

## SENATE BILL No. 204

By Committee on Public Health and Welfare

2-11

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AN ACT concerning lead poisoning prevention; amending K.S.A. 65-1,200, 65-1,201, 65-1,202, 65-1,203, 65-1,204, 65-1,205, 65-1,206, 65-1,207, 65-1,208, 65-1,209, 65-1,210, 65-1,211, 65-1,212, 65-1,213 and 65-1,214 and repealing the existing sections.

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

Section 1. K.S.A. 65-1,200 is hereby amended to read as follows: 65-1,200. K.S.A. 65-1,200 to 65-1,214, inclusive, ~~of this act and amendments thereto~~, shall be known and may be cited as the ~~residential childhood child and adult~~ lead poisoning prevention act.

Sec. 2. K.S.A. 65-1,201 is hereby amended to read as follows: 65-1,201. As used in the ~~residential childhood child and adult~~ lead poisoning prevention act:

(a) “Abatement” means any measure or set of measures ~~designed to which permanently eliminate lead-based paint eliminates lead hazards as defined in the federal program.~~

(b) “Accredited training program” means a training program that has been accredited by ~~the federal program or~~ the secretary to present training courses to individuals engaged in ~~lead-based paint~~ lead activities.

(c) “Business entity” means a company, partnership, corporation, sole proprietorship, association, or other business concern.

(d) “Certificate” means an authorization issued by the secretary permitting an individual to engage in ~~lead-based paint~~ lead activities.

(e) “*Commercial and industrial properties*” means, but is not limited to, any factory, plant, refinery, warehouse, steel edifice, building or complex of buildings, which include activities that are generally recognized as commercial or industrial by local zoning authorities in this state, but shall not include: (1) Housing built before 1978; (2) child occupied facilities; and (3) government facilities.

~~(f)~~ (f) “Federal program” means subpart L, lead-based paint activities of 40 CFR part 745, as in effect on the effective date of this act.

~~(g)~~ (g) “Lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or more than 0.5% by weight.

~~(g)~~ (h) “~~Lead-based paint~~ Lead activities” means the inspection, as-

1 ~~assessment and abatement of lead-based paint, including the disposal of~~  
 2 ~~waste generated therefrom lead and lead hazards, and any investigation~~  
 3 ~~for the determination of the presence of lead in soil, paint, water or dust~~  
 4 ~~on residential, commercial or industrial properties.~~

5 ~~(i)~~ (i) “License” means an authorization issued by the secretary per-  
 6 mitting a business entity to engage in ~~lead-based paint~~ lead activities.

7 ~~(j)~~ (j) “Public agency” means any state agency or political or taxing  
 8 subdivision of the state and those federal departments, agencies or in-  
 9 strumentalities thereof which are not subject to preemption.

10 ~~(k)~~ (k) “Secretary” means the secretary of health and environment.

11 ~~(l)~~ (l) “Residential dwelling” means a detached single family dwelling  
 12 or a single family dwelling unit in a structure that contains more than one  
 13 separate residential dwelling unit used as a place of residence for habi-  
 14 tation by an individual or the individual’s immediate family, or both.

15 (m) “Residential real property” means real property on which there  
 16 is situated one or more residential dwellings used or occupied, or intended  
 17 to be used or occupied, in whole or in part, as the home or residence of  
 18 one or more persons.

19 (n) “Renovation activity” means activities that disturb more than two  
 20 square feet of paint.

21 ~~(o)~~ (o) “Habitation” means a place of abode or residence constructed  
 22 before 1978 where individuals eat, sleep and reside.

23 ~~(p)~~ (p) “Immediate family” means spouse, parent, stepparent, *adult*  
 24 *child*, child, *foster child*, stepchild or, *grandchild*, *niece*, *nephew*, sibling  
 25 or any combination thereof.

