

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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

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.*

HOUSE
3rd Reading Unamended
March 18, 2016

HOUSE
Amended 2nd Reading
March 17, 2016

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 EXERCISING REASONABLE CARE
8 TO AVOID CAUSING BODILY INJURY AND BY minimizing intrusion upon and
9 damage to the surface of the land.

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

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

1 (d) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (3) OF
2 THIS SECTION, the standard of conduct set forth in this section shall not be
3 construed to abrogate or impair a contractual provision binding on the
4 parties that expressly provides for the use of the surface for the conduct
5 of oil and gas operations or that releases the operator from liability for the
6 use of the surface.

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

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

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

26 ~~(b)~~ (II) An operator may assert, as an affirmative defense, that it
27 has conducted oil and gas operations in accordance with a regulatory

1 requirement, contractual obligation, or land use plan provision that is
2 APPLIES specifically applicable to the alleged intrusion or damage.

3 (b) AN OPERATOR SHALL EXERCISE THE HIGHEST DEGREE OF CARE
4 IN CONDUCTING OPERATIONS SO AS TO AVOID CAUSING AN EARTHQUAKE.
5 AN OPERATOR THAT BREACHES THIS DUTY IS LIABLE IF THE OPERATOR'S
6 OIL AND GAS OPERATIONS, INCLUDING A REINJECTION OPERATION,
7 CAUSE AN EARTHQUAKE THAT DAMAGES REAL OR PERSONAL PROPERTY OR
8 INJURES AN INDIVIDUAL, WHEREVER THE PERSON OR PROPERTY IS
9 LOCATED. THE LIABILITY ESTABLISHED PURSUANT TO THIS PARAGRAPH (b)
10 IS NOT WAIVABLE BY CONTRACT BUT IS SUBJECT TO THE AFFIRMATIVE
11 DEFENSE SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS
12 SUBSECTION (3).

13 (c) (I) A PLAINTIFF ESTABLISHES A PRIMA FACIE CASE OF
14 CAUSATION FOR PURPOSES OF PARAGRAPH (b) OF THIS SUBSECTION (3) IF
15 THE PLAINTIFF SHOWS A BREACH OF THE DUTY ESTABLISHED IN
16 PARAGRAPH (b) OF THIS SUBSECTION (3) AND THAT:

17 (A) AN EARTHQUAKE HAS OCCURRED;

18 (B) THE EARTHQUAKE CAUSED DAMAGE TO THE PLAINTIFF'S
19 PROPERTY OR INJURED THE PLAINTIFF; AND

20 (C) THE OIL AND GAS OPERATIONS OCCURRED WITHIN AN AREA
21 THAT HAS BEEN DETERMINED TO HAVE EXPERIENCED INDUCED SEISMICITY
22 BY A STUDY OF INDUCED SEISMICITY THAT WAS INDEPENDENTLY
23 PEER-REVIEWED.

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

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

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