

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 16-0474.01 Thomas Morris x4218

HOUSE BILL 16-1046

HOUSE SPONSORSHIP

Kraft-Tharp,

SENATE SPONSORSHIP

Baumgardner,

House Committees
Local Government

Senate Committees
Local Government

A BILL FOR AN ACT

101 CONCERNING THE RESPONSE TO HAZARDOUS SUBSTANCE INCIDENTS
102 UNDER DESIGNATED EMERGENCY RESPONSE AUTHORITY
103 RESPONSIBILITY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Under current law, each county and municipality must designate an emergency response authority that is responsible for responding to releases of hazardous substances within that jurisdiction. The bill specifies that:

! The local government must annually report the designation

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Amended 2nd Reading
March 9, 2016

HOUSE
3rd Reading Unamended
February 2, 2016

HOUSE
2nd Reading Unamended
February 1, 2016

to the hazardous materials section of the Colorado state patrol; the appropriate response is narrowed to include threats of adverse effects on human health or the environment; and emergency response authorities may provide their response capability through an agreement with a private entity (**section 1** of the bill);

- ! Private entities that are neither a responsible party nor otherwise compensated may claim reimbursement of specified response costs when they provide services under an agreement with the designated emergency response authority or fire department (**section 3**); and
- ! The obligation to report the presence of a hazardous substance on one's property does not apply if the substance is 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 4**).

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

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

4 **29-22-102. Hazardous substance incidents - response**
5 **authorities - designation - definition.** (1) It is the purpose of this
6 section to provide for the designation of emergency response authorities
7 for hazardous substance incidents. Every emergency response authority
8 designated in or pursuant to this section ~~shall be~~ IS responsible for
9 providing and maintaining the capability for emergency response to a
10 hazardous substance incident occurring within its jurisdiction. An
11 emergency response authority may provide and maintain the capability for
12 such response directly or through mutual aid or other agreements,
13 INCLUDING AN AGREEMENT WITH A PRIVATE ENTITY TO SUPPORT THE
14 EMERGENCY RESPONSE AUTHORITY, RESPONDING FIRE DEPARTMENTS, OR
15 OTHER GOVERNMENT AGENCIES. Subject to the provisions of local or
16 regional response agreements for hazardous substance incidents, the first

1 emergency response authority, or its public agency designee through
2 mutual aid or otherwise, to arrive at the scene of the incident, regardless
3 of whether the incident occurs within its jurisdiction, ~~shall be~~ IS
4 responsible for the emergency response as incident commander until such
5 time as the emergency response authority that has jurisdiction over the
6 incident site has arrived, after which unified command shall be followed
7 until the emergency response has concluded. As used in this section,
8 "emergency response to a hazardous substance incident" means taking the
9 initial emergency action necessary to minimize the effects OR THREAT OF
10 ADVERSE EFFECTS of a hazardous substance incident ON HUMAN HEALTH
11 OR THE ENVIRONMENT.

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

27 (3) (a) The governing body of every town, city, and city and

1 county shall designate by ordinance or resolution an emergency response
2 authority or authorities for hazardous substance incidents occurring
3 within the corporate limits of such town, city, and city and county. THE
4 GOVERNING BODY SHALL ANNUALLY REPORT THE DESIGNATION TO THE
5 HAZARDOUS MATERIALS SECTION OF THE COLORADO STATE PATROL.
6 Unless otherwise designated by ordinance or resolution, the fire authority
7 ~~having responsibility~~ RESPONSIBLE for the AREA WITHIN THE corporate
8 limits of such town, city, or city and county ~~shall be~~ IS the designated
9 emergency response authority.

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

19 (c) (Deleted by amendment, L. 99, p. 432, § 1, effective April 30,
20 1999.)

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

23 **29-22-103. Emergency response authority may request**
24 **assistance.** (3) Any municipal or county governing body, ~~any~~ emergency
25 response authority, ~~any~~ private entity, the Colorado state patrol, or the
26 department of public safety may enter into mutual aid or other agreements
27 for the purpose of ~~enhancing the~~ PROVIDING OR CONDUCTING THE

1 EMERGENCY response to hazardous substance incidents. Such agreements
2 may include ~~but are not limited to~~, procedures for utilizing equipment,
3 personnel, and technical assistance.

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

6 **29-22-104. Right to claim reimbursement - rules.** (1) (a) A
7 public entity, political subdivision of the state, ~~or~~ unit of local
8 government, OR PRIVATE ENTITY is hereby given the right to claim
9 reimbursement from the person or persons who have care, custody, and
10 control of the hazardous substance involved at the time of the incident for
11 the reasonable, necessary, and documented costs resulting from action
12 taken to remove, contain, or otherwise mitigate the effects of ~~such~~ THE
13 incident. A PRIVATE ENTITY THAT IS NEITHER A RESPONSIBLE PARTY NOR
14 OTHERWISE COMPENSATED MAY CLAIM ITS COSTS ONLY WHEN IT PROVIDED
15 SERVICES UNDER AN AGREEMENT WITH THE DESIGNATED EMERGENCY
16 RESPONSE AUTHORITY OR FIRE DEPARTMENT PURSUANT TO SECTION
17 29-22-102 OR 29-22-103 THAT PROVIDES THAT THE PRIVATE ENTITY WILL
18 NOT BE PAID BY THE DESIGNATED EMERGENCY RESPONSE AUTHORITY OR
19 FIRE DEPARTMENT. A PRIVATE ENTITY MAY ASSIST A FIRE DEPARTMENT OR
20 DESIGNATED EMERGENCY RESPONSE AUTHORITY IN PURSUING SUCH A
21 CLAIM UNDER SUBSECTION (3) OF THIS SECTION; HOWEVER, THE FIRE
22 DEPARTMENT OR DESIGNATED EMERGENCY RESPONSE AUTHORITY MUST
23 APPROVE THE CLAIM. When the action to remove, contain, or otherwise
24 mitigate the effects of such an incident also involves extinguishing a fire,
25 the costs may only include the extraordinary expenses related to the
26 hazardous substance and not any expense related to extinguishing the fire.
27 If the property on which the hazardous substance incident occurred lies

1 within an unincorporated area of a county and not otherwise within a fire
2 protection district, then the costs may include any expense related to the
3 hazardous substance incident or to extinguishing the fire. If any such
4 person is the owner of property upon which the hazardous substance
5 incident occurs, collection of such costs may be made pursuant to section
6 30-10-513.5 (1), C.R.S.

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

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

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

18 **29-22-107. Legislative finding - hazardous substance listing**
19 **required.** (2) (d) The requirements of this subsection (2) ~~shall~~ DO not
20 apply to:

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

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

27 **SECTION 6. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.