

CHAPTER 314

GOVERNMENT - STATE

SENATE BILL 04-236

BY SENATOR(S) Anderson, Entz, Kester, and Taylor;
also REPRESENTATIVE(S) Miller, Butcher, Coleman, Hoppe, McFadyen, and McGihon.

AN ACT

**CONCERNING THE TRANSFORMATION OF THE OFFICE OF EMERGENCY MANAGEMENT INTO A DIVISION
OF THE DEPARTMENT OF LOCAL AFFAIRS.**

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

SECTION 1. 24-1-125 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-1-125. Department of local affairs - creation. (2) The department of local affairs shall consist of the following divisions:

(m) THE DIVISION OF EMERGENCY MANAGEMENT CREATED BY PART 21 OF ARTICLE 32 OF THIS TITLE, THE HEAD OF WHICH SHALL BE THE DIRECTOR OF THE DIVISION OF EMERGENCY MANAGEMENT. THE DIVISION OF EMERGENCY MANAGEMENT SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT AS IF THE SAME WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER.

SECTION 2. 24-1-125 (7), Colorado Revised Statutes, is amended to read:

24-1-125. Department of local affairs - creation. (7) (a) ~~The office of emergency management, created by part 21 of article 32 of this title, shall constitute a part of the division of local government in the department of local affairs and shall exercise its powers and perform its duties and functions under the department as if the same were transferred to such department by a **type 2** transfer.~~

(b) The division of disaster emergency services in the department of public safety, created by section 24-1-128.6 (2) (e), prior to its repeal in 1992, and its powers, duties, and functions are transferred by a **type 3** transfer to the department of local

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

affairs and allocated to the ~~office~~ DIVISION of emergency management ~~in the division of local government~~, pursuant to the provisions of this article, and the division of disaster emergency services in the department of public safety is abolished.

SECTION 3. 24-32-113 (1), (3), and (4), Colorado Revised Statutes, are amended to read:

24-32-113. Transfer of functions and property - contracts - continuation of regulations. (1) The ~~office~~ DIVISION of emergency management, ~~in the division of local government~~, as created by section 24-32-2105, shall on and after March 12, 1992, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the division of disaster emergency services in the department of public safety prior to March 12, 1992, concerning the duties and functions transferred to the department of local affairs pursuant to the provisions of this article.

(3) Whenever the division of disaster emergency services in the department of public safety is referred to or designated by any contract or other document in connection with the duties and functions transferred to the department of local affairs pursuant to this article, such reference or designation shall be deemed to apply to the ~~office~~ DIVISION of emergency management ~~in the division of local government~~ pursuant to this article. All contracts entered into by the division of disaster emergency services in the department of public safety prior to March 12, 1992, in connection with the duties and functions transferred to the department of local affairs pursuant to this article are hereby validated, with the ~~office~~ DIVISION of emergency management created by this article succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to such contracts are hereby transferred and appropriated to the department of local affairs for allocation to the ~~office~~ DIVISION of emergency management for the payment of such obligations.

(4) Any rules and regulations of the division of disaster emergency services in the department of public safety prior to March 12, 1992, concerning the duties and functions transferred to the department of local affairs pursuant to the provisions of this article shall become the rules and regulations of the ~~office~~ DIVISION of emergency management ~~in the division of local government~~ on March 12, 1992. Such rules and regulations shall be deemed to be continuous.

SECTION 4. 24-32-2104 (3) (a), (4), and (8) (b) (I) (M), Colorado Revised Statutes, are amended to read:

24-32-2104. The governor and disaster emergencies. (3) (a) There is hereby created a governor's disaster emergency council, referred to in this part 21 as the "council", consisting of not less than six nor more than nine members. The attorney general, the adjutant general, and the executive directors of the following departments shall be members: ~~Administration~~ PERSONNEL, transportation, public safety, and natural resources. The additional members, if any, shall be appointed by the governor from among the executive directors of the other departments. The governor shall serve as ~~chairman~~ CHAIRPERSON of the council, and a majority shall constitute a quorum. The council shall meet at the call of the governor and shall advise the governor and the director of the ~~office~~ DIVISION of emergency management on all

matters pertaining to the declaration of disasters and the disaster response and recovery activities of the state government; except that nothing in the duties of the council shall be construed to limit the authority of the governor to act without the advice of the council when the situation calls for prompt and timely action when disaster threatens or exists.

