

CHAPTER 413

GOVERNMENT - STATE

SENATE BILL 09-013

BY SENATOR(S) Gibbs and Schwartz, Penry, Boyd, Hodge, Kester, Newell, Brophy, Harvey, Kopp, Spence, White, Williams; also REPRESENTATIVE(S) Levy and King S., Apuan, Balmer, Baumgardner, Frangas, Gardner B., Gerou, Green, Kerr J., Labuda, Lambert, Looper, Marostica, Massey, Middleton, Murray, Primavera, Priola, Roberts, Ryden, Scanlan, Schafer S., Stephens, Tipton, Todd, Vigil, Gardner C.

AN ACT**CONCERNING THE EXTENSION OF CIVIL IMMUNITY TO PERSONS ENGAGED IN EMERGENCY RESPONSE ACTIVITIES.**

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

SECTION 1. Short title. This act shall be known and may be cited as the "Marc Mullenix Volunteer Firefighter Protection Act".

SECTION 2. Part 1 of article 21 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

13-21-113.3. Donation of firefighting equipment - exemption from civil and criminal liability - definition - legislative declaration. (1) A FIRE DEPARTMENT OR OTHER PERSON OR ENTITY THAT DONATES SURPLUS FIREFIGHTING EQUIPMENT TO A FIRE DEPARTMENT SHALL NOT BE LIABLE FOR DAMAGES IN ANY CIVIL ACTION OR SUBJECT TO PROSECUTION IN ANY CRIMINAL PROCEEDING RESULTING FROM THE NATURE, AGE, CONDITION, OR PACKAGING OF SUCH EQUIPMENT; EXCEPT THAT THIS EXEMPTION SHALL NOT APPLY TO THE GROSSLY NEGLIGENT, WILLFUL, WANTON, OR RECKLESS ACTS OF DONORS THAT RESULT IN INJURY TO RECIPIENTS OF SUCH EQUIPMENT.

(2) AS USED IN THIS SECTION:

(a) "FIRE DEPARTMENT" HAS THE MEANING SET FORTH IN SECTION 24-33.5-1202, C.R.S., AND INCLUDES A FIRE DEPARTMENT THAT USES PAID FIREFIGHTERS, VOLUNTEER FIREFIGHTERS, OR BOTH. THE TERM INCLUDES, WITHOUT LIMITATION, NOT-FOR-PROFIT NONGOVERNMENTAL ENTITIES THAT ARE ORGANIZED TO PROVIDE

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

FIREFIGHTING SERVICES.

(b) "FIREFIGHTING EQUIPMENT" MEANS ANY AND ALL EQUIPMENT DESIGNED FOR OR TYPICALLY USED IN THE PREVENTION AND SUPPRESSION OF FIRE, THE PROTECTION OF FIREFIGHTERS, OR THE RESCUE AND EXTRICATION OF VICTIMS OF FIRE OR OTHER EMERGENCIES, INCLUDING WITHOUT LIMITATION HOSES, FIRE TRUCKS, RESCUE VEHICLES, EXTRICATION EQUIPMENT, PROTECTIVE CLOTHING, AND BREATHING APPARATUS.

(3) A FIRE DEPARTMENT THAT RECEIVES DONATED FIREFIGHTING EQUIPMENT PURSUANT TO THIS SECTION SHALL NOT SELL OR OFFER TO SELL ANY SUCH DONATED EQUIPMENT. THIS PROHIBITION SHALL NOT AFFECT THE TRANSFER OF SUCH DONATED EQUIPMENT, WITHOUT CONTEMPLATION OF REMUNERATION, BETWEEN FIRE DEPARTMENTS FOR FUTURE USE.

(4) NOTHING IN THIS SECTION LIMITS THE AUTHORITY OF ANY APPROPRIATE AGENCY TO REGULATE, PROHIBIT, OR PLACE CONDITIONS ON THE USE OF SPECIFIC FIREFIGHTING EQUIPMENT.

(5) THE GENERAL ASSEMBLY INTENDS THAT THE PROVISIONS OF THIS SECTION AND OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., BE READ TOGETHER AND HARMONIZED. IF ANY PROVISION OF THIS SECTION IS CONSTRUED TO CONFLICT WITH A PROVISION OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", THE PROVISION THAT GRANTS THE GREATEST IMMUNITY SHALL PREVAIL.

13-21-113.7. Immunity of volunteer firefighters, incident management teams, and their employers or organizations - definitions - legislative declaration. (1) A VOLUNTEER FIREFIGHTER WHO, IN GOOD FAITH, TAKES PART IN FIREFIGHTING EFFORTS OR PROVIDES EMERGENCY CARE, RESCUE, ASSISTANCE, OR RECOVERY SERVICES AT THE SCENE OF AN EMERGENCY, ANY INCIDENT MANAGEMENT TEAM, AND ANY PERSON WHO, IN GOOD FAITH, COMMANDS, DIRECTS, EMPLOYS, SPONSORS, OR REPRESENTS ANY SUCH VOLUNTEER FIREFIGHTER OR INCIDENT MANAGEMENT TEAM SHALL NOT BE LIABLE FOR CIVIL DAMAGES AS A RESULT OF AN ACT OR OMISSION BY SUCH VOLUNTEER FIREFIGHTER, INCIDENT MANAGEMENT TEAM, OR OTHER PERSON IN CONNECTION WITH THE EMERGENCY; EXCEPT THAT THIS EXEMPTION SHALL NOT APPLY TO GROSSLY NEGLIGENT, WILLFUL, WANTON, OR RECKLESS ACTS OR OMISSIONS.

