

SENATE BILL 458

D3

5lr2272

By: Senators Zirkin ~~and Raskin~~, Raskin, Currie, Ferguson, Guzzone, Kagan, Kelley, Madaleno, Montgomery, Muse, Nathan-Pulliam, Pinsky, Ramirez, and Young

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 20, 2015

CHAPTER _____

1 AN ACT concerning

2 **Civil Actions – Hydraulic Fracturing Liability Act**

3 FOR the purpose of ~~providing that a certain permittee is strictly liable for any injury, death,~~
4 ~~or loss to person or property caused by the hydraulic fracturing activities of the~~
5 ~~permittee; establishing that compliance with certain standards, laws, and permit~~
6 ~~conditions is not a defense to a certain action; establishing a certain rebuttable~~
7 ~~presumption in an action brought by a plaintiff who resides within a certain~~
8 ~~presumptive impact area; providing that certain permittees shall be presumed to be~~
9 ~~jointly and severally liable for any injury, death, or loss to person or property alleged~~
10 ~~by a certain plaintiff, under certain circumstances; providing that a permittee has~~
11 ~~the burden of proof to rebut a certain presumption; voiding as against public policy~~
12 a provision of a certain contract or agreement that attempts or purports to waive
13 certain rights or reduce certain liability ~~as against public policy~~ for injury, death, or
14 loss to person or property caused by the hydraulic fracturing activities of a certain
15 permittee; providing for the treatment of certain information relating to a chemical
16 constituent used in hydraulic fracturing for the purposes of a certain action;
17 authorizing a certain plaintiff to recover certain economic and noneconomic
18 damages; ~~requiring a court to make a certain award under certain circumstances;~~
19 altering the amount of certain insurance coverage a certain permittee is required to
20 maintain; extending the length of time a certain permittee must maintain certain
21 insurance coverage; defining certain terms; and generally relating to civil actions
22 arising from hydraulic fracturing activities.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
 2 Article – Courts and Judicial Proceedings
 3 Section 3–2101 through ~~3–2107~~ 3–2105 to be under the new subtitle “Subtitle 21.
 4 Hydraulic Fracturing Liability Act”
 5 Annotated Code of Maryland
 6 (2013 Replacement Volume and 2014 Supplement)

7 BY repealing and reenacting, with amendments,
 8 Article – Environment
 9 Section 14–111(a)(6) and (7) and (b)
 10 Annotated Code of Maryland
 11 (2014 Replacement Volume)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 13 That the Laws of Maryland read as follows:

14 **Article – Courts and Judicial Proceedings**

15 **SUBTITLE 21. HYDRAULIC FRACTURING LIABILITY ACT.**

16 **3–2101.**

17 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 18 INDICATED.

19 (B) “HYDRAULIC FRACTURING” MEANS ~~A DRILLING TECHNIQUE~~ AN
 20 ULTRAHAZARDOUS AND ABNORMALLY DANGEROUS ACTIVITY THAT EXPANDS
 21 EXISTING FRACTURES OR CREATES NEW FRACTURES IN ROCK BY INJECTING
 22 FLUIDS, OFTEN A MIXTURE OF WATER AND CHEMICALS, SAND, OR OTHER
 23 SUBSTANCES, AND OFTEN UNDER PRESSURE, INTO OR UNDERNEATH THE SURFACE
 24 OF THE ROCK FOR PURPOSES THAT INCLUDE WELL DRILLING AND THE
 25 EXPLORATION OR PRODUCTION OF NATURAL GAS.

26 (C) “HYDRAULIC FRACTURING ACTIVITY” MEANS THE FOLLOWING
 27 ACTIVITIES RELATED TO HYDRAULIC FRACTURING:

28 (1) WELL DRILLING;

29 (2) THE EXPLORATION OR PRODUCTION OF NATURAL GAS; AND

30 (3) THE STORAGE, TREATMENT, OR TRANSPORT BY A PERMITEE OF
 31 ANY:

32 (I) NATURAL GAS PRODUCED BY HYDRAULIC FRACTURING;

1 (II) CHEMICAL COMPONENT USED IN HYDRAULIC FRACTURING;
2 OR

3 (III) WASTE FROM HYDRAULIC FRACTURING, INCLUDING
4 PRODUCED WATERS.

5 (D) (1) "NATURAL GAS" MEANS ANY HYDROCARBON OR
6 NONHYDROCARBON GAS THAT IS PRODUCED FROM A NATURAL RESERVOIR.

7 (2) "NATURAL GAS" INCLUDES:

8 (I) CARBON DIOXIDE;

9 (II) CASINGHEAD GAS;

10 (III) HELIUM;

11 (IV) HYDROGEN;

12 (V) HYDROGEN SULFIDE; AND

13 (VI) NITROGEN.

14 (E) "PERMITTEE" MEANS A PERSON THAT HOLDS A PERMIT ISSUED UNDER
15 § 14-104 OF THE ENVIRONMENT ARTICLE FOR NATURAL GAS EXPLORATION OR
16 PRODUCTION.

