

## CHAPTER 174

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**GOVERNMENT - STATE**


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**HOUSE BILL 08-1097**

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**AN ACT**

**CONCERNING THE PROVISION OF PROTECTIONS TO CERTAIN TYPES OF VOLUNTEERS WHO VOLUNTEER THEIR SERVICES IN A STATE-LEVEL EMERGENCY SITUATION.**

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

**SECTION 1.** Article 1 of title 28, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**28-1-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CIVIL AIR PATROL MISSION" MEANS AN ACTUAL EMERGENCY OPERATIONAL MISSION OF THE COLORADO WING OF CIVIL AIR PATROL THAT HAS BEEN DULY AUTHORIZED UNDER CIVIL AIR PATROL REGULATIONS, INCLUDING, BUT NOT LIMITED TO, THROUGH THE UNITED STATES AIR FORCE, THE GOVERNOR'S OFFICE, OR OTHER POLITICAL SUBDIVISION OF THE STATE THAT HAS THE AUTHORITY TO AUTHORIZE AN EMERGENCY OPERATIONAL MISSION OF THE COLORADO WING OF THE CIVIL AIR PATROL.

(2) "MEMBER" MEANS A MEMBER OF THE CIVIL AIR PATROL, COLORADO WING.

(3) "PRIVATE EMPLOYER" MEANS AN EMPLOYER THAT IS NOT THE STATE OR ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, OR OTHER PUBLIC AGENCY OF THE STATE.

**28-1-103. Civil air patrol - discrimination prohibited.** AN EMPLOYER SHALL NOT DISCRIMINATE AGAINST OR DISCHARGE FROM EMPLOYMENT ANY MEMBER OF

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

THE CIVIL AIR PATROL BECAUSE OF SUCH MEMBERSHIP AND SHALL NOT HINDER OR PREVENT A MEMBER FROM PERFORMING DURING ANY CIVIL AIR PATROL MISSION FOR WHICH A MEMBER IS ENTITLED TO LEAVE PURSUANT TO THIS ARTICLE.

**28-1-104. Public employees - leave of absence.** (1) ANY MEMBER WHO IS AN OFFICER OR EMPLOYEE OF THE STATE OR OF ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, OR OTHER PUBLIC AGENCY OF THE STATE AND WHO IS CALLED TO DUTY FOR A CIVIL AIR PATROL MISSION IS ENTITLED TO A LEAVE OF ABSENCE FROM THE MEMBER'S OFFICE OR EMPLOYMENT FOR THE TIME WHEN THE MEMBER IS ENGAGED IN THE CIVIL AIR PATROL MISSION WITHOUT LOSS OF PAY, SENIORITY, STATUS, EFFICIENCY RATING, VACATION, SICK LEAVE, OR OTHER BENEFITS. THE LEAVE WITHOUT LOSS OF PAY THAT IS ALLOWED PURSUANT TO THIS SECTION SHALL NOT EXCEED A TOTAL OF FIFTEEN WORK DAYS IN ANY CALENDAR YEAR; EXCEPT THAT SUCH LEAVE WITHOUT LOSS OF PAY SHALL BE ALLOWED ONLY IF THE REQUIRED CIVIL AIR PATROL SERVICE IS SATISFACTORILY PERFORMED, WHICH SHALL BE PRESUMED UNLESS THE CONTRARY IS ESTABLISHED.

(2) THE LEAVE ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED ONLY IF THE MEMBER RETURNS TO HIS OR HER PUBLIC POSITION AS SOON AS PRACTICABLE AFTER BEING RELIEVED FROM SERVICE FOR THE CIVIL AIR PATROL MISSION.

(3) A STATE AGENCY OR ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, OR OTHER PUBLIC AGENCY OF THE STATE MAY HIRE A TEMPORARY EMPLOYEE TO FILL A VACANCY CREATED BY A LEAVE OF ABSENCE ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(4) UPON RETURNING FROM A LEAVE OF ABSENCE ALLOWED PURSUANT TO THIS SECTION, A MEMBER IS ENTITLED TO RETURN TO THE SAME POSITION AND CLASSIFICATION HELD BY THE MEMBER BEFORE THE LEAVE OF ABSENCE FOR THE CIVIL AIR PATROL MISSION OR TO THE POSITION, INCLUDING THE GEOGRAPHIC LOCATION OF THE POSITION, AND CLASSIFICATION THAT THE MEMBER WOULD HAVE BEEN ENTITLED TO IF THE MEMBER DID NOT TAKE A LEAVE OF ABSENCE FOR THE CIVIL AIR PATROL MISSION.

