

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/18/15 S3/23/15

A Bill

SENATE BILL 488

By: Senator Rapert

For An Act To Be Entitled

AN ACT TO PROHIBIT ENFORCEMENT OF CERTAIN PROVISIONS
IN CONSTRUCTION AGREEMENTS AND CONSTRUCTION
CONTRACTS; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT ENFORCEMENT OF CERTAIN
PROVISIONS IN CONSTRUCTION AGREEMENTS AND
CONSTRUCTION CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. The catchline for Arkansas Code § 4-56-104 is amended to read as follows:

4-56-104. ~~Hold harmless clause~~ Unenforceable provisions in construction agreements and construction contracts unenforceable.

SECTION 2. Arkansas Code § 4-56-104(a), concerning the definitions used in dealing with construction contracts, is amended to add additional subdivisions to read as follows:

(4) "Gas" means natural gas, including casing-head gas and all other hydrocarbons that are not oil under subdivision (a)(5) of this section;

(5) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity that are produced at the well in liquid form by ordinary production methods and is not the result of condensation of gas after it leaves the reservoir; and

(6) "Operator" means a person that has the right as a landowner or by agreement with a landowner to enter on the land of another to explore,



drill, and develop for the production of brine, oil, gas, and any other petroleum hydrocarbons.

SECTION 3. Arkansas Code § 4-56-104(b), concerning the hold harmless clause in a construction contract as unenforceable, is amended to read as follows:

(b) A clause or provision in a construction agreement or construction contract ~~entered into after July 31, 2007,~~ is void and unenforceable as against public policy to the extent that:

(1) a A party to the construction ~~contract or construction~~ agreement or construction contract is required to indemnify, defend, or hold harmless another party against:

~~(1)(A)~~ Damage from death or bodily injury to a person arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier; or

~~(2)(B)~~ Damage to property arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier; or

(2) The clause or provision requires any litigation, arbitration, or other alternative dispute resolution proceeding arising under the construction agreement or construction contract to be conducted in another state.

SECTION 4. Arkansas Code § 4-56-104, concerning the hold harmless clause in a construction contract as unenforceable, is amended to add an additional subsection to read as follows:

(f) The provisions of this section do not affect any provision in a construction agreement or construction contract that requires for the provision of construction work or services to an operator or other person directly related to activities or operations stemming from the exploration, drilling, production, processing, gathering, or movement of oil or gas, including without limitation the planning, construction, site preparation, or installation of equipment, facilities, or structures, on or off at least one (1) site where any exploration or production operations have occurred, are occurring, or will occur.

SECTION 5. The catchline for Arkansas Code § 22-9-214 is amended to read as follows:

22-9-214. ~~Hold harmless clause~~ Unenforceable provisions in public construction agreements and public construction contracts ~~unenforceable =~~ Definitions.

SECTION 6. Arkansas Code § 22-9-214(b), concerning the unenforceability of a public construction contract that contains a hold harmless clause, is amended to read as follows:

(b) A clause or provision in a public construction agreement or public construction contract ~~entered into after July 31, 2007,~~ is void and unenforceable as against public policy to the extent that:

(1) ~~a~~ A party to the public construction ~~contract or public construction~~ agreement or public construction contract is required to indemnify, defend, or hold harmless another party against:

~~(1)(A)~~ (A) Damage from death or bodily injury to a person arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier; or

~~(2)(B)~~ (B) Damage to property arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier; or

(2) The clause or provision requires any litigation, arbitration, or other alternative dispute resolution proceeding arising under the public construction agreement or public construction contract to be conducted in another state.

/s/Rapert