

CHAPTER 314

NATURAL RESOURCES

HOUSE BILL 07-1252

BY REPRESENTATIVE(S) Roberts, Curry, Buescher, Carroll M., Fischer, Gibbs, Labuda, Levy, Looper, Lundberg, McFadyen, Merrifield, Weissmann, Green, Kefalas, Madden, Massey, Romanoff, Rose, Solano, White, and Witwer; also SENATOR(S) Isgar, Boyd, Fitz-Gerald, Hagedorn, Kester, Taylor, and Williams.

AN ACT

CONCERNING THE ACCOMMODATION OF THE RIGHTS OF SURFACE OWNERS WITH RESPECT TO OIL AND GAS OPERATORS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby:

(a) Finds that substantial increases in the amount of oil and gas operations and the number of rural residents has created numerous conflicts between surface owners and oil and gas operators;

(b) Determines that a clarification of the law regarding the relationship between oil and gas operators and surface owners is in the public interest; and

(c) Declares that the intent of this act is to codify the reasonable accommodation doctrine adopted by the Colorado Supreme Court in *Gerrity v. Magness*, 946 P.2d 913 (Colo. 1997).

SECTION 2. Article 60 of title 34, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

34-60-127. Reasonable accommodation. (1) (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,

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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) 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. UPON A DETERMINATION BY THE TRIER OF FACT THAT SUCH FAILURE HAS OCCURRED, A SURFACE OWNER MAY SEEK COMPENSATORY DAMAGES OR SUCH EQUITABLE RELIEF AS IS CONSISTENT WITH SUBSECTION (1) OF THIS SECTION.

(3) (a) IN ANY LITIGATION OR ARBITRATION BASED UPON THIS SECTION, THE SURFACE OWNER SHALL PRESENT EVIDENCE THAT THE OPERATOR'S USE OF THE SURFACE MATERIALLY INTERFERED WITH THE SURFACE OWNER'S USE OF THE SURFACE OF THE LAND. 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) 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 SPECIFICALLY APPLICABLE TO THE ALLEGED INTRUSION OR DAMAGE.

(4) NOTHING IN THIS SECTION SHALL:

(a) PRECLUDE OR IMPAIR ANY PERSON FROM OBTAINING ANY AND ALL OTHER REMEDIES ALLOWED BY LAW;

(b) PREVENT AN OPERATOR AND A SURFACE OWNER FROM ADDRESSING THE USE OF THE SURFACE FOR OIL AND GAS OPERATIONS IN A LEASE, SURFACE USE AGREEMENT, OR OTHER WRITTEN CONTRACT; OR

(c) ESTABLISH, ALTER, IMPAIR, OR NEGATE THE AUTHORITY OF LOCAL AND COUNTY GOVERNMENTS TO REGULATE LAND USE RELATED TO OIL AND GAS OPERATIONS.

SECTION 3. Effective date - applicability. (1) This act shall take effect September 1, 2007.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to all oil and gas operations commenced on or after the applicable effective date of this act.

Approved: May 29, 2007