

SENATE BILL NO. 299

INTRODUCED BY T. RICHMOND, P. CONNELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PUBLIC DISCLOSURE OF FRACTURING FLUID

5 INFORMATION IN OIL AND GAS OPERATIONS; ESTABLISHING INFORMATION TO BE DISCLOSED;

6 ALLOWING AN OWNER, OPERATOR, OR SERVICE COMPANY TO REQUEST INFORMATION BE

7 WITHHELD; DIRECTING THE ADMINISTRATOR OF THE BOARD OF OIL AND GAS CONSERVATION TO

8 DETERMINE IF INFORMATION MAY BE WITHHELD; ESTABLISHING REQUIREMENTS TO REQUEST

9 INFORMATION BE WITHHELD; ESTABLISHING A FEE; REQUIRING THE BOARD OF OIL AND GAS

10 CONSERVATION TO AMEND ARM 36.22.608, 36.22.1015, AND 36.22.1016 RELATED TO DISCLOSURE OF

11 FRACTURING FLUIDS; AMENDING SECTION 82-11-117, MCA; AND PROVIDING AN IMMEDIATE

12 EFFECTIVE DATE."

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14 WHEREAS, Board of Oil and Gas Conservation rules related to the disclosure of fracturing fluids are

15 made redundant by passage of this bill; and

16 WHEREAS, ARM 36.22.608 contradicts the provisions of this bill because a description of the

17 requirements for a proposed well stimulation do not conform to the requirements which would be reflected in law;

18 and

19 WHEREAS, ARM 36.22.1015 contradicts the provisions of this bill because disclosure of well stimulation

20 fluids do not conform to the requirements which would be reflected in law; and

21 WHEREAS, ARM 36.22.1016 contradicts the provisions of this bill because options for the protection of

22 proprietary chemicals and trade secrets do not conform to the requirements which would be reflected in law.

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24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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26 NEW SECTION. **Section 1. Legislative findings -- purpose.** The purpose of [sections 1 through 3]

27 is to provide a fair process for disclosure of fracturing fluids to facilitate transparency, while protecting valuable

28 trade secrets and allowing well owners, operators, and service companies to protect their right to obtain an

29 advantage over competitors.

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1 **NEW SECTION. Section 2. Fracturing fluid disclosure -- requirements.** (1) The board of oil and gas
2 conservation shall require the disclosure of fracturing fluids in accordance with [section 3] and this section.

3 (2) The fracturing fluid disclosure required by subsection (1) must include:

4 (a) except as provided in [section 3], the chemical compound name and the chemical abstracts service
5 registry number of the ingredients, including any hazardous component listed on a material safety data sheet as
6 defined in 50-78-102, the product name, and the type of additives used; and

7 (b) the proposed rate or concentration for each ingredient or additive, which may be expressed as
8 percent by weight, percent by volume, parts per million, or parts per billion.

9 (3) Except as provided in [section 3(4)(b)], the administrator shall post the information submitted pursuant
10 to subsection (2) to the board of oil and gas conservation's website or to a website established for education and
11 disclosure of fracturing fluids hosted by a nonprofit organization dedicated to ground water protection with
12 members consisting of state ground water regulatory agencies, the interstate oil and gas compact commission,
13 or both or their successors.

14 (4) For the purposes of this part the following definitions apply:

15 (a) "Administrator" means the administrator of the division of oil and gas conservation.

16 (b) "Fracturing" means the introduction of fluid that may carry in suspension a propping agent under
17 pressure into a formation containing oil or gas for the purpose of creating cracks in the formation to serve as
18 channels for fluids to move to or from the well bore.

19 (c) "Systems approach" means the reporting of the identity of chemicals separately from the additive
20 products they go into or the reporting of fracturing chemicals without attribution to the specific products in the
21 fracturing fluid.

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23 **NEW SECTION. Section 3. Confidentiality request for trade secrets.** (1) (A) If the owner or operator
24 or service company providing fracturing services for a well believes that disclosing the complete composition of
25 the fracturing fluid, including a specific ingredient's identity, concentrations, or both required in accordance with
26 [section 2(2)], will, if disclosed, reveal information entitled to protection as trade secrets as defined in 30-14-402
27 that should be exempt from public disclosure, the owner, operator, or service company may request that the
28 administrator withhold the information.

29 (B) WHEN AN OWNER, OPERATOR, OR SERVICE COMPANY REQUESTS THAT INFORMATION BE WITHHELD, THE
30 DEPARTMENT SHALL CHARGE A FEE OF NO MORE THAN \$25 PER INGREDIENT OR CONCENTRATION FOR THE REQUEST.

1 (2) To meet the requirement of subsection (1), the owner, operator, or service company shall provide
2 the administrator with information demonstrating all of the following:

3 (a) the ingredient identity, its concentrations, or both, as appropriate, has not appeared in a public source
4 or been publicly disclosed pursuant to a:

5 (i) federal or state law or regulation;

6 (ii) professional trade publication; or

7 (iii) through any other media or publication available to the public or competing oil and gas owners,
8 operators, or service companies;

9 (b) to what extent the identity of the ingredient, concentrations, or both, as appropriate, is known within
10 a company and how the information is housed in the company and what steps employees, officers, agents, and
11 directors take to prevent disclosure of the information;

12 (c) whether any other federal or state entity has determined that the ingredient identity, concentrations,
13 or both, as appropriate, is not entitled to protection from public disclosure. A copy of the regulatory entity's
14 determination, along with any explanation as to why the administrator should not make a similar determination,
15 must be provided. Any information concerning prior requests for confidentiality that an owner, operator, or service
16 company determines to be relevant also must be provided to the administrator;

17 (d) how the identity of the ingredient, its concentrations, or both, as appropriate, is commercially valuable
18 to the owner, operator, or service company. A description of why the use of the ingredient, its concentrations, or
19 both, as appropriate, is not common knowledge in the industry, including any novel or unusual aspects about the
20 ingredient must be provided.