(4) A disaster emergency shall be declared by executive order or proclamation of the governor if the governor finds a disaster has occurred or that this occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the governor finds that the threat of danger has passed or that the disaster has been dealt with to the extent that emergency conditions no longer exist and the governor terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than thirty days unless renewed by the governor. The general assembly, by joint resolution, may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection (4) shall indicate the nature of the disaster, the area threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, shall be promptly filed with the ~~office~~ DIVISION of emergency management, the secretary of state, and the county clerk and recorder and disaster agencies in the area to which it applies.

(8) (b) (I) State members of the committee shall include the following:

(M) The director of the ~~office~~ DIVISION of emergency management.

SECTION 5. 24-32-2105 (1), (3), (4), and (5) and the introductory portion to 24-32-2105 (6), Colorado Revised Statutes, are amended, and the said 24-32-2105 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-32-2105. Division of emergency management. (1) (a) There is hereby created in the ~~division of local government~~ DEPARTMENT OF LOCAL AFFAIRS the ~~office~~ DIVISION of emergency management, referred to in this part 21 as the "~~office~~" "DIVISION". Pursuant to section 13 of article XII of the state constitution, the executive director shall appoint a director, referred to in this part 21 as the "director", as head of the ~~office~~ DIVISION.

(b) The ~~office~~ DIVISION of emergency management and the office of the director shall exercise their powers and perform their duties and functions under the department of local affairs and the executive director as IF THE SAME WERE transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

(3) The ~~office~~ DIVISION shall take part in the development and revision of local and interjurisdictional disaster plans prepared under section 24-32-2107. To this end the ~~office~~ DIVISION shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. Such

personnel shall consult with political subdivisions and disaster agencies and shall make field examinations.

(4) In preparing and revising the state disaster plan, the ~~office~~ DIVISION may seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders.

(5) The state disaster plan or any part thereof may be incorporated in regulations of the ~~office~~ DIVISION or executive orders ~~which~~ THAT have the force and effect of law.

(6) The ~~office~~ DIVISION may do all things necessary for the implementation of this part 21, including but not limited to:

(7) WHENEVER THE OFFICE OF EMERGENCY MANAGEMENT IS REFERRED TO OR DESIGNATED BY ANY CONTRACT OR OTHER DOCUMENT, SUCH REFERENCE OR DESIGNATION SHALL BE DEEMED TO APPLY TO THE DIVISION OF EMERGENCY MANAGEMENT.

SECTION 6. 24-32-2202 (1) and (3), Colorado Revised Statutes, are amended to read:

24-32-2202. Definitions. As used in this part 22, unless the context otherwise requires:

(1) "Accredited local organization for civil defense" means a local organization for civil defense ~~which~~ THAT is certified by the ~~office~~ DIVISION of emergency management as conforming with the "Plan and Program for the Civil Defense of this State" prepared by the governor of Colorado or under the governor's direction. A local organization for civil defense remains accredited only while the certificate of the Colorado state civil defense agency is in effect and is not revoked.

(3) "Civil defense worker" means any natural person who is registered with the ~~office~~ DIVISION of emergency management or with a local organization for civil defense for the purpose of engaging in civil defense service pursuant to the provisions of this part 22 without pay or other consideration or is a physician, health care provider, public health worker, or emergency medical service provider who is ordered by the governor or a member of the disaster emergency forces of this state to provide specific medical or public health services during and related to an emergency epidemic and who complies with such an order without pay or other consideration.

SECTION 7. 24-32-2203, Colorado Revised Statutes, is amended to read:

24-32-2203. Compensation for injury limited. Except as provided in this part 22, a civil defense worker and such civil defense worker's dependents shall have no right to receive compensation from the state, from the ~~office~~ DIVISION of emergency management, from the local organization for civil defense with which such civil defense worker is registered, or from the county or city which has empowered the local organization for civil defense to register such civil defense worker and direct such civil defense worker's activities for an injury arising out of and occurring in the course of such civil defense worker's activities as a civil defense worker.

