

SENATE BILL No. 531

AN ACT enacting the radon certification law; amending K.S.A. 48-1625 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section. 1. Sections 1 through 12, and amendments thereto, shall be known and may be cited as the radon certification law.

New Sec. 2. As used in the radon certification law:

(a) "Mitigate" means to repair or alter a building or design for the purpose in whole or in part of reducing the concentration of radon in the indoor atmosphere.

(b) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, state, political subdivision or agency of a state or political subdivision, or any legal successor or representative thereof.

(c) "Radon (Rn)" means the naturally occurring, colorless, odorless, radioactive gaseous element formed by radioactive decay, including radon 222, radon 220 (thoron), radon decay products and radon progeny or as defined by rules and regulations adopted by the secretary.

(d) "Secretary" means the secretary of the department of health and environment.

(e) "Measurement" or "test" means the: (1) Examination of a building, soil, water or air for the presence of radon, including taking air or soil samples; or (2) diagnosis of the source of radon contamination.

(f) "Radon measurement business" means a business which performs radon measurement and is either owned by, employees, or retains as a consultant a certified radon measurement technician.

(g) "Radon mitigation business" means a business which performs radon mitigation services and is either owned by, employees or retains as a consultant a certified radon mitigation technician.

(h) "Radon measurement laboratory" means a business that performs laboratory analysis of radon measurement devices or samples, but does not include the field analysis of continuous radon monitors or continuous working level monitors.

(i) "Department" means the department of health and environment.

New Sec. 3. (a) The secretary shall establish a certification program for certified persons performing radon tests or mitigation in the state.

(b) The secretary shall adopt rules and regulations necessary to administer and implement the provisions of the radon certification law. Such rules and regulations shall be adopted no later than July 1, 2011.

(c) Within the limitations of appropriation acts, the secretary may employ personnel necessary to carry out the provisions of the radon certification law and rules and regulations adopted thereunder.

(d) The secretary may enter into agreements with public or private agencies for the implementation of the radon certification law.

(e) The secretary shall have no authority to adopt rules, regulations, standards or guidelines for the acceptable or permissible level of radon gas concentrations in residential or commercial structures that are more stringent, restrictive or expansive than the applicable federal standards or guidelines adopted or approved by the United States environmental protection agency.

New Sec. 4. (a) The secretary may establish a schedule of fees to pay the costs of administration and implementation of the radon certification law. The secretary shall remit all moneys received from fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the radiation control operations fee fund established by K.S.A. 48-1625, and amendments thereto.

(b) Subject to the limitations of this section, the secretary may impose and collect fees, in advance for:

Radon measurement technician, application fee, new and biannual	
renewal	\$100.00
Radon mitigation technician application fee, new and biannual	
renewal	100.00
Radon measurement laboratory, application fee, new and biannual	
renewal	250.00
Returned check or insufficient check	50.00
Late application fee, for each month or part thereof	25.00

New Sec. 5. (a) A person may not perform radon measurements or represent or advertise that such person may perform radon measurements unless such person has been certified as a radon measurement technician by the department.

(b) Any person desiring to be certified as a certified radon measurement technician shall submit an application on a form prescribed by the department along with the non refundable application fee.

(c) A radon measurement technician shall comply with the requirements of the radon certification law and any rules and regulations adopted thereunder.

(d) (1) Except as provided by this section, no person shall be certified by the department as a certified radon measurement technician unless such person shall have completed successfully a training course and passed an examination on radon measurement offered by the national radon safety board, the national environmental health association, or another organization determined by the department to have a radon measurement certification examination equal to or better than the national environmental health association or the national radon safety board.

(2) Applicants who are certified by either the national environmental health association or the national radon safety board on July 1, 2011, and who have completed an approved training course and passed an examination on radon measurement at any time prior to July 1, 2011, shall be deemed to have met the requirements of paragraph (1).

(e) The provisions of this section shall not apply to any person:

(1) Performing radon measurements on a building owned by such person or where such person resides; provided, the testing is not performed in association with or related to the transfer of real property; or

(2) performing radon measurements without remuneration; provided, the testing is not performed in association with or related to the transfer of real property.

New Sec. 6. (a) A person may not perform radon mitigation or represent or advertise that such person may perform radon mitigation unless such person has been certified by the department.

(b) Any person desiring to be certified as a radon mitigation technician shall submit an application on a form prescribed by the department along with the non refundable application fee.

(c) A radon mitigation technician shall comply with the requirements of the radon certification law and any rules and regulations adopted thereunder.

