

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

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

A Bill

SENATE BILL 488

5 By: Senator Rapert
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For An Act To Be Entitled

8 AN ACT TO PROHIBIT ENFORCEMENT OF CERTAIN PROVISIONS
9 IN CONSTRUCTION AGREEMENTS AND CONSTRUCTION
10 CONTRACTS; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO PROHIBIT ENFORCEMENT OF CERTAIN
15 PROVISIONS IN CONSTRUCTION AGREEMENTS AND
16 CONSTRUCTION CONTRACTS.
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18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. The catchline for Arkansas Code § 4-56-104 is amended to
22 read as follows:

23 4-56-104. ~~Hold harmless clause~~ Unenforceable provisions in
24 construction agreements and construction contracts unenforceable.
25

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

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

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

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



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

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

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

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

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

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

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

23
24 *SECTION 4. Arkansas Code § 4-56-104, concerning the hold harmless*
25 *clause in a construction contract as unenforceable, is amended to add an*
26 *additional subsection to read as follows:*

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

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

3 22-9-214. ~~Hold harmless clause~~ Unenforceable provisions in public
4 construction agreements and public construction contracts ~~unenforceable =~~
5 Definitions.

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

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

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

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

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

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

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27 */s/Rapert*

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