

# SENATE BILL 361

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6lr0438

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By: **Senators Raskin and Zirkin**

Introduced and read first time: January 28, 2016

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 16, 2016

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## 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;~~ voiding a provision of a certain contract  
7 or agreement that attempts or purports to waive certain rights or reduce certain  
8 liability as against public policy; providing for the treatment of certain information  
9 relating to a chemical constituent used in hydraulic fracturing for the purposes of a  
10 certain action; authorizing a certain plaintiff to recover certain economic and  
11 noneconomic damages; authorizing a court to award punitive damages under certain  
12 circumstances; altering the amount of certain insurance coverage a certain permittee  
13 is required to maintain; extending the length of time a certain permittee must  
14 maintain certain insurance coverage; requiring a permittee to file with the  
15 Department of the Environment and a certain local health department certain  
16 documentation; providing that the Department and the local health department  
17 shall maintain the confidentiality of certain information included in the  
18 documentation except under certain circumstances; requiring an individual or a  
19 certain agency to whom the documentation is disclosed to maintain the  
20 confidentiality of the contents of the documentation except under certain  
21 circumstances; providing for the construction of a certain provision of this Act;  
22 defining certain terms; and generally relating to civil actions arising from hydraulic  
23 fracturing activities.

24 BY adding to

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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 Article – Courts and Judicial Proceedings  
 2 Section 3–2101 through ~~3–2106~~ 3–2105 to be under the new subtitle “Subtitle 21.  
 3 Hydraulic Fracturing Liability Act”  
 4 Annotated Code of Maryland  
 5 (2013 Replacement Volume and 2015 Supplement)

6 BY repealing and reenacting, with amendments,  
 7 Article – Environment  
 8 Section 14–111(a)(6) and (7) and (b)  
 9 Annotated Code of Maryland  
 10 (2014 Replacement Volume and 2015 Supplement)

11 BY adding to  
 12 Article – Environment  
 13 Section 14–111(h)  
 14 Annotated Code of Maryland  
 15 (2014 Replacement Volume and 2015 Supplement)

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

18 **Article – Courts and Judicial Proceedings**

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

20 **3–2101.**

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
 22 INDICATED.

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

29 (C) “HYDRAULIC FRACTURING ACTIVITY” MEANS THE FOLLOWING  
 30 ACTIVITIES RELATED TO HYDRAULIC FRACTURING:

- 31 (1) WELL DRILLING;  
 32 (2) THE EXPLORATION OR PRODUCTION OF NATURAL GAS; AND  
 33 (3) THE STORAGE, TREATMENT, OR TRANSPORT OF ANY:

- 1 (I) NATURAL GAS PRODUCED BY HYDRAULIC FRACTURING;  
2 (II) CHEMICAL COMPONENT USED IN HYDRAULIC FRACTURING;  
3 OR  
4 (III) WASTE FROM HYDRAULIC FRACTURING, INCLUDING  
5 PRODUCED WATERS.

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

8 (2) "NATURAL GAS" INCLUDES:

- 9 (I) CARBON DIOXIDE;  
10 (II) CASINGHEAD GAS;  
11 (III) HELIUM;  
12 (IV) HYDROGEN;  
13 (V) HYDROGEN SULFIDE; AND  
14 (VI) NITROGEN.

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

18 3-2102.

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

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

25 ~~(1) INDUSTRY STANDARDS;~~

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

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

1 ~~3-2103.~~

2 A PROVISION IN ANY CONTRACT OR AGREEMENT THAT ATTEMPTS OR  
 3 PURPORTS TO WAIVE THE RIGHT TO BRING AN ACTION AGAINST A PERMITTEE  
 4 UNDER ~~THIS SUBTITLE~~ APPLICABLE LAW OR REDUCE ANY LIABILITY UNDER  
 5 APPLICABLE LAW FOR INJURY, DEATH, OR LOSS TO PERSON OR PROPERTY THAT IS  
 6 CAUSED BY THE HYDRAULIC FRACTURING ACTIVITIES OF A PERMITTEE IS VOID AS  
 7 AGAINST PUBLIC POLICY.

8 ~~3-2104.~~ 3-2103.

9 FOR THE PURPOSE OF AN ACTION BROUGHT AGAINST A PERMITTEE,  
 10 INFORMATION RELATING TO ANY CHEMICAL CONSTITUENT USED IN HYDRAULIC  
 11 FRACTURING IS:

12 ~~(1) NOT PROTECTED AS A TRADE SECRET;~~

13 ~~(2)~~ (1) DISCOVERABLE, SUBJECT TO § 14-111 OF THE  
 14 ENVIRONMENT ARTICLE; AND

15 ~~(3)~~ (2) ADMISSIBLE AS EVIDENCE.

16 ~~3-2105.~~ 3-2104.

17 (A) IN AN ACTION BROUGHT AGAINST A PERMITTEE, A PLAINTIFF MAY  
 18 RECOVER ANY ECONOMIC OR NONECONOMIC DAMAGES THAT WERE PROXIMATELY  
 19 CAUSED BY THE HYDRAULIC FRACTURING ACTIVITIES OF ~~A~~ THE PERMITTEE.

