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

CONCERNING LIABILITY FOR THE CONDUCT OF OIL AND GAS 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
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.

\[
\text{Be it enacted by the General Assembly of the State of Colorado:}
\]

SECTION 1. In Colorado Revised Statutes, amend 34-60-127

(1), (2), and (3) as follows:

34-60-127. Reasonable accommodation. (1) Except as

specified in paragraph (b) of subsection (3) of this section:

(a) An operator shall conduct oil and gas operations in a manner

that accommodates the surface owner by minimizing intrusion upon and
damage to the surface of the land.

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

(c) The standard of conduct set forth in this section shall not be

construed to prevent an operator from entering upon and using that
amount of the surface as is reasonable and necessary to explore for,
develop, and produce oil and gas.

(d) Except as specified in paragraph (b) of subsection (3) of
THIS SECTION, the standard of conduct set forth in this section shall not be
construed to abrogate or impair a contractual provision binding on the
parties that expressly provides for the use of the surface for the conduct
of oil and gas operations or that releases the operator from liability for the
use of the surface.

(2) An operator's failure to meet the requirements set forth in this
section shall give rise to a cause of action by the surface owner OR,
if the liability arises pursuant to paragraph (b) of subsection (3)
of this section, by the owner of the property or the injured
person. Upon a determination by the trier of fact that such failure has
occurred, a surface owner THE PERSON may seek compensatory damages
or such equitable relief as is consistent with subsection (1) of this section.

(3) (a) Except as specified in paragraph (b) of this
subsection (3):

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

(b) (II) An operator may assert, as an affirmative defense, that it
has conducted oil and gas operations in accordance with a regulatory
requirement, contractual obligation, or land use plan provision that is
APPLIES specifically applicable to the alleged intrusion or damage.

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

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

(A) AN EARTHQUAKE HAS OCCURRED;
(B) THE EARTHQUAKE DAMAGED THE PLAINTIFF'S PROPERTY OR INJURED THE PLAINTIFF; AND
(C) 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 WAS INDEPENDENTLY PEER-REVIEWED.

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

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

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