

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0155.01 Thomas Morris x4218

HOUSE BILL 16-1310

HOUSE SPONSORSHIP

Salazar,

SENATE SPONSORSHIP

Carroll,

House Committees

Health, Insurance, & Environment

Senate Committees

Agriculture, Natural Resources, & Energy

A BILL FOR AN ACT

101 CONCERNING LIABILITY FOR THE CONDUCT OF OIL AND GAS
102 OPERATIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under current law governing relations between surface owners and oil and gas operators, to prevail on a claim the surface owner must present evidence that the operator's use of the surface materially interfered with the surface owner's use of the surface of the land. The bill amends this to allow proof that the operator's oil and gas operations harmed the surface owner's use of the surface of the land, caused bodily injury to the surface

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

owner or any person residing on the property of the surface owner, or damaged the surface owner's property.

The bill also holds oil and gas operators strictly liable for their conduct if oil and gas operations, including a hydraulic fracturing treatment or reinjection operation, cause an earthquake that damages property or injures an individual. A plaintiff establishes a prima facie case of causation by showing that: An earthquake has occurred; the earthquake damaged the plaintiff's property or injured the plaintiff; and the oil and gas operations occurred within an area that has been determined to have experienced induced seismicity by a study of induced seismicity that has been independently peer-reviewed. Plaintiffs have 5 years after discovery of the damages or injury to file an action.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 34-60-127
3 (1), (2), and (3) as follows:

4 **34-60-127. Reasonable accommodation.** (1) EXCEPT AS
5 SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION:

6 (a) An operator shall conduct oil and gas operations in a manner
7 that accommodates the surface owner by minimizing intrusion upon and
8 damage to the surface of the land.

9 (b) As used in this section, "minimizing intrusion upon and
10 damage to the surface" means selecting alternative locations for wells,
11 roads, pipelines, or production facilities, or employing alternative means
12 of operation, that prevent, reduce, or mitigate the impacts of the oil and
13 gas operations on the surface, where such alternatives are technologically
14 sound, economically practicable, and reasonably available to the operator.

15 (c) The standard of conduct set forth in this section shall not be
16 construed to prevent an operator from entering upon and using that
17 amount of the surface as is reasonable and necessary to explore for,
18 develop, and produce oil and gas.

19 (d) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (3) OF

1 THIS SECTION, the standard of conduct set forth in this section shall not be
2 construed to abrogate or impair a contractual provision binding on the
3 parties that expressly provides for the use of the surface for the conduct
4 of oil and gas operations or that releases the operator from liability for the
5 use of the surface.

6 (2) An operator's failure to meet the requirements set forth in this
7 section ~~shall give~~ GIVES rise to a cause of action by the surface owner OR,
8 IF THE LIABILITY ARISES PURSUANT TO PARAGRAPH (b) OF SUBSECTION (3)
9 OF THIS SECTION, BY THE OWNER OF THE PROPERTY OR THE INJURED
10 PERSON. Upon a determination by the trier of fact that such failure has
11 occurred, ~~a surface owner~~ THE PERSON may seek compensatory damages
12 or such equitable relief as is consistent with ~~subsection (1)~~ of this section.

13 (3) (a) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF THIS
14 SUBSECTION (3):

15 (I) In any litigation or arbitration based upon this section, the
16 surface owner ~~shall~~ MUST present evidence that the operator's ~~use of the~~
17 ~~surface materially interfered with~~ OIL AND GAS OPERATIONS HARMED the
18 surface owner's use of the surface of the land, CAUSED BODILY INJURY TO
19 THE SURFACE OWNER OR ANY PERSON RESIDING ON THE PROPERTY OF THE
20 SURFACE OWNER, OR DAMAGED THE SURFACE OWNER'S PROPERTY. After
21 such showing, the operator ~~shall bear~~ BEARS the burden of proof of
22 showing that it met the standard set out in subsection (1) of this section.
23 If an operator makes that showing, the surface owner may present rebuttal
24 evidence.

25 ~~(b)~~ (II) An operator may assert, as an affirmative defense, that it
26 has conducted oil and gas operations in accordance with a regulatory
27 requirement, contractual obligation, or land use plan provision that is

1 APPLIES specifically ~~applicable~~ to the alleged intrusion or damage.

2 (b) AN OPERATOR IS STRICTLY LIABLE IF THE OPERATOR'S OIL AND
3 GAS OPERATIONS, INCLUDING A HYDRAULIC FRACTURING TREATMENT OR
4 REINJECTION OPERATION, CAUSE AN EARTHQUAKE THAT DAMAGES REAL
5 OR PERSONAL PROPERTY OR INJURES AN INDIVIDUAL, WHEREVER THE
6 PERSON OR PROPERTY IS LOCATED. THE LIABILITY ESTABLISHED PURSUANT
7 TO THIS PARAGRAPH (b) IS NOT WAIVABLE BY CONTRACT.

8 (c) (I) A PLAINTIFF ESTABLISHES A PRIMA FACIE CASE OF
9 CAUSATION FOR PURPOSES OF PARAGRAPH (b) OF THIS SUBSECTION (3) IF
10 THE PLAINTIFF SHOWS THAT:

11 (A) AN EARTHQUAKE HAS OCCURRED;

12 (B) THE EARTHQUAKE DAMAGED THE PLAINTIFF'S PROPERTY OR
13 INJURED THE PLAINTIFF; AND

14 (C) THE OIL AND GAS OPERATIONS OCCURRED WITHIN AN AREA
15 THAT HAS BEEN DETERMINED TO HAVE EXPERIENCED INDUCED SEISMICITY
16 BY A STUDY OF INDUCED SEISMICITY THAT WAS INDEPENDENTLY
17 PEER-REVIEWED.

18 (II) NOTWITHSTANDING ANY LIMITATION OF ACTIONS IMPOSED BY
19 ARTICLE 80 OF TITLE 13, C.R.S., A PLAINTIFF HAS FIVE YEARS AFTER
20 DISCOVERY OF THE DAMAGES OR INJURY TO FILE AN ACTION PURSUANT TO
21 THIS SECTION.

22 **SECTION 2. Applicability.** This act applies to conduct occurring
23 on or after the effective date of this act.

24 **SECTION 3. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.