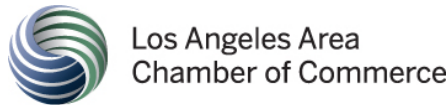


## SB 556 OIL AND GAS WELLS: HEALTH PROTECTION ZONES: CIVIL LIABILITY



May 10, 2023

TO: Members, Senate Appropriations Committee

FROM: Brady Van Engelen, Policy Advocate 

**SUBJECT: SB 556 OIL AND GAS WELLS: HEALTH PROTECTION ZONES: CIVIL LIABILITY  
OPPOSE – AS AMENDED MAY 1, 2023**

The California Chamber of Commerce must respectfully **OPPOSE SB 556 (Gonzalez)** as amended on May 1, 2023. The bill would, after January 1, 2024, presume that every case of cancer, pre-term birth, or high-risk pregnancy, or respiratory ailment within 3,200 feet of a wellhead in California was caused by that wellhead, and make an operator, or owner of an oil or gas production facility or well, jointly and severally liable for the condition. **SB 556** sets a disturbing precedent for the business community – that you can be liable for health conditions that have no connection to your activities, and be required to prove you were not the cause. This bill goes far beyond discouraging investment in California's infrastructure – we view it as a de facto ban by creating impossible liability for any owners, operators or Board members related to oil wells.

**SB 556 creates incomprehensible liability ... without requiring any proof that a well caused harm.**

Substantively, **SB 556** provides that any case of the following ailments are attributable to an oil well owner or operator if the individual resided within a 3,200-foot radius of a well for 24 months:

1. respiratory ailment in a senior or child;
2. pre-term birth or high-risk pregnancy suffered by a pregnant person; and
3. a person's cancer diagnoses

The scale of **SB 556's** presumption is hard to comprehend. Consider just the scope of the illnesses covered. Every case of cancer developed in a covered area – even types of cancer with no comprehensible connection to an oil well, such as skin cancer or bowel cancer or breast cancer - is presumed to be caused by the operator. Every premature baby – even older mothers<sup>1</sup> or those using narcotics<sup>2</sup> – are presumed to be caused by the well operator or owner. Every respiratory illness in minors or seniors – even if the individual smoked or vaped chronically – is presumed to be caused by the operator or the owner.

This presumption means that any covered individual may sue *any* nearby operator for their entire medical damages without proving causation. Instead, **SB 556** places the burden entirely on the operator to disprove causation. This means that, in each case, the operator will need to pursue invasive and exhaustive discovery on every aspect of the individual's life to identify the true causes of their illness. These litigation costs will be in the hundreds of thousands – or millions – for each case .... even if the operator is ultimately successful.

