

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

A Bill

Call Item 8

SENATE BILL 9

5 By: Senators J. Hutchinson, J. Woods
6 By: Representatives Sabin, Eads
7

For An Act To Be Entitled

9 AN ACT TO RECONCILE CONFLICTS BETWEEN ACTS OF THE
10 GENERAL ASSEMBLY ENACTED DURING THE 2015 REGULAR
11 SESSION; TO RECONCILE CONFLICTS BETWEEN ACT 857 OF
12 2015 AND ACT 1237 OF 2015 REGARDING MICROBREWERY
13 RESTAURANTS, SMALL BREWERIES, AND THE PRODUCTION OF
14 HARD CIDER; TO RECONCILE CONFLICTS BETWEEN ACT 1110
15 OF 2015 AND ACT 1120 OF 2015 CONCERNING CONSTRUCTION
16 AGREEMENTS AND CONSTRUCTION CONTRACTS; TO DECLARE AN
17 EMERGENCY; AND FOR OTHER PURPOSES.
18
19

Subtitle

21 TO RECONCILE CONFLICTS BETWEEN ACTS OF
22 THE GENERAL ASSEMBLY ENACTED DURING THE
23 2015 REGULAR SESSION; AND TO DECLARE AN
24 EMERGENCY.
25
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Acts 2015, No. 1237, is repealed.

30 ~~SECTION 1. Arkansas Code § 3-1-102(a), concerning definitions for~~
31 ~~distillers for alcohol permits, is amended to read as follows:~~

32 ~~(a) As used in this act, unless the context otherwise requires:~~

33 ~~(1) "Block" means the area on both sides of that portion of a~~
34 ~~street lying between intersecting streets and extending back, on both sides,~~
35 ~~halfway to the next parallel street;~~

36 ~~(2) "Dispensary" means any store which, under the provisions of~~



1 this act and having paid all taxes required by the state, sells at retail, in
2 unbroken packages, for consumption off the premises, any intoxicating
3 alcoholic liquor as defined by this act;

4 ~~(3) "Hard cider" means liquor brewed from the fermented juices~~
5 ~~of fruit and containing more than three percent (3%) and not more than~~
6 ~~twenty one percent (21%) of alcohol by weight;~~

7 ~~(3)(A)(4)(A) "Malt" means liquor brewed from the fermented~~
8 ~~juices of grain and containing more than five percent (5%) of alcohol by~~
9 ~~weight;~~

10 ~~(B) Beer containing not more than five percent (5%) of~~
11 ~~alcohol by weight and all other malt beverages containing not more than five~~
12 ~~percent (5%) of alcohol by weight are not defined as malt liquors and are~~
13 ~~excepted from each and every provision of this act;~~

14 ~~(4)(5) "Manufacturer" means any person engaged in the business~~
15 ~~of distilling, brewing, making, blending, rectifying, or producing for sale~~
16 ~~in wholesale quantities alcoholic liquors of any kind including whiskey,~~
17 ~~brandy, cordials, liquors, ales, beers, or other liquids containing alcohol,~~
18 ~~except wines;~~

19 ~~(5)(6) "Person" means any and all corporations, partnerships,~~
20 ~~associations, or individuals;~~

21 ~~(6)(7) "Spirituous" means liquor distilled from the fermented~~
22 ~~juices of grain, fruits, or vegetables and containing more than twenty one~~
23 ~~percent (21%) of alcohol by weight, or any other liquids containing more than~~
24 ~~twenty one percent (21%) of alcohol by weight; and~~

25 ~~(7)(8) "Vinous" means the fermented juices of fruits, except~~
26 ~~native wine, containing more than five percent (5%) and not more than twenty-~~
27 ~~one percent (21%) of alcohol by weight.~~

28
29 SECTION 2. ~~Arkansas Code § 3-5-1403 is amended to read as follows:~~

30 ~~3-5-1403. Definitions.~~

31 ~~As used in this subchapter:~~

32 ~~(1) "Barrel" means thirty one gallons (31 gals.);~~

33 ~~(2) "Beer" means any fermented liquor made from malt or any~~
34 ~~substitute having an alcoholic content of not more than five percent (5%) by~~
35 ~~weight;~~

