

ARTICLE 57. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

65-5701. Citation of act.

This act shall be known and may be cited as the Kansas emergency planning and community right-to-know act.

History: L. 1987, ch. 231, § 1; May 28.

65-5702. Definitions. As used in this act:

(a) "Commission" means the state emergency response commission created by K.S.A. 65-5703.

(b) "Federal act" means the federal emergency planning and community right-to-know act of 1986 (Title III, P.L. 99-499).

History: L. 1987, ch. 231, § 2; May 28.

65-5703. State emergency response commission created; membership; terms; compensation and expenses; duties.

(a) There is hereby created the state emergency response commission for the purpose of carrying out all requirements of the federal act and for the purpose of providing assistance in the coordination of state agency activities relating to:

(1) Chemical emergency training, preparedness, and response; and

(2) chemical release reporting and prevention, transportation, manufacture, storage, handling, and use.

(b) The commission shall consist of:

(1) The following state officers or their appointed designees: The lieutenant governor, the secretary of wildlife and parks, the secretary of human resources, the secretary of the state board of agriculture, the secretary of health and environment, the adjutant general, the superintendent of the Kansas highway patrol, the state fire marshal, the secretary of transportation, the attorney general, the

chairperson of the state corporation commission, and the governor;

(2) three members appointed by the governor to represent the general public; and

(3) two members appointed by the governor to represent owners and operators of facilities regulated pursuant to this act.

(c) Members of the commission appointed by the governor shall serve for terms of two years. Any vacancy in the office of an appointed member of the commission shall be filled for the unexpired term by appointment by the governor.

(d) A chairperson shall be elected annually by the members of the commission. A vice-chairperson shall be designated by the chairperson to serve in the absence of the chairperson.

(e) Members of the commission attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(f) The commission shall perform such duties as are specified in the federal act to be performed by such commissions and, in addition thereto, such duties as are specified in the laws of this state or as are deemed necessary and appropriate by the commission to achieving its purposes. In accordance with the requirements of the federal act, the commission shall establish local planning districts, subject to approval by the secretary of health and environment and the adjutant general, and shall appoint a local planning committee for each such district. Local planning committees shall perform such duties as are specified in the federal act to be performed by such committees, and in addition thereto, such duties as are assigned by the commission or by any member of the commission acting on behalf of or at the direction of the commission, or as are deemed necessary and appropriate by each such committee to achieving its purposes. The

duties of the commission and the local planning committees shall be performed in accordance with rules and regulations adopted pursuant to this act.

History: L. 1987, ch. 231, § 3; L. 1991, ch. 202, § 1; July 1.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

65-5704. Duties of secretary of health and environment; rules and regulations; fees. The secretary of health and environment shall:

(a) Provide support for the oversight and administrative activities of the commission;

(b) receive, process and manage hazardous chemical information required to be submitted and notifications required to be given pursuant to the federal act;

(c) establish a list of Kansas reportable chemicals which shall also be subject to the requirements of sections 311 and 312 of the federal act;

(d) designate threshold planning quantities and reportable quantities for any chemical designated for listing as reportable in Kansas. For purposes of reporting in Kansas, the secretary may establish more stringent reporting thresholds for those chemicals required to be reported under the federal act. Chemicals shall be designated and reporting thresholds established after public notice and hearing, based upon concern for the hazards such chemicals may represent in Kansas; and

(e) adopt such rules and regulations as necessary to implement the provisions of the federal act and the secretary's duties under this section, including provisions for protection of trade secrets and for public disclosure of information consistent with sections 322, 323 and 324 of the federal act. Such rules and

regulations may establish fees to cover all or part of the total cost of operation of the program.

History: L. 1987, ch. 231, § 4; L. 1991, ch. 202, § 2; July 1.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

65-5705. Duties of adjutant general; rules and regulations; fees. The adjutant general shall be responsible for emergency planning activities under the federal act, including adoption of such rules and regulations necessary to implement the provisions of the federal act relating to emergency planning. Such rules and regulations may establish fees to cover all or part of the total cost of operation of the program.

History: L. 1987, ch. 231, § 5; May 28.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

65-5706. Interagency agreement.

The secretary of health and environment and the adjutant general shall enter into an interagency agreement providing for exchange of information and coordination of their respective duties and responsibilities under this act.

History: L. 1987, ch. 231, § 6; May 28.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

65-5707. Provisions of federal act adopted; application; submission of lists of

chemicals and material safety data sheets.

