

Regular Session, 2014

SENATE BILL NO. 325

BY SENATOR MURRAY

MINERALS. Provides relative to certain indemnification agreements concerning environmental damage. (gov sig)

1 AN ACT

2 To enact R.S. 30:29.2, relative to oilfield sites and exploration and production sites; to
3 provide for the effect of certain indemnity agreements related to environmental
4 damages; to provide certain exemptions; to provide for penalties; to provide terms,
5 conditions, and requirements; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 30:29.2 is hereby enacted to read as follows:

8 **§29.2. Certain indemnification agreements invalid**

9 **A. The legislature hereby finds and declares that Article IX, Section 1 of**
10 **the Constitution of Louisiana mandates that the natural resources and the**
11 **environment of the state, including surface and ground water, are to be**
12 **protected, conserved, repaired and replenished insofar as possible and**
13 **consistent with the health, safety, and welfare of the people, and further**
14 **mandates that the legislature enact laws to implement this policy. The**
15 **enactment of laws that require persons who cause environmental damage to**
16 **remediate such damage are in furtherance of the public policy expressed in**
17 **Article IX, Section 1 of the Constitution of Louisiana. The legislature further**

1 finds that the purpose of such laws are undermined as a result of certain hold
2 harmless and indemnity agreements, and that such agreements interfere with
3 and hinder the necessary remediation of environmental damage, all of which is
4 contrary to the best interest of the public, and the purpose of Article IX, Section
5 1 of the Constitution of Louisiana. It is the intent of the legislature by this
6 Section to declare void and against public policy of the state of Louisiana any
7 provision in any agreement which requires defense and indemnification for
8 environmental damage subject to the provisions of R.S. 30:29 where there is
9 negligence or fault on the part of the indemnitee, or an agent or employee of the
10 indemnitee, or an independent contractor who is directly responsible to the
11 indemnitee.

12 B. Any provision contained in, collateral to, or affecting an agreement
13 pertaining to an oilfield site or an exploration and production (E&P) site as
14 defined in R.S. 30:29 (I)(4) is void and unenforceable to the extent that it
15 purports to or does provide for defense or indemnity, or either, to the
16 indemnitee against loss or liability for damages arising out of or resulting from
17 environmental damage caused by or resulting from the sole or concurrent
18 negligence or fault of the indemnitee, or an agent, employee, or an independent
19 contractor who is directly responsible to the indemnitee.

20 C. The term "agreement", as it pertains to an oilfield site or an
21 exploration and production (E&P) site, shall mean any agreement or
22 understanding, written or oral, pertaining to the assignment, sublease, or
23 transfer of rights to explore for or produce minerals on lands subject to the
24 provisions of R.S. 30:29, and includes but is not limited to the assignment, sale,
25 or transfer of any rights contained in a mineral lease, mineral sublease, surface
26 lease or sublease, mineral servitude or royalty interest in or on an oilfield site
27 or an exploration and production (E&P) site.

28 D.(1) The provisions of this Section shall not affect the validity of any
29 insurance contract, except as otherwise provided in this Section, and shall not

1 deprive an owner, co-owner, or usufructuary of a surface estate of the right to
2 secure an indemnity from any lessee, operator, contractor, or other person
3 conducting operations for the exploration or production of minerals on the
4 owner's land.

5 (2) Notwithstanding any provision in this Section to the contrary, nothing
6 in this Section shall affect the validity of an operating agreement or farmout
7 agreement, as defined herein, to the extent that the operating agreement or
8 farmout agreement purports to provide for defense or indemnity. This
9 exception shall not extend to any party who physically performs any activities
10 pursuant to any agreement. For purposes of this Subsection, operating
11 agreement and farmout agreement shall be defined as follows:

12 (a) "Operating agreement" means any agreement entered into by or
13 among the owners of mineral rights for the joint exploration, development,
14 operation, or production of minerals.

15 (b) "Farmout agreement" means any agreement in which the holder of
16 the operating rights to explore for and produce minerals agrees that he will,
17 upon completion of the conditions of the agreement, assign to another person
18 all or a portion of a mineral lease or of the operating rights.

19 E. Any provision in any agreement which requires waivers of
20 subrogation, additional named insured endorsements, or any other form of
21 insurance protection which would frustrate or circumvent the prohibitions of
22 this Section, shall be void.

23 F. The provisions of this Section shall not deprive a person who has
24 transferred land, with a reservation of mineral rights, of the right to secure a
25 defense or indemnity agreement from any lessee, operator, contractor, or other
26 person conducting operations for the exploration or production of minerals in
27 connection with the reserved mineral rights provided that such person does not
28 retain a working interest or an overriding royalty interest convertible to a
29 working interest in any production obtained through activities conducted on an

1 oilfield site or an exploration and production (E&P) site.

2 G. The provisions of this Section shall not apply to loss or liability for
3 damages, or any other expenses, arising out of or resulting from bodily injury
4 or death to persons occurring on an oilfield site or an exploration and
5 production (E&P) site.

6 H. Whoever intentionally violates the provisions of this Section shall be
7 liable to any person who suffers damage arising from such violation. Any person
8 aggrieved of an intentional violation of this Section shall be entitled to treble
9 damages.

10 Section 2. The provisions of this Act shall be given retroactive application but shall
11 not apply to contracts or agreements related to claims under R.S. 30:29 that have been settled
12 in principle within the meaning of R.S. 30:29(J).

13 Section 3. This Act shall become effective upon signature by the governor or, if not
14 signed by the governor, upon expiration of the time for bills to become law without signature
15 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
16 vetoed by the governor and subsequently approved by the legislature, this Act shall become
17 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by McHenry Lee.

DIGEST

Murray (SB 325)

Proposed law provides legislative findings.

Proposed law voids any provision in an oilfield site or exploration and production site agreement that provides defense or indemnity against a person who is responsible for environmental damage caused by his negligence or fault.

Proposed law defines "agreement", "operating agreement", and "farmout agreement".

Proposed law provides no affect on any insurance contract and will not deprive an owner, or co-owner, or usufructuary of a surface estate of the right to secure an indemnity from any lessee, operator, contractor, or other person conducting operations for the exploration or production of minerals.

Proposed law provides no affect on the validity of an operating agreement or farmout agreement to the extent that such an agreement purports to provide for defense or indemnity.

Proposed law provides that any agreement which requires waivers of subrogation, additional

named insured endorsements, or any other form of insurance protection are void. Further provides an exception for a party who physically performs certain activities.

Proposed law does not deprive a person who has transferred land, with a reservation of mineral rights, of the right to secure a defense or indemnity agreement from any lessee, operator, contractor, or other person conducting operations for the exploration or productions of minerals in connection with the reserved mineral rights provided that such person does not retain a working interest or an overriding royalty interest convertible to a working interest in any production obtained through activities conduction on an oilfield site or an exploration and production (E&P) site.

Proposed law does not apply to loss or liability for damages, or any other expenses, arising out of or resulting from bodily injury or death to persons occurring on an oilfield site or an exploration and production (E&P) site.

Proposed law provides that whoever intentionally violates proposed law will be liable to any person who suffers damage arising from such violation and that any person aggrieved of an intentional violation will be entitled to treble damages.

Proposed law provides that the provisions of proposed law will be given retroactive application.

Proposed law provides that the provisions of proposed law will not apply to certain contracts or agreements related to claims under R.S. 30:29 that have been settled in principle.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 30:29.2)