36 ~~(3) "Brewery" means the facilities of a native brewer that~~

1 operate a small brewery, contract brewing company, microbrewery, or
2 restaurant;

3 (4) ~~“Contract brewing company” means any licensed brewery that~~
4 ~~hires another company to produce a portion of its beer or malt beverage;~~

5 (5) ~~“Director” means the Director of the Alcoholic Beverage~~
6 ~~Control Division;~~

7 (5) ~~“Hard cider” means liquor brewed from the fermented juices~~
8 ~~of fruit and containing more than three percent (3%) and not more than~~
9 ~~twenty one percent (21%) alcohol by weight;~~

10 (6) ~~“Malt beverage” means any liquor brewed from the fermented~~
11 ~~juices of grain and having an alcoholic content of no less than five percent~~
12 ~~(5%) nor more than twenty one percent (21%) by weight;~~

13 (7) ~~“Microbrewery restaurant” means any restaurant that~~
14 ~~manufactures one (1) or more varieties of beer or malt beverage in an~~
15 ~~aggregate quantity of not more than five thousand (5,000) barrels per year~~
16 ~~and stores the beer or malt beverages on the premises or on any adjacent~~
17 ~~premises;~~

18 (8) ~~“Native brewer” means any person who is licensed by the~~
19 ~~Alcoholic Beverage Control Division to manufacture and sell beer and malt~~
20 ~~beverages at a small brewery or microbrewery restaurant;~~

21 (9) ~~“Native brewery” means a small brewery or microbrewery-~~
22 ~~restaurant;~~

23 (10) ~~“Person” means any natural person, partnership,~~
24 ~~association, or corporation;~~

25 (11) ~~“Producer brewery” means any licensed brewery, domestic or~~
26 ~~foreign, that manufactures or packages beer or malt beverages for a small~~
27 ~~brewery, contract brewing company, microbrewery, or restaurant;~~

28 (12) ~~“Restaurant” means any public or private facility that:~~

29 (A) ~~Is kept, used, maintained, advertised, and held out to~~
30 ~~the public or to a private or restricted membership as a place where complete~~
31 ~~meals are regularly served, and the place is provided with adequate and~~
32 ~~sanitary kitchen and dining equipment and has a seating capacity of at least~~
33 ~~fifty (50) people and employs a sufficient number of employees to prepare,~~
34 ~~cook, and serve food suitable for its guests or members; and~~

35 (B) ~~Serves at least one (1) meal per day, and the place is~~
36 ~~open a minimum of five (5) days per week with the exception of holidays;~~

1 ~~vacations, and periods of redecorating; and~~

2 ~~(13) "Small brewery" means any licensed facility that~~
3 ~~manufactures fewer than thirty thousand (30,000) barrels of beer and malt~~
4 ~~manufactures fewer than thirty thousand (30,000) barrels of beer, and malt~~
5 ~~beverages, and hard cider per year for sale or consumption.~~

6
7 SECTION 3. ~~Arkansas Code § 3-5-1405 is amended to read as follows:~~
8 ~~3-5-1405. Licenses—Scope—Restrictions.~~

9 ~~(a) The Director of the Alcoholic Beverage Control Division may issue~~
10 ~~a license for a licensee:~~

11 ~~(1) To operate a small brewery that:~~

12 ~~(A) Manufactures at its licensed facility:~~

13 ~~(i) No less than thirty-five percent (35%) of its~~
14 ~~beer, and malt beverages, and hard cider to be sold in the state and no more~~
15 ~~than thirty thousand (30,000) barrels per year; or~~

16 ~~(ii) Purchases from a producer brewery beer, or malt~~
17 ~~beverages, or hard cider in an aggregate quantity not to exceed sixty~~
18 ~~thousand (60,000) barrels per year;~~

19 ~~(B) Sells to wholesale or to the consumer for consumption~~
20 ~~either on or off the premises brand name products of the licensed facility;~~

21 ~~(C) Stores any beer, and malt beverages, and hard cider~~
22 ~~legally purchased for resale on the premises;~~

