

CHAPTER 60

HEALTH AND ENVIRONMENT

HOUSE BILL 16-1046

BY REPRESENTATIVE(S) Kraft-Tharp, Hamner, Mitsch Bush, Pettersen, Rosenthal, Ryden, Singer, Hulinghorst, Lontine, Vigil; also SENATOR(S) Baumgardner, Heath, Jahn, Kefalas, Lambert, Martinez Humenik, Merrifield, Newell, Roberts, Scheffel, Scott, Tate, Todd, Woods, Cadman.

AN ACT**CONCERNING THE RESPONSE TO HAZARDOUS SUBSTANCE INCIDENTS UNDER DESIGNATED EMERGENCY RESPONSE AUTHORITY RESPONSIBILITY.**

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

SECTION 1. In Colorado Revised Statutes, 29-22-102, **amend** (1), (2), and (3) as follows:

29-22-102. Hazardous substance incidents - response authorities - designation - definition. (1) It is the purpose of this section to provide for the designation of emergency response authorities for hazardous substance incidents. Every emergency response authority designated in or pursuant to this section ~~shall~~ **be** is responsible for providing and maintaining the capability for emergency response to a hazardous substance incident occurring within its jurisdiction. An emergency response authority may provide and maintain the capability for such response directly or through mutual aid or other agreements, INCLUDING AN AGREEMENT WITH A PRIVATE ENTITY TO SUPPORT THE EMERGENCY RESPONSE AUTHORITY, RESPONDING FIRE DEPARTMENTS, OR OTHER GOVERNMENT AGENCIES. Subject to the provisions of local or regional response agreements for hazardous substance incidents, the first emergency response authority, or its public agency designee through mutual aid or otherwise, to arrive at the scene of the incident, regardless of whether the incident occurs within its jurisdiction, ~~shall be~~ is responsible for the emergency response as incident commander until such time as the emergency response authority that has jurisdiction over the incident site has arrived, after which unified command shall be followed until the emergency response has concluded. As used in this section, "emergency response to a hazardous substance incident" means taking the initial emergency action necessary to minimize the effects OR THREAT OF ADVERSE EFFECTS of a hazardous substance

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

incident ON HUMAN HEALTH OR THE ENVIRONMENT.

(2) If a hazardous substance incident occurs on private property and is otherwise reportable to any federal, state, or local agency, the owner of the property or person or entity operating on the property shall promptly report the incident to and coordinate a response with the appropriate emergency response authority designated in or pursuant to this section. If the owner or operator does not undertake or coordinate an emergency response or if, in the judgment of the designated emergency response authority, there exists an imminent danger to ~~the public~~ HUMAN health ~~and safety~~ OR THE ENVIRONMENT beyond such property, the designated emergency response authority may undertake the emergency response to such hazardous substance incident, as provided in this section. Nothing in this subsection (2) shall be construed to prohibit the owner of private property or a person or entity operating on such property from undertaking the emergency response to a hazardous substance incident occurring on the property.

(3) (a) The governing body of every town, city, and city and county shall designate by ordinance or resolution an emergency response authority or authorities for hazardous substance incidents occurring within the corporate limits of such town, city, and city and county. THE GOVERNING BODY SHALL ANNUALLY REPORT THE DESIGNATION TO THE HAZARDOUS MATERIALS SECTION OF THE COLORADO STATE PATROL. Unless otherwise designated by ordinance or resolution, the fire authority ~~having responsibility~~ RESPONSIBLE for the AREA WITHIN THE corporate limits of such town, city, or city and county ~~shall be~~ IS the designated emergency response authority.

(b) The board of county commissioners of every county in the state shall designate by ordinance or resolution the emergency response authority or authorities for hazardous substance incidents occurring within the unincorporated area of the county. THE BOARD SHALL ANNUALLY REPORT THE DESIGNATION TO THE HAZARDOUS MATERIALS SECTION OF THE COLORADO STATE PATROL. Unless otherwise designated by ordinance or resolution, the county sheriff ~~having responsibility~~ RESPONSIBLE for the unincorporated area of the county ~~shall be~~ IS the designated emergency response authority.

(c) (Deleted by amendment, L. 99, p. 432, § 1, effective April 30, 1999.)