(5) A MEMBER WHO IS AN OFFICER OR EMPLOYEE OF THE STATE OR OF ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, OR OTHER PUBLIC AGENCY OF THE STATE, RECEIVING LEAVE OF ABSENCE PURSUANT TO THIS SUBSECTION AND HAVING RIGHTS IN ANY STATE, MUNICIPAL, OR OTHER PUBLIC PENSION, RETIREMENT, OR RELIEF SYSTEM SHALL RETAIN ALL OF THE RIGHTS ACCRUED UP TO THE TIME OF TAKING THE LEAVE AND SHALL HAVE ALL RIGHTS SUBSEQUENTLY ACCRUING UNDER SUCH SYSTEM AS IF THE MEMBER DID NOT TAKE THE LEAVE. ANY INCREASE IN THE AMOUNT OF MONEY BENEFITS ACCRUING WITH RESPECT TO THE TIME OF THE LEAVE IS DEPENDENT UPON THE PAYMENT OF ANY CONTRIBUTIONS OR ASSESSMENTS, AND THE RIGHT TO THE INCREASE IS DEPENDENT UPON THE PAYMENT OF CONTRIBUTIONS OR ASSESSMENTS WITHIN A REASONABLE TIME AFTER THE TERMINATION OF THE LEAVE AND UPON SUCH TERMS AS THE AUTHORITIES IN CHARGE OF THE SYSTEM MAY PRESCRIBE.

**28-1-105. Private employees - leave of absence.** (1) ANY MEMBER WHO IS EMPLOYED BY A PRIVATE EMPLOYER AND WHO IS CALLED TO DUTY FOR A CIVIL AIR

PATROL MISSION IS ENTITLED TO A LEAVE OF ABSENCE FROM THE MEMBER'S PRIVATE EMPLOYMENT, OTHER THAN EMPLOYMENT OF A TEMPORARY NATURE, FOR THE TIME WHEN THE MEMBER IS ENGAGED IN THE CIVIL AIR PATROL MISSION. THE LEAVE ALLOWED PURSUANT TO THIS SECTION SHALL NOT EXCEED A TOTAL OF FIFTEEN WORK DAYS IN ANY CALENDAR YEAR, AND THE LEAVE SHALL BE ALLOWED ONLY IF THE MEMBER GIVES EVIDENCE TO THE EMPLOYER OF THE SATISFACTORY COMPLETION OF THE CIVIL AIR PATROL SERVICE.

(2) THE PERIOD OF ABSENCE ALLOWED PURSUANT TO THIS SECTION SHALL BE CONSTRUED AS AN ABSENCE WITH LEAVE AND WITHOUT PAY AND SHALL IN NO WAY AFFECT THE MEMBER'S RIGHTS TO VACATION, SICK LEAVE, BONUS, ADVANCEMENT, OR OTHER EMPLOYMENT BENEFITS OR ADVANTAGES RELATING TO AND NORMALLY TO BE EXPECTED FOR THE MEMBER'S PARTICULAR EMPLOYMENT.

(3) THE LEAVE ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED ONLY IF THE MEMBER RETURNS TO HIS OR HER PUBLIC POSITION AS SOON AS PRACTICABLE AFTER BEING RELIEVED FROM SERVICE FOR THE CIVIL AIR PATROL MISSION.

(4) THE PRIVATE EMPLOYER OF A MEMBER WHO TAKES LEAVE FROM THE MEMBER'S EMPLOYMENT IN ORDER TO ENGAGE IN A CIVIL AIR PATROL MISSION SHALL, UPON THE MEMBER'S COMPLETION OF THE MISSION, RESTORE THE MEMBER TO THE POSITION THE MEMBER HELD PRIOR TO THE LEAVE OF ABSENCE OR TO A SIMILAR POSITION.