20 (B) IF THE COURT FINDS THAT AN ACT OR OMISSION OF A PERMITTEE  
 21 CONSTITUTES GROSS NEGLIGENCE OR RECKLESS, WILLFUL, OR WANTON  
 22 MISCONDUCT, THE COURT MAY ALSO AWARD PUNITIVE DAMAGES TO THE PLAINTIFF.

23 ~~3-2106.~~ 3-2105.

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

26 Article – Environment

27 14-111.

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

1 (6) Obtain and keep in effect comprehensive general liability insurance  
2 coverage in an amount not less than ~~[\$300,000]~~ **\$1,000,000** for each person and ~~[\$500,000]~~  
3 **\$5,000,000** for each occurrence or accident to pay damages for injury to persons or damage  
4 to property caused by sudden accidental occurrences arising from, or in support of, the  
5 activities authorized by a permit issued under § 14–104 of this subtitle, including the costs  
6 and expenses incurred in the investigation, defense, or settlement of claims;

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

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

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

18 (2) The site has been reclaimed.

19 **(H) (1) EVERY HOLDER OF A PERMIT TO DRILL FOR THE HYDRAULIC**  
20 **FRACTURING OF A WELL FOR THE EXPLORATION OR PRODUCTION OF NATURAL GAS**  
21 **IN THE STATE SHALL FILE WITH THE DEPARTMENT AND THE APPROPRIATE LOCAL**  
22 **HEALTH DEPARTMENT DOCUMENTATION STATING THE COMPOSITION OF THE**  
23 **INJECTION FLUID USED FOR HYDRAULIC FRACTURING OF THE WELL.**

24 **(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**  
25 **PARAGRAPH, THE DEPARTMENT AND THE LOCAL HEALTH DEPARTMENT SHALL**  
26 **KEEP THE SPECIFIC CONCENTRATION OF THE CHEMICAL CONSTITUENTS THAT ARE**  
27 **INCLUDED IN THE DOCUMENTATION FILED UNDER PARAGRAPH (1) OF THIS**  
28 **SUBSECTION CONFIDENTIAL.**

29 **(II) ON REQUEST, THE DEPARTMENT OR A LOCAL HEALTH**  
30 **DEPARTMENT SHALL DISCLOSE THE CONTENTS OF THE DOCUMENTS FILED UNDER**  
31 **PARAGRAPH (1) OF THIS SUBSECTION TO:**

32 **1. A HEALTH CARE PROFESSIONAL FOR MEDICAL**  
33 **PURPOSES;**

34 **2. A PARTY TO A CIVIL OR CRIMINAL ACTION FOR**  
35 **LITIGATION PURPOSES;**

1                                   **3. A FEDERAL, STATE, OR LOCAL AGENCY; OR**

2                                   **4. A PUBLIC HEALTH PROFESSIONAL, A TOXICOLOGIST,**  
3 **OR AN EPIDEMIOLOGIST EMPLOYED IN THE FIELD OF PUBLIC HEALTH FOR PUBLIC**  
4 **HEALTH PURPOSES.**

5                                   **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II), (III), OR (IV)**  
6 **OF THIS PARAGRAPH, AN INDIVIDUAL OR A FEDERAL, STATE, OR LOCAL AGENCY TO**  
7 **WHOM DOCUMENTATION IS DISCLOSED UNDER PARAGRAPH (2)(II) OF THIS**  
8 **SUBSECTION SHALL MAINTAIN THE CONFIDENTIALITY OF THE CONTENTS OF THE**  
9 **DOCUMENTATION.**

10                                   **(II) A HEALTH CARE PROFESSIONAL MAY SHARE THE**  
11 **DOCUMENTATION WITH OTHER INDIVIDUALS AS REASONABLY NECESSARY FOR**  
12 **PURPOSES OF PROVIDING MEDICAL CARE, INCLUDING WITH THE PATIENT TO WHOM**  
13 **THE PROFESSIONAL IS PROVIDING CARE AND OTHER HEALTH CARE PROFESSIONALS**  
14 **INVOLVED IN THE PATIENT'S CARE.**

15                                   **(III) A PARTY TO A CIVIL OR CRIMINAL ACTION MAY SHARE THE**  
16 **DOCUMENTATION WITH EXPERT WITNESSES, JURORS, AND OTHER INDIVIDUALS AS**  
17 **REASONABLY NECESSARY FOR PURPOSES OF LITIGATING THE CIVIL OR CRIMINAL**  
18 **ACTION.**

19                                   **(IV) A FEDERAL, STATE, OR LOCAL AGENCY MAY SHARE THE**  
20 **DOCUMENTATION WITH OTHER AGENCIES OR INDIVIDUALS AS REASONABLY**  
21 **NECESSARY TO PROTECT PUBLIC HEALTH AND SAFETY.**

22                                   **(4) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO REQUIRE**  
23 **THE DEPARTMENT, A LOCAL HEALTH DEPARTMENT, OR ANY OTHER PERSON TO**  
24 **KEEP THE IDENTITY OF ANY CHEMICAL CONSTITUENT THAT IS INCLUDED IN THE**  
25 **DOCUMENTATION FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION**  
26 **CONFIDENTIAL.**

27                                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28                                   October 1, 2016.