SECTION 2. In Colorado Revised Statutes, 29-22-103, **amend** (3) as follows:

29-22-103. Emergency response authority may request assistance. (3) Any municipal or county governing body, ~~any~~ emergency response authority, ~~any~~ private entity, the Colorado state patrol, or the department of public safety may enter into mutual aid or other agreements for the purpose of ~~enhancing the~~ PROVIDING OR CONDUCTING THE EMERGENCY response to hazardous substance incidents. Such agreements may include ~~but are not limited to,~~ procedures for utilizing equipment, personnel, and technical assistance.

SECTION 3. In Colorado Revised Statutes, 29-22-104, **amend** (1) and (3) (b) as follows:

29-22-104. Right to claim reimbursement - rules. (1) (a) A public entity,

political subdivision of the state, ~~or~~ unit of local government, OR PRIVATE ENTITY is hereby given the right to claim reimbursement from the person or persons who have care, custody, and control of the hazardous substance involved at the time of the incident for the reasonable, necessary, and documented costs resulting from action taken to remove, contain, or otherwise mitigate the effects of ~~such~~ THE incident. A PRIVATE ENTITY THAT IS NEITHER A RESPONSIBLE PARTY NOR OTHERWISE COMPENSATED MAY CLAIM ITS COSTS ONLY WHEN IT PROVIDED SERVICES UNDER AN AGREEMENT WITH THE DESIGNATED EMERGENCY RESPONSE AUTHORITY OR FIRE DEPARTMENT PURSUANT TO SECTION 29-22-102 OR 29-22-103 THAT PROVIDES THAT THE PRIVATE ENTITY WILL NOT BE PAID BY THE DESIGNATED EMERGENCY RESPONSE AUTHORITY OR FIRE DEPARTMENT. A PRIVATE ENTITY MAY ASSIST A FIRE DEPARTMENT OR DESIGNATED EMERGENCY RESPONSE AUTHORITY IN PURSUING SUCH A CLAIM UNDER SUBSECTION (3) OF THIS SECTION; HOWEVER, THE FIRE DEPARTMENT OR DESIGNATED EMERGENCY RESPONSE AUTHORITY MUST APPROVE THE CLAIM. When the action to remove, contain, or otherwise mitigate the effects of such an incident also involves extinguishing a fire, the costs may only include the extraordinary expenses related to the hazardous substance and not any expense related to extinguishing the fire. If the property on which the hazardous substance incident occurred lies within an unincorporated area of a county and not otherwise within a fire protection district, then the costs may include any expense related to the hazardous substance incident or to extinguishing the fire. If any such person is the owner of property upon which the hazardous substance incident occurs, collection of such costs may be made pursuant to section 30-10-513.5 (1), C.R.S.

(b) RESPONSE COSTS RECOVERABLE UNDER THIS SECTION INCLUDE THE VALUE OF REASONABLE EMERGENCY RESPONSE SERVICES PROVIDED BY A PRIVATE ENTITY UNDER AN AGREEMENT FOR ASSISTANCE WITH A FIRE DEPARTMENT OR THE DESIGNATED EMERGENCY RESPONSE AUTHORITY REGARDLESS OF WHETHER THE PRIVATE ENTITY HAS BEEN PAID BY THE FIRE DEPARTMENT OR DESIGNATED EMERGENCY RESPONSE AUTHORITY.

(3) (b) Any collections or recovery made by the emergency response authority shall be distributed on a pro rata basis among the agencies ~~which~~ AND PRIVATE ENTITIES THAT rendered assistance.

SECTION 4. In Colorado Revised Statutes, 29-22-107, **amend** (2) (d) introductory portion and (2) (d) (II) as follows:

29-22-107. Legislative finding - hazardous substance listing required.
(2) (d) The requirements of this subsection (2) ~~shall~~ DO not apply to:

(II) Hazardous substances ~~located on residential, personal, or agricultural property~~ IN TYPICAL CONSUMER-SIZED PACKAGING OR WHEN BEING STORED OR USED BY A FARMER OR RANCHER AT A FACILITY USED IN ACTIVE AGRICULTURAL PRODUCTION;

SECTION 5. Applicability. This act applies to conduct occurring on or after the effective date of this act.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 31, 2016