26 Sec. 3. K.S.A. 65-1,202 is hereby amended to read as follows: 65-  
 27 1,202. The secretary shall administer the provisions of the ~~residential~~  
 28 ~~childhood~~ *child and adult* lead poisoning prevention act. In administering  
 29 the provisions of the ~~residential-childhood~~ *child and adult* lead poisoning  
 30 prevention act, the secretary shall be authorized to:

31 (a) Develop and implement a ~~childhood~~ *child and adult* lead poison-  
 32 ing prevention program as necessary to protect the health of the ~~children~~  
 33 *people* of Kansas, which may include provisions to:

34 (1) Investigate the extent of ~~childhood~~ *child and adult* lead poisoning  
 35 in Kansas;

36 (2) develop a data management system designed to collect and ana-  
 37 lyze information on ~~childhood~~ *child and adult* lead poisoning;

38 (3) develop and conduct programs to educate health care providers  
 39 regarding the magnitude and severity of ~~and the necessary responses to~~  
 40 lead poisoning in Kansas;

41 (4) *Implement procedures relevant to the case management of ele-*  
 42 *vated blood lead levels;*

43 ~~(5)~~ (5) issue recommendations for the methods and intervals for

1 blood lead screening and testing of children, taking into account recom-  
2 mendations by the United States centers for disease control and preven-  
3 tion, except that no child shall be screened or tested if the child's parent  
4 or guardian objects in writing on the ground that such ~~screening or testing~~  
5 is contrary to the parent's or guardian's religious beliefs and practices;

6 ~~(5)~~ (6) develop and issue health advisories urging health care provid-  
7 ers to conduct blood lead ~~screening of children~~ *testing*;

8 ~~(6)~~ (7) encourage health care providers to ensure that parents and  
9 guardians of children are advised of the availability and ~~advisability~~ *feas-*  
10 *ibility* of ~~screening and~~ testing for lead poisoning;

11 ~~(7)~~ (8) develop a program to assist local health departments in iden-  
12 tification and follow-up of cases of elevated blood lead levels in children  
13 and other high-risk individuals; and

14 ~~(8)~~ (9) in consultation with appropriate federal, state and local agen-  
15 cies, develop a comprehensive public education program regarding en-  
16 vironmental lead exposures and lead poisoning by:

17 (A) Identifying appropriate target groups that are in a position to  
18 prevent lead poisoning or reduce ~~the number of children who are exposed~~  
19 *exposure* to lead;

20 (B) assessing the information needed for each of the target groups  
21 and determine the best means of educating the members of each target  
22 ~~groups~~ *group*; and

23 (C) disseminating the information to the target groups in an effective  
24 manner.

25 (b) adopt rules and regulations necessary for the administration of  
26 the ~~residential childhood~~ *child and adult* lead poisoning prevention act  
27 including, but not limited to, licensure of business entities and public  
28 agencies, certification of individuals, accreditation of training programs,  
29 on-site inspections and requirements, notification and record keeping,  
30 procedures and work practice standards relating to ~~lead-based paint~~ *lead*  
31 activities as are necessary to protect the public health and safety;

32 (c) adopt by rules and regulations a reasonable schedule of fees for  
33 the issuance and renewal of certificates and licenses, training program  
34 accreditations and on-site inspections. The fees shall be periodically in-  
35 creased or decreased consistent with the need to cover the direct and  
36 indirect costs to administer the program. At no time shall such fees exceed  
37 those charged by the United States environmental protection agency for  
38 the same or similar regulatory programs. The fees shall be based upon  
39 the amount of revenue determined by the secretary to be required for  
40 proper administration of the provisions of the ~~residential childhood~~ *child*  
41 *and adult* lead poisoning prevention act. State and local health depart-  
42 ment personnel certifying for the purpose of environmental investigation  
43 of lead poisoned children shall be exempted from ~~licensure~~ *certification*

1 fees;

2 (d) conduct on-site inspections of procedures being utilized by a li-  
3 censee during an actual abatement project and conduct inspection of the  
4 records pertaining to the ~~residential childhood~~ *child and adult* lead poi-  
5 soning prevention act;