23 ~~(D) Serves on the premises or at small brewery off-~~
24 ~~premises retail sites complimentary samples of beer produced by the small~~
25 ~~brewery or another licensed small brewery if the small brewery or its off-~~
26 ~~premises retail sites are located in a wet territory;~~

27 ~~(E) Sells at retail by the drink or by the package beer~~
28 ~~produced on the premises of the small brewery or produced by another small~~
29 ~~brewery if all sales occur in a wet territory and at:~~

30 ~~(i) The small brewery off-premises retail sites; or~~

31 ~~(ii)(a) Fairs and food and beer festivals, with the~~
32 ~~permission and the consent of the management of the events.~~

33 ~~(b) A sales and use tax permit also is~~
34 ~~required for sales under this subdivision (a)(1)(E)(ii);~~

35 ~~(F)(i) Sells and transports beer produced on the premises~~
36 ~~of the small brewery or of another small brewery to wholesale and retail~~

1 ~~license holders and small brewery license holders.~~

2 ~~(ii) To sell and transport beer under subdivision~~
3 ~~(a)(1)(F)(i) of this section, the small brewery shall obtain a small brewery~~
4 ~~wholesale permit; and~~

5 ~~(G) Sells for consumption on the premises of the small~~
6 ~~brewery beer produced by the small brewery or another small brewery and~~
7 ~~purchased by the drink or by the package at the licensed premises if the~~
8 ~~small brewery is located in a wet territory; or~~

9 ~~(2) To operate a microbrewery restaurant that:~~

10 ~~(A) Manufactures beer, and malt beverages, and hard eider~~
11 ~~in an aggregate quantity not to exceed five thousand (5,000) barrels per~~
12 ~~year;~~

13 ~~(B)(i) Sells to wholesale or retail dealers or to the~~
14 ~~consumer for consumption either on or off the premises.~~

15 ~~(ii) However, off-premise sales are limited to brand~~
16 ~~name products of the licensed facility;~~

17 ~~(C) Stores any beer, and malt beverages, and hard eider~~
18 ~~purchased for resale on the premises; and~~

19 ~~(D) Sells wine on the premises.~~

20 ~~(b) Notwithstanding the provisions of any other law to the contrary,~~
21 ~~beer, and malt beverages, and hard eider may be sold for on-premises or off-~~
22 ~~premises consumption during all legal operating hours in which business is~~
23 ~~normally and legally conducted on the premises, if:~~

24 ~~(1) The brewery provides tours through its facility; and~~

25 ~~(2) Only sealed containers are removed from the premises.~~

26 ~~(c)(1) A native brewery may provide beer, and malt beverages, and hard~~
27 ~~eider it manufactures to charitable or nonprofit organizations or sell for~~
28 ~~resale beer, and malt beverages, and hard eider it manufactures to charitable~~
29 ~~or nonprofit organizations holding valid special event permits issued by the~~
30 ~~Alcoholic Beverage Control Board.~~

31 ~~(2) The sale of those products is limited to the duration of the~~
32 ~~particular special event.~~

33 ~~(d) Any person holding a valid microbrewery restaurant license is~~
34 ~~considered a native brewery licensee that maintains production limits~~
35 ~~according to the definition of microbrewery restaurant in § 3-5-1403.~~

36

1 SECTION 2. Arkansas Code § 3-1-102(a), concerning definitions for
 2 distillers for alcohol permits, is amended to read as follows:

3 (a) As used in this act, unless the context otherwise requires:

4 (1) "Block" means the area on both sides of that portion of a
 5 street lying between intersecting streets and extending back, on both sides,
 6 halfway to the next parallel street;

7 (2) "Dispensary" means any store which, under the provisions of
 8 this act and having paid all taxes required by the state, sells at retail, in
 9 unbroken packages, for consumption off the premises, any intoxicating
 10 alcoholic liquor as defined by this act;

11 (3) "Hard cider" means liquor brewed from the fermented juices
 12 of fruit and containing more than three percent (3%) and not more than
 13 twenty-one percent (21%) of alcohol by weight;

14 ~~(3)(A)~~(4)(A) "Malt" means liquor brewed from the fermented
 15 juices of grain and containing more than five percent (5%) of alcohol by
 16 weight~~;~~.

