

AN ACT

RELATING TO INDEMNIFICATION; MAKING VOID CERTAIN INDEMNIFICATION  
AGREEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 56-7-1 NMSA 1978 (being Laws 1971, Chapter 107,  
Section 1) is amended to read:

"56-7-1. REAL PROPERTY--INDEMNITY AGREEMENTS--AGREEMENTS  
VOID.--

A. A provision in a construction contract that requires one party to the contract to indemnify, hold harmless, insure or defend the other party to the contract, including the other party's employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents, is void, unenforceable and against the public policy of the state.

B. A construction contract may contain a provision that, or shall be enforced only to the extent that, it:

(1) requires one party to the contract to indemnify, hold harmless or insure the other party to the contract, including its officers, employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the indemnitor or its officers, employees or agents; or

(2) requires a party to the contract to purchase a project-

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specific insurance policy, including an owner's or contractor's protective insurance,  
project management protective liability insurance or builder's risk insurance.

C. This section does not apply to indemnity of a surety by a principal  
on any surety bond or to an insurer's obligation to its insureds.

D. As used in this section, "construction contract" means a public,  
private, foreign or domestic contract or agreement relating to construction, alteration,  
repair or maintenance of any real property in New Mexico and includes agreements for  
architectural services, demolition, design services, development, engineering services,  
excavation or other improvement to real property, including buildings, shafts, wells and  
structures, whether on, above or under real property.

E. As used in this section, "indemnify" or "hold harmless" includes any  
requirement to name the indemnified party as an additional insured in the indemnitor's  
insurance coverage for the purpose of providing indemnification for any liability not  
otherwise allowed in this section."

Section 2. Section 56-7-2 NMSA 1978 (being Laws 1971, Chapter 205,  
Section 1, as amended) is amended to read:

"56-7-2. OIL, GAS OR WATER WELLS AND MINERAL MINES--AGREEMENTS,  
COVENANTS AND PROMISES TO INDEMNIFY VOID.--

A. An agreement, covenant or promise, foreign or domestic, contained  
in, collateral to or affecting an agreement pertaining to a well for oil, gas or water, or  
mine for a mineral, within New Mexico, that purports to indemnify the indemnitee  
against loss or liability for damages arising from the circumstances specified in  
Paragraph (1), (2) or (3) of this subsection is against public policy and is void:

(1) the sole or concurrent negligence of the indemnitee or the

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agents or employees of the indemnitee;

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(2) the sole or concurrent negligence of an independent contractor who is directly responsible to the indemnitee; or

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(3) an accident that occurs in operations carried on at the direction or under the supervision of the indemnitee, an employee or representative of the indemnitee or in accordance with methods and means specified by the indemnitee or employees or representatives of the indemnitee.

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B. As used in this section, "agreement pertaining to a well for oil, gas or water, or mine for a mineral" means an agreement:

(1) concerning any operations related to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging or otherwise rendering services in connection with a well drilled for the purpose of producing or disposing of oil, gas or other minerals or water;

(2) for rendering services in connection with a mine shaft, drift or other structure intended for use in the exploration for or production of a mineral; or

(3) to perform a portion of the work or services described in Paragraph (1) or (2) of this subsection or an act collateral thereto.

C. A provision in an insurance contract indemnity agreement naming a person as an additional insured or a provision in an insurance contract or any other contract requiring a waiver of rights of subrogation or otherwise having the effect of imposing a duty of indemnification on the primary insured party that would, if it were a direct or collateral agreement described in Subsections A and B of this section, be void, is against public policy and void.

D. Nothing in this section:

(1) deprives an owner of the surface estate of the right to secure indemnity from a lessee, operator, contractor or other person conducting operations for the exploration of minerals on the owner's land; or

(2) affects the validity of a benefit conferred by the Workers' Compensation Act."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, ~~2013~~

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