

SENATE BILL NO. 667

BY SENATORS ADLEY AND JOHNS

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AN ACT

To amend and reenact R.S. 30:29(B)(6), (H), and (I) and Code of Civil Procedure Art. 1563(A)(2) and to enact R.S. 30:29(C)(2)(c) and (M), relative to the remediation of oilfield sites and exploration and production sites; to provide for presumption and jury charge following a limited admission of liability; to provide for reasonable attorney fees and costs following a preliminary dismissal; to provide for certain remediation damages; to provide terms, conditions, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:29(B)(6), (H), and (I) are hereby amended and reenacted and R.S. 30:29(C)(2)(c) and (M) are hereby enacted to read as follows:

§29. Remediation of oilfield sites and exploration and production sites

* * *

B. * * *

(6) Within sixty days of being served with a petition or amended petition asserting an action, a defendant may request that the court conduct a preliminary hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation. At the hearing, the parties may introduce evidence in affidavit or written form. The plaintiff shall have the initial burden to introduce evidence to support the allegations of environmental damage, following which the moving party shall have the burden to demonstrate the absence of a genuine issue of material fact that the moving party caused or is otherwise legally responsible for the alleged environmental damage. The rules governing summary judgments in the Code of Civil Procedure shall not apply to the preliminary hearing. Within fifteen days of the preliminary hearing, the court shall issue an order on any timely request for preliminary dismissal. A judgment of dismissal under this Paragraph shall be without prejudice, with all parties reserving the right to rejoin the dismissed defendant during

1 the litigation upon discovery of evidence not reasonably available at the time of the
 2 hearing on the motion for preliminary dismissal. If not rejoined, a party dismissed
 3 under this Paragraph shall be entitled to a judgment of dismissal with prejudice
 4 following a final nonappealable judgment on the claims asserted by the party against
 5 whom the preliminary dismissal was granted **and shall be entitled to recover from**
 6 **the party who asserted the claim an award of reasonable attorney fees and costs,**
 7 **as may be determined by the court.** Any pleading rejoining any defendant
 8 previously dismissed under this Paragraph shall relate back to the filing of the
 9 original petition or any amendment thereto as provided in the Code of Civil
 10 Procedure Article 1153. The finding of the district court shall be without prejudice
 11 of any party to litigate the legal responsibility of any potentially responsible party,
 12 the allocation of responsibility among the potentially responsible parties, and any
 13 other issues incident to the finder of fact's determination of the party or parties who
 14 caused the damage or who are otherwise legally responsible for the alleged
 15 environmental damage. The procedure for a preliminary dismissal provided by this
 16 Paragraph shall be in addition to the pretrial rights and the remedies available to the
 17 parties under the Code of Civil Procedure, including the right to civil discovery.

18 * * *

19 C. * * *

20 (2) * * *

21 **(c) In all cases in which a party makes a limited admission of liability**
 22 **under the provisions of the Code of Civil Procedure Art. 1563, there shall be a**
 23 **rebuttable presumption that the plan approved or structured by the**
 24 **department, after consultation with the Department of Environmental Quality**
 25 **as appropriate, shall be the most feasible plan to evaluate or remediate to**
 26 **applicable regulatory standards the environmental damage for which**
 27 **responsibility is admitted. For cases tried by a jury, the court shall instruct the**
 28 **jury regarding this presumption if so requested by a party.**

29 * * *

30 H.(1) This Section shall not preclude an owner of land from pursuing a

1 judicial remedy or receiving a judicial award for private claims suffered as a result
 2 of environmental damage, except as otherwise provided in this Section. ~~Nor shall it~~
 3 ~~preclude a judgment ordering damages for or implementation of additional~~
 4 ~~remediation in excess of the requirements of the plan adopted by the court pursuant~~
 5 ~~to this Section as may be required in accordance with the terms of an express~~
 6 ~~contractual provision.~~ Any award granted in connection with the judgment for
 7 additional remediation **in excess of the requirements of the feasible plan adopted**
 8 **by the court** is not required to be paid into the registry of the court.

9 **(2) Damages that may be awarded in an action under this Section shall**
 10 **be governed by the provisions of Subsection M of this Section.** This Section shall
 11 not be interpreted to create any cause of action or to impose additional implied
 12 obligations under the mineral code or arising out of a mineral lease.

