

CIVIL PRACTICE AND REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 127. INDEMNITY PROVISIONS IN CERTAIN MINERAL AGREEMENTS

Sec. 127.001. DEFINITIONS. In this chapter:

(1) "Agreement pertaining to a well for oil, gas, or water or to a mine for a mineral":

(A) means:

(i) a written or oral agreement or understanding concerning the rendering of well or mine services; or

(ii) an agreement to perform a part of those services or an act collateral to those services, including furnishing or renting equipment, incidental transportation, or other goods and services furnished in connection with the services; but

(B) does not include a joint operating agreement.

(2) "Joint operating agreement" means an agreement between or among holders of working interests or operating rights for the joint exploration, development, operation, or production of minerals.

(3) "Mutual indemnity obligation" means an indemnity obligation in an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral in which the parties agree to indemnify each other and each other's contractors and their employees against loss, liability, or damages arising in connection with bodily injury, death, and damage to property of the respective employees, contractors or their employees, and invitees of each party arising out of or resulting from the performance of the agreement.

(4) "Well or mine service":

(A) includes:

(i) drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, purchasing, gathering, storing, or transporting oil, brine water, fresh water, produced water, condensate, petroleum products, or other liquid commodities, or

otherwise rendering services in connection with a well drilled to produce or dispose of oil, gas, other minerals or water; and

(ii) designing, excavating, constructing, improving, or otherwise rendering services in connection with a mine shaft, drift, or other structure intended for use in exploring for or producing a mineral; but

(B) does not include:

(i) purchasing, selling, gathering, storing, or transporting gas or natural gas liquids by pipeline or fixed associated facilities; or

(ii) construction, maintenance, or repair of oil, natural gas liquids, or gas pipelines or fixed associated facilities.

(5) "Wild well" means a well from which the escape of oil or gas is not intended and cannot be controlled by equipment used in normal drilling practice.

(6) "Unilateral indemnity obligation" means an indemnity obligation in an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral in which one of the parties as indemnitor agrees to indemnify the other party as indemnitee with respect to claims for personal injury or death to the indemnitor's employees or agents or to the employees or agents of the indemnitor's contractors but in which the indemnitee does not make a reciprocal indemnity to the indemnitor.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 1102, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 36, Sec. 1, eff. April 19, 1991.

Sec. 127.002. FINDINGS; CERTAIN AGREEMENTS AGAINST PUBLIC POLICY. (a) The legislature finds that an inequity is fostered on certain contractors by the indemnity provisions in certain agreements pertaining to wells for oil, gas, or water or to mines for other minerals.

(b) Certain agreements that provide for indemnification of a negligent indemnitee are against the public policy of this state.

(c) The legislature finds that joint operating agreement provisions for the sharing of costs or losses arising from joint

activities, including costs or losses attributable to the negligent acts or omissions of any party conducting the joint activity:

(1) are commonly understood, accepted, and desired by the parties to joint operating agreements;

(2) encourage mineral development;

(3) are not against the public policy of this state; and

(4) are enforceable unless those costs or losses are expressly excluded by written agreement.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 36, Sec. 2, eff. April 19, 1991.

Sec. 127.003. AGREEMENT VOID AND UNENFORCEABLE. (a) Except as otherwise provided by this chapter, a covenant, promise, agreement, or understanding contained in, collateral to, or affecting an agreement pertaining to a well for oil, gas, or water or to a mine for a mineral is void if it purports to indemnify a person against loss or liability for damage that:

(1) is caused by or results from the sole or concurrent negligence of the indemnitee, his agent or employee, or an individual contractor directly responsible to the indemnitee; and

(2) arises from:

(A) personal injury or death;

(B) property injury; or

(C) any other loss, damage, or expense that arises from personal injury, death, or property injury.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 127.004. EXCLUSIONS. This chapter does not apply to loss or liability for damages or an expense arising from:

(1) personal injury, death, or property injury that results from radioactivity;

(2) property injury that results from pollution, including cleanup and control of the pollutant;

(3) property injury that results from reservoir or underground damage, including loss of oil, gas, other mineral substance, or water or the well bore itself;

(4) personal injury, death, or property injury that results from the performance of services to control a wild well to protect the safety of the general public or to prevent depletion of vital natural resources; or

(5) cost of control of a wild well, underground or above the surface.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 1102, Sec. 2, eff. Sept. 1, 1989.

Sec. 127.005. INSURANCE COVERAGE. (a) This chapter does not apply to an agreement that provides for indemnity if the parties agree in writing that the indemnity obligation will be supported by liability insurance coverage to be furnished by the indemnitor subject to the limitations specified in Subsection (b) or (c).

(b) With respect to a mutual indemnity obligation, the indemnity obligation is limited to the extent of the coverage and dollar limits of insurance or qualified self-insurance each party as indemnitor has agreed to obtain for the benefit of the other party as indemnitee.

(c) With respect to a unilateral indemnity obligation, the amount of insurance required may not exceed \$500,000.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 1102, Sec. 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 36, Sec. 3, eff. April 19, 1991; Acts 1995, 74th Leg., ch. 679, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1006, Sec. 1, eff. Aug. 30, 1999.

Sec. 127.006. INSURANCE CONTRACT; WORKERS' COMPENSATION. This chapter does not affect:

(1) the validity of an insurance contract; or

(2) a benefit conferred by the workers' compensation statutes of this state.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 127.007. OWNER OF SURFACE ESTATE. This chapter does not deprive an owner of the surface estate of the right to secure indemnity from a lessee, an operator, a contractor, or other person

conducting operations for the exploration or production of minerals of the owner's land.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.