17 (B) Beer containing not more than five percent (5%) of
 18 alcohol by weight and all other malt beverages containing not more than five
 19 percent (5%) of alcohol by weight are not defined as malt liquors and are
 20 excepted from each and every provision of this act;

21 ~~(4)~~(5) "Manufacturer" means any person engaged in the business
 22 of distilling, brewing, making, blending, rectifying, or producing for sale
 23 in wholesale quantities alcoholic liquors of any kind including whiskey,
 24 brandy, cordials, liquors, ales, beers, or other liquids containing alcohol,
 25 except wines;

26 ~~(5)~~(6) "Person" means any and all corporations, partnerships,
 27 associations, or individuals;

28 ~~(6)~~(7) "Spirituous" means liquor distilled from the fermented
 29 juices of grain, fruits, or vegetables and containing more than twenty-one
 30 percent (21%) of alcohol by weight, or any other liquids containing more than
 31 twenty-one percent (21%) of alcohol by weight; and

32 ~~(7)~~(8) "Vinous" means the fermented juices of fruits, except
 33 native wine, containing more than five percent (5%) and not more than twenty-
 34 one percent (21%) of alcohol by weight.

35
 36 SECTION 3. Arkansas Code § 3-5-1403 as amended by Acts 2015, No. 857,

1 is amended to read as follows:

2 3-5-1403. Definitions.

3 As used in this subchapter:

4 (1) "Barrel" means thirty-one gallons (31 gals.);

5 (2) "Beer" means any fermented liquor made from malt or any
6 substitute having an alcoholic content of not more than five percent (5%) by
7 weight;

8 (3) "Brewery" means a small brewery or contract brewing company;

9 (4) "Contract brewing company" means any licensed brewery that
10 hires another company to produce a portion of its beer, ~~or~~ malt beverage, or
11 hard cider;

12 (5) "Hard cider" means liquor brewed from the fermented juices
13 of fruit and containing more than three percent (3%) and not more than
14 twenty-one percent (21%) of alcohol by weight;

15 ~~(5)(6)~~ (6) "Malt beverage" means any liquor brewed from the
16 fermented juices of grain and having an alcoholic content of no less than
17 five percent (5%) nor more than twenty-one percent (21%) by weight;

18 ~~(6)(7)~~ (7) "Person" means any natural person, partnership,
19 association, or corporation; and

20 ~~(7)(A)~~(8)(A) "Small brewery" means any licensed facility located
21 in Arkansas that manufactures fewer than forty-five thousand (45,000) barrels
22 of beer, ~~and~~ malt beverages, and hard cider per year for sale or consumption.

23 (B) "Small brewery" does not include a microbrewery
24 restaurant.

25

26 SECTION 4. Arkansas Code § 3-5-1404 is amended to read as follows:

27 3-5-1404. Effect on other laws.

28 Every provision of this subchapter is subject to all beer, ~~and~~ malt
29 beverage, and hard cider laws and regulations not in conflict with the
30 provisions of this subchapter.

31

32 SECTION 5. Arkansas Code § 3-5-1405 as amended by Acts 2015, No. 857,
33 is amended to read as follows.

34 3-5-1405. Licenses – Scope – Restrictions.

35 (a) The Director of the Alcoholic Beverage Control Division may issue
36 a license ~~for a licensee~~ to operate a small brewery that:

1 (1) Manufactures at its licensed facility no less than thirty-
2 five percent (35%) of its beer, ~~and~~ malt beverages, and hard cider to be sold
3 in the state and no more than forty-five thousand (45,000) barrels per year;

4 (2) Sells to wholesale or to the consumer at the small brewery
5 premises for consumption either on or off the premises brand name products of
6 the licensed facility;

7 (3) Stores any beer, ~~and~~ malt beverages, and hard cider legally
8 purchased for resale on the premises;

9 (4) Serves on the premises complimentary samples of beer, malt
10 beverages, and hard cider produced by the small brewery;

11 (5) Sells:

12 (A) At retail by the drink or by the package beer, malt
13 beverages, and hard cider produced on the premises of the small brewery if
14 all sales occur in a wet territory;† or

15 (B)(i) At fairs and food and beer festivals with the
16 permission and the consent of the management of the events.