(2) AS USED IN THIS SECTION:

(a) "EMERGENCY" MEANS ANY INCIDENT TO WHICH A RESPONSE BY A FIRE DEPARTMENT OR INCIDENT MANAGEMENT TEAM IS APPROPRIATE OR REQUESTED, INCLUDING, WITHOUT LIMITATION:

(I) A FIRE, FIRE ALARM RESPONSE, MOTOR VEHICLE ACCIDENT, RESCUE CALL, OR HAZARDOUS MATERIALS INCIDENT;

(II) A NATURAL OR MAN-MADE DISASTER SUCH AS AN EARTHQUAKE, FLOOD, OR SEVERE WEATHER EVENT;

(III) A TERRORIST ATTACK; OR

(IV) AN OUTBREAK OF A HARMFUL BIOLOGICAL AGENT OR INFECTIOUS DISEASE.

(b) "FIRE DEPARTMENT" HAS THE MEANING SET FORTH IN SECTION 24-33.5-1202, C.R.S., AND INCLUDES A FIRE DEPARTMENT THAT USES PAID FIREFIGHTERS, VOLUNTEER FIREFIGHTERS, OR BOTH. THE TERM INCLUDES, WITHOUT LIMITATION, NOT-FOR-PROFIT NONGOVERNMENTAL ENTITIES THAT ARE ORGANIZED TO PROVIDE FIREFIGHTING SERVICES.

(c) "INCIDENT MANAGEMENT TEAM" MEANS AN AD HOC OR STANDING TEAM OF TRAINED PERSONNEL FROM DIFFERENT DEPARTMENTS, ORGANIZATIONS, AGENCIES, AND JURISDICTIONS ACTIVATED TO MANAGE THE LOGISTICAL, FISCAL, PLANNING, OPERATIONAL, SAFETY, AND COMMUNITY ISSUES RELATED TO AN EMERGENCY OR OTHER INCIDENT.

(d) "VOLUNTEER FIREFIGHTER" HAS THE MEANING SET FORTH IN SECTION 31-30-1102, C.R.S., AND INCLUDES VOLUNTEER FIREFIGHTERS OF NOT-FOR-PROFIT NONGOVERNMENTAL ENTITIES THAT ARE ORGANIZED TO PROVIDE FIREFIGHTING SERVICES.

(3) THE GENERAL ASSEMBLY INTENDS THAT THE PROVISIONS OF THIS SECTION AND OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., BE READ TOGETHER AND HARMONIZED. IF ANY PROVISION OF THIS SECTION IS CONSTRUED TO CONFLICT WITH A PROVISION OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", THE PROVISION THAT GRANTS THE GREATEST IMMUNITY SHALL PREVAIL.

SECTION 3. 24-32-2605, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-32-2605. Immunity. (1.7) (a) NO STATE COMMISSION OR AGENCY OR COUNTY OR MUNICIPAL AGENCY, INCLUDING LOCAL EMERGENCY PLANNING COMMITTEES, INCIDENT MANAGEMENT TEAMS, CITIZEN CORPS COUNCILS, CITIZEN EMERGENCY RESPONSE TEAMS, MEDICAL RESERVE CORPS, FIRE PROTECTION DISTRICTS, AND VOLUNTEER FIRE, AMBULANCE, OR EMERGENCY SERVICE AND RESCUE GROUPS, NOR THEIR OFFICERS, OFFICIALS, DIRECTORS, EMPLOYEES, TRAINEES, OR VOLUNTEERS, WHEN ENGAGED IN PLANNING, TRAINING, OR RESPONSE ACTIVITIES REGARDING A NATURAL DISASTER, HAZARDOUS MATERIAL RELEASE, PUBLIC HEALTH EMERGENCY, OR ACT OF TERRORISM OR THE THREAT OF ANY SUCH DISASTER, RELEASE, EMERGENCY, OR ACT, SHALL BE LIABLE FOR THE DEATH OF OR INJURY TO ANY PERSON OR FOR THE LOSS OF OR DAMAGE TO PROPERTY OR THE ENVIRONMENT EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL AND WANTON ACTS OR OMISSIONS.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (1.7), A PLAINTIFF MAY SUE AND RECOVER CIVIL DAMAGES FROM A PERSON OR ENTITY SPECIFIED IN SAID PARAGRAPH (a) BASED UPON A NEGLIGENT ACT OR OMISSION INVOLVING THE OPERATION OF A MOTOR VEHICLE; EXCEPT THAT THE AMOUNT RECOVERED FROM SUCH PERSON OR ENTITY SHALL NOT EXCEED THE LIMITS OF APPLICABLE INSURANCE COVERAGE MAINTAINED BY OR ON BEHALF OF SUCH PERSON OR ENTITY WITH

RESPECT TO THE NEGLIGENT OPERATION OF A MOTOR VEHICLE IN SUCH CIRCUMSTANCES. HOWEVER, NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE RIGHT OF A PLAINTIFF TO RECOVER FROM A POLICY OF UNINSURED OR UNDERINSURED MOTORIST COVERAGE AVAILABLE TO THE PLAINTIFF AS A RESULT OF A MOTOR VEHICLE ACCIDENT.

(c) THE GENERAL ASSEMBLY INTENDS THAT THE PROVISIONS OF THIS SUBSECTION (1.7) AND OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., BE READ TOGETHER AND HARMONIZED. IF ANY PROVISION OF THIS SUBSECTION (1.7) IS CONSTRUED TO CONFLICT WITH A PROVISION OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", THE PROVISION THAT GRANTS THE GREATEST IMMUNITY SHALL PREVAIL.

SECTION 4. 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: June 3, 2009