

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 ~~(c) 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 *negligent or willful* acts or omissions contributed to or**
29 **aggravated the incident.**

30 (c) For purposes of this section, the term "hazardous materials"
31 means any material defined as a hazardous substance under 29 C.F.R.
32 § 1910.120(a)(3), as in effect on the effective date of this act, or any

1 **later version adopted by the state fire marshal in rules and**
2 **regulations.**

3 (d) The state fire marshal may recover the costs specified in
4 ~~subsections~~ **subsection (b) and (c)** pursuant to the provisions of the Kansas
5 administrative procedure act **after notice and an opportunity for a**
6 **hearing.**

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

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

14 (e) (1) **The state fire marshal shall appoint a hazardous materials**
15 **advisory committee and a search and rescue advisory committee to**
16 **provide input and assistance to the emergency response program and**
17 **act as advisors to the state fire marshal and director of the emergency**
18 **response division.**

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

26 (B) **The search and rescue advisory committee shall be comprised**
27 **of one member from each search and rescue region, one representative**
28 **from the Kansas division of emergency management, one**
29 **representative from the Kansas national guard/crisis city, one**
30 **representative from the Kansas fire and rescue training institute and**
31 **one representative from the Kansas search and rescue dog association.**

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

37 (f) The state fire marshal may adopt rules and regulations governing
38 the composition, training **{requirements}**, response and operations of the
39 regional emergency response teams.

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

43 (a) "State" means the state of Kansas and any department or branch of

1 state government, or any agency, authority, institution or other
2 instrumentality thereof.

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

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

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

13 (B) any steward or racing judge appointed pursuant to K.S.A. 74-
14 8818, and amendments thereto, regardless of whether the services of such
15 steward or racing judge are rendered pursuant to contract as an
16 independent contractor;

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

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

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

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

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

38 (H) former employees for acts and omissions within the scope of their
39 employment during their former employment with the governmental
40 entity;

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

1 response; ~~and~~

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

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

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

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

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

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

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

38 (3) a local health department or indigent health care clinic, which
39 renders professional services to medically indigent persons or persons
40 receiving medical assistance from the programs operated by the
41 department of health and environment gratuitously or for a fee paid by the
42 local health department or indigent health care clinic to such provider and
43 who is considered an employee of the state of Kansas under K.S.A. 75-

1 6120, and amendments thereto. Professional services rendered by a
2 provider under this paragraph (3) shall be considered gratuitous
3 notwithstanding fees based on income eligibility guidelines charged by a
4 local health department or indigent health care clinic and notwithstanding
5 any fee paid by the local health department or indigent health care clinic to
6 a provider in accordance with this paragraph (3); or

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

23 (f) "Medically indigent person" means a person who lacks resources
24 to pay for medically necessary health care services and who meets the
25 eligibility criteria for qualification as a medically indigent person
26 established by the secretary of health and environment under K.S.A. 75-
27 6120, and amendments thereto.

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

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

34 (i) "Fire control, fire rescue or emergency medical services
35 equipment" means any vehicle, firefighting tool, protective clothing,
36 breathing apparatus and any other supplies, tools or equipment used in
37 firefighting or fire rescue or in the provision of emergency medical
38 services.

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

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