17 (ii) A sales and use tax permit also is required for
18 sales under subdivision (a)(5)(B)(i) of this section;

19 (6)(A)(i)(a) Sells and transports beer, malt beverages, and hard
20 cider produced on the premises of the small brewery to wholesale and small
21 brewery license holders.

22 (b)(1) Sells and transports beer, ~~and~~ malt
23 ~~products~~ beverages, and hard cider produced on the premises of the small
24 brewery to retail license holders and small brewery license holders if the
25 total production of the permitted brewery does not exceed fifteen thousand
26 (15,000) barrels per year.

27 (2) Each permitted ~~outlet~~ brewery shall
28 submit documentation of production each year to renew the permit with the
29 Alcoholic Beverage Control Division.

30 (ii) A small brewery may distribute no more than
31 fifteen thousand (15,000) barrels ~~of~~ per year.

32 (B)(i) To sell and transport beer, malt beverages, and
33 hard cider under subdivision (a)(6)(A) of this section, the small brewery
34 license holder shall obtain a small brewery wholesale permit.

35 (ii) The small brewery license holder shall
36 pay a fee of two hundred fifty dollars (\$250) per year for the permit under

1 subdivision (a)(6)(B)(i) of this section; and

2 (7) Sells for consumption on the premises of the small brewery:

3 (A) Beer, malt beverages, and hard cider produced by the
4 small brewery or another small brewery; or

5 (B) Wine.

6 (b) Notwithstanding the provisions of any other law to the contrary,
7 beer, and malt beverages, and hard cider may be sold for on-premises or off-
8 premises consumption during all legal operating hours in which business is
9 normally and legally conducted on the premises, if:

10 (1) The brewery provides tours through its facility; and

11 (2) Only sealed containers are removed from the premises.

12 (c)(1) A small brewery may provide beer, and malt beverages, and hard
13 cider it manufactures to charitable or nonprofit organizations or sell for
14 resale beer, and malt beverages, and hard cider it manufactures to charitable
15 or nonprofit organizations holding valid special event permits issued by the
16 Alcoholic Beverage Control Board.

17 (2) The sale of those products is limited to the duration of the
18 particular special event.

19
20 SECTION 6. Arkansas Code §§ 3-5-1406 – 3-5-1409 as amended by Acts
21 2015, No. 857, are amended to read as follows:

22 3-5-1406. Additional license to sell small brewery beer, and malt
23 beverages, and hard cider not required.

24 (a) Any wholesale or retail dealer that is licensed to sell beer, and
25 malt beverages, and hard cider may sell beer, and malt beverages, and hard
26 cider produced by small brewers without any additional license fee.

27 (b) Any retail dealer not licensed to sell beer, and malt beverages,
28 and hard cider may sell beer, and malt beverages, and hard cider produced by
29 small brewers and microbrewery restaurants licensed under § 3-5-1204 if the
30 retailer pays a retail dealer’s license fee of fifteen dollars (\$15.00) to
31 the Alcoholic Beverage Control Division.

32
33 3-5-1407. Transportation.

34 (a) A small brewery may transport its beer, and malt beverages, and
35 hard cider along any highway, road, street, or other thoroughfare of travel.

36 (b) A small brewery may ship its products out of the state by common

1 carrier or other appropriate parcel delivery service, and common carriers and
2 other appropriate parcel delivery services may accept beer, ~~and~~ malt
3 beverages, and hard cider from Arkansas small brewers for delivery outside
4 the state.

5 (c) A small brewery in this state may ship its products within the
6 state by common carrier or other appropriate parcel delivery service, and
7 common carriers and other appropriate parcel delivery services may accept
8 beer, ~~and~~ malt beverages, and hard cider from Arkansas small breweries for
9 delivery within the state if the beer, ~~and~~ malt beverages, and hard cider are
10 only shipped to persons holding a wholesale permit to purchase, store, sell,
11 or dispense beer, ~~and~~ malt beverages, and hard cider.

