

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2580

By Committee on Veterans, Military and Homeland Security

2-7

1 AN ACT concerning emergencies and disasters; relating to the response to
2 hazardous materials and search and rescue incidents; regional
3 emergency response teams; duties of the state fire marshal; recovery of
4 costs; amending K.S.A. 2013 Supp. 75-6102 and repealing the existing
5 section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) The state fire marshal may enter into contracts to
9 establish regional emergency response teams to provide a response to
10 hazardous materials or search and rescue incidents.

11 ~~(b) When a regional emergency response team contracting with the~~
12 ~~state fire marshal pursuant to subsection (a) is activated to respond to a~~
13 ~~hazardous materials incident, the party responsible for the hazardous~~
14 ~~materials shall be strictly liable to the state fire marshal for the costs of the~~
15 ~~response.~~

16 ~~(e) When a regional emergency response team contracting with the~~
17 ~~state fire marshal pursuant to subsection (a) is activated to respond to a~~
18 ~~technical search or rescue incident caused by the negligent or willful act or~~
19 ~~omission of another party, the responsible party shall be liable to the state~~
20 ~~fire marshal for the costs of the response. **When a regional emergency**~~
21 **response team contracting with the state fire marshal pursuant to**
22 **subsection (a) is activated to respond to a hazardous materials or**
23 **search and rescue incident caused by a negligent or willful act or**
24 **omission, the party responsible for the incident shall be liable to the**
25 **state fire marshal for the reasonable and necessary costs of the**
26 **response. In the case of an incident caused by a natural disaster, a**
27 **party shall not be liable for the costs of the response unless that**
28 **party's acts or omissions contributed to or aggravated the incident.**

29 (c) For purposes of this section, the term "hazardous materials"
30 means any material defined as a hazardous substance under 29 C.F.R.
31 § 1910.120(a)(3), as in effect on the effective date of this act, or any
32 later version adopted by the state fire marshal in rules and
33 regulations.

34 (d) The state fire marshal may recover the costs specified in
35 ~~subsections (b) and (e)~~ **subsection (b) and (e)** pursuant to the provisions of the Kansas
36 administrative procedure act **after notice and an opportunity for a**

1 **hearing.**

2 (1) If payment is not made in full within 60 days after a final agency
3 order is issued, the state fire marshal shall contact the responsible party in
4 an effort to obtain payment.

5 (2) If the matter remains unresolved, the state fire marshal may obtain
6 civil enforcement of the final agency order pursuant to the Kansas judicial
7 review act ~~and may recover any cost of collection, including reasonable~~
8 ~~attorney fees.~~

9 (e) **(1) The state fire marshal shall appoint a hazardous materials**
10 **advisory committee and a search and rescue advisory committee to**
11 **provide input and assistance to the emergency response program and**
12 **act as advisors to the state fire marshal and director of the emergency**
13 **response division.**

14 **(2) (A) The hazardous materials advisory committee shall be**
15 **comprised of one member from each hazardous materials response**
16 **region, one representative from the Kansas division of emergency**
17 **management, one representative from the Kansas national guard/civil**
18 **support team, one representative from the Kansas fire and rescue**
19 **training institute and one representative from the Kansas department**
20 **of health and environment.**

21 **(B) The search and rescue advisory committee shall be comprised**
22 **of one member from each search and rescue region, one representative**
23 **from the Kansas division of emergency management, one**
24 **representative from the Kansas national guard/crisis city, one**
25 **representative from the Kansas fire and rescue training institute and**
26 **one representative from the Kansas search and rescue dog association.**

27 **(3) The committees shall meet periodically as determined by the**
28 **state fire marshal. Advisory committee members attending meetings**
29 **of such committees shall be paid per diem compensation and**
30 **subsistence allowances, mileage and other reasonable and necessary**
31 **expenses as provided in K.S.A. 75-3223, and amendments thereto.**

32 **(f) The state fire marshal may adopt rules and regulations governing**
33 **the composition, training, response and operations of the regional**
34 **emergency response teams.**

35 Sec. 2. K.S.A. 2013 Supp. 75-6102 is hereby amended to read as
36 follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and
37 amendments thereto, unless the context clearly requires otherwise:

38 (a) "State" means the state of Kansas and any department or branch of
39 state government, or any agency, authority, institution or other
40 instrumentality thereof.

41 (b) "Municipality" means any county, township, city, school district
42 or other political or taxing subdivision of the state, or any agency,
43 authority, institution or other instrumentality thereof.

1 (c) "Governmental entity" means state or municipality.

2 (d) (1) "Employee" means: (A) Any officer, employee, servant or
3 member of a board, commission, committee, division, department, branch
4 or council of a governmental entity, including elected or appointed
5 officials and persons acting on behalf or in service of a governmental
6 entity in any official capacity, whether with or without compensation and a
7 charitable health care provider;

8 (B) any steward or racing judge appointed pursuant to K.S.A. 74-
9 8818, and amendments thereto, regardless of whether the services of such
10 steward or racing judge are rendered pursuant to contract as an
11 independent contractor;

12 (C) employees of the United States marshal's service engaged in the
13 transportation of inmates on behalf of the secretary of corrections;

14 (D) a person who is an employee of a nonprofit independent
15 contractor, other than a municipality, under contract to provide educational
16 or vocational training to inmates in the custody of the secretary of
17 corrections and who is engaged in providing such service in an institution
18 under the control of the secretary of corrections provided that such
19 employee does not otherwise have coverage for such acts and omissions
20 within the scope of their employment through a liability insurance contract
21 of such independent contractor;