21 (e) the ease or difficulty with which the complete composition of the fracturing fluid, including the
22 ingredient identity, concentrations, or both, as appropriate, could be determined because of public disclosure.
23 The information must explain why a systems approach format would not adequately protect a proprietary interest.

24 (3) An owner, operator, or service company shall provide the administrator with a description of the
25 investigation completed by the owner, operator, or service company to meet the requirements of subsection (2).

26 (4) (a) Within 5 days of receiving the information provided in accordance with subsection (2), the
27 administrator shall determine whether an owner, operator, or service company must disclose the ingredient
28 identity, concentrations, or both, as appropriate.

29 (b) If the administrator determines disclosure of the ingredient identity, concentrations, or both, as
30 appropriate, is not required, the administrator shall:

1 (i) post the information required in accordance with [section 2] to the board of oil and gas conservation's
2 website or to a website hosted by a nonprofit organization dedicated to ground water protection with members
3 consisting of state ground water regulatory agencies, the interstate oil and gas compact commission, or both or
4 their successors and redact the specific information about the ingredient identity, concentrations, or both, as
5 appropriate, that the administrator has determined may be withheld from public disclosure in accordance with this
6 section;

7 (ii) make available to the public the chemical family name in lieu of a specific chemical compound name
8 and number for any ingredient, concentration, or both, as appropriate, that is being withheld; and

9 (iii) maintain the unredacted version of the information in the board of oil and gas conservation's
10 confidential files.

11 (5) If the administrator makes a determination in accordance with subsection (4)(b) that information must
12 be withheld from public disclosure, the owner, operator, or service company shall every 3 years update the
13 information required in accordance with subsection (2) to confirm that the ingredient identity, concentrations, or
14 both, as appropriate, has not been disclosed to the public in another forum.

15 (6) If an owner, operator, or service company disagrees with a determination by the administrator in
16 accordance with subsections (1) through (5) that certain material will not be maintained as confidential, the owner,
17 operator, or service company may file a declaratory judgment action in a court of competent jurisdiction to
18 establish the existence of a trade secret if the owner, operator, or service company wishes the information to
19 enjoy confidential status. The board must be served in the action and may intervene as a party. Information
20 submitted to the board or administrator by an owner, operator, or service company and contested in accordance
21 with this subsection may only be publicly disclosed after a determination is made by a court of competent
22 jurisdiction. Information submitted in accordance with [section 2] must be treated in accordance with [sections
23 1 and 2] and this section.

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25 **NEW SECTION. Section 4. Board to amend rules.** The board of oil and gas conservation shall amend
26 ARM 36.22.608, 36.22.1015, and 36.22.1016 as needed to comply with the requirements of [sections 1 through
27 3].

28
29 **Section 5.** Section 82-11-117, MCA, is amended to read:
30 **"82-11-117. Confidentiality of records.** (1) Any Except as provided in subsection (4), any information

1 that is furnished to the board or the board's staff or that is obtained by either of them is a matter of public record
 2 and open to public use. ~~However, any~~ Except as provided in subsection (4), information unique to the owner or
 3 operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be
 4 maintained as confidential if so determined by the board.

5 (2) If an owner, ~~or operator, or service company~~ disagrees with a determination by the board in
 6 accordance with this section or by the administrator in accordance with [sections 1 through 3] that certain material
 7 will not be maintained as confidential, the owner, ~~or operator, or service company~~ may file a declaratory judgment
 8 action in a court of competent jurisdiction to establish the existence of a trade secret if the owner, ~~or operator,~~
 9 or service company wishes the information to enjoy confidential status. The ~~department board~~ must be served
 10 in the action and may intervene as a party. Information submitted to the board or administrator by an owner,
 11 operator, or service company and contested in accordance with this subsection may only be publicly disclosed
 12 after a determination is made by a court of competent jurisdiction.

13 (3) Any information not intended to be public when submitted to the board or the board's staff must be
 14 submitted in writing and clearly marked as confidential.

15 (4) Information submitted in accordance with [section 2] must be treated in accordance with [sections 1
 16 through 3].

17 ~~(4)(5)~~ (5) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other
 18 substance injected or discharged into state waters under this chapter or [sections 1 through 3] may not be
 19 considered confidential.

20 ~~(5)(6)~~ (6) The board may use any information in compiling or publishing analyses or summaries relating to
 21 water pollution if the analyses or summaries do not identify the owner or operator or reveal any information that
 22 is otherwise made confidential by this section."

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 24 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified
 25 as an integral part of Title 82, chapter 10, part 1, and the provisions of Title 82, chapter 10, part 1, apply to
 26 [sections 1 through 3].

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 28 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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