SECTION 8. 24-32-2204, Colorado Revised Statutes, is amended to read:

24-32-2204. Compensation provided is exclusive. Compensation provided by this part 22, as limited by the provisions of this part 22, is the exclusive remedy of a civil defense worker or such civil defense worker's dependents for injury or death arising out of and in the course of such civil defense worker's activities as a civil defense worker as against the state, the ~~office~~ DIVISION of emergency management, the local organization for civil defense with which such civil defense worker is registered, and the county or city ~~which~~ THAT has empowered the local organization for civil defense to register such civil defense worker and direct such civil defense worker's activities. Liability for the compensation provided by this part 22, as limited by the provisions of this part 22, is in lieu of any other liability whatsoever to a civil defense worker or such civil defense worker's dependents or any other person on the part of the state, the ~~office~~ DIVISION of emergency management, the local organization for civil defense with which the civil defense worker is registered, and the county or city ~~which~~ THAT has empowered the local organization for civil defense to register such civil defense worker and direct such civil defense worker's activities for injury or death arising out of and in the course of such civil defense worker's activities as a civil defense worker.

SECTION 9. 24-32-2209, Colorado Revised Statutes, is amended to read:

24-32-2209. Agreement for disposition of claims. The ~~office~~ DIVISION of emergency management and Pinnacol Assurance shall enter into an agreement requiring Pinnacol Assurance, as adjusting agent, to adjust and dispose of claims and furnish compensation to civil defense workers and their dependents. The agreement shall authorize Pinnacol Assurance to make all expenditures, including payments to claimants for compensation or for the adjustment or settlement of claims. Nothing in this part 22 shall be construed to mean that Pinnacol Assurance or its officers or agents have the final decision with respect to the compensability of any case or the amount of compensation or benefits due. Any civil defense worker or such civil defense worker's dependents shall have the same right to hearings before the division of labor in the department of labor and employment and its referees and to appeal from awards of said division and referees to the industrial claim appeals panel and to the courts as is provided in the hearing and review procedures of the "Workers' Compensation Act of Colorado" found in article 43 of title 8, C.R.S., subject to the limitations prescribed in this part 22.

SECTION 10. 24-32-2210, Colorado Revised Statutes, is amended to read:

24-32-2210. Reimbursement of fund. The agreement shall provide that Pinnacol Assurance shall be reimbursed for the expenditures made as adjusting agent and for the cost of services rendered, which reimbursement shall be made out of moneys appropriated for the purpose of furnishing compensation to civil defense workers. The reimbursement for cost of services rendered shall not exceed twelve and one-half percent of the total expenditures for medical and dental treatment and disability and death payments made by Pinnacol Assurance in the adjustment of claims arising under this part 22. The agreement shall provide for the setting up of bookkeeping reserves in order that provisions may be made for the reimbursement of Pinnacol Assurance and that liability for the payment or furnishing of compensation may be determined. The agreement shall also provide that Pinnacol Assurance shall be

notified promptly by the ~~office~~ DIVISION of emergency management when a local organization for civil defense is certified as an accredited local organization for civil defense and when the certification is revoked.

SECTION 11. 24-32-2212, Colorado Revised Statutes, is amended to read:

24-32-2212. Other provisions of agreement. The agreement may also contain any other provision not inconsistent with this part 22 deemed necessary by the ~~office~~ DIVISION of emergency management and Pinnacol Assurance for the furnishing of compensation to civil defense workers and their dependents in accordance with the provisions of this part 22 and the serving by Pinnacol Assurance as adjusting agent. The agreement may be modified by action of the ~~office~~ DIVISION of emergency management and Pinnacol Assurance.

SECTION 12. 24-32-2213, Colorado Revised Statutes, is amended to read:

24-32-2213. Power of recovery - use of recovered amounts. Pinnacol Assurance may, in its own name or in the name of the ~~office~~ DIVISION of emergency management, or both, do any and all things necessary to recover on behalf of the ~~office~~ DIVISION of emergency management any and all amounts that an employer or insurance carrier might recover under the provisions of section 8-41-203, C.R.S. All amounts so recovered shall be used for the furnishing of compensation benefits, and the agreement shall provide for the reimbursing of the Pinnacol Assurance fund for expenses incurred in recovering such amounts and the manner in which such amounts shall be applied to the furnishing of compensation.

SECTION 13. 24-32-2215, Colorado Revised Statutes, is amended to read:

24-32-2215. State medical aid denied - when. If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States government or any agent thereof furnishes medical, surgical, or hospital treatment or any combination thereof to an injured civil defense worker, such civil defense worker has no right to receive similar medical, surgical, or hospital treatment as provided in this part 22; except that Pinnacol Assurance, as adjusting agent of the ~~office~~ DIVISION of emergency management, may furnish medical, surgical, or hospital treatment as part of the compensation provided under the provisions of this part 22.