(d) (1) Except as provided by this section, no person shall be certified by the department as a certified radon mitigation technician unless such person shall have completed successfully a training course and passed an examination on radon mitigation offered by the national radon safety board, the national environmental health association, or another organization determined by the department to have a radon mitigation certification examination equal to or better than the national environmental health association or the national radon safety board.

(2) Applicants who are certified by either the national environmental health association or the national radon safety board on July 1, 2011, and who have completed an approved training course and passed an examination on radon mitigation at any time prior to July 1, 2011, shall be deemed to have met the requirements of paragraph (1).

(e) The provisions of this section shall not apply to:

(1) Any person testing or mitigating buildings owned or occupied by such person.

(2) Any person not otherwise certified under the radon certification law who incorporate radon control options during construction in conformance with guidance designated by the department including, but not limited to, Appendix F of the 2003 international residential code or the applicable sections of ASTM E1465 “Standard Practice for Radon Control Options for the Design and Construction of New Low Rise Residential Buildings.” Any upgrade or modification of the system to make it an active mitigation system shall be done by persons certified by the department and certified under the radon certification law.

(3) Laborers performing specific mitigation system installation tasks under the direct on-site supervision of a certified radon mitigation technician.

(4) Trade professionals installing portions of a radon mitigation system at the request of a radon mitigation business and under the direct on-site supervision of a certified radon mitigation technician.

(5) Any person who sells, or offers for sale at a retail outlet, radon measurement devices, such as charcoal canisters if:

(A) The radon measurement devices are manufactured or supplied by a certified person by the department;

(B) the analysis, result and interpretation of such tests are performed by a laboratory certified by the department and sent directly to the purchaser;

(C) consultation on radon is provided only by a certified radon measurement technician; and

(D) the measurement devices are stored and displayed in a manner that maintains their integrity.

(6) Any person testing for or mitigating radon as part of radon training approved by the department, scientific research approved by the department or as a public service without remuneration, and not performed for the purposes of transferring real property, as approved by the department.

New Sec. 7. A radon measurement business shall comply with the radon certification law and any rules and regulations adopted thereunder. A certified radon measurement technician who is certified with the department shall own, be employed by or be retained as a consultant by a radon measurement business when such business is performing radon measurements. All radon testing, including the initial placement and final retrieval of all measurement devices and post mitigation testing, shall be performed by a certified radon measurement technician.

New Sec. 8. A radon mitigation business shall comply with the radon certification law and any rules and regulations adopted thereunder. A certified radon mitigation technician who is certified with the department shall own, be employed by or be retained as a consultant by a radon mitigation business when such business is performing radon mitigation. A radon mitigation business shall ensure that radon mitigation system installations are performed under the supervision of a certified radon mitigation technician.

New Sec. 9. (a) A person may not perform laboratory analysis or represent or advertise that it may perform laboratory analysis of radon measurement devices or samples unless such person has been certified as a certified radon measurement laboratory by the department.

(b) Any person desiring to be certified as a certified radon measurement laboratory shall submit an application on a form prescribed by the department along with the non refundable application fee.

(c) A certified radon measurement laboratory shall comply with the requirements of the radon certification law and any rules and regulations adopted thereunder. A person shall not be certified as an approved radon measurement laboratory unless such person has obtained a laboratory certification from the national environmental health association, the national radon safety board or a national proficiency testing program approved by the department.

(d) A designation as a certified radon measurement laboratory shall be nontransferable.

New Sec. 10. (a) Except as provided by subsections (d), (e) and (g), any person who tests for radon in this state, analyzes radon testing devices used in this state or performs radon mitigation in this state shall make a report of such testing, analysis or mitigation to the secretary. Such report shall be made within 90 days of performance of such testing, analysis or mitigation and shall include the address where the services were provided, location within the building, approximate age of the building, the date on which the service was provided, the type of equipment or test kit used for radon measurements, specific information regarding pre-mitigation or post-mitigation for radon measurements, and the results of any tests, analysis or mitigation.

(b) All information obtained pursuant to this section shall be confidential and shall not be subject to disclosure under the open records act.

(c) The secretary may conduct research studies utilizing the data required to be reported by subsection (a). No report or publication shall include names or addresses of individuals.

(d) The provisions of this section shall not apply to a person performing tests or mitigation on a building owned by such person or where such person resides.

(e) Radon measurement businesses certified under this act shall not be required to submit the results of a radon test to the Kansas department of health and environment unless the customer or client consents to the release of this information in the contract to perform the radon test under subsection (f).