The provisions of sections 302(c), 303(d), 304, 311, 312, 313 and 323 of the federal act, as effective on the effective date of this act, pertaining to providing of information and giving of notifications shall be considered the law of this state and shall apply equally to all federal agencies, departments, installations and facilities located in this state, as well as to any other facilities subject to the federal act. For purposes of complying with this section, facilities regulated under sections 311 and 312 of the federal act shall submit lists of chemicals in lieu of material safety data sheets, and tier II reports in lieu of tier I reports. Material safety data sheets shall be submitted within 30 days of request to the state or local emergency planning committees.

History: L. 1987, ch. 231, § 7; L. 1991, ch. 202, § 3; July 1.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

65-5708. Orders to comply with certain requirements; enforcement; civil penalties; action by health care professional to obtain information; disposition of moneys from civil penalties.

(a) The secretary of health and environment, the adjutant general or the attorney general may order a facility owner or operator to comply with the requirements of section 302(c) or 303(d) of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto. The secretary of health and environment, the adjutant general or attorney general may bring an action to enforce the order in the district court of the judicial district where the facility is located by a civil penalty of not more than \$25,000 for each day the violation or failure to comply continues.

(b) For a violation of the requirements of section 304 of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto:

(1) The secretary of health and environment, the adjutant general or the attorney general, upon notice and opportunity for hearing, may assess a civil penalty of not more than \$25,000 per violation.

(2) The secretary of health and environment, the adjutant general or the attorney general may bring an action against a facility owner or operator in the district court of the judicial district where the facility is located for a civil penalty of:

(A) Not more than \$25,000 per day for each day the violation continues, for the first violation; and

(B) not more than \$75,000 per day for each day the violation continues, for the second or a subsequent violation.

(c) For a violation of the requirements of section 312 or 313 of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto, or for denial of the accesses provided for in K.S.A. 65-5711 and amendments thereto:

(1) The secretary of health and environment, the adjutant general or the attorney general, upon notice and opportunity for hearing, may assess a civil penalty of not more than \$25,000 per violation.

(2) The secretary of health and environment, the adjutant general or the attorney general may bring an action against a facility owner or operator in the district court of the judicial district where the facility is located for a civil penalty of not more than \$25,000 per day for each day the violation continues.

(d) For a violation of section 311 or 323(b) of the federal act, as adopted by K.S.A. 65-5707, and amendments thereto:

(1) The secretary of health and environment, the adjutant general or the attorney general, upon notice and opportunity for hearing, may assess a civil penalty of not more than \$10,000 per violation.

(2) The secretary of health and environment, the adjutant general or the attorney general may bring an action against

a facility owner or operator in the district court of the judicial district where the facility is located for a civil penalty of not more than \$10,000 per day for each day the violation continues.

(e) The secretary of health and environment may impose a late fee at the rate of 10% per annum on any outstanding fee (including late fee) owed the department under K.S.A. 65-5704 and amendments thereto or rules and regulations promulgated thereunder. The late fee shall be imposed on the first of each month following the date a fee was due. Payment made prior to the next succeeding month shall satisfy the requirements of this section.

(f) Any health care professional entitled to information pursuant to section 323 of the federal act, as adopted by K.S.A. 65-5707 and amendments thereto, may bring an action in the district court to require a facility owner or operator to provide such information.

(g) Except as provided by subsection (h), any civil penalty recovered pursuant to this section shall be remitted to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the state general fund.

(h) At the request of the secretary of health and environment, the adjutant general or the attorney general, a county or district attorney may bring an action for a civil penalty as provided by this section, in which case 1/2 of any penalty recovered in such action shall be paid to the county treasurer for deposit in the county treasury and credit to the county general fund. The remainder shall be remitted to the state treasurer for disposition as provided by subsection (g).

History: L. 1987, ch. 231, § 8; L. 1991, ch. 202, § 4; July 1.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

65-5709. Penalty for violation.

Violation of section 304 of the federal act, as adopted by K.S.A. 65-5707, is a felony punishable by a fine of not more than \$25,000 or imprisonment for not more than two years, or both, for the first conviction and a fine of not more than \$50,000 or imprisonment for not more than five years, or both, for the second or a subsequent conviction.

History: L. 1987, ch. 231, § 9; May 28.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

65-5710. Severability. The provisions of this act are severable and, if any provision or part thereof is held invalid, unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act.