12
13 3-5-1408. Fees and taxes.

14 A small brewer shall:

15 (1) Pay any applicable city or county license or permit fees and
16 barrelogage or taxes and shall pay a state licensing fee to the Alcoholic
17 Beverage Control Division of three hundred dollars (\$300) per fiscal year to:

18 (A) Manufacture and sell its beer, ~~and~~ malt beverages, and
19 hard cider for consumption, both on and off the premises; and

20 (B) Sell any other beer, ~~and~~ malt beverages, and hard
21 cider purchased from a licensed dealer for consumption on or off the
22 premises;

23 (2) Measure beer, ~~and~~ malt beverages, and hard cider
24 manufactured by the small brewer or purchased from a contract brewery, or
25 otherwise comply with applicable regulations respecting excise and
26 enforcement tax determination of the beer, ~~and~~ malt beverages, and hard
27 cider, and pay any applicable bond or deposit and the amount of the state
28 excise tax and enforcement tax to this state as required, but is free from
29 the fees and taxes provided in § 3-5-205 and as required by §§ 3-7-104 and 3-
30 7-111; and

31 (3) Pay a tax at the rate of seven dollars and fifty cents
32 (\$7.50) per barrel, and proportionately for larger and smaller gallonages per
33 barrel, on all beer, ~~and~~ malt beverages, and hard cider in quantities of up
34 to forty-five thousand (45,000) barrels per year and sold or offered for sale
35 in the state.

36

1 3-5-1409. Beer, ~~and~~ malt beverage, and hard cider education.

2 (a)(1) A small brewer may be allowed to conduct beer, ~~and~~ malt
3 beverage, and hard cider tasting events for educational or promotional
4 purposes at any location in a wet area of this state if approved by the
5 Alcoholic Beverage Control Division and if written notice is given by the
6 division to the small brewer at least five (5) days before the event.

7 (2) Requests for approval to conduct beer, ~~and~~ malt beverage,
8 and hard cider tasting events must be received by the division at least two
9 (2) weeks before the event.

10 (b) Beer, ~~and~~ malt beverage, and hard cider tasting events may be held
11 in any facility licensed by the division if written notice is given by the
12 division under subsection (a) of this section.

13
14 SECTION 7. Arkansas Code § 3-5-1412, as amended by Acts 2015, No. 857,
15 is amended to read as follows:

16 3-5-1412. Dry areas prohibited.

17 It is unlawful for the Director of the Alcoholic Beverage Control
18 Division to issue a small brewers license in any city, county, township, or
19 other area in this state if the sale or possession of beer, ~~and~~ malt
20 beverages, and hard cider is unlawful.

21
22 SECTION 8. Arkansas Code §§ 3-5-1415 is amended to read as follows:

23 3-5-1415. Sales on any day of the week.

24 Small brewery beer, ~~and~~ malt beverages, and hard cider may be sold at
25 any small brewery located in this state for on-premises or off-premises
26 consumption on any day of the week.

27
28 SECTION 9. Arkansas Code § 3-5-1416, as amended by Acts 2015, No. 857,
29 is amended to read as follows:

30 3-5-1416. Small brewery is a supplier.

31 (a) A small brewery selling and transporting beer, ~~and~~ malt ~~products~~
32 beverages, and hard cider produced on the premises of the small brewery is a
33 supplier.

34 (b) A small brewery is not subject to § 3-5-1101 et seq., unless the
35 small brewery exceeds annual production of beer, ~~and~~ malt beverages, and hard
36 cider of fifteen thousand (15,000) barrels.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

SECTION 10. Arkansas Code § 3-7-116(b) as amended by Act 857 of 2015, concerning tax rebates for qualified liquor manufacturers, is amended to read as follows:

(b)(1)(A) A qualified manufacturer is entitled to a tax rebate equal to seven dollars and fifty cents (\$7.50) per barrel of beer, ~~or malt beverage, or hard cider~~ sold or offered for sale in Arkansas each calendar year by the qualified manufacturer or sold through its appointed wholesalers if the qualified manufacturer or its wholesaler is required to report and pay tax under ~~§ 3-7-104(6) or § 3-5-1205(3) or § 3-5-1408(3) or § 3-7-104~~ § 3-5-1205(3), § 3-5-1408(3), or § 3-7-104 on the beer, ~~or malt beverage, or hard cider~~ first sold or offered for sale in this state.