**28-1-106. Employer's noncompliance - actions.** IF AN EMPLOYER VIOLATES ANY PROVISION OF THIS ARTICLE, THE AGGRIEVED MEMBER MAY BRING A CIVIL ACTION FOR DAMAGES OR EQUITABLE RELIEF OR BOTH. IN ANY SUCH CIVIL ACTION, THE COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY.

**SECTION 2.** 24-10-103 (4) (a), Colorado Revised Statutes, is amended to read:

**24-10-103. Definitions.** As used in this article, unless the context otherwise requires:

(4) (a) "Public employee" means an officer, employee, servant, or authorized volunteer of the public entity, whether or not compensated, elected, or appointed, but does not include an independent contractor or any person who is sentenced to participate in any type of useful public service. For the purposes of this subsection (4), "authorized volunteer" means a person who performs an act for the benefit of a public entity at the request of and subject to the control of such public entity AND INCLUDES A QUALIFIED VOLUNTEER AS DEFINED IN SECTION 24-32-2202 (6).

**SECTION 3.** 24-32-2202, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

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

(3.3) "DEPARTMENT" MEANS THE DEPARTMENT OF LOCAL AFFAIRS.

(3.5) "DISASTER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-32-2103 (1.5).

(3.7) "EMERGENCY VOLUNTEER SERVICE" MEANS ALL ACTIVITIES AUTHORIZED AND CARRIED OUT BY A VOLUNTEER WHO IS A MEMBER OF A QUALIFIED VOLUNTEER ORGANIZATION AS DIRECTED BY A COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY IN THE EVENT OF DISASTER.

(4.5) "LOCAL EMERGENCY PLANNING COMMITTEE" MEANS A COMMITTEE THAT MEETS THE CRITERIA SPECIFIED IN SECTION 24-32-2604.

(6) "QUALIFIED VOLUNTEER" MEANS A VOLUNTEER WHO MEETS THE CRITERIA SPECIFIED IN SECTION 24-32-2224 (1).

(7) "VOLUNTEER" MEANS A VOLUNTEER WHO IS A MEMBER OF A VOLUNTEER ORGANIZATION AND PROVIDES VOLUNTEER SERVICES THROUGH THE ORGANIZATION IN THE EVENT OF A DISASTER.

(8) "VOLUNTEER ORGANIZATION" MEANS AN ORGANIZATION THAT PROVIDES EMERGENCY SERVICES ON A STATE OR LOCAL LEVEL PURSUANT TO THIS PART 22.

**SECTION 4.** Part 22 of article 32 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**24-32-2222. County sheriff - local government - local emergency planning committee - memorandum of understanding with volunteer organizations.**

(1) ANY COUNTY SHERIFF, THE DIRECTOR OF ANY LOCAL GOVERNMENT, ANY LOCAL EMERGENCY PLANNING COMMITTEE, OR ANY STATE AGENCY MAY DEVELOP AND ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH ONE OR MORE VOLUNTEER ORGANIZATIONS TO ASSIST THE COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY IN PROVIDING SERVICES IN THE EVENT OF A DISASTER.

(2) A MEMORANDUM OF UNDERSTANDING BETWEEN A COUNTY SHERIFF, A LOCAL GOVERNMENT, A LOCAL EMERGENCY PLANNING COMMITTEE, OR A STATE AGENCY AND A VOLUNTEER ORGANIZATION MAY INCLUDE THE FOLLOWING INFORMATION:

(a) THE CIRCUMSTANCES UNDER WHICH THE COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY MAY REQUEST THE SERVICES OF THE VOLUNTEER ORGANIZATION IN A DISASTER;

(b) THE CIRCUMSTANCES UNDER WHICH THE VOLUNTEER ORGANIZATION MAY ACCEPT OR REFUSE THE REQUEST FOR ASSISTANCE BY THE COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY IN A DISASTER;

(c) THE PARTY THAT WILL BE RESPONSIBLE FOR ANY COSTS INCURRED BY THE VOLUNTEER ORGANIZATION IN THE COURSE OF ASSISTING THE COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY IN A DISASTER;