History: L. 1987, ch. 231, § 10; May 28.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

65-5711. Inspection of premises and records for determination of compliance with act. The secretary of health and environment, the adjutant general or the attorney general or their respective authorized representatives shall have the power to enter at all reasonable times upon any private or public property and inspect the premises and all relevant business or other records for the purpose of determining whether there is compliance with or violation of the provisions of this act and rules and regulations issued pursuant thereto, except that entry into areas

under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

History: L. 1991, ch. 202, § 5; July 1.

Transfer of power and duties to Commission on emergency planning and response, under Executive Reorganization Order No. 29, L. 1999, ch. 192 § 3; July 1; at K.S.A. 1999 Supp. 65-5721.

Implementing Executive Reorganization Order No. 29, L. 1999, ch.192, § 1; July 1, 1999.

65-5712 to 65-5720. Reserved

65-5721. Commission on emergency planning and response; establishment; members; terms, compensation and expenses.

(a) On the effective date of this order, there is hereby established the commission on emergency planning and response.

(b) The membership of the commission on emergency planning and response shall consist of the agency head or secretary or a designated person of authority from the following agencies:

- (1) the fire marshal;
- (2) the department of health and environment;
- (3) the department of transportation;
- (4) the Kansas highway patrol;
- (5) the adjutant general; and
- (6) the department of commerce and housing.

(c) In addition, the membership of the commission on emergency planning and response shall also consist of seven members appointed by the governor as follows:

- (1) Two individuals shall be representative of counties;
- (2) two individuals selected to represent cities; and
- (3) three individuals selected to

represent businesses and industries.

(d) A designee of the adjutant general shall serve as the secretary of the commission on emergency planning and response. The adjutant general shall provide staff support for the commission on emergency planning and response.

(e) Of the members first appointed to the commission on emergency planning and response by the governor, one representative of cities, one representative of counties, and one representative of business and industry shall serve a term of two years, and the remainder of the members appointed by the governor shall serve terms of three years. Thereafter, members who represent cities, counties, and business and industry shall serve terms of four years and until the successor has been appointed. Any vacancy in the office of an appointed member shall be filled for the unexpired term by appointment by the governor.

(f) A chairperson shall be elected annually by the members of the commission. A vice-chairperson shall be designated by the chairperson to serve in the absence of the chairperson.

(g) For attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, those members of the commission appointed by the governor shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 1; July 1.

65-5722. Same; powers and duties.

The commission on emergency planning and response shall have the following functions, powers and duties:

(a) Carry out all requirements of the federal emergency planning and community right-to-know act of 1986, 42 U.S.C. 11001-11005, and amendments thereto,

hereinafter called the "federal act";

(b) provide assistance and advice in establishing policy for the coordination of state agency activities relating to emergency training, preparedness, planning, and response;

(c) provide assistance and advice in establishing policy and procedures for chemical release reporting and prevention, transportation, manufacture, storage, handling, and use;

(d) facilitate and advise the division of emergency management, the adjutant general, and others in the preparation and implementation of all emergency plans prepared by state agencies;

(e) facilitate and advise the division of emergency management, the adjutant general, and others in the preparation and implementation of statewide, interjurisdictional, and local emergency plans prepared in accordance with state and federal law;

(f) designate, and revise as necessary, the boundaries of emergency planning districts in accordance with the federal act;

(g) approve the local emergency planning committee for each emergency planning district;

(h) review reports about responses to disaster emergencies and make recommendations to the appropriate parties involved in the response concerning improved prevention, mitigation, and preparedness;

(i) provide assistance and advice to the division of emergency management and the adjutant general in coordinating, advising, or planning tasks related to community right-to-know reporting, toxic chemical release reporting, management of hazardous substances, emergency planning and preparedness for all types of hazards, and emergency planning and preparedness for all types of disasters, as defined in K.S.A. 48-925;

(j) recommend procedures to integrate, as appropriate, hazardous substance

response planning under 42 U.S.C. 11001-11005, federal contingency planning under 33 U.S.C. 1321 and other federal laws as applicable to hazardous substance discharges, and state, regional, and local planning;

(k) provide recommendations and advice to the adjutant general and the secretary of health and environment regarding the adoption of regulations as authorized to carry out the purposes of all state hazard preparedness and planning laws and the federal act, 42 U.S.C. 11001-11005; and

(l) approve the fees established by rules and regulations of the adjutant general to cover all or part of the total operational costs of implementing the provisions of the federal act.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 2; July 1.

