

SENATE BILL No. 381

By Committee on Federal and State Affairs

2-11

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 search***  
23 ***and rescue incident caused by a negligent or willful act or omission, the***  
24 ***party responsible for the incident shall be liable to the state fire marshal***  
25 ***for the reasonable and necessary costs of the response. In the case of an***  
26 ***incident caused by a natural disaster, a party shall not be liable for the***  
27 ***costs of the response unless that party's acts or omissions contributed to***  
28 ***or aggravated the incident.***

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

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

36 (2) If the matter remains unresolved, the state fire marshal may obtain

1 civil enforcement of the final agency order pursuant to the Kansas judicial  
2 review act ~~and may recover any cost of collection, including reasonable~~  
3 ~~attorney fees.~~

4 (e) (d) The state fire marshal shall appoint a hazardous materials  
5 advisory committee and a search and rescue advisory committee to  
6 provide input and assistance to the emergency response program and act as  
7 advisors to the state fire marshal and the director of the **emergency**  
8 **response** division. The committees shall meet periodically as determined  
9 by the state fire marshal.

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

14 (f) The state fire marshal may adopt rules and regulations governing  
15 the composition, training, response and operations of the regional  
16 emergency response teams.

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

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

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

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

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

33 (B) any steward or racing judge appointed pursuant to K.S.A. 74-  
34 8818, and amendments thereto, regardless of whether the services of such  
35 steward or racing judge are rendered pursuant to contract as an  
36 independent contractor;

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

39 (D) a person who is an employee of a nonprofit independent  
40 contractor, other than a municipality, under contract to provide educational  
41 or vocational training to inmates in the custody of the secretary of  
42 corrections and who is engaged in providing such service in an institution  
43 under the control of the secretary of corrections provided that such

1 employee does not otherwise have coverage for such acts and omissions  
2 within the scope of their employment through a liability insurance contract  
3 of such independent contractor;

4 (E) a person who is an employee or volunteer of a nonprofit program,  
5 other than a municipality, who has contracted with the commissioner of  
6 juvenile justice or with another nonprofit program that has contracted with  
7 the commissioner of juvenile justice to provide a juvenile justice program  
8 for juvenile offenders in a judicial district provided that such employee or  
9 volunteer does not otherwise have coverage for such acts and omissions  
10 within the scope of their employment or volunteer activities through a  
11 liability insurance contract of such nonprofit program;

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

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

15 (H) former employees for acts and omissions within the scope of their  
16 employment during their former employment with the governmental  
17 entity;

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

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

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

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

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

34 (e) "Charitable health care provider" means a person licensed by the  
35 state board of healing arts as an exempt licensee or a federally active  
36 licensee, a person issued a limited permit by the state board of healing arts,  
37 a physician assistant licensed by the state board of healing arts, a mental  
38 health practitioner licensed by the behavioral sciences regulatory board, an  
39 ultrasound technologist currently registered in any area of sonography  
40 credentialed through the American registry of radiology technologists, the  
41 American registry for diagnostic medical sonography or cardiovascular  
42 credentialing international and working under the supervision of a person  
43 licensed to practice medicine and surgery, or a health care provider as the

1 term "health care provider" is defined under K.S.A. 65-4921, and  
2 amendments thereto, who has entered into an agreement with:

3 (1) The secretary of health and environment under K.S.A. 75-6120,  
4 and amendments thereto, who, pursuant to such agreement, gratuitously  
5 renders professional services to a person who has provided information  
6 which would reasonably lead the health care provider to make the good  
7 faith assumption that such person meets the definition of medically  
8 indigent person as defined by this section or to a person receiving medical  
9 assistance from the programs operated by the department of health and  
10 environment, and who is considered an employee of the state of Kansas  
11 under K.S.A. 75-6120, and amendments thereto;

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

15 (3) a local health department or indigent health care clinic, which  
16 renders professional services to medically indigent persons or persons  
17 receiving medical assistance from the programs operated by the  
18 department of health and environment gratuitously or for a fee paid by the  
19 local health department or indigent health care clinic to such provider and  
20 who is considered an employee of the state of Kansas under K.S.A. 75-  
21 6120, and amendments thereto. Professional services rendered by a  
22 provider under this paragraph (3) shall be considered gratuitous  
23 notwithstanding fees based on income eligibility guidelines charged by a  
24 local health department or indigent health care clinic and notwithstanding  
25 any fee paid by the local health department or indigent health care clinic to  
26 a provider in accordance with this paragraph (3); or

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

43 (f) "Medically indigent person" means a person who lacks resources

1 to pay for medically necessary health care services and who meets the  
2 eligibility criteria for qualification as a medically indigent person  
3 established by the secretary of health and environment under K.S.A. 75-  
4 6120, and amendments thereto.

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

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

11 (i) "Fire control, fire rescue or emergency medical services  
12 equipment" means any vehicle, firefighting tool, protective clothing,  
13 breathing apparatus and any other supplies, tools or equipment used in  
14 firefighting or fire rescue or in the provision of emergency medical  
15 services.

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

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