

*{As Amended by Senate Committee of the Whole}*

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*As Amended by Senate Committee*

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**{As Amended by House Committee of the Whole}**

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**As Amended by House Committee**

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*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 ~~(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 {person} responsible for the incident shall be liable~~  
25 ~~to the 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 {person} shall not be liable for the costs of the response unless~~  
28 ~~that party's *negligent or willful* acts or omissions contributed to or~~  
29 ~~aggravated the incident.~~

30 *{(c) The state fire marshal shall notify the attorney general of any*

1 *incident the fire marshal has determined was caused by the negligent or*  
2 *willful acts or omissions of a person. The attorney general shall*  
3 *investigate the incident and may bring an action in the name of the state*  
4 *in the district court of the county where the incident occurred against the*  
5 *person whose negligent or willful acts or omissions were responsible for*  
6 *the incident. All moneys recovered for reasonable and necessary costs*  
7 *for the response to such incident shall be paid into the state general*  
8 *fund.*}

9 **~~(e)~~ ~~{(d)}~~** For purposes of this section, the term "hazardous  
10 materials" means any material defined as a hazardous substance  
11 under 29 C.F.R. § 1910.120(a)(3), as in effect on the effective date of  
12 this act, or any later version adopted by the state fire marshal in rules  
13 and regulations.

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

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

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

25 **(e) (1)** The state fire marshal shall appoint a hazardous materials  
26 advisory committee and a search and rescue advisory committee to  
27 provide input and assistance to the emergency response program and  
28 act as advisors to the state fire marshal and director of the emergency  
29 response division.

30 **(2) (A)** The hazardous materials advisory committee shall be  
31 comprised of one member from each hazardous materials response  
32 region, one representative from the Kansas division of emergency  
33 management, one representative from the Kansas national guard/civil  
34 support team, one representative from the Kansas fire and rescue  
35 training institute and one representative from the Kansas department  
36 of health and environment.

37 **(B)** The search and rescue advisory committee shall be comprised  
38 of one member from each search and rescue region, one representative  
39 from the Kansas division of emergency management, one  
40 representative from the Kansas national guard/crisis city, one  
41 representative from the Kansas fire and rescue training institute and  
42 one representative from the Kansas search and rescue dog association.

43 **(3)** The committees shall meet periodically as determined by the

1 **state fire marshal. Advisory committee members attending meetings**  
2 **of such committees shall be paid per diem compensation and**  
3 **subsistence allowances, mileage and other reasonable and necessary**  
4 **expenses as provided in K.S.A. 75-3223, and amendments thereto.**

5 (f) The state fire marshal may adopt rules and regulations governing  
6 the composition, training {requirements}, response and operations of the  
7 regional emergency response teams.

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

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

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

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

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

24 (B) any steward or racing judge appointed pursuant to K.S.A. 74-  
25 8818, and amendments thereto, regardless of whether the services of such  
26 steward or racing judge are rendered pursuant to contract as an  
27 independent contractor;

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

30 (D) a person who is an employee of a nonprofit independent  
31 contractor, other than a municipality, under contract to provide educational  
32 or vocational training to inmates in the custody of the secretary of  
33 corrections and who is engaged in providing such service in an institution  
34 under the control of the secretary of corrections provided that such  
35 employee does not otherwise have coverage for such acts and omissions  
36 within the scope of their employment through a liability insurance contract  
37 of such independent contractor;

38 (E) a person who is an employee or volunteer of a nonprofit program,  
39 other than a municipality, who has contracted with the commissioner of  
40 juvenile justice or with another nonprofit program that has contracted with  
41 the commissioner of juvenile justice to provide a juvenile justice program  
42 for juvenile offenders in a judicial district provided that such employee or  
43 volunteer does not otherwise have coverage for such acts and omissions

1 within the scope of their employment or volunteer activities through a  
2 liability insurance contract of such nonprofit program;

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

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

6 (H) former employees for acts and omissions within the scope of their  
7 employment during their former employment with the governmental  
8 entity;

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

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

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

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

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

25 (e) "Charitable health care provider" means a person licensed by the  
26 state board of healing arts as an exempt licensee or a federally active  
27 licensee, a person issued a limited permit by the state board of healing arts,  
28 a physician assistant licensed by the state board of healing arts, a mental  
29 health practitioner licensed by the behavioral sciences regulatory board, an  
30 ultrasound technologist currently registered in any area of sonography  
31 credentialed through the American registry of radiology technologists, the  
32 American registry for diagnostic medical sonography or cardiovascular  
33 credentialing international and working under the supervision of a person  
34 licensed to practice medicine and surgery, or a health care provider as the  
35 term "health care provider" is defined under K.S.A. 65-4921, and  
36 amendments thereto, who has entered into an agreement with:

37 (1) The secretary of health and environment under K.S.A. 75-6120,  
38 and amendments thereto, who, pursuant to such agreement, gratuitously  
39 renders professional services to a person who has provided information  
40 which would reasonably lead the health care provider to make the good  
41 faith assumption that such person meets the definition of medically  
42 indigent person as defined by this section or to a person receiving medical  
43 assistance from the programs operated by the department of health and

1 environment, and who is considered an employee of the state of Kansas  
2 under K.S.A. 75-6120, and amendments thereto;

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

6 (3) a local health department or indigent health care clinic, which  
7 renders professional services to medically indigent persons or persons  
8 receiving medical assistance from the programs operated by the  
9 department of health and environment gratuitously or for a fee paid by the  
10 local health department or indigent health care clinic to such provider and  
11 who is considered an employee of the state of Kansas under K.S.A. 75-  
12 6120, and amendments thereto. Professional services rendered by a  
13 provider under this paragraph (3) shall be considered gratuitous  
14 notwithstanding fees based on income eligibility guidelines charged by a  
15 local health department or indigent health care clinic and notwithstanding  
16 any fee paid by the local health department or indigent health care clinic to  
17 a provider in accordance with this paragraph (3); or

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

34 (f) "Medically indigent person" means a person who lacks resources  
35 to pay for medically necessary health care services and who meets the  
36 eligibility criteria for qualification as a medically indigent person  
37 established by the secretary of health and environment under K.S.A. 75-  
38 6120, and amendments thereto.

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

43 (h) "Local health department" shall have the meaning ascribed to

1 such term under K.S.A. 65-241, and amendments thereto.

2 (i) "Fire control, fire rescue or emergency medical services  
3 equipment" means any vehicle, firefighting tool, protective clothing,  
4 breathing apparatus and any other supplies, tools or equipment used in  
5 firefighting or fire rescue or in the provision of emergency medical  
6 services.

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

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