

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 233

HOUSE BILL 2599

AN ACT

AMENDING SECTIONS 26-301, 26-303 AND 26-314, ARIZONA REVISED STATUTES;
RELATING TO EMERGENCY WORKERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 26-301, Arizona Revised Statutes, is amended to
3 read:

4 26-301. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Commercial nuclear generating station" means an electric power
7 generating facility which is owned by a public service corporation, a
8 municipal corporation or a consortium of public service corporations or
9 municipal corporations and which produces electricity by means of a nuclear
10 reactor.

11 2. "Council" means the state emergency council.

12 3. "Director" means the director of the division.

13 4. "Division" means the division of emergency management within the
14 department of emergency and military affairs.

15 5. "Emergency functions" includes warning and communications services,
16 relocation of persons from stricken areas, radiological defense, temporary
17 restoration of utilities, plant protection, transportation, welfare, public
18 works and engineering, search or rescue, health and medical services, law
19 enforcement, fire fighting, mass care, resource support, urban search or
20 rescue, hazardous materials, food and energy information and planning and
21 other activities necessary or incidental thereto.

22 6. "Emergency management" means the preparedness, response, recovery
23 and mitigation activities necessary to respond to and recover from disasters,
24 emergencies or contingencies.

25 7. "EMERGENCY WORKER" MEANS ANY PERSON WHO IS REGISTERED, WHETHER
26 TEMPORARY OR PERMANENT, PAID OR VOLUNTEER, WITH A LOCAL OR STATE EMERGENCY
27 MANAGEMENT ORGANIZATION AND CERTIFIED BY THE LOCAL OR STATE EMERGENCY
28 MANAGEMENT ORGANIZATION FOR THE PURPOSE OF ENGAGING IN AUTHORIZED EMERGENCY
29 MANAGEMENT ACTIVITIES OR PERFORMING EMERGENCY FUNCTIONS, OR WHO IS AN
30 OFFICER, AGENT OR EMPLOYEE OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS
31 STATE AND WHO IS CALLED ON TO PERFORM OR SUPPORT EMERGENCY MANAGEMENT
32 ACTIVITIES OR PERFORM EMERGENCY FUNCTIONS.

33 ~~7.~~ 8. "Hazardous materials" means:

34 (a) Any hazardous material designated pursuant to the hazardous
35 materials transportation act of 1974 (P.L. 93-633; 88 Stat. 2156; 49 United
36 States Code section 1801).

37 (b) Any element, compound, mixture, solution or substance designated
38 pursuant to the comprehensive environmental response, compensation, and
39 liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code
40 section 9602).

41 (c) Any substance designated in the emergency planning and community
42 right-to-know act of 1986 (P.L. 99-499; 100 Stat. 1613; 42 United States Code
43 section 11002).

44 (d) Any substance designated in the water pollution control act (P.L.
45 92-500; 86 Stat. 816; 33 United States Code sections 1317(a) and
46 1321(b)(2)(A)).

1 (e) Any hazardous waste having the characteristics identified under or
2 listed pursuant to section 49-922.

3 (f) Any imminently hazardous chemical substance or mixture with
4 respect to which action has been taken pursuant to the toxic substances
5 control act (P.L. 94-469; 90 Stat. 2003; 15 United States Code section 2606).

6 (g) Any material or substance determined to be radioactive pursuant to
7 the atomic energy act of 1954 (68 Stat. 919; 42 United States Code section
8 2011).

9 (h) Any substance designated as a hazardous substance pursuant to
10 section 49-201.

11 (i) Any highly hazardous chemical or regulated substance as listed in
12 the clean air act of 1963 (P.L. 88-206; 42 United States Code sections
13 7401-THROUGH 7671).

14 ~~8-~~ 9. "Hazardous materials incident" means the uncontrolled,
15 unpermitted release or potential release of hazardous materials that may
16 present an imminent and substantial danger to the public health or welfare or
17 to the environment.

18 ~~9-~~ 10. "Local emergency" means the existence of conditions of
19 disaster or of extreme peril to the safety of persons or property within the
20 territorial limits of a county, city or town, which conditions are or are
21 likely to be beyond the control of the services, personnel, equipment and
22 facilities of such political subdivision as determined by its governing body
23 and which require the combined efforts of other political subdivisions.

24 ~~10-~~ 11. "Mitigation" means measures taken to reduce the need to
25 respond to a disaster and to reduce the cost of disaster response and
26 recovery.

27 ~~11-~~ 12. "Preparedness" means actions taken to develop the response
28 capabilities needed for an emergency.

29 ~~12-~~ 13. "Recovery" means short-term activities necessary to return
30 vital systems and facilities to minimum operating standards and long-term
31 activities required to return life to normal or improved levels.

32 ~~13-~~ 14. "Response" means activities that are designed to provide
33 emergency assistance, limit the primary effects, reduce the probability of
34 secondary damage and speed recovery operations.