(f) Each contract between a certified radon measurement business and a client to perform a radon test shall include the following language: “It is standard procedure to provide the radon measurement information to the Kansas Department of Health and Environment. This data is required by law to be kept confidential and is used to conduct studies on radon and lung cancer incidence in Kansas. No report or publication will include names or addresses of individuals associated with the radon tests. If you (the client) agree that the radon testing information be disclosed to the Kansas Department of Health and Environment, you should initial here _____.”

(g) If no contract is entered into by a certified radon measurement business and a client, the results of the radon testing shall be reported to the department in accordance with subsection (a).

New Sec. 11. (a) Any person who willfully violates any provision of the radon certification law or any rules and regulations adopted thereunder is guilty of a class B misdemeanor and is subject to a cease and desist order imposed by the secretary after providing notice and a hearing in accordance with the Kansas administrative procedure act.

(b) In addition to any other penalty provided by law and after providing notice and a hearing in accordance with the Kansas administrative procedure act, the secretary may impose a fine in an amount not to exceed \$1,000 against any person who violates any provision of the radon certification law and any rule and regulation adopted or order issued thereunder; if any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the amount of the civil penalty. Any action by the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(c) On the request of the secretary, the attorney general is authorized to institute a civil action to collect any fine imposed pursuant to this section.

(d) All moneys collected from fines imposed under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(e) Any person certified for radon measurement or mitigation and who violates the provisions of the radon certification law or the rules and regulations adopted thereunder are subject to suspension or revocation of certification by the department in accordance with the Kansas administrative procedure act.

New Sec. 12. If any section, subsection, sentence, clause, phrase or word of this act is for any reason held to be unconstitutional, such decree shall not affect the validity of any remaining portion of this act.

Sec. 13. K.S.A. 48-1625 is hereby amended to read as follows: 48-1625. (a) There is hereby created in the state treasury the radiation control operations fee fund to administer the provisions of K.S.A. 48-1601 through 48-1624, and amendments thereto. Such fund shall be administered by the secretary of health and environment in accordance with the provisions of this section.

(b) Revenue from the following sources shall be deposited in the state treasury and credited to the radiation control operations fee fund:

- (1) Fees collected for licenses and registrations, and renewals thereof, issued under the nuclear energy development and radiation control act;
- (2) reimbursement for administrative, inspection, radioactive material disposal, investigation and remedial action expenses;
- (3) excluding civil penalties, moneys paid pursuant to any agreement, stipulation or settlement;

- (4) grants, gifts, bequests or state appropriations for the purposes of K.S.A. 48-1601 through 48-1624, and amendments thereto; ~~and~~
- (5) *fees collected pursuant to section 4, and amendments thereto; and*
- (6) interest attributable to investment of moneys in the fund.

Moneys described in this subsection which are received by the secretary shall be remitted by the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of such fund.

The secretary of health and environment is authorized to receive from the federal government or any of its agencies or from any private or governmental source any funds made available for the purposes of K.S.A. 48-1601 through 48-1624, and amendments thereto.

(c) The secretary is authorized to use moneys from the radiation control operations fee fund to pay the cost of:

- (1) All activities related to licensing and registration, including but not limited to, development and issuance of licenses, registrations and renewals thereof, compliance monitoring, inspections, long term monitoring and enforcement actions and decontamination, decommissioning, reclamation or remedial actions;
- (2) design and review of radioactive waste disposal facilities;
- (3) review and witnessing of test and repair procedures;
- (4) investigation of violations, complaints, pollution and events affecting the environment or public health;
- (5) design and review of remedial action plans;
- (6) personnel training programs;
- (7) contracting for services needed to supplement the department's staff expertise in administering the provisions of K.S.A. 48-1601 through 48-1624, and amendments thereto;
- (8) staff consultation needed to provide radiation protection services provided under this act;
- (9) mitigation of adverse environmental or public health impacts, including impounding sources of radiation;
- (10) emergency or long-term remedial activities;
- (11) administrative, technical and legal costs incurred by the secretary in administering the provisions of K.S.A. 48-1601 through 48-1624, and amendments thereto; and
- (12) costs of program administration, including the state's share of any grant received from the federal government or from other sources, public or private.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the radiation control operations fee fund interest earnings based on:

- (1) The average daily balance of moneys in the radiation control operations fee fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding months.

(e) All expenditures from this fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment for the purposes set forth in this section.

~~(f) Any appropriation of state general fund moneys for the fiscal year ending June 30, 2005, to pay costs described in subsection (c) shall be repaid to the state general fund from the radiation control operations fee fund. On and after July 1, 2005, as moneys are available, but not later than June 30, 2007, the director of accounts and reports shall transfer moneys from the radiation control operations fee fund to the state general fund to repay such moneys.~~

Sec. 14. K.S.A. 48-1625 is hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.