

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**To:** Sidra Aghababian and Jessica Arhontoulis

**From:** Legislative Council Staff and Office of Legislative Legal Services

**Date:** March 27, 2026

**Subject:** Proposed Initiative Measure 2025-2026 #313, Concerning Liability for Oil and Gas Operations

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Legislative Council Staff and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments and questions to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council Staff and the Office of Legislative Legal Services is to provide comments and questions intended to aid designated representatives, and the proponents they represent, in determining the language of their proposal and to avail the public of the contents of the proposal. Our first objective is to be sure we understand your intended purposes of the proposal. We hope that the comments and questions in this memorandum provide a basis for discussion and understanding of the proposal. Discussion between designated representatives or their legal representatives and employees of the Legislative Council Staff and the Office of Legislative Legal Services is encouraged during review and comment meetings, but comments or discussion from anyone else is not permitted.

This proposed initiative 2025-2026 #313 was submitted by the same designated representatives as a part of a group of related proposed initiatives, including proposed initiatives 2025-2026 #310, #311, and #312. The comments and questions raised in this memorandum do not include comments and questions that were addressed in the memoranda for proposed initiatives 2025-2026 #310, #311, and #312, except as necessary to fully understand proposed initiative 2025-2026 #313. Comments and questions

addressed in those memoranda may also be relevant, and those questions and comments are considered part of this memorandum.

## **Purpose**

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be to require an operator, owner, or producer to be held strictly liable for any damages, including personal injury, property damage, and environmental harm, resulting from oil and gas operations.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado Constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The definitions in section 34-60-103, C.R.S., apply to all of article 60 of title 34, C.R.S., and thus would apply to section 34-60-114.1 of the proposed initiative. Therefore, the proponents should consider removing the definitions in subsections (3)(a) to (3)(d) of the proposed initiative.
3. Section 34-60-114.1 (3)(e) of the proposed initiative provides a definition for “strict liability.”
  - a. Section 18-1-502, C.R.S., states that “if an offense or some material element thereof does not require a culpable mental state on the part of the actor, the offense is one of ‘strict liability.’” There is no other definition for “strict liability” in current Colorado law. To avoid confusion, the proponents should consider removing the definition in subsection (3)(e) or changing the definition to directly reference section 18-1-502, C.R.S.
  - b. Subsection (4) of the proposed initiative holds operators, owners, and producers “strictly liable” for any damages resulting from oil and gas operations. The proponents should consider changing subsection (3)(e) of the proposed initiative to state “‘Strict liability’ or ‘strictly liable’ means...” to provide added clarity for the proposed initiative.

4. Section 34-60-114.1 (4)(b) of the proposed initiative states that “Strict liability under this section applies regardless of whether the operator, owner, or producer exercised reasonable care and adhered to industry best practices.” Exercise of reasonable care and adherence to industry best practices are components of negligence-based liability. The definition of “strict liability” in subsection (3)(e) of the proposed initiative states “liability without regard to...negligence.” The language in subsection (4)(b) is redundant with the definition in subsection (3)(e) and with the definition of “strict liability” in section 18-1-502, C.R.S. To avoid confusion, the proponents should consider removing subsection (4)(b) from the proposed initiative.
5. The language of the proposed initiative imposes strict liability on operators, owners, or producers for “any damages...resulting from oil and gas operations.” Without further clarification, this language could be interpreted to include oil and gas operations that operators, owners, or producers never participated in or profited from at any point. Is that the proponents’ intent or is the proponents’ intent to only impose strict liability on operators, owners, and producers of the oil and gas operations that resulted in the damages? If the latter, the proponents may consider clarifying this in the language of the proposed initiative.
6. In the event that there are damages resulting from oil and gas operations and there are multiple operators, producers, or owners involved, how do the proponents intend for liability to be allocated if there is no fault determination?
7. Article II, section 11 of the Colorado Constitution states that “No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.”
  - a. Do the proponents intend for the standard of liability in the proposed initiative to only apply to owners, operators, and producers for damages that occur on or after the effective date of the proposed initiative? If so, the proponents should consider adding an applicability clause to the proposed initiative that states that the proposed initiative only applies to conduct that occurs on or after the effective date of proposed section 34-60-114.1. An example of an applicability clause is below:

**SECTION 2. Applicability.** This measure applies to conduct occurring on or after the effective date of this measure.

- b. If the intent is for strict liability to apply to owners, operators, and producers for damages for conduct that occurred before the effective date of the proposed initiative, this raises constitutional concerns. The Colorado Supreme Court has held that a law violates article II, section 11 if it creates a new obligation or imposes a new duty. It is possible that the proposed initiative could be found to violate article II, section 11 since it potentially creates a new obligation or imposes a new duty on owners, operators, and producers. In addition, in *Aurora Public Schools v. A.S.*, 2023 CO 39, the Colorado Supreme Court held that there is no public policy exception to article II, section 11.
- c. It is possible that the proposed initiative could be found to impair existing contracts concerning liability and indemnity between past and current owners, operators, and producers. The proponents could address this constitutional concern by including an applicability clause in the proposed initiative that states “This measure applies to contracts entered into on or after the effective date of this measure.”

## **Technical Comments**

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the designated representatives so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as follows:

Standard practice and language for a short title for a section is as follows:

The short title of this section is the “Colorado Oil and Gas Operations Public Health and Safety Act”.