35 ~~14-~~ 15. "State of emergency" means the duly proclaimed existence of
36 conditions of disaster or of extreme peril to the safety of persons or
37 property within the state caused by air pollution, fire, flood or floodwater,
38 storm, epidemic, riot, earthquake or other causes, except those resulting in
39 a state of war emergency, which are or are likely to be beyond the control of
40 the services, personnel, equipment and facilities of any single county, city
41 or town, and which require the combined efforts of the state and the
42 political subdivision.

43 ~~15-~~ 16. "State of war emergency" means the condition which exists
44 immediately whenever this nation is attacked or upon receipt by this state of
45 a warning from the federal government indicating that such an attack is
46 imminent.

1 Sec. 2. Section 26-303, Arizona Revised Statutes, is amended to read:
2 26-303. Emergency powers of governor; termination;
3 authorization for adjutant general

4 A. During a state of war emergency, the governor may:

5 1. Suspend the provisions of any statute prescribing the procedure for
6 conduct of state business, or the orders or rules of any state agency, if the
7 governor determines and declares that strict compliance with the provisions
8 of any such statute, order or rule would in any way prevent, hinder or delay
9 mitigation of the effects of the emergency.

10 2. Commandeer and utilize any property or personnel deemed necessary
11 in carrying out the responsibilities vested in the office of the governor by
12 this chapter as chief executive of the state and thereafter the state shall
13 pay reasonable compensation therefor as follows:

14 (a) If property is taken for temporary use, the governor, within ten
15 days after the taking, shall determine the amount of compensation to be paid
16 therefor. If the property is returned in a damaged condition, the governor
17 shall, within ten days after its return, determine the amount of compensation
18 to be paid for such damage.

19 (b) If the governor deems it necessary for the state to take title to
20 property under this section, the governor shall then cause the owner of the
21 property to be notified thereof in writing by registered mail, postage
22 prepaid, and then cause a copy of the notice to be filed with the secretary
23 of state.

24 (c) If the owner refuses to accept the amount of compensation fixed by
25 the governor for the property referred to in subdivisions (a) and (b) of this
26 paragraph, the amount of compensation shall be determined by appropriate
27 proceedings in the superior court in the county where the property was
28 originally taken.

29 B. During a state of war emergency, the governor shall have complete
30 authority over all agencies of the state government and shall exercise all
31 police power vested in this state by the constitution and laws of this state
32 in order to effectuate the purposes of this chapter.

33 C. The powers granted the governor by this chapter with respect to a
34 state of war emergency shall terminate if the legislature is not in session
35 and the governor has not, within twenty-four hours after the beginning of
36 such state of war emergency, issued a call for an immediate special session
37 of the legislature for the purpose of legislating on subjects relating to
38 such state of war emergency.

39 D. The governor may proclaim a state of emergency which shall take
40 effect immediately in an area affected or likely to be affected if the
41 governor finds that circumstances described in section 26-301, paragraph ~~14~~
42 15 exist.

43 E. During a state of emergency:

44 1. The governor shall have complete authority over all agencies of the
45 state government and the right to exercise, within the area designated, all

1 police power vested in the state by the constitution and laws of this state
2 in order to effectuate the purposes of this chapter.

3 2. The governor may direct all agencies of the state government to
4 utilize and employ state personnel, equipment and facilities for the
5 performance of any and all activities designed to prevent or alleviate actual
6 and threatened damage due to the emergency. The governor may direct such
7 agencies to provide supplemental services and equipment to political
8 subdivisions to restore any services in order to provide for the health and
9 safety of the citizens of the affected area.

10 F. The powers granted the governor by this chapter with respect to a
11 state of emergency shall terminate when the state of emergency has been
12 terminated by proclamation of the governor or by concurrent resolution of the
13 legislature declaring it at an end.

14 G. No provision of this chapter may limit, modify or abridge the
15 powers vested in the governor under the constitution or statutes of this
16 state.

17 H. If authorized by the governor, the adjutant general has the powers
18 prescribed in this subsection. If, in the judgment of the adjutant general,
19 circumstances described in section 26-301, paragraph 14- 15 exist, the
20 adjutant general may:

21 1. Exercise those powers pursuant to statute and gubernatorial
22 authorization following the proclamation of a state of emergency under
23 subsection D of this section.

24 2. Incur obligations of twenty thousand dollars or less for each
25 emergency or contingency payable pursuant to section 35-192 as though a state
26 of emergency had been proclaimed under subsection D of this section.

27 I. The powers exercised by the adjutant general pursuant to subsection
28 H of this section expire seventy-two hours after the adjutant general makes a
29 determination under subsection H of this section.