65-5723. Emergency response commission abolished; powers and duties transferred; orders and directives continued in effect until superseded.

The state emergency response commission created by K.S.A. 65-5703 is hereby abolished.

(a) Except as otherwise provided by this order, all of the powers, duties, and functions of the existing state emergency response commission are hereby transferred to and conferred and imposed upon the commission on emergency planning and response.

(b) Whenever the phrase "state emergency response commission" or words of like effect, are referred to or designated by a statute, rule and regulation, contract or other documents, the reference or designation shall be deemed to apply to the commission on emergency planning and response.

(c) All orders and directives of the state emergency response commission shall continue to be effective and shall be deemed to be orders and directives of the commission on emergency planning and response until

revised, amended or nullified pursuant to law.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 3; July 1.

65-5724. Commission on emergency planning and response successor to emergency response commission; force and effect of acts.

Except as otherwise provided by this order, the commission on emergency planning and response established by this order shall be the successor in every way to the powers, duties, and functions of the state emergency response commission which were vested prior to the effective date of this order and which are transferred pursuant to K.S.A. 1999 Supp. 65-5723. Every act performed in the exercise of such powers, duties, and functions by or under the authority of the commission on emergency planning and response shall be deemed to have the same force and effect as if performed by the state emergency response commission in which such powers, duties, and functions were vested prior to the effective date of this order.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 4; July 1.

65-5725. Powers and duties of secretary of health and environment transferred to adjutant general.

(a) Except as otherwise provided by this order, all of the powers, duties, and functions of the secretary of health and environment relating to provision of support for the oversight and administrative activities of the state emergency response commission as provided in K.S.A. 65-5704(a), and amendments thereto, are hereby transferred to and conferred and imposed upon the adjutant general.

(b) Except as otherwise provided by this order, whenever the words "secretary of health and environment" or words of like effect are referred to or designated by a statute, rule and regulation, contract or other document in connection with the powers,

and functions transferred from the secretary of health and environment to the adjutant general by this order, the reference or designation shall be deemed to apply to the adjutant general.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 5; July 1.

65-5726. Rules and regulations, orders and directives continued in effect until superseded. All rules and regulations, orders, and directives of the secretary of health and environment relating to those duties, functions, and powers transferred to the adjutant general by K.S.A. 1999 Supp. 65-5725 shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the adjutant general until revised, amended or nullified pursuant to law.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 6; July 1.

65-5727. Adjutant general successor to secretary of health and environment; force and effect of acts.

Except as otherwise provided by this order, the adjutant general shall be the successor in every way to the powers, duties, and functions of the secretary of health and environment which were vested prior to the effective date of this order and which are transferred pursuant to K.S.A. 1999 Supp. 65-5725. Every act performed in the exercise of such powers, duties, and functions by or under the authority of the adjutant general shall be deemed to have the same force and effect as if performed by the secretary of health and environment in which such powers, duties, and functions were vested prior to the effective date of this order.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 7; July 1.

65-5729. Commission on emergency planning and response successor to powers and duties; force and effect of acts. Except

as otherwise provided by this order, the commission on emergency planning and response established by this order shall be the successor in every way to the powers, duties, and functions of the adjutant general and the secretary of health and environment in which the same were vested prior to the effective date of this order and which are transferred pursuant to K.S.A. 1999 Supp. 65-5728. Every act performed in the exercise of such powers, duties, and functions by or under the authority of the commission on emergency planning and response shall be deemed to have the same force and effect as if performed by the adjutant general or the secretary of health and environment in which such powers, duties, and functions were vested prior to the effective date of this order.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 9; July 1.

65-5730. Transfer of property and records; resolution of conflicts.

(a) The adjutant general and the secretary of health and environment shall engage in consultations with the purpose of reaching agreement regarding the disposition of all property, all property rights, and records which were used for or pertain to the performance of any of the powers and duties transferred to the adjutant general pursuant to this order.

(b) Any conflict as to the proper disposition of property, records, or the unexpended balance of any appropriation arising as a result of any abolition, transfer, attachment or change made by this order shall be determined by the governor, whose decision shall be final.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 10; July 1.

65-5731. Rights preserved in legal actions and proceedings. No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state

agency, or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

History: Executive Reorganization Order No. 29, L. 1999, ch. 192, § 11; July 1.