(d) THE SPECIFIC TRAINING OR CERTIFICATION REQUIRED FOR VOLUNTEERS WHO ARE MEMBERS OF THE VOLUNTEER ORGANIZATION TO BE AUTHORIZED TO ASSIST THE COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY IN A DISASTER;

(e) THE DURATION OF THE MEMORANDUM OF UNDERSTANDING;

(f) PROVISIONS FOR AMENDING THE MEMORANDUM OF UNDERSTANDING; AND

(g) ANY OTHER INFORMATION DEEMED NECESSARY BY THE COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY OR BY THE VOLUNTEER ORGANIZATION.

(3) IF NATIONAL OR STATEWIDE TRAINING AND CERTIFICATION STANDARDS EXIST FOR A CERTAIN ORGANIZATION OR CERTAIN TYPE OF VOLUNTEER, THE EXISTING STANDARDS SHALL BE USED IN A MEMORANDUM OF UNDERSTANDING CREATED PURSUANT TO THIS SECTION.

(4) THE MOST CURRENT VERSION OF THE STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT FOR EMERGENCY MANAGEMENT MAY BE USED AS THE MEMORANDUM OF UNDERSTANDING PURSUANT TO THIS SECTION.

**24-32-2223. Qualified volunteer organization list - creation - nomination of organizations.** (1) ANY VOLUNTEER WHO IS ASSOCIATED WITH A QUALIFIED VOLUNTEER ORGANIZATION PURSUANT TO THIS SECTION MAY BE ELIGIBLE TO RECEIVE THE PROTECTIONS AND BENEFITS SPECIFIED IN THIS PART 22 AND IN ARTICLE 10 OF THIS TITLE. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL CREATE AND MAINTAIN A LIST OF VOLUNTEER ORGANIZATIONS THAT SHALL BE KNOWN AS THE "QUALIFIED VOLUNTEER ORGANIZATION LIST".

(2) ANY COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY MAY NOMINATE A VOLUNTEER ORGANIZATION WITH WHICH IT ENTERS INTO A MEMORANDUM OF UNDERSTANDING PURSUANT TO SECTION 24-32-2222 TO BE INCLUDED ON THE QUALIFIED VOLUNTEER ORGANIZATION LIST CREATED AND MAINTAINED PURSUANT TO SUBSECTION (1) OF THIS SECTION.

**24-32-2224. Volunteers - provision of emergency services - protections - benefits.** (1) A VOLUNTEER SHALL BE ALLOWED TO RECEIVE THE BENEFITS AND PROTECTIONS SPECIFIED IN THIS PART 22 AND PURSUANT TO ARTICLE 10 OF THIS TITLE IF THE VOLUNTEER IS DETERMINED TO BE A QUALIFIED VOLUNTEER PURSUANT TO THIS SECTION. A VOLUNTEER SHALL BE DEEMED A QUALIFIED VOLUNTEER IF:

(a) THE VOLUNTEER IS A MEMBER OF A VOLUNTEER ORGANIZATION THAT ENTERS INTO A MEMORANDUM OF UNDERSTANDING WITH A COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY PURSUANT TO SECTION 24-32- 2222;

(b) THE VOLUNTEER ORGANIZATION OF WHICH THE VOLUNTEER IS A MEMBER IS INCLUDED ON THE QUALIFIED VOLUNTEER ORGANIZATION LIST CREATED AND MAINTAINED BY THE DEPARTMENT PURSUANT TO SECTION 24-32-2223;

(c) THE VOLUNTEER IS CALLED TO SERVICE THROUGH THE VOLUNTEER ORGANIZATION UNDER THE AUTHORITY OF THE COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY TO VOLUNTEER IN A DISASTER; AND

(d) THE VOLUNTEER RECEIVES THE APPROPRIATE VERIFICATION PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(2) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL CREATE A SYSTEM WHEREBY A VOLUNTEER MAY OBTAIN PROOF TO PROVIDE TO HIS OR HER EMPLOYER THAT SPECIFIES:

(a) THE VOLUNTEER WAS CALLED TO SERVICE BY A VOLUNTEER ORGANIZATION FOR THE PURPOSE OF ASSISTING IN A DISASTER;

(b) THE VOLUNTEER REPORTED FOR SERVICE AND PERFORMED THE ACTIVITIES REQUIRED OF HIM OR HER BY THE VOLUNTEER ORGANIZATION; AND

(c) THE NUMBER OF DAYS OF SERVICE THAT THE VOLUNTEER PROVIDED.