22 (E) a person who is an employee or volunteer of a nonprofit program,
23 other than a municipality, who has contracted with the commissioner of
24 juvenile justice or with another nonprofit program that has contracted with
25 the commissioner of juvenile justice to provide a juvenile justice program
26 for juvenile offenders in a judicial district provided that such employee or
27 volunteer does not otherwise have coverage for such acts and omissions
28 within the scope of their employment or volunteer activities through a
29 liability insurance contract of such nonprofit program;

30 (F) a person who contracts with the Kansas guardianship program to
31 provide services as a court-appointed guardian or conservator;

32 (G) an employee of an indigent health care clinic;

33 (H) former employees for acts and omissions within the scope of their
34 employment during their former employment with the governmental
35 entity;

36 (I) any member of a regional medical emergency response team,
37 created under the provisions of K.S.A. 48-928, and amendments thereto, in
38 connection with authorized training or upon activation for an emergency
39 response; ~~and~~

40 (J) *any member of a regional hazardous materials or search and*
41 *rescue emergency response team contracting with the state fire marshal*
42 *pursuant to section 1, and amendments thereto, in connection with*
43 *authorized training or upon activation for an emergency response; and*

1 ~~(J)~~(K) medical students enrolled at the university of Kansas medical
2 center who are in clinical training, on or after July 1, 2008, at the
3 university of Kansas medical center or at another health care institution.

4 (2) "Employee" does not include: (A) An individual or entity for
5 actions within the scope of K.S.A. 60-3614, and amendments thereto; or

6 (B) any independent contractor under contract with a governmental
7 entity except those contractors specifically listed in paragraph (1) of this
8 subsection.

9 (e) "Charitable health care provider" means a person licensed by the
10 state board of healing arts as an exempt licensee or a federally active
11 licensee, a person issued a limited permit by the state board of healing arts,
12 a physician assistant licensed by the state board of healing arts, a mental
13 health practitioner licensed by the behavioral sciences regulatory board, an
14 ultrasound technologist currently registered in any area of sonography
15 credentialed through the American registry of radiology technologists, the
16 American registry for diagnostic medical sonography or cardiovascular
17 credentialing international and working under the supervision of a person
18 licensed to practice medicine and surgery, or a health care provider as the
19 term "health care provider" is defined under K.S.A. 65-4921, and
20 amendments thereto, who has entered into an agreement with:

21 (1) The secretary of health and environment under K.S.A. 75-6120,
22 and amendments thereto, who, pursuant to such agreement, gratuitously
23 renders professional services to a person who has provided information
24 which would reasonably lead the health care provider to make the good
25 faith assumption that such person meets the definition of medically
26 indigent person as defined by this section or to a person receiving medical
27 assistance from the programs operated by the department of health and
28 environment, and who is considered an employee of the state of Kansas
29 under K.S.A. 75-6120, and amendments thereto;

30 (2) the secretary of health and environment and who, pursuant to such
31 agreement, gratuitously renders professional services in conducting
32 children's immunization programs administered by the secretary;

33 (3) a local health department or indigent health care clinic, which
34 renders professional services to medically indigent persons or persons
35 receiving medical assistance from the programs operated by the
36 department of health and environment gratuitously or for a fee paid by the
37 local health department or indigent health care clinic to such provider and
38 who is considered an employee of the state of Kansas under K.S.A. 75-
39 6120, and amendments thereto. Professional services rendered by a
40 provider under this paragraph (3) shall be considered gratuitous
41 notwithstanding fees based on income eligibility guidelines charged by a
42 local health department or indigent health care clinic and notwithstanding
43 any fee paid by the local health department or indigent health care clinic to

1 a provider in accordance with this paragraph (3); or

2 (4) the secretary of health and environment to provide dentistry
3 services defined by K.S.A. 65-1422 et seq., and amendments thereto, or
4 dental hygienist services defined by K.S.A. 65-1456, and amendments
5 thereto, that are targeted, but are not limited to, medically indigent
6 persons, and are provided on a gratuitous basis: (A) At a location
7 sponsored by a not-for-profit organization that is not the dentist or dental
8 hygienist office location; ~~or~~ (B) at the office location of a dentist or dental
9 hygienist provided the care be delivered as part of a program organized by
10 a not-for-profit organization and approved by the secretary of health and
11 environment; or (C) as part of a charitable program organized by the
12 dentist that has been approved by the secretary of health and environment
13 upon a showing that the dentist seeks to treat medically indigent patients
14 on a gratuitous basis, except that such dentistry services and dental
15 hygienist services shall not include "oral and maxillofacial surgery" as
16 defined by K.A.R. 71-2-2, or use sedation or general anesthesia that result
17 in "deep sedation" or "general anesthesia" as defined by K.A.R. 71-5-7.

18 (f) "Medically indigent person" means a person who lacks resources
19 to pay for medically necessary health care services and who meets the
20 eligibility criteria for qualification as a medically indigent person
21 established by the secretary of health and environment under K.S.A. 75-
22 6120, and amendments thereto.

23 (g) "Indigent health care clinic" means an outpatient medical care
24 clinic operated on a not-for-profit basis which has a contractual agreement
25 in effect with the secretary of health and environment to provide health
26 care services to medically indigent persons.

27 (h) "Local health department" shall have the meaning ascribed to
28 such term under K.S.A. 65-241, and amendments thereto.

29 (i) "Fire control, fire rescue or emergency medical services
30 equipment" means any vehicle, firefighting tool, protective clothing,
31 breathing apparatus and any other supplies, tools or equipment used in
32 firefighting or fire rescue or in the provision of emergency medical
33 services.

34 Sec. 3. K.S.A. 2013 Supp. 75-6102 is hereby repealed.

35 Sec. 4. This act shall take effect and be in force from and after its
36 publication in the statute book.