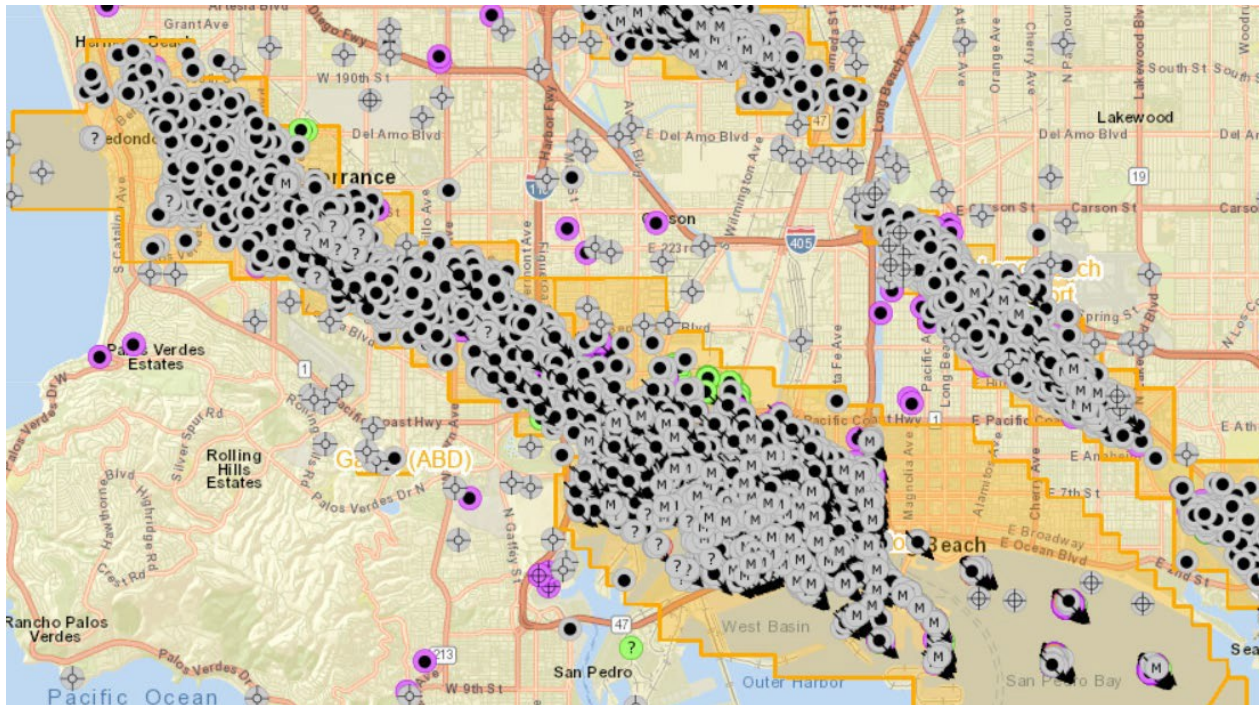
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<sup>1</sup> Older maternal age is associated with increased pre-term birth. See Fuchs F, Monet B, Ducruet T, Chaillet N, Audibert F. Effect of maternal age on the risk of preterm birth: A large cohort study. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5791955/>

<sup>2</sup> Opioid use is correlated with pre-term birth and other negative consequences according to the CDC. See <https://www.cdc.gov/pregnancy/opioids/basics.html>.

Moreover, because the liability is joint and several, it does not matter whether the particular operator was the largest or healthiest or safest well in the area ... they can still be liable for 100% of the plaintiff's alleged damages.

For illustrative purposes, the graphic below depicts the volume of wells that extend from Redondo Beach to Long Beach in Los Angeles County. And, this represents just a fraction of the total volume of wells in California's inventory. **SB 556** would allow for any person that lives within the area depicted below, or within the 3,200 foot radius of a well that has any type of cancer, any type of a respiratory disease, any type of an early birth, and any at risk pregnancy to take legal action against the owner or operator. And, puts the burden of proof on the owner or operator.



**SB 556 creates an impossible standard to for defendants to overcome its presumption.**

**SB 556** provides two methods of overcoming its presumption, but both are written to be impossible to meet – making it impossible to defend against.

First, the operator can prove that it had the “best available technology and remediation efforts proven to prevent respiratory ailments ... pre-term births and high-risk pregnancies ... and cancer...”, and that this technology operated “without interruption and at full capacity for the entire [2-year period the individual lived in the 3,200 foot zone].” Notably, is unclear what technology would even meet the compliance requirements of this bill. The bill does not specify the relevant technology beyond “the best available technology ... proven to prevent” the listed conditions. What technology is “proven” to prevent all types of cancer? What technology is “proven” to prevent premature birth? In addition, even if such technology could be identified, if the well-owner is not constantly updating its equipment – or if those updates generate even a short pause in effectiveness – then liability is waived. For example – if an operator identifies the “best available technology” that would meet the terms of this bill and has a 10-year life cycle and spends \$500 million installing it ... a slightly better technology being released a year later would void his defense. Simply put - this is a vague and impossible to meet standard.

Second, an operator can demonstrate that the “oil or gas production facility or well with a wellhead was not, in whole or in part, the cause of the [condition].” Here as well, the burden on the defendant is impossible. How can someone prove that their conduct was not even “in part” the cause of a medical condition which

even doctors cannot precisely identify the cause of? For example – if a 30-year smoker was diagnosed with lung cancer, how could the operator prove that its well was not any part of the cause of that condition? Or if a pair of twins is born prematurely, how could a defendant prove that it was their nature as twins (and not the well) which caused their premature birth? These events are not as simple as a gunshot; there is no simple cause and effect. Because the presumption is weighted towards liability, and the defendant is given an impossible factual burden, this affirmative defense is also a myth.