SECTION 14. 24-32-2216, Colorado Revised Statutes, is amended to read:

24-32-2216. Medical benefits as part of compensation. If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States government or any agent thereof will reimburse a civil defense worker or such civil defense worker's dependents for medical, surgical, or hospital treatment or any combination thereof furnished to such injured civil defense worker, the civil defense worker has no right to receive similar medical, surgical, or hospital treatment as provided in this part 22; except that Pinnacol Assurance, as adjusting agent of the ~~office~~ DIVISION of emergency management, may furnish medical, surgical, or hospital treatment as part of the compensation provided under the provisions of this part 22 and apply to the United States government or its agent for the reimbursement that will be made to the civil defense worker or such civil defense worker's dependents. As a condition to the furnishing of such medical, surgical, or hospital treatment, Pinnacol

Assurance shall require the civil defense worker and such civil defense worker's dependents to assign to the state of Colorado, for the purpose of reimbursing for any medical, surgical, or hospital treatment furnished or to be furnished by the state, any privilege or right the civil defense worker or such civil defense worker's dependents may have to reimbursement from the United States government or any agent thereof.

SECTION 15. 24-32-2218, Colorado Revised Statutes, is amended to read:

24-32-2218. Classes of workers - registration - duties. The ~~office~~ DIVISION of emergency management shall establish by rule and regulation various classes of civil defense workers and the scope of the duties of each class. The ~~office~~ DIVISION of emergency management shall also adopt rules and regulations prescribing the manner in which civil defense workers of each class are to be registered. All such rules and regulations shall be designed to facilitate the paying of workers' compensation.

SECTION 16. 24-32-2219, Colorado Revised Statutes, is amended to read:

24-32-2219. Accrediting local organization. Any local organization for civil defense ~~which~~ THAT both agrees to follow the rules and regulations established by the ~~office~~ DIVISION of emergency management pursuant to the provisions of this part 22 and substantially complies with such rules and regulations shall be certified by the ~~office~~ DIVISION of emergency management. Upon making the certification, not before, the local organization for civil defense becomes an accredited local organization for civil defense.

SECTION 17. 24-32-2220, Colorado Revised Statutes, is amended to read:

24-32-2220. Accredited status lost - when. If an accredited local organization for civil defense fails to comply with the rules and regulations of the ~~office~~ DIVISION of emergency management in any material degree, the ~~office~~ DIVISION of emergency management may revoke the certification, and upon the act of revocation the local organization for civil defense shall lose its accredited status. It may again become an accredited local organization for civil defense in the same manner as is provided for a local organization for civil defense ~~which~~ THAT has not had its certificate revoked.

SECTION 18. 24-32-2603 (1) (a), Colorado Revised Statutes, is amended to read:

24-32-2603. Colorado emergency planning commission - creation - duties. (1) (a) There is hereby created in the department of local affairs the Colorado emergency planning commission, which shall exercise its powers and perform its duties and functions under the department of local affairs as if the same were transferred to the department by a type 2 transfer; except that the commission shall have full authority to promulgate rules and regulations related to the administration of this part 26. The commission shall consist of twelve members. Five of the twelve members shall be the following representatives of state government or their designees: The director of the division of fire safety in the office of preparedness, security, and fire safety in the department of public safety, the director of the division of local government in the department of local affairs, the director of the ~~office~~

DIVISION of emergency management ~~in the division of local government~~ in the department of local affairs, who shall be a cochairperson, the director of the division in the department of public health and environment responsible for hazardous materials and waste management, who shall also be a cochairperson, and a representative of the Colorado state patrol in the department of public safety. The remaining seven members of the commission shall be appointed by the governor for two-year terms. Of those seven members, two shall represent local governments, two shall be from either public interest groups or community groups, one shall represent a local emergency planning committee, and two shall represent affected industries. The governor shall fill any vacancy by appointment.

SECTION 19. 34-23-103 (1) (d), Colorado Revised Statutes, is amended to read:

34-23-103. Mine rescue teams. (1) The office of active and inactive mines shall assist operators in complying with the mine rescue team requirements of the "Federal Mine Safety and Health Act of 1977", P.L. 95-164, as amended. Such assistance may include, but need not be limited to:

(d) Making application for funds in cooperation with the ~~office~~ DIVISION of emergency management to pay rescue costs; and

SECTION 20. Repeal. 24-32-113, Colorado Revised Statutes, is repealed.

SECTION 21. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 27, 2004