

SENATE BILL 458

D3

5lr2272

By: **Senators Zirkin and Raskin**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

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 a provision of a certain
12 contract or agreement that attempts or purports to waive certain rights or reduce
13 certain liability as against public policy; providing for the treatment of certain
14 information relating to a chemical constituent used in hydraulic fracturing for the
15 purposes of a certain action; authorizing a certain plaintiff to recover certain
16 economic and noneconomic damages; requiring a court to make a certain award
17 under certain circumstances; altering the amount of certain insurance coverage a
18 certain permittee is required to maintain; extending the length of time a certain
19 permittee must maintain certain insurance coverage; defining certain terms; and
20 generally relating to civil actions arising from hydraulic fracturing activities.

21 BY adding to

22 Article – Courts and Judicial Proceedings

23 Section 3–2101 through 3–2107 to be under the new subtitle “Subtitle 21. Hydraulic
24 Fracturing Liability Act”

25 Annotated Code of Maryland

26 (2013 Replacement Volume and 2014 Supplement)

27 BY repealing and reenacting, with amendments,

28 Article – Environment

29 Section 14–111(a)(6) and (7) and (b)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2014 Replacement Volume)

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

5 **Article – Courts and Judicial Proceedings**

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

7 **3–2101.**

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

10 (B) “HYDRAULIC FRACTURING” MEANS A DRILLING TECHNIQUE THAT
11 EXPANDS EXISTING FRACTURES OR CREATES NEW FRACTURES IN ROCK BY
12 INJECTING FLUIDS, OFTEN A MIXTURE OF WATER AND CHEMICALS, SAND, OR OTHER
13 SUBSTANCES, AND OFTEN UNDER PRESSURE, INTO OR UNDERNEATH THE SURFACE
14 OF THE ROCK FOR PURPOSES THAT INCLUDE WELL DRILLING AND THE
15 EXPLORATION OR PRODUCTION OF NATURAL GAS.

16 (C) “HYDRAULIC FRACTURING ACTIVITY” MEANS THE FOLLOWING
17 ACTIVITIES RELATED TO HYDRAULIC FRACTURING:

18 (1) WELL DRILLING;

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

20 (3) THE STORAGE, TREATMENT, OR TRANSPORT OF ANY:

21 (I) NATURAL GAS PRODUCED BY HYDRAULIC FRACTURING;

22 (II) CHEMICAL COMPONENT USED IN HYDRAULIC FRACTURING;

23 OR

24 (III) WASTE FROM HYDRAULIC FRACTURING, INCLUDING
25 PRODUCED WATERS.

26 (D) (1) “NATURAL GAS” MEANS ANY HYDROCARBON OR
27 NONHYDROCARBON GAS THAT IS PRODUCED FROM A NATURAL RESERVOIR.

28 (2) “NATURAL GAS” INCLUDES:

- 1 **(I) CARBON DIOXIDE;**
2 **(II) CASINGHEAD GAS;**
3 **(III) HELIUM;**
4 **(IV) HYDROGEN;**
5 **(V) HYDROGEN SULFIDE; AND**
6 **(VI) NITROGEN.**

7 **(E) “PERMITTEE” MEANS A PERSON THAT HOLDS A PERMIT ISSUED UNDER**
8 **§ 14–104 OF THE ENVIRONMENT ARTICLE FOR NATURAL GAS EXPLORATION OR**
9 **PRODUCTION.**

10 **3–2102.**

11 **(A) A PERMITTEE IS STRICTLY LIABLE FOR ANY INJURY, DEATH, OR LOSS TO**
12 **PERSON OR PROPERTY THAT IS CAUSED BY THE HYDRAULIC FRACTURING**
13 **ACTIVITIES OF THE PERMITTEE.**

14 **(B) IT IS NOT A DEFENSE TO AN ACTION UNDER THIS SUBTITLE THAT THE**
15 **HYDRAULIC FRACTURING ACTIVITIES OF THE PERMITTEE WERE IN COMPLIANCE**
16 **WITH:**

- 17 **(1) INDUSTRY STANDARDS;**
18 **(2) STATE OR FEDERAL LAW; OR**
19 **(3) THE CONDITIONS OF ANY PERMIT ISSUED TO THE PERMITTEE BY**
20 **A STATE OR FEDERAL AGENCY.**

21 **3–2103.**

22 **(A) IN AN ACTION BROUGHT BY A PLAINTIFF WHO RESIDES WITHIN THE**
23 **PRESUMPTIVE IMPACT AREA DESCRIBED IN § 14–110.1 OF THE ENVIRONMENT**
24 **ARTICLE, THERE IS A REBUTTABLE PRESUMPTION THAT THE HYDRAULIC**
25 **FRACTURING ACTIVITIES OF THE PERMITTEE ARE THE PROXIMATE CAUSE OF ANY**
26 **INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY ALLEGED BY THE PLAINTIFF.**

27 **(B) IF THE PLAINTIFF RESIDES IN THE PRESUMPTIVE IMPACT AREA OF**
28 **WELLBORES BELONGING TO TWO OR MORE PERMITTEES, EACH PERMITTEE SHALL**

1 BE PRESUMED UNDER THIS SECTION TO BE JOINTLY AND SEVERALLY LIABLE FOR
2 ANY INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY ALLEGED BY THE
3 PLAINTIFF.

4 (C) THE PERMITTEE HAS THE BURDEN OF PROOF TO REBUT A
5 PRESUMPTION ESTABLISHED UNDER THIS SECTION.

6 **3-2104.**

7 A PROVISION IN ANY CONTRACT OR AGREEMENT THAT ATTEMPTS OR
8 PURPORTS TO WAIVE THE RIGHT TO BRING AN ACTION UNDER THIS SUBTITLE OR
9 REDUCE ANY LIABILITY SPECIFIED IN THIS SUBTITLE IS VOID AS AGAINST PUBLIC
10 POLICY.

11 **3-2105.**

12 FOR THE PURPOSE OF AN ACTION BROUGHT UNDER THIS SUBTITLE,
13 INFORMATION RELATING TO ANY CHEMICAL CONSTITUENT USED IN HYDRAULIC
14 FRACTURING IS:

15 (1) NOT PROTECTED AS A TRADE SECRET;

16 (2) DISCOVERABLE; AND

17 (3) ADMISSIBLE AS EVIDENCE.

18 **3-2106.**

19 (A) IN AN ACTION BROUGHT UNDER THIS SUBTITLE, A PLAINTIFF MAY
20 RECOVER ANY ECONOMIC OR NONECONOMIC DAMAGES THAT WERE PROXIMATELY
21 CAUSED BY THE HYDRAULIC FRACTURING ACTIVITIES OF A PERMITTEE.

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

27 **3-2107.**

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