**24-32-2225. Qualified volunteers - leave of absence - public employees.**

(1) ANY QUALIFIED VOLUNTEER WHO IS AN OFFICER OR EMPLOYEE OF THE STATE OR OF ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, OR OTHER PUBLIC AGENCY OF THE STATE AND WHO IS CALLED INTO SERVICE BY A VOLUNTEER ORGANIZATION IS ENTITLED TO A LEAVE OF ABSENCE FROM THE QUALIFIED VOLUNTEER'S EMPLOYMENT FOR THE TIME WHEN THE QUALIFIED VOLUNTEER IS SERVING, WITHOUT LOSS OF PAY, SENIORITY, STATUS, EFFICIENCY RATING, VACATION, SICK LEAVE, OR OTHER BENEFITS. THE LEAVE WITHOUT LOSS OF PAY THAT IS ALLOWED PURSUANT TO THIS SECTION SHALL NOT EXCEED A TOTAL OF FIFTEEN WORK DAYS IN ANY CALENDAR YEAR; EXCEPT THAT SUCH LEAVE WITHOUT LOSS OF PAY SHALL BE ALLOWED ONLY IF THE REQUIRED VOLUNTEER SERVICE IS SATISFACTORILY PERFORMED, WHICH SHALL BE PRESUMED UNLESS THE CONTRARY IS ESTABLISHED.

(2) THE LEAVE ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED ONLY IF THE QUALIFIED VOLUNTEER RETURNS TO HIS OR HER PUBLIC POSITION AS SOON AS PRACTICABLE AFTER BEING RELIEVED FROM EMERGENCY VOLUNTEER SERVICE.

(3) A STATE AGENCY OR ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, OR OTHER PUBLIC AGENCY OF THE STATE MAY HIRE A TEMPORARY EMPLOYEE TO FILL A VACANCY CREATED BY A LEAVE OF ABSENCE ALLOWED PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(4) UPON RETURNING FROM A LEAVE OF ABSENCE ALLOWED PURSUANT TO THIS SECTION, A QUALIFIED VOLUNTEER IS ENTITLED TO RETURN TO THE SAME POSITION AND CLASSIFICATION HELD BY THE QUALIFIED VOLUNTEER BEFORE THE LEAVE OF ABSENCE FOR THE EMERGENCY VOLUNTEER SERVICE OR TO THE POSITION, INCLUDING THE GEOGRAPHIC LOCATION OF THE POSITION, AND CLASSIFICATION THAT THE QUALIFIED VOLUNTEER WOULD HAVE BEEN ENTITLED TO IF THE QUALIFIED VOLUNTEER DID NOT TAKE A LEAVE OF ABSENCE FOR THE EMERGENCY VOLUNTEER

SERVICE.

(5) A QUALIFIED VOLUNTEER WHO IS AN OFFICER OR EMPLOYEE OF THE STATE OR OF ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, OR OTHER PUBLIC AGENCY OF THE STATE, RECEIVING A LEAVE OF ABSENCE PURSUANT TO THIS SECTION, AND HAVING RIGHTS IN ANY STATE, MUNICIPAL, OR OTHER PUBLIC PENSION, RETIREMENT, OR RELIEF SYSTEM SHALL RETAIN ALL OF THE RIGHTS ACCRUED UP TO THE TIME OF TAKING THE LEAVE AND SHALL HAVE ALL RIGHTS SUBSEQUENTLY ACCRUING UNDER SUCH SYSTEM AS IF THE QUALIFIED VOLUNTEER DID NOT TAKE THE LEAVE. ANY INCREASE IN THE AMOUNT OF MONEY BENEFITS ACCRUING WITH RESPECT TO THE TIME OF THE LEAVE IS DEPENDENT UPON THE PAYMENT OF ANY CONTRIBUTIONS OR ASSESSMENTS, AND THE RIGHT TO THE INCREASE IS DEPENDENT UPON THE PAYMENT OF CONTRIBUTIONS OR ASSESSMENTS WITHIN A REASONABLE TIME AFTER THE TERMINATION OF THE LEAVE AND UPON SUCH TERMS AS THE AUTHORITIES IN CHARGE OF THE SYSTEM MAY PRESCRIBE.

