

DATE FILED: May 1, 2024 3:44 PM



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **JENA GRISWOLD**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, fiscal summary, motion for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2023-2024 #270 'Oil and Gas Operations Strict Liability for Damages'".....

[Handwritten signature in blue ink]

.....**IN TESTIMONY WHEREOF** I have unto set my hand
and affixed the Great Seal of the State of Colorado,
at the City of Denver this 29th day of April, 2024.

Jena Griswold

SECRETARY OF STATE



Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 34-60-114.1 as follows:

34-60-114.1. Strict liability for damages caused by oil and gas operations – short title – purposes and findings – definitions. (1) **Short title.** THE SHORT TITLE OF THIS SECTION IS AND MAY BE CITED AS THE “COLORADO OIL AND GAS OPERATIONS PUBLIC HEALTH AND SAFETY ACT”.

(2) **Purposes and findings.** THE PEOPLE OF THE STATE OF COLORADO HEREBY FIND AND DECLARE THAT:

- (a) THE PURPOSE OF THIS SECTION IS TO ENSURE THE PROTECTION OF PUBLIC HEALTH, SAFETY, PROPERTY, WILDLIFE, AND THE ENVIRONMENT BY ESTABLISHING STRICT LIABILITY FOR DAMAGES CAUSED BY OIL AND GAS OPERATIONS IN THE STATE OF COLORADO, INCLUDING EMISSIONS OF HARMFUL AIR POLLUTANTS, HARM TO WILDLIFE OR HABITAT, SPILLS OR RELEASES OF TOXIC CHEMICALS, FIRES, EXPLOSIONS, OR EARTHQUAKES; AND
- (b) IT IS NECESSARY TO HOLD ANY OPERATOR, OWNER, OR PRODUCER ACCOUNTABLE FOR ANY HARM CAUSED TO PUBLIC HEALTH, SAFETY, PROPERTY, WILDLIFE, OR THE ENVIRONMENT BY OIL AND GAS OPERATIONS.

(3) **Definitions.** AS USED IN THIS SECTION, UNLESS CONTEXT OTHERWISE REQUIRES:

- (a) "OIL AND GAS OPERATIONS" HAS THE SAME MEANING AS SET FORTH IN SECTION 34-60-103 (6.5).
- (b) “OPERATOR” HAS THE SAME MEANING AS SET FORTH IN SECTION 34-60-103 (6.8).
- (c) “OWNER” HAS THE SAME MEANING AS SET FORTH IN SECTION 34-60-103 (7).
- (d) “PRODUCER” HAS THE SAME MEANING AS SET FORTH IN SECTION 34-60-103 (10).
- (e) "STRICT LIABILITY" MEANS LIABILITY WITHOUT REGARD TO FAULT, NEGLIGENCE, OR INTENT.

(4) **Strict liability for damages.**

- (a) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ANY OPERATOR, OWNER, OR PRODUCER IS STRICTLY LIABLE FOR ANY DAMAGES, INCLUDING PERSONAL INJURY, PROPERTY DAMAGE, AND ENVIRONMENTAL HARM, RESULTING FROM OIL AND GAS OPERATIONS.
- (b) STRICT LIABILITY UNDER THIS SECTION APPLIES REGARDLESS OF WHETHER THE OPERATOR, OWNER, OR PRODUCER EXERCISED REASONABLE CARE AND ADHERED TO INDUSTRY BEST PRACTICES.

SECTION 2. Effective date. This Act takes effect upon official declaration of the governor and is self-executing.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #270¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes concerning holding any oil and gas operator, owner, or producer strictly liable for any damages including personal injury, property damage, or environmental harm that result from oil and gas operations without regard to fault.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes concerning holding any oil and gas operator, person that has the right to drill into or produce from an oil or gas reservoir, or owner of a well capable of producing oil or gas strictly liable for any damages that result from oil and gas operations?

Hearing April 18, 2024:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Jeremiah Barry, Kurt Morrison

Hearing adjourned 9:15 A.M.

¹ Unofficially captioned “**Oil and Gas Operations Strict Liability for Damages**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

Ballot Title Setting Board

Proposed Initiative 2023-2024 #270¹

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Shall there be a change to the Colorado Revised Statutes concerning holding any oil and gas operator, owner, or producer strictly liable for any damages including personal injury, property damage, or environmental harm that result from oil and gas operations without regard to fault, negligence, or intent?

Hearing April 18, 2024:

Single subject approved; staff draft amended; titles set.

Board members: Theresa Conley, Jeremiah Barry, Kurt Morrison

Hearing adjourned 9:15 A.M.

Rehearing April 26, 2024

Motion for rehearing (Taheri, Ward) was granted only to the extent the Board made changes to the title (3-0).