6 (e) adopt rules and regulations regarding the distribution of lead haz-  
7 ard information to owners and occupants of housing prior to conducting  
8 renovation activities in housing;

9 (f) *adopt rules and regulations for renovation activities in pre-1978*  
10 *housing;*

11 (g) *adopt rules and regulations for lead activities in commercial and*  
12 *industrial properties;*

13 ~~(h)~~ (h) develop rules and regulations to control ~~and~~ *the* disposition  
14 and reuse of architectural debris that contains lead-based paint.

15 Sec. 4. K.S.A. 65-1,203 is hereby amended to read as follows: 65-  
16 1,203. (a) A business entity or public agency shall not engage in a ~~lead-~~  
17 ~~based-paint~~ *lead* activity unless the business entity or public agency holds  
18 a license issued by the secretary for that purpose.

19 (b) Except as otherwise provided in the ~~residential childhood~~ *child*  
20 *and adult* lead poisoning prevention act, no individual shall engage in  
21 ~~lead-based-paint~~ *lead* activities unless the individual holds a certificate  
22 issued by the secretary for that purpose. In order to qualify for a certifi-  
23 cate, an individual must have successfully completed an accredited train-  
24 ing program and pass a third party exam as required by the secretary. Any  
25 individual who owns and resides in a residential dwelling may perform  
26 ~~lead-based-paint~~ *lead* activities within such residential dwelling even  
27 though such individual does not hold a certificate for that purpose under  
28 the ~~residential childhood~~ *child and adult* lead poisoning prevention act.  
29 All work performed by such individual owner of a residential dwelling  
30 must be performed in accordance with state and federal guidelines or  
31 statutes, or both.

32 (c) Any business or public agency that owns or leases a nonresidential  
33 dwelling may perform ~~lead-based-paint~~ *lead* activities within such facility  
34 even though such business or public agency does not hold a license for  
35 that purpose under the ~~residential childhood~~ *child and adult* lead poi-  
36 soning prevention act. All work performed by a business or public agency on  
37 such facility must be performed in accordance with state and federal  
38 guidelines or statutes, or both.

39 Sec. 5. K.S.A. 65-1,204 is hereby amended to read as follows: 65-  
40 1,204. In order to qualify for a license, a business entity or public agency  
41 shall:

42 (a) Ensure that each employee or agent ~~of the business entity or pub-~~  
43 ~~lic agency~~ who will engage in a ~~lead-based-paint~~ *lead* activity is certified;

1 (b) demonstrate to the satisfaction of the secretary that the business  
2 entity or public agency is capable of complying with all requirements,  
3 procedures and standards of the United States environmental protection  
4 agency, the United States occupational safety and health administration  
5 and the secretary, as applicable, to ~~lead-based paint~~ *lead* activities;

6 (c) comply with all rules and regulations adopted by the secretary  
7 under the ~~residential-childhood~~ *child and adult* lead poisoning prevention  
8 act; and

9 (d) allow representatives of the secretary, after identification, to enter  
10 and inspect any habitation *or commercial or industrial properties*, or  
11 property on which a habitation *or commercial or industrial property* is  
12 situated at any reasonable time with consent of the owner or under search  
13 warrant for the purpose of inspecting ~~lead-based paint~~ *lead* activities as  
14 required in order to implement provisions of the ~~residential-childhood~~  
15 *child and adult* lead poisoning prevention act.

16 Sec. 6. K.S.A. 65-1,205 is hereby amended to read as follows: 65-  
17 1,205. The secretary shall remit all moneys received from the fees estab-  
18 lished pursuant to the ~~residential-childhood~~ *child and adult* lead poisoning  
19 prevention act to the state treasurer in accordance with the provisions of  
20 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
21 remittance, the state treasurer shall deposit the entire amount in the state  
22 treasury to the credit of the lead-based paint hazard fee fund established  
23 in K.S.A. 65-1,206, and amendments thereto.