(B) The tax rebate claimed each year by the qualified manufacturer under this section shall not exceed the annual tax liability of the qualified manufacturer and its wholesalers under § 3-5-1205(3), § 3-5-1408(3), or § 3-7-104 during the year requested.

(2) The first twelve-month period for which a qualified manufacturer may claim a rebate under this section begins January 1, 2007, for the year ending December 31, 2006.

SECTION 11. Arkansas Code § 4-56-104(b) as amended by Section 3 of Act 1110 of 2015 and Section 2 of Act 1120 of 2015, concerning the unenforceable provisions of a construction agreement or construction contract, is amended to read as follows:

(b) A provision in a construction agreement or construction contract is void and unenforceable as against public policy if it requires an entity or that entity's insurer to indemnify, defend, or hold harmless another entity against liability for damage ~~arising out of~~ from 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 (B)~~

~~(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.~~

1 SECTION 12. Arkansas Code § 4-56-104(e) as amended by Section 4 of Act
2 1120 of 2015, concerning unenforceable provisions in construction agreements
3 and construction contracts, is amended to read as follows:

4 (e) The provisions of this section do not affect any provision in a
5 construction agreement or construction contract+

6 ~~(1) That that~~ requires an entity or that entity's insurer to:

7 (1) indemnify ~~Indemnify~~ another entity against liability for
8 damage ~~arising out of~~ from the death of or bodily injury to a person or
9 persons, or damage to property, but the indemnification shall not exceed any
10 amounts that are greater than that represented by the degree or percentage of
11 negligence or fault attributable to the indemnitors, its agents,
12 representatives, subcontractors, or suppliers; or

13 (2) ~~To provide~~ Provide construction work or services to an
14 operator or other person directly related to activities or operations
15 stemming from the exploration, drilling, production, processing, gathering,
16 or movement of oil or gas, including without limitation the planning,
17 construction, site preparation, or installation of equipment, facilities, or
18 structures, on or off at least one (1) site where any exploration or
19 production operations have occurred, are occurring, or will occur.

20
21 SECTION 13. Arkansas Code § 4-56-104(f) as amended by Section 4 of Act
22 1110 of 2015, concerning unenforceable provisions of construction agreements
23 and construction contracts is repealed.

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

33
34 SECTION 14. Arkansas Code § 22-9-214(b) as amended by Section 6 of Act
35 1110 of 2015 and Section 5 of Act 1120 of 2015, concerning unenforceable
36 provisions of public construction agreements and public construction

1 contracts, is amended to read as follows:

2 (b) A provision in a public construction agreement or public
3 construction contract is void and unenforceable as against public policy if
4 it requires an entity or that entity's insurer to indemnify, insure, defend,
5 or hold harmless another entity against liability for damage ~~arising out of~~
6 from the death of or bodily injury to a person or persons or damage to
7 property, which arises out of negligence or fault of the indemnitee, its
8 agents, representatives, subcontractors, or suppliers ~~(B); or~~

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

13
14 SECTION 15. EMERGENCY CLAUSE. It is found and determined by the
15 General Assembly of the State of Arkansas that conflicts between certain acts
16 enacted during the 2015 Regular Session of the Ninetieth General Assembly are
17 irreconcilable; that these irreconcilable provisions result in confusion as
18 to the operable law in the affected areas; and that this act is immediately
19 necessary to eliminate uncertainty and confusion and clarify the operable
20 provisions of Arkansas law in the wake of the 2015 Regular Session of the
21 Ninetieth General Assembly. Therefore, an emergency is declared to exist,
22 and this act being immediately necessary for the preservation of the public
23 peace, health, and safety shall become effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,
26 the expiration of the period of time during which the Governor may veto the
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is
29 overridden, the date the last house overrides the veto.