

Regular Session, 2012

HOUSE BILL NO. 388

BY REPRESENTATIVE JOHNSON

CIVIL/INDEMNIFICATION: Prohibits indemnification for environmental damage to an oilfield site

1 AN ACT

2 To enact R.S. 9:2779.1, relative to certain indemnity agreements; to provide for legislative
3 findings; to provide for definitions; to provide relative to the validity of certain
4 indemnity agreements; to provide for exceptions; to provide for liability; to provide
5 for penalties; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:2779.1 is hereby enacted to read as follows:

8 §2779.1. Certain indemnity agreements relative to environmental damage invalid

9 A. The legislature hereby finds and declares that Article IX, Section 1 of the
10 Constitution of Louisiana mandates that the natural resources and the environment
11 of the state, including surface and ground water, are to be protected, conserved,
12 repaired, and replenished insofar as possible and consistent with the health, safety,
13 and welfare of the people, and further mandates that the legislature enact laws to
14 implement this policy. The enactment of laws that require persons who cause
15 environmental damage to remediate such damage are in furtherance of the public
16 policy expressed in Article IX, Section 1 of the Constitution of Louisiana. The
17 legislature further finds that the purpose of such laws are undermined as a result of
18 certain hold harmless and indemnity agreements, and that such agreements interfere
19 with and hinder the necessary remediation of environmental damage, all of which is
20 contrary to the best interest of the public, and the purpose of Article IX, Section 1 of
21 the Constitution of Louisiana. It is the intent of the legislature by this Section to

1 declare null and void and against public policy of the state of Louisiana any
2 provision in any agreement which requires defense or indemnification for
3 environmental damage subject to the provisions of R.S. 30:29, where there is
4 negligence or fault on the part of the indemnitee, or an agent or employee of the
5 indemnitee, or an independent contractor who is directly responsible to the
6 indemnitee.

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

15 C. The term "agreement", as it pertains to an "oilfield site" or an "exploration
16 and production (E & P) site" as defined in R.S. 30:29(I)(4), means any agreement or
17 understanding, written or oral, pertaining to the assignment, sublease or transfer of
18 rights to explore for or produce minerals on lands subject to the provisions of R.S.
19 30:29, and includes but is not limited to the assignment, sale, or transfer of any rights
20 contained in a mineral lease, mineral sublease, surface lease or sublease, mineral
21 servitude, or royalty interest in or on lands defined in R.S. 30:29(I)(4).

22 D.(1) The provisions of this Section do not affect the validity of any
23 insurance contract, except as otherwise provided in this Section, and do not deprive
24 an owner, co-owner, or usufructuary of a surface estate of the right to secure an
25 indemnity from any lessee, operator, contractor, or other person conducting
26 operations for the exploration or production of minerals on the owner's land.

27 (2) Any language in this Section to the contrary notwithstanding, nothing in
28 this Section shall affect the validity of an operating agreement or farmout agreement,
29 as defined in this Paragraph, to the extent that the operating agreement or farmout

1 agreement purports to provide for defense or indemnity. This exception shall not
2 extend to any party who physically performs any activities pursuant to any
3 agreement as defined in Subsection C of this Section. For purposes of this
4 Subsection, operating agreement and farmout agreement shall be defined as follows:

5 (a) "Farmout agreement" means any agreement in which the holder of the
6 operating rights to explore for and produce minerals, the "assignor", agrees that it
7 will, upon completion of the conditions of the agreement, assign to another, the
8 "assignee", all or a portion of a mineral lease or of the operating rights.

9 (b) "Operating agreement" means any agreement entered into by or among
10 the owners of mineral rights for the joint exploration, development, operation, or
11 production of minerals.

12 E. Any provision in any agreement defined in Subsection C of this Section
13 which requires waivers of subrogation, additional named insured endorsements, or
14 any other form of insurance protection which would circumvent the prohibitions of
15 this Section, shall be null and void and of no force and effect.

16 F. The provisions of this Section do not deprive a person who has transferred
17 land, with a reservation of mineral rights, of the right to secure a defense or
18 indemnity agreement from any lessee, operator, contractor, or other person
19 conducting operations for the exploration or production of minerals in connection
20 with the reserved mineral rights; provided such person does not retain a working
21 interest or an overriding royalty interest convertible to a working interest in any
22 production obtained through activities conducted on an "oilfield site" or an
23 "exploration and production (E & P) site" as defined in R.S. 30:29(I)(4).

24 G. Whoever intentionally violates the provisions of this Section shall be
25 liable to any person who suffers damage arising from such violation. Any person
26 aggrieved of an intentional violation of this Section shall be entitled to treble
27 damages.

28 Section 2. The provisions of this Act shall apply both prospectively and
29 retroactively.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Johnson

HB No. 388

Abstract: Provides that certain indemnity and defense agreements relative to environmental damages arising from oilfield operations are void and unenforceable.

Proposed law provides for legislative findings, relative to protection and conservation of natural resources, and provides for the public policy in favor of the enactment of laws that require persons who cause environmental damage to remediate such damage.

Proposed law provides for further legislative findings that certain hold harmless and indemnity agreements hinder the necessary remediation of environmental damage.

Proposed law provides that any provision in an agreement pertaining to an "oilfield site" or an "exploration and production (E & P) site" is void and unenforceable to the extent that it purports to or does provide for defense or indemnity, or either, to the indemnitee against loss or liability for damages arising out of environmental damage resulting from the sole or concurrent negligence or fault of the indemnitee, or an agent, employee, or an independent contractor who is directly responsible to the indemnitee.

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

Provides that the provisions of proposed law do not affect the validity of any insurance contract and do not deprive an owner of the right to secure an indemnity from any lessee, operator, contractor, or other person conducting operations for the exploration or production of minerals on the owner's land.

Provides that proposed law shall not affect the validity of an operating agreement or farmout agreement to the extent that such an agreement purports to provide for defense or indemnity, but that this exception shall not extend to any party who physically performs any activities.

Proposed law provides that any provision in any agreement which requires waivers of subrogation, additional named insured endorsements, or any other form of insurance protection which would circumvent the prohibitions of proposed law shall be null and void and of no force and effect.

Provides that the provisions of proposed law do 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 production of minerals, unless such person does retain a working interest or an overriding royalty interest convertible to a working interest in any production obtained through activities conducted on an oilfield site or an exploration and production (E & P) site.

Provides that whoever intentionally violates the provisions of proposed law shall be liable to any person who suffers damage arising from such violation and that any person aggrieved of an intentional violation shall be entitled to treble damages.

Proposed law provides for prospective and retroactive application.

(Adds R.S. 9:2779.1)