**SB 556 does nothing to reduce California's oil and gas energy demands – it simply creates impossible liability for all operators.**

According to the California Energy Commission, California is relying more on foreign oil than at any time since the agency started tracking it in 1982. In 2018, California imported 370 million barrels, or 57% of the state's crude oil supply, from foreign nations like Saudi Arabia (37%), Colombia (13%), and Iraq (8%). Compare this rate to 1992, when California imported just 33 million barrels, or just 5% of its supply.<sup>3</sup>

Unfortunately, **SB 556** lacks the pragmatism to acknowledge that demand for fossil fuels here in California still exists and will continue to do so into the near future. Given California's ambitious climate policy objectives combined with strong workforce standards, measures like **SB 556** that push production out of California must answer the question: if not here, then where? **SB 556**, will undoubtedly stymie any future investments in California's existing inventory of wells – including upgrading any legacy wells to more modern standards to ensure groundwater protection and air quality standards are met – because any potential new owner or operator will be rightly terrified of facing extreme liability without any proof of wrongful conduct.

For all of these reasons, we must **OPPOSE SB 556 (GONZALEZ)**.

Sincerely,

Brady Van Engelen  
Policy Advocate  
California Chamber of Commerce

On behalf of

Associated Builders and Contractors of California, Jason Pengel  
California Alliance of Small Business Associations, Bill La Mar  
California Chamber of Commerce, Brady Van Engelen  
California Delivery Association (CDA), Mike Williams  
California Independent Petroleum Association (CIPA), Sean Wallentine  
California Manufacturers & Technology Association, Robert Spiegel  
Carson Chamber of Commerce, Barry Waite  
Central Valley Business Federation, Melissa Traugh  
Civil Justice Association of California, Jaime Huff  
Coastal Energy Alliance, Chris Collier  
Fontana Chamber of Commerce, Phil Cothran  
Greater Bakersfield Chamber of Commerce, Hillary Haenes  
Greater Coachella Valley Chamber of Commerce, Chris Collier  
Greater Conejo Valley Chamber of Commerce, Adam Haverstock  
Imperial Valley Regional Chamber of Commerce, Kayla Kirby  
Industrial Association of Contra Costa, Mark Hughes  
Inland Empire Economic Partnership, Benjamin Lopez  
International Warehouse Logistics Association (IWLA), Mike Williams  
Kern Citizens for Energy, Paul Diero  
Long Beach Area Chamber of Commerce, Kate Lomas Gutierrez



Los Angeles Chamber of Commerce, Patricia Torres Bruno  
Los Angeles County Business Federation, Sarah Wiltfong  
Los Angeles Latino Chamber of Commerce, Olivia Rios  
Mariposa Chamber of Commerce, Steve Aitchison  
Mission Viejo Chamber of Commerce, Dave Benson  
Murrieta/Wildomar Chamber of Commerce, Patrick Ellis  
Nisei Farmers League, Manuel Cunha  
Orange County Business Council, Connor Medina  
Palm Desert Area Chamber of Commerce, Patrick Klein  
Paso Robles Chamber of Commerce, Gina Fitzpatrick  
Santa Barbara County TaxPayers Association, Roy Reed  
Santa Maria Valley Chamber of Commerce, Glenn Morris  
Simi Valley Chamber of Commerce, Jim Vigdor  
Southwest California Legislative Council, Chris Collier  
Templeton Chamber of Commerce, Gina Fitzpatrick  
Tri County Chamber Alliance, Jim Dantona  
Ventura County Coalition of Labor Agriculture and Business, Louise Lampara  
Walnut Creek Chamber of Commerce, Bob Linscheid  
West Ventura County Business Alliance, Nancy Lindholm  
Western Independent Refiners Association, Craig Moyer  
Yorba Linda Chamber of Commerce, Alex Hernandez

cc: Legislative Affairs, Office of the Governor  
Arianna Medel, Office of Senator Gonzalez  
Matthew Flemming, Senate Appropriations Committee  
Morgan Branch, Senate Republican Caucus

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<sup>3</sup> [https://ww2.energy.ca.gov/almanac/petroleum\\_data/statistics/crude\\_oil\\_receipts.html](https://ww2.energy.ca.gov/almanac/petroleum_data/statistics/crude_oil_receipts.html)