# Second Regular Session Sixty-ninth General Assembly STATE OF COLORADO

### **ENGROSSED**

This Version Includes All Amendments Adopted on Second Reading in the House of Introduction

LLS NO. 14-0290.02 Thomas Morris x4218

**HOUSE BILL 14-1356** 

#### **HOUSE SPONSORSHIP**

Foote,

## SENATE SPONSORSHIP

Jones,

#### **House Committees**

**Senate Committees** 

Transportation & Energy Finance Appropriations

### A BILL FOR AN ACT

101	CONCERNING AN INCREASE IN THE COLORADO OIL AND GAS
102	COMMISSION'S PENALTY AUTHORITY, AND, IN CONNECTION
103	THEREWITH, MAKING AN APPROPRIATION.

### **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 <a href="http://www.leg.state.co.us/billsummaries">http://www.leg.state.co.us/billsummaries</a>.)

Current law specifies that a violation of the "Oil and Gas Conservation Act" is punishable by a maximum daily penalty of \$1,000, subject to a penalty schedule promulgated by the oil and gas conservation commission that considers aggravating and mitigating circumstances. The

maximum total penalty is capped at \$10,000 for violations that do not result in significant waste of oil and gas resources, do not damage correlative rights, and do not result in a significant adverse impact on public health, safety, or welfare.

The bill:

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- ! Increases the maximum daily penalty to \$15,000;
- ! Directs the commission to:
  - ! Adopt rules that specify a process for determining the dates on which a violation begins and ends; and
  - Publish a quarterly report on its web site that specifies certain information about each penalty assessed in the previous quarter and discuss these reports at the department of natural resources' SMART Act hearings; and
- ! Repeals the cap on the maximum total penalty.

The commission must hold a hearing if an operator is responsible for gross negligence or knowing and willful misconduct that results in an egregious violation or a pattern of violations. The commission may issue an order that prohibits the issuance of any new permits to the operator, suspends any or all of the operator's certificates of clearance, or both. The commission may vacate the order after the operator has come back into compliance and paid all penalties.

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

SECTION 1. In Colorado Revised Statutes, 34-60-121, amend

(1) and (7) as follows:

**34-60-121. Violations - penalties - rules - legislative declaration.** (1) (a) Any operator that violates <del>any provision of this article, any rule or order of the commission, or any permit shall be</del> IS subject to a penalty of not more than <del>one</del> FIFTEEN thousand dollars for each act of violation per day that such violation continues; <del>Any such</del>

(b) THE COMMISSION MAY IMPOSE A penalty shall be imposed by order of the commission, ONLY after a hearing in accordance with section 34-60-108 or by an administrative order by consent entered into by the commission and an THE operator. For a violation that does not result in significant waste of oil and gas resources or damage to correlative rights

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1	of does not result in a significant adverse impact on public hearth, safety
2	or welfare, the maximum penalty shall not exceed ten thousand dollars.
3	(c) The commission shall:
4	(I) Promulgate rules that establish a penalty schedule appropriate
5	to the nature of the violation and that provide for the consideration of any
6	aggravating or mitigating circumstances. THE RULES MUST ESTABLISH THE
7	BASIS FOR DETERMINING THE DURATION OF A VIOLATION FOR PURPOSES OF
8	IMPOSING THE APPLICABLE PENALTY AND INCLUDE PRESUMPTIONS THAT:
9	(A) A REPORTING OR OTHER MINOR OPERATIONAL VIOLATION
10	BEGINS ON THE DAY THAT THE REPORT SHOULD HAVE BEEN MADE OR
11	OTHER CORRECTIVE ACTION SHOULD HAVE BEEN TAKEN; AND ENDS WHEN
12	THE REQUIRED REPORT IS SUBMITTED OR OTHER CORRECTIVE ACTION IS
13	COMMENCED;
14	(B) ANY OTHER VIOLATION: BEGINS ON THE DATE THE VIOLATION
15	WAS DISCOVERED OR SHOULD HAVE BEEN DISCOVERED THROUGH THE
16	EXERCISE OF REASONABLE CARE; AND ENDS WHEN CORRECTIVE ACTION IS
17	COMMENCED;
18	(C) THE FAILURE TO DILIGENTLY IMPLEMENT CORRECTIVE ACTION
19	PURSUANT TO A SCHEDULE EMBODIED IN AN ADMINISTRATIVE ORDER ON
20	CONSENT, ORDER FINDING VIOLATION, OR OTHER ORDER OF THE
21	COMMISSION CONSTITUTES AN INDEPENDENT VIOLATION FOR WHICH THE
22	OPERATOR MAY BE SUBJECT TO ADDITIONAL PENALTIES OR CORRECTIVE
23	ACTION ORDERS IMPOSED BY THE COMMISSION; AND
24	(D) THE NUMBER OF DAYS OF VIOLATION DOES NOT INCLUDE ANY
25	PERIOD NECESSARY TO ALLOW THE OPERATOR TO ENGAGE IN GOOD FAITH
26	NEGOTIATION WITH THE COMMISSION REGARDING AN ALLEGED VIOLATION
27	IF THE OPERATOR DEMONSTRATES A PROMPT, EFFECTIVE, AND PRUDENT