(6) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO PROVIDE LEAVE PURSUANT TO THIS SECTION TO MORE THAN TWENTY PERCENT OF THE EMPLOYER'S EMPLOYEES ON ANY WORK DAY.

(7) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO ALLOW LEAVE PURSUANT TO THIS SECTION FOR ANY EMPLOYEE DESIGNATED AS AN ESSENTIAL EMPLOYEE. FOR THE PURPOSES OF THIS SUBSECTION (7), "ESSENTIAL EMPLOYEE" MEANS AN EMPLOYEE WHO THE EMPLOYER DEEMS TO BE ESSENTIAL TO THE OPERATION OF THE EMPLOYER'S DAILY ENTERPRISE AND WHOSE ABSENCE WOULD LIKELY CAUSE THE EMPLOYER TO SUFFER ECONOMIC INJURY.

**24-32-2226. Qualified volunteers - leave of absence - private employees.**

(1) ANY QUALIFIED VOLUNTEER WHO IS EMPLOYED BY A PRIVATE EMPLOYER OR BY THE STATE OR ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, OR OTHER PUBLIC AGENCY OF THE STATE AND WHO IS CALLED INTO SERVICE BY A VOLUNTEER ORGANIZATION FOR A DISASTER IS ENTITLED TO A LEAVE OF ABSENCE FROM THE QUALIFIED VOLUNTEER'S EMPLOYMENT, OTHER THAN EMPLOYMENT OF A TEMPORARY NATURE, FOR THE TIME WHEN THE QUALIFIED VOLUNTEER IS SERVING. THE LEAVE ALLOWED FOR A QUALIFIED VOLUNTEER PURSUANT TO THIS SECTION SHALL NOT EXCEED A TOTAL OF FIFTEEN WORK DAYS IN ANY CALENDAR YEAR, AND THE LEAVE SHALL BE ALLOWED ONLY IF THE VOLUNTEER IS CALLED INTO SERVICE FOR A DISASTER AND PROVIDES PROOF THAT HE OR SHE IS A QUALIFIED VOLUNTEER PURSUANT TO SECTION 24-32-2224 (2).

(2) THE LEAVE OF ABSENCE ALLOWED PURSUANT TO THIS SECTION SHALL BE CONSTRUED AS AN ABSENCE WITH LEAVE AND WITHOUT PAY AND SHALL NOT AFFECT THE QUALIFIED VOLUNTEER'S RIGHTS TO VACATION, SICK LEAVE, BONUS, ADVANCEMENT, OR OTHER EMPLOYMENT BENEFITS OR ADVANTAGES RELATING TO AND NORMALLY TO BE EXPECTED FOR THE QUALIFIED VOLUNTEER'S PARTICULAR EMPLOYMENT.

(3) THE LEAVE OF ABSENCE PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE ALLOWED ONLY IF THE QUALIFIED VOLUNTEER RETURNS TO HIS OR HER EMPLOYMENT AS SOON AS PRACTICABLE AFTER BEING RELIEVED FROM EMERGENCY

## VOLUNTEER SERVICE.

(4) THE EMPLOYER OF A QUALIFIED VOLUNTEER WHO TAKES A LEAVE OF ABSENCE FROM EMPLOYMENT TO ENGAGE IN EMERGENCY VOLUNTEER SERVICE SHALL, UPON THE QUALIFIED VOLUNTEER'S COMPLETION OF THE EMERGENCY VOLUNTEER SERVICE, RESTORE THE QUALIFIED VOLUNTEER TO THE POSITION THE VOLUNTEER HELD PRIOR TO THE LEAVE OF ABSENCE OR TO A SIMILAR POSITION.