13 I. For the purposes of this Section, the following terms shall have the
 14 following meanings:

15 (1) **"Contamination" shall mean the introduction or presence of**
 16 **substances or contaminants into a usable groundwater aquifer, an underground**
 17 **source of drinking water (USDW) or soil in such quantities as to render them**
 18 **unsuitable for their reasonably intended purposes.**

19 (2) "Environmental damage" shall mean any actual or potential impact,
 20 damage, or injury to environmental media caused by contamination resulting from
 21 activities associated with oilfield sites or exploration and production sites.
 22 Environmental media shall include but not be limited to soil, surface water, ground
 23 water, or sediment.

24 ~~(2)~~(3) "Evaluation or remediation" shall include but not be limited to
 25 investigation, testing, monitoring, containment, prevention, or abatement.

26 ~~(3)~~(4) "Feasible Plan" means the most reasonable plan which addresses
 27 environmental damage in conformity with the requirements of Louisiana
 28 Constitution Article IX, Section 1 to protect the environment, public health, safety
 29 and welfare, and is in compliance with the specific relevant and applicable standards
 30 and regulations promulgated by a state agency in accordance with the Administrative

1 Procedure Act in effect at the time of clean up to remediate contamination resulting
 2 from oilfield or exploration and production operations or waste.

3 ~~(4)~~(5) "Oilfield site" or "exploration and production (E&P) site" means any
 4 location or any portion thereof on which oil or gas exploration, development, or
 5 production activities have occurred, including wells, equipment, tanks, flow lines or
 6 impoundments used for the purposes of the drilling, workover, production, primary
 7 separation, disposal, transportation or storage of E&P wastes, crude oil and natural
 8 gas processing, transportation or storage of a common production stream of crude
 9 oil, natural gas, coal seam natural gas, or geothermal energy prior to a custody
 10 transfer or a sales point. In general, this definition would apply to all exploration and
 11 production operations located on the same lease, unit or field.

12 ~~(5)~~(6) "Timely notice" means written notice sent by certified mail, return
 13 receipt requested. Such notice shall include a copy of the petition and any other filing
 14 in such litigation.

15 * * *

16 **M. In an action governed by the provisions of this Section, damages may**
 17 **be awarded only for the following:**

18 **(1) The cost of funding the feasible plan adopted by the court.**

19 **(2) The cost of additional remediation only if required by an express**
 20 **contractual provision providing for remediation to original condition or to some**
 21 **other specific remediation standard.**

22 **(3) The cost of evaluating, correcting or repairing environmental damage**
 23 **upon a showing that such damage was caused by unreasonable or excessive**
 24 **operations based on rules, regulations, lease terms and implied lease obligations**
 25 **arising by operation of law, or standards applicable at the time of the activity**
 26 **complained of, provided that such damage is not duplicative of damages**
 27 **awarded under Paragraphs (1) or (2) of this Subsection.**

28 **(4) The cost of nonremediation damages.**

29 **The provisions of this Subsection shall not be construed to alter the**
 30 **traditional burden of proof or to imply the existence or extent of damages in any**

1 action, nor shall it affect an award of reasonable attorney fees or costs under
2 this Section.

3 Section 2. Code of Civil Procedure Art. 1563(A)(2) is hereby amended and
4 reenacted to read as follows:

5 Art. 1563. Limited admission of liability in environmental damage lawsuits; effect

6 A. * * *

7 (2) Upon the expiration of the delay in which a party may file a limited
8 admission under ~~Paragraph (A)(5) of this Article~~ **Subparagraph (5) of this**
9 **Paragraph**, and if one or more of the defendants have made a timely limited
10 admission, the court shall refer the matter to the Department of Natural Resources,
11 office of conservation, hereinafter referred to as the "department", to conduct a
12 public hearing to approve or structure a plan which the department determines to be
13 the most feasible plan to evaluate or remediate the environmental damage under the
14 applicable regulatory standards pursuant to the provisions of R.S. 30:29. **There shall**
15 **be a rebuttable presumption that the plan approved or structured by the**
16 **department, after consultation with the Department of Environmental Quality**
17 **as appropriate, shall be the most feasible plan to evaluate or remediate the**
18 **environmental damage under the applicable regulatory standards pursuant to**
19 **the provisions of R.S. 30:29. For cases tried by a jury, the court shall instruct**
20 **the jury regarding this presumption if requested by a party.**

21 * * *

22 Section 3. The provisions of this Act shall not apply to any case in which the court,
23 on or before May 15, 2014, has issued or signed an order setting the case for trial, regardless
24 of whether such trial setting is continued.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____