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1	RESPONSE TO THE VIOLATION.
2	(II) PUBLISH A QUARTERLY REPORT ON ITS WEB SITE THAT
3	SPECIFIES, FOR EACH PENALTY ASSESSED IN THE PREVIOUS QUARTER:
4	(A) THE ACTUAL PENALTY ASSESSED, INCLUDING THE NUMBER OF
5	DAYS FOR WHICH THE PENALTY WAS ASSESSED AND THE AMOUNT OF THE
6	PENALTY PER DAY OF VIOLATION;
7	(B) THE AGGRAVATING OR MITIGATING CIRCUMSTANCES FROM THE
8	PENALTY SCHEDULE THAT APPLIED;
9	(C) WHETHER THE VIOLATION WAS PART OF A PATTERN OF
10	VIOLATIONS;
11	(D) WHETHER AN EGREGIOUS VIOLATION RESULTED FROM GROSS
12	NEGLIGENCE OR KNOWING AND WILLFUL MISCONDUCT;
13	(E) WHETHER THE PENALTY WAS ASSESSED AFTER A HEARING OR
14	BY AN ADMINISTRATIVE ORDER BY CONSENT; AND
15	(F) ANY OTHER RATIONALE USED IN DETERMINING THE AMOUNT
16	OF THE PER-DAY PENALTY, DURATION OF THE VIOLATION, OR AMOUNT OF
17	THE PENALTY ACTUALLY ASSESSED; AND
18	(III) Ensure that the reports prepared pursuant to
19	SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) ARE DISCUSSED AT THE
20	ANNUAL DEPARTMENTAL PRESENTATIONS MADE PURSUANT TO SECTION
21	2-7-203, C.R.S.
22	(d) An operator subject to a penalty order shall pay the amount
23	due within thirty days after its imposition unless such THE operator files
24	a judicial appeal. The COMMISSION MAY RECOVER penalties owed under
25	this section may be recovered in a civil action brought by the attorney
26	general at the request of the commission in the second judicial district.
27	Moneys collected through the imposition of penalties shall be credited

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first to any legal costs and attorney fees incurred by the attorney general in such a THE recovery action and then to the environmental response account in the oil and gas conservation and environmental response fund created in section 34-60-122.

- (e) The General assembly hereby declares that the purposes of this subsection (1) are to deter noncompliance and to encourage any out-of-compliance operators to come into compliance as soon as possible and to those ends intends that, in determining the amount of a penalty, the commission should not reduce the number of days of violation for which a penalty is assessed below that number which the evidence supports.
- (7) (a) THE COMMISSION OR THE DIRECTOR SHALL ISSUE AN ORDER TO AN OPERATOR TO APPEAR FOR A HEARING BEFORE THE COMMISSION IN ACCORDANCE WITH SECTION 34-60-108 whenever the commission or the director has evidence that an operator is responsible for:
- (I) GROSS NEGLIGENCE OR KNOWING AND WILLFUL MISCONDUCT THAT RESULTS IN AN EGREGIOUS VIOLATION; OR
  - (II) A pattern of violation of any provision of this article, or of any rule regulation, or order of the commission, or of any permit. the commission or the director shall issue an order to such operator to appear for a hearing before the commission in accordance with section 34-60-108.
  - (b) If the commission finds, after such hearing, that a knowing and willful pattern of violation exists THE OPERATOR IS RESPONSIBLE UNDER THE LEGAL STANDARDS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (7), it may issue an order which shall prohibit THAT PROHIBITS the issuance of any new permits to such THE operator,

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1	suspends any or all of the operator's certificates of clearance, OR BOTH.
2	When such THE operator demonstrates to the satisfaction of the
3	commission that it has brought each of the violations into compliance and
4	that any penalty not subject to judicial review or appeal has been paid
5	such THE COMMISSION MAY VACATE THE order. denying new permits shall
6	<del>be vacated.</del>
7	SECTION 2. Appropriation. In addition to any other
8	appropriation, there is hereby appropriated, out of any moneys in the oil
9	and gas conservation and environmental response fund created in section
10	34-60-122 (5), Colorado Revised Statutes, not otherwise appropriated, to
11	the department of natural resources, for the fiscal year beginning July 1
12	2014, the sum of \$80,425 and 0.9 FTE, or so much thereof as may be
13	necessary, for allocation to the oil and gas conservation commission for
14	the implementation of this act.
15	SECTION 3. Applicability. This act applies to conduct occurring
16	on or after the effective date of this act.
17	<b>SECTION 4. Safety clause.</b> The general assembly hereby finds.
18	determines, and declares that this act is necessary for the immediate
19	preservation of the public peace, health, and safety.

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