D3 6lr0438

By: Senators Raskin and Zirkin

Introduced and read first time: January 28, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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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 certain action; authorizing a certain plaintiff to recover certain economic and 10 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; defining certain terms; and generally relating 15 to civil actions arising from hydraulic fracturing activities.

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- 17 Article Courts and Judicial Proceedings
- 18 Section 3–2101 through 3–2106 to be under the new subtitle "Subtitle 21. Hydraulic
- 19 Fracturing Liability Act"
- 20 Annotated Code of Maryland
- 21 (2013 Replacement Volume and 2015 Supplement)
- 22 BY repealing and reenacting, with amendments,
- 23 Article Environment
- 24 Section 14–111(a)(6) and (7) and (b)
- 25 Annotated Code of Maryland
- 26 (2014 Replacement Volume and 2015 Supplement)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

28 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1	Article - Courts and Judicial Proceedings			
2	SUBTITLE 21. HYDRAULIC FRACTURING LIABILITY ACT.			
3	3–2101.			
4 5	(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.			
6 7 8 9 10 11	(B) "HYDRAULIC FRACTURING" MEANS A DRILLING TECHNIQUE THAT EXPANDS EXISTING FRACTURES OR CREATES NEW FRACTURES IN ROCK BY INJECTING FLUIDS, OFTEN A MIXTURE OF WATER AND CHEMICALS, SAND, OR OTHER SUBSTANCES, AND OFTEN UNDER PRESSURE, INTO OR UNDERNEATH THE SURFACE OF THE ROCK FOR PURPOSES THAT INCLUDE WELL DRILLING AND THE EXPLORATION OR PRODUCTION OF NATURAL GAS.			
12 13	(C) "HYDRAULIC FRACTURING ACTIVITY" MEANS THE FOLLOWING ACTIVITIES RELATED TO HYDRAULIC FRACTURING:			
14	(1) WELL DRILLING;			
15	(2) THE EXPLORATION OR PRODUCTION OF NATURAL GAS; AND			
16	(3) THE STORAGE, TREATMENT, OR TRANSPORT OF ANY:			
17	(I) NATURAL GAS PRODUCED BY HYDRAULIC FRACTURING;			
18 19	(II) CHEMICAL COMPONENT USED IN HYDRAULIC FRACTURING; OR			
20 21	(III) WASTE FROM HYDRAULIC FRACTURING, INCLUDING PRODUCED WATERS.			
22 23	(D) (1) "NATURAL GAS" MEANS ANY HYDROCARBON OR NONHYDROCARBON GAS THAT IS PRODUCED FROM A NATURAL RESERVOIR.			
24	(2) "NATURAL GAS" INCLUDES:			
25	(I) CARBON DIOXIDE;			
26	(II) CASINGHEAD GAS;			
27	(III) HELIUM;			

- 1 (IV) HYDROGEN; 2 (V) HYDROGEN SULFIDE; AND (VI) NITROGEN. 3 "PERMITTEE" MEANS A PERSON THAT HOLDS A PERMIT ISSUED UNDER 4 § 14-104 OF THE ENVIRONMENT ARTICLE FOR NATURAL GAS EXPLORATION OR 5 PRODUCTION. 7 3-2102. 8 (A) A PERMITTEE IS STRICTLY LIABLE FOR ANY INJURY, DEATH, OR LOSS TO 9 PERSON OR PROPERTY THAT IS CAUSED BY THE HYDRAULIC FRACTURING 10 ACTIVITIES OF THE PERMITTEE. 11 (B) IT IS NOT A DEFENSE TO AN ACTION UNDER THIS SUBTITLE THAT THE 12 HYDRAULIC FRACTURING ACTIVITIES OF THE PERMITTEE WERE IN COMPLIANCE 13 WITH: 14 **(1)** INDUSTRY STANDARDS; **(2)** 15 STATE OR FEDERAL LAW; OR 16 **(3)** THE CONDITIONS OF ANY PERMIT ISSUED TO THE PERMITTEE BY 17 A STATE OR FEDERAL AGENCY. 3-2103. 18 19 A PROVISION IN ANY CONTRACT OR AGREEMENT THAT ATTEMPTS OR 20 PURPORTS TO WAIVE THE RIGHT TO BRING AN ACTION AGAINST A PERMITTEE 21 UNDER THIS SUBTITLE OR REDUCE ANY LIABILITY FOR INJURY, DEATH, OR LOSS TO 22 PERSON OR PROPERTY THAT IS CAUSED BY THE HYDRAULIC FRACTURING 23ACTIVITIES OF A PERMITTEE IS VOID AS AGAINST PUBLIC POLICY. 243-2104. 25FOR THE PURPOSE OF AN ACTION BROUGHT AGAINST A PERMITTEE,
 - (1) NOT PROTECTED AS A TRADE SECRET;

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FRACTURING IS:

INFORMATION RELATING TO ANY CHEMICAL CONSTITUENT USED IN HYDRAULIC

- 1 (2) DISCOVERABLE; AND
- 2 (3) ADMISSIBLE AS EVIDENCE.
- 3 **3-2105.**
- 4 (A) IN AN ACTION BROUGHT AGAINST A PERMITTEE, A PLAINTIFF MAY 5 RECOVER ANY ECONOMIC OR NONECONOMIC DAMAGES THAT WERE PROXIMATELY 6 CAUSED BY THE HYDRAULIC FRACTURING ACTIVITIES OF A PERMITTEE.
- 7 (B) IF THE COURT FINDS THAT AN ACT OR OMISSION OF A PERMITTEE 8 CONSTITUTES GROSS NEGLIGENCE OR RECKLESS, WILLFUL, OR WANTON 9 MISCONDUCT, THE COURT MAY ALSO AWARD PUNITIVE DAMAGES TO THE PLAINTIFF.
- 10 **3–2106.**
- THIS SUBTITLE MAY BE CITED AS THE HYDRAULIC FRACTURING LIABILITY ACT.
- 13 Article Environment
- 14 14-111.

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- 15 (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;
- Obtain and keep in effect environmental pollution liability insurance in an amount not less than [\$1,000,000] **\$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;
- 30 (b) The environmental pollution liability insurance required under subsection 31 (a)(7) of this section shall be maintained for [5] 6 years after the Department determines 32 that:

- 1 (1) The gas or oil well has been properly sealed and plugged; and
- 2 (2) The site has been reclaimed.
- 3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 4 October 1, 2016.