(5) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO PROVIDE LEAVE PURSUANT TO THIS SECTION TO MORE THAN TWENTY PERCENT OF THE EMPLOYER'S EMPLOYEES ON ANY WORK DAY.

(6) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, AN EMPLOYER SHALL NOT BE REQUIRED TO ALLOW LEAVE PURSUANT TO THIS SECTION FOR ANY EMPLOYEE DESIGNATED AS AN ESSENTIAL EMPLOYEE. FOR THE PURPOSES OF THIS SUBSECTION (6), "ESSENTIAL EMPLOYEE" MEANS AN EMPLOYEE WHO THE EMPLOYER DEEMS TO BE ESSENTIAL TO THE OPERATION OF THE EMPLOYER'S DAILY ENTERPRISE, WHOSE ABSENCE WOULD LIKELY CAUSE THE EMPLOYER TO SUFFER ECONOMIC INJURY, OR WHOSE DUTIES INCLUDE ASSISTING IN DISASTER RECOVERY FOR THE EMPLOYER.

**24-32-2227. Procedures.** (1) THE DEPARTMENT SHALL CREATE PROCEDURES FOR THE ADMINISTRATION OF THIS PART 22. THE PROCEDURES SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, THE FOLLOWING:

(a) A PROCESS FOR A COUNTY SHERIFF, LOCAL GOVERNMENT, LOCAL EMERGENCY PLANNING COMMITTEE, OR STATE AGENCY TO NOMINATE A VOLUNTEER ORGANIZATION TO BE INCLUDED ON THE QUALIFIED VOLUNTEER ORGANIZATION LIST PURSUANT TO SECTION 24-32-2223 (2); AND

(b) A PROCESS TO VERIFY THAT A QUALIFIED VOLUNTEER PROVIDED VOLUNTEER SERVICES DURING A DISASTER AND A METHOD TO ALLOW THE VOLUNTEER TO PROVIDE PROOF OF SUCH SERVICE TO HIS OR HER EMPLOYER PURSUANT TO SECTION 24-32-2224 (2).

**24-32-2228. Interpretation.** (1) NOTHING IN THIS PART 22 SHALL BE CONSTRUED TO AMEND, SUSPEND, SUPERCEDE, OR OTHERWISE MODIFY THE PROTECTIONS PROVIDED TO VOLUNTEER FIREFIGHTERS PURSUANT TO SECTION 31-30-1131, C.R.S.

(2) NOTHING IN THIS PART 22 SHALL BE CONSTRUED TO AFFECT ANY PREEXISTING INTERGOVERNMENTAL AGREEMENT REGARDING EMERGENCY MANAGEMENT OR ANY OTHER ISSUE.

**SECTION 5.** 24-32-2303, Colorado Revised Statutes, is amended to read:

**24-32-2303. State liability.** All legal liabilities for damages, not only to property under the provisions of the constitution of the state of Colorado but also for death or injury to any person, except a civil defense worker regularly enrolled and acting as such, caused by acts done or attempted under the color of the "Colorado Disaster Emergency Act of 1992", part 21 of this article, in a bona fide attempt to comply therewith, shall be the obligation of the state of Colorado. Permission is given for

suits against the state ~~as if an ordinary corporation~~, for recovery of compensation in that behalf, and for the indemnification of any person appointed and regularly enrolled as a civilian defense worker while actually engaged in civil defense duties or as a member of any agency of the state or political subdivision thereof engaged in civilian defense activity, or such person's dependents, as an aspect of damage done to such person's private property, or judgment against such person for acts done in good faith attempts in compliance with this part 23. The foregoing shall not be construed to result in indemnification in any case of willful misconduct, gross negligence, or bad faith on the part of any agent of civilian defense. Should the United States government or any agency thereof, in accordance with any federal statute, rule, or regulation, provide for the payment of damages to property or for death or injury as provided for in this section, then and in that event, there shall be no liability or obligation whatsoever upon the part of the state of Colorado for any such damage, death, or injury for which the United States government assumes liability.

**SECTION 6. 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 6, 2008, if adjournment sine die is on May 7, 2008); 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: April 24, 2008