other applicable provisions of this Chapter, the  
 17 owner of each tract embraced within the drilling unit may drill thereon. The  
 18 allowable production therefrom shall be such proportion of the allowable for the full  
 19 unit as the area of the separately owned tract bears to the full drilling unit.

20 **C. For purposes of this Section, the following definitions shall apply:**

21 **(1) "Deepening" means an operation whereby an existing wellbore**  
 22 **serving as a unit well, alternate unit well, substitute unit well, or cross-unit well**  
 23 **is extended to a point within the same unit and unitized interval beyond its**  
 24 **previously drilled total vertical depth.**

25 **(2) "Extension" means an operation related to a horizontal well whereby**  
 26 **a lateral is drilled in the same unitized interval to a greater total measured**  
 27 **depth or extent than the lateral was drilled pursuant to a previous proposal.**

28 **(3) "Recompletion" means an operation to attempt a completion in a**  
 29 **portion of the unitized interval in the existing wellbore different from the initial**  
 30 **completion in the unitized interval.**

1           (4) "Rework" means an operation conducted in the wellbore after it is  
 2           initially completed in the unitized interval in a good faith effort to secure,  
 3           restore, or improve production in a stratum within the unitized interval that  
 4           was previously open to production in that wellbore, including re-perforating,  
 5           hydraulic fracturing and re-fracturing, tubing repair or replacement, casing  
 6           repair or replacement, squeeze cementing, setting bridge plugs, and any  
 7           essential preparatory steps. "Rework" does not include routine maintenance  
 8           such as acidizing, sand or paraffin removal, repair, or replacement of downhole  
 9           equipment such as rods, pumps, packers, or other mechanical devices.

10           (5) "Sidetrack" means the intentional deviation of an existing wellbore  
 11           serving as a unit well, alternate unit well, or substitute unit well from its actual  
 12           or permitted bottom hole location within that unit and unitized interval to a  
 13           different bottom hole location within the same unit and unitized interval or  
 14           done to drill around junk in the hole or to overcome other mechanical  
 15           difficulties in order to reach the permitted bottom hole location.

16           (6) "Subsequent unit operation" means a recompletion, rework,  
 17           deepening, sidetrack, or extension conducted within the unitized interval for a  
 18           unit or units created under R.S. 30:9(B).

19           (7) "Unitized interval" means the subsurface interval defined in the  
 20           office of conservation order creating the unit or units that the existing wellbore  
 21           is serving as a unit well, alternate unit well, substitute unit well, or cross-unit  
 22           well.

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 PRESIDENT OF THE SENATE

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 SPEAKER OF THE HOUSE OF REPRESENTATIVES

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 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_