17 ~~3-2102.~~

18 ~~(A) A PERMITTEE IS STRICTLY LIABLE FOR ANY INJURY, DEATH, OR LOSS TO~~
19 ~~PERSON OR PROPERTY THAT IS CAUSED BY THE HYDRAULIC FRACTURING~~
20 ~~ACTIVITIES OF THE PERMITTEE.~~

21 ~~(B) IT IS NOT A DEFENSE TO AN ACTION UNDER THIS SUBTITLE THAT THE~~
22 ~~HYDRAULIC FRACTURING ACTIVITIES OF THE PERMITTEE WERE IN COMPLIANCE~~
23 ~~WITH:~~

24 ~~(1) INDUSTRY STANDARDS;~~

25 ~~(2) STATE OR FEDERAL LAW; OR~~

26 ~~(3) THE CONDITIONS OF ANY PERMIT ISSUED TO THE PERMITTEE BY~~
27 ~~A STATE OR FEDERAL AGENCY.~~

28 ~~3-2103.~~

1 ~~(A) IN AN ACTION BROUGHT BY A PLAINTIFF WHO RESIDES WITHIN THE~~
 2 ~~PRESUMPTIVE IMPACT AREA DESCRIBED IN § 14-110.1 OF THE ENVIRONMENT~~
 3 ~~ARTICLE, THERE IS A REBUTTABLE PRESUMPTION THAT THE HYDRAULIC~~
 4 ~~FRACTURING ACTIVITIES OF THE PERMITTEE ARE THE PROXIMATE CAUSE OF ANY~~
 5 ~~INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY ALLEGED BY THE PLAINTIFF.~~

6 ~~(B) IF THE PLAINTIFF RESIDES IN THE PRESUMPTIVE IMPACT AREA OF~~
 7 ~~WELLBORES BELONGING TO TWO OR MORE PERMITTEES, EACH PERMITTEE SHALL~~
 8 ~~BE PRESUMED UNDER THIS SECTION TO BE JOINTLY AND SEVERALLY LIABLE FOR~~
 9 ~~ANY INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY ALLEGED BY THE~~
 10 ~~PLAINTIFF.~~

11 ~~(C) THE PERMITTEE HAS THE BURDEN OF PROOF TO REBUT A~~
 12 ~~PRESUMPTION ESTABLISHED UNDER THIS SECTION.~~

13 ~~§ 2104.~~

14 A PROVISION IN ANY CONTRACT OR AGREEMENT THAT ATTEMPTS OR
 15 PURPORTS TO WAIVE THE RIGHT TO BRING AN ACTION ~~UNDER THIS SUBTITLE~~
 16 AGAINST A PERMITTEE OR REDUCE ANY LIABILITY SPECIFIED IN THIS SUBTITLE FOR
 17 INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY THAT IS CAUSED BY THE
 18 HYDRAULIC FRACTURING ACTIVITIES OF A PERMITTEE IS VOID AS AGAINST PUBLIC
 19 POLICY.

20 ~~§ 2105~~ § 2103.

21 FOR THE PURPOSE OF AN ACTION BROUGHT ~~UNDER THIS SUBTITLE~~ AGAINST
 22 A PERMITTEE, INFORMATION RELATING TO ANY CHEMICAL CONSTITUENT USED IN
 23 HYDRAULIC FRACTURING IS:

24 (1) NOT PROTECTED AS A TRADE SECRET;

25 (2) DISCOVERABLE; AND

26 (3) ADMISSIBLE AS EVIDENCE.

27 ~~§ 2106~~ § 2104.

28 ~~(A) IN AN ACTION BROUGHT UNDER THIS SUBTITLE~~ AGAINST A PERMITTEE,
 29 A PLAINTIFF MAY RECOVER ANY ECONOMIC OR NONECONOMIC DAMAGES THAT
 30 WERE PROXIMATELY CAUSED BY THE HYDRAULIC FRACTURING ACTIVITIES OF A
 31 THE PERMITTEE.

~~(B) IF THE COURT FINDS THAT AN ACT OR OMISSION OF A PERMITEE CONSTITUTES GROSS NEGLIGENCE OR RECKLESS, WILLFUL, OR WANTON MISCONDUCT, OR THAT THE PERMITEE ACTED IN VIOLATION OF STATE OR FEDERAL LAW, THE COURT SHALL AWARD A PLAINTIFF AN AMOUNT EQUAL TO THREE TIMES ANY AWARD MADE UNDER SUBSECTION (A) OF THIS SECTION.~~

~~3-2107 3-2105.~~

THIS SUBTITLE MAY BE CITED AS THE HYDRAULIC FRACTURING LIABILITY ACT.

Article – Environment

14–111.

(a) Except as provided in subsection (d) of this section, every holder of a permit to drill for gas or oil shall:

(6) Obtain and keep in effect comprehensive general liability insurance coverage in an amount not less than ~~[\$300,000]~~ **\$1,000,000** for each person and ~~[\$500,000]~~ **\$5,000,000** for each occurrence or accident to pay damages for injury to persons or damage to property caused by sudden accidental occurrences arising from, or in support of, the activities authorized by a permit issued under § 14–104 of this subtitle, including the costs and expenses incurred in the investigation, defense, or settlement of claims;

(7) Obtain and keep in effect environmental pollution liability insurance in an amount not less than ~~[\$1,000,000]~~ **\$5,000,000** ~~\$10,000,000~~ per loss for bodily injury and property damage to persons and natural resource damage, including the costs of cleanup and remediation, caused by the sudden or nonsudden release of pollutants arising from, or in support of, the activities authorized by a permit issued under § 14–104 of this subtitle, including the costs and expenses incurred in the investigation, defense, or settlement of claims;

(b) The environmental pollution liability insurance required under subsection (a)(7) of this section shall be maintained for ~~[5]~~ **21 6** years after the Department determines that:

(1) The gas or oil well has been properly sealed and plugged; and

(2) The site has been reclaimed.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.