Board members: Theresa Conley, Jeremiah Barry, Kurt Morrison

Hearing adjourned 9:16 A.M.

¹ Unofficially captioned “**Oil and Gas Operations Strict Liability for Damages**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

COLORADO TITLE SETTING BOARD

Suzanne Taheri and Steve Ward, Objectors

MOTION FOR REHEARING ON INITIATIVE 2023-2024 #270

Suzanne Taheri and Steven Ward, registered electors of the State of Colorado, object to the Title Board’s finding that Initiative 2023-2024 # 270 (“Initiative #270”) constitutes a single subject, and submit this Motion for Rehearing.

On April 18, 2024, the Title Board set the following ballot title and submission clause for Initiative #270:

“A change to the Colorado Revised Statutes concerning holding any oil and gas operator, owner, or producer strictly liable for any damages including personal injury, property damage, or environmental harm that result from oil and gas operations without regard to fault.”

As demonstrated below, Initiative #270 violates the Colorado Constitution and conflicts with established legal precedent related to single subject and clear title. The Board lacks jurisdiction to set title as the measure contains multiple subjects. Objectors additionally assert the title is not clear and is misleading because it omits important features of Initiative #270.

A. The Initiative Impermissibly Contains Separate and Distinct Subject in Violation of the Single Subject Requirement.

Initiative #270 provides the following definition in proposed section 34-60-114.1(3)(e): ““Strict liability” means liability without regard to fault, negligence, or intent.”

The Title Board recently determined that the similar proposed initiative 2023-2024 #289, which would impose strict liability for certain damages and establish a definition of “strict liability,” did not constitute a single subject. The decision to set title for this Initiative #270 is blatantly inconsistent with the Board’s decision regarding proposed initiative 2023-2024 #289. The dictionary definition of “strict liability” is “liability imposed without regard to fault.”¹ Initiative #270 expands upon this commonly use of the term to add that it is also without regard to negligence or intent.

Initiative #270 would make “any operator, owner, or producer strictly liable for any damages, including personal injury, property damage, and environmental harm, resulting from oil and gas operations.” Given the proposed definition in Initiative #270, this liability applies regardless of negligence or intent, which must be intended to have some effect beyond the

¹ *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/strict%20liability>. Accessed 23 Apr. 2024.

common, dictionary-defined use of “strict liability.” For example, it may be read to supersede other claims involving negligence or intent, such as an intentional tort or criminal act.

This decision should be consistent with the Board’s single-subject decision regarding proposed initiative 2023-2024 #289. Therefore, redefining the term “strict liability” constitutes a second subject. The Title Board should deny setting of a title for the Initiative on the grounds that the Initiative does not contain a single subject.²

B. The Title Set is Unclear and Misleading.

The title set by the Board is unclear and misleading because it omits important features of Initiative #270. The title fails to inform voters that the definition of strict liability includes liability regardless of negligence and intent. The title should also inform voters that it imposes strict liability regardless of the exercise of reasonable care or adherence to industry best practices.

Accordingly, the Objectors respectfully request that this Motion for Rehearing be granted and a rehearing set pursuant to C.R.S. § 1-40-107(1), because Initiative #270 contains multiple subjects and the Title Board lacks jurisdiction to set a title.

Respectfully submitted this 23rd day of April, 2024.

/s/ Suzanne Taheri

West Group
Attorney for Objectors

² Colo. Const. Art. V, § 1(5.5) (“[n]o measure shall be proposed by petition containing more than one subject”); § 1-40-106.5, C.R.S.; and *Fine v. Ward (In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128)*, 2022 CO 37, ¶8 (“When a proposed initiative comprises multiple subjects, the Board lacks jurisdiction to set its title.”).



Initiative 270

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Summary

Date: April 15, 2024 **Fiscal Analyst:** Colin Gaiser (303-866-2677)

LCS TITLE: OIL AND GAS OPERATIONS STRICT LIABILITY FOR DAMAGES

Fiscal Summary of Initiative 270

This fiscal summary, prepared by the nonpartisan Director of Research of the Legislative Council, contains a preliminary assessment of the measure's fiscal impact. A full fiscal impact statement for this initiative is or will be available at leg.colorado.gov/bluebook. This fiscal summary identifies the following impact.

State expenditures and revenue. By making oil and gas operators, owners, and producers strictly liable for damages from oil and gas operations, the Judicial Department will see an increase in expenditures and revenue from additional civil case filings. The measure will increase the number of plaintiffs seeking damages from oil and gas companies, and increase the scope of any corresponding lawsuits. This results in additional workload for the Judicial Department.

Economic impacts. To the extent Initiative 270 increases legal action against oil and gas operators, owners, and producers, the initiative may lead to higher costs or reduced activity in the oil and gas sector. This could decrease employment and investment in the industry.