

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

State of Arkansas
90th General Assembly
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As Engrossed: S3/11/15 H3/19/15

A Bill

SENATE BILL 726

By: Senator Files

By: Representatives Murdock, Deffenbaugh, Cozart, Pitsch

For An Act To Be Entitled

AN ACT TO PROMOTE FAIR AND EQUITABLE ALLOCATION OF
LIABILITY IN CONSTRUCTION CONTRACTS; AND FOR OTHER
PURPOSES.

Subtitle

TO PROMOTE FAIR AND EQUITABLE ALLOCATION
OF LIABILITY IN CONSTRUCTION CONTRACTS.

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

SECTION 1. 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 2. Arkansas Code § 4-56-104(b), concerning the unenforceability of a construction contract that contains a hold harmless



clause, is amended to read as follows:

(b) A ~~clause~~ 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 a party to the construction contract or construction agreement is required~~ if it requires an entity or that entity's insurer to indemnify, defend, or hold harmless another ~~party~~ entity against:

~~(1) Damage from death or bodily injury to a person arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier~~ liability for damage arising out of the death of or bodily injury to a person or persons or damage to property, which arises out of the negligence or fault of the indemnitee, its agents, representatives, subcontractors, or suppliers; ~~or~~

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

SECTION 3. Arkansas Code § 4-56-104(c), concerning construction contracts that contain a hold harmless clause, is amended to read as follows:

(c) A provision, covenant, clause, or understanding written in a construction agreement or construction contract that conflicts with the provisions and intent of this section or attempts to circumvent this section by making the construction agreement or construction contract subject to the laws of another state, or that requires any litigation, arbitration, or other alternative dispute resolution proceeding arising from the construction agreement or construction contract to be conducted in another state, is void and is unenforceable as against public policy.

SECTION 4. Arkansas Code § 4-56-104(e), concerning construction contracts that contain a hold harmless clause, is amended to read as follows:

~~(e) The parties to a construction contract or construction agreement may enter into an agreement in which:~~

~~(1) The first party indemnifies, defends, or holds harmless the second party from the first party's negligence or fault or from the negligence or fault of the first party's agent, representative, subcontractor, or supplier;~~

~~(2) The first party requires the second party to provide~~

~~liability insurance coverage for the first party's negligence or fault if the construction contract or construction agreement requires the second party to obtain insurance and the construction contract or construction agreement limits the second party's obligation to the cost of the required insurance;~~

~~(3) The first party requires the second party to provide liability insurance coverage for the first party's negligence or fault under a separate insurance contract with an insurance provider; or~~

~~(4) The first party requires the second party to name the first party as an additional insured as a part of the construction agreement or construction contract~~ The provisions of this section do not affect any provision in a construction agreement or construction contract:

(1) That requires an entity or that entity's insurer to indemnify another entity against liability for damage arising out of the death of or bodily injury to persons, or damage to property, but the indemnification shall not exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitors, its agents, representatives, subcontractors, or suppliers; or

(2) To provide 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. Arkansas Code § 22-9-214(b) and (c), concerning the unenforceability of a public construction contract that contains a hold harmless clause, are amended to read as follows:

(b) A ~~clause~~ 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 a party to the public construction contract or public construction agreement is required to indemnify, defend, or hold harmless another party against~~ if it requires+

~~(1) 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) Damage to property arising out of the sole negligence of the indemnitee, its agent, representative, subcontractor, or supplier an entity or that entity's insurer to indemnify, insure, defend, or hold harmless another entity against liability for damage arising out of the death of or bodily injury to a person or persons or damage to property, which arises out of negligence or fault of the indemnitee, its agents, representatives, subcontractors, or suppliers.~~

(c) A provision, covenant, clause, or understanding in a public construction agreement or public construction contract that conflicts with the provisions and intent of this section or attempts to circumvent this section by making the public construction agreement or public construction contract subject to the laws of another state, or that requires any litigation, arbitration, or other dispute resolution proceeding arising from the construction agreement or construction contract to be conducted in another state, is void and unenforceable as against public policy.

SECTION 6. Arkansas Code § 22-9-214(e), concerning public construction contracts that contain a hold harmless clause, is amended to read as follows:

(e) ~~The parties to~~ provisions of this section do not affect any provision in a public construction contract or public construction agreement ~~may enter into an agreement in which:~~

~~(1) The first party indemnifies, defends, or holds harmless the second party from the first party's negligence or fault or from the negligence or fault of the first party's agent, representative, subcontractor, or supplier;~~

~~(2) The first party requires the second party to provide liability insurance coverage for the first party's negligence or fault if the public construction contract or public construction agreement requires the second party to obtain insurance and the public construction contract or public construction agreement limits the second party's obligation to the cost of the required insurance;~~

~~(3) The first party requires the second party to provide liability insurance coverage for the first party's negligence or fault under a separate insurance contract with an insurance provider; or~~

~~(4) The first party requires the second party to name the first~~

~~party as an additional insured as a part of the public construction agreement or public construction contract~~ that requires an entity or that entity's insurer to indemnify another entity against liability for damage arising out of the death of or bodily injury to persons or damage to property, but such indemnification shall not exceed any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitors, its agents, representatives, subcontractors, or suppliers.

/s/Files