30 Sec. 3. Section 26-314, Arizona Revised Statutes, is amended to read:

31 26-314. Immunity of state, political subdivisions and officers,
32 agents and emergency workers; limitation; rules

33 A. This state and its DEPARTMENTS, AGENCIES, BOARDS, COMMISSIONS AND
34 ALL OTHER political subdivisions ~~shall~~ ARE not be liable for any claim based
35 upon the exercise or performance, or the failure to exercise or perform, a
36 discretionary function or duty ~~on the part of the state or its political~~
37 ~~subdivisions or any employee of this state or its political subdivisions,~~ BY
38 ANY EMERGENCY WORKER, excepting wilful misconduct, gross negligence or bad
39 faith of any such employee, ~~in carrying out the provisions of this chapter~~
40 EMERGENCY WORKER, IN ENGAGING IN EMERGENCY MANAGEMENT ACTIVITIES OR
41 PERFORMING EMERGENCY FUNCTIONS PURSUANT TO THIS CHAPTER OR TITLE 36, CHAPTER
42 6, ARTICLE 9.

43 B. The immunities from liability, exemptions from laws, ordinances and
44 rules, all pensions, relief, disability workers' compensation and other
45 benefits ~~which~~ THAT apply to the activity of officers, agents, ~~or~~ employees
46 OR EMERGENCY WORKERS OF THIS STATE OR of any political subdivision when

1 performing their respective functions within THIS STATE OR the territorial
2 limits of their respective political subdivisions ~~shall~~ apply to them to the
3 same degree and extent while engaged in the performance of any of their
4 functions and duties extraterritorially under ~~the provisions of~~ this chapter
5 OR TITLE 36, CHAPTER 6, ARTICLE 9, excepting wilful misconduct, gross
6 negligence, or bad faith.

7 C. ~~Volunteers duly enrolled or registered with the division of~~
8 ~~emergency management or any political subdivision, in a local emergency, a~~
9 ~~state of emergency, or a war emergency, or unregistered persons placed into~~
10 ~~service during a state of war emergency,~~ EMERGENCY WORKERS ENGAGING IN
11 EMERGENCY MANAGEMENT ACTIVITIES OR EMERGENCY FUNCTIONS UNDER THIS CHAPTER OR
12 TITLE 36, CHAPTER 6, ARTICLE 9, in carrying out, complying with, or
13 attempting to comply with any order or rule issued pursuant to the provisions
14 of UNDER this chapter, TITLE 36, CHAPTER 6, ARTICLE 9 or any local ordinance,
15 or performing any of their authorized functions or duties or training for the
16 performance of their authorized functions or duties, shall have the same
17 degree of responsibility for their actions, and enjoy the same immunities and
18 disability workers' compensation benefits as officers, AGENTS and employees
19 of the state and its political subdivisions performing similar work. THIS
20 STATE AND ITS DEPARTMENTS, AGENCIES, BOARDS AND COMMISSIONS AND ALL OTHER
21 POLITICAL SUBDIVISIONS THAT SUPERVISE OR CONTROL EMERGENCY WORKERS ENGAGING
22 IN EMERGENCY MANAGEMENT ACTIVITIES OR EMERGENCY FUNCTIONS UNDER THIS CHAPTER
23 OR TITLE 36, CHAPTER 6, ARTICLE 9 ARE RESPONSIBLE FOR PROVIDING FOR LIABILITY
24 COVERAGE, INCLUDING LEGAL DEFENSE, OF AN EMERGENCY WORKER IF NECESSARY.
25 COVERAGE IS PROVIDED IF THE EMERGENCY WORKER IS ACTING WITHIN THE COURSE AND
26 SCOPE OF ASSIGNED DUTIES AND IS ENGAGED IN AN AUTHORIZED ACTIVITY, EXCEPT FOR
27 ACTIONS OF WILFUL MISCONDUCT, GROSS NEGLIGENCE OR BAD FAITH.

28 D. No other state or its officers, AGENTS, EMERGENCY WORKERS or
29 employees rendering aid in this state pursuant to any interstate mutual aid
30 arrangement, agreement or compact ~~shall be~~ ARE liable on account of any act
31 or omission in good faith on the part of such state or its officers, AGENTS,
32 EMERGENCY WORKERS or employees while so engaged, or on account of the
33 maintenance or use of any equipment or supplies in connection with an
34 emergency.

35 E. THE DIVISION SHALL ADOPT RULES PRESCRIBING THE PROCEDURES FOR
36 REGISTRATION OF EMERGENCY WORKERS.

37 Sec. 4. Rule making; exemption

38 The division of emergency management in the department of emergency and
39 military affairs is exempt from the rule making requirements of title 41,
40 chapter 6, Arizona Revised Statutes, for one year after the effective date of
41 this act to adopt rules prescribing the procedures for registration of
42 emergency workers.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

Passed the House March 24, 2005,

Passed the Senate April 18, 2005,

by the following vote: 49 Ayes,

by the following vote: 28 Ayes,

11 Nays, 0 Not Voting

1 Nays, 1 Not Voting

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 8:45 o'clock A. M.

Secretary to the Governor

Approved this 25 day of

April, 2005,

at 9:25 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005,

at 4:33 o'clock P. M.

Secretary of State