24 Sec. 7. K.S.A. 65-1,206 is hereby amended to read as follows: 65-  
25 1,206. (a) There is established in the state treasury the lead-based paint  
26 hazard fee fund. Revenue from the following sources shall be deposited  
27 in the state treasury and credited to the fund:

28 (1) Fees collected under the ~~residential-childhood~~ *child and adult*  
29 lead poisoning prevention act for licensure and certification to engage in  
30 ~~lead-based paint~~ *lead* activities, accreditation of training programs and  
31 fees for evaluation of abatement projects;

32 (2) any moneys recovered by the state under the ~~residential-childhood~~  
33 *child and adult* lead poisoning prevention act, including administrative  
34 expenses, civil penalties and moneys paid under any agreement, stipula-  
35 tion or settlement;

36 (3) any moneys collected or received from public or private grants  
37 and from gifts and donations; and

38 (4) interest attributable to investment of moneys in the fund.

39 (b) Moneys deposited in the fund shall be expended only for the  
40 purpose of administering the ~~residential-childhood~~ *child and adult* lead  
41 poisoning prevention act and for no other governmental purposes.

42 (c) On or before the 10th day of each month, the director of accounts  
43 and reports shall transfer from the state general fund to the lead-based

1 paint hazard fee fund interest earnings based on:

2 (1) The average daily balance of moneys in the lead-based paint haz-  
3 ard fee fund for the preceding month; and

4 (2) the net earnings rate of the pooled money investment portfolio  
5 for the preceding month.

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

10 Sec. 8. K.S.A. 65-1,207 is hereby amended to read as follows: 65-  
11 1,207. (a) The secretary may refuse to issue a license or may suspend or  
12 revoke any license issued under the ~~residential-childhood~~ *child and adult*  
13 lead poisoning prevention act if the secretary finds, after notice and hear-  
14 ing conducted in accordance with the provisions of the Kansas adminis-  
15 trative procedure act, that the applicant or licensee has:

16 (1) Fraudulently or deceptively obtained or attempted to obtain a  
17 license;

18 (2) failed at any time to meet the qualifications for a license or to  
19 comply with any rules and regulations adopted by the secretary under the  
20 ~~residential-childhood~~ *child and adult* lead poisoning prevention act;

21 (3) failed at any time to meet any applicable federal or state standard  
22 for ~~lead-based-paint~~ *lead* activities; or

23 (4) employed or permitted an uncertified individual to work on a  
24 ~~lead-based-paint~~ *lead* activity.

25 (b) The secretary may refuse to issue a certificate or may suspend or  
26 revoke any certificate issued under the ~~residential-childhood~~ *child and*  
27 *adult* lead poisoning prevention act if the secretary finds, after notice and  
28 hearing conducted in accordance with the provisions of the Kansas ad-  
29 ministrative procedure act, that the applicant for certificate or certificate  
30 holder has:

31 (1) Fraudulently or deceptively obtained or attempted to obtain a  
32 certificate; or

33 (2) failed at any time to meet qualifications for a certificate or to  
34 comply with any provision or requirement of the ~~residential-childhood~~  
35 *child and adult* lead poisoning prevention act or any rules and regulations  
36 adopted by the secretary under the ~~residential-childhood~~ *child and adult*  
37 lead poisoning prevention act.

38 (c) The secretary may deny, suspend or revoke any accreditation of  
39 a training program under the ~~residential-childhood~~ *child and adult* lead  
40 poisoning prevention act if the secretary finds, after notice and hearing  
41 conducted in accordance with the provisions of the Kansas administrative  
42 procedure act, that the applicant for training program accreditation or  
43 training provider has:

1 (1) Fraudulently or deceptively obtained or attempted to obtain ac-  
2 creditation of a training program;

3 (2) failed at any time to meet the qualifications to obtain accreditation  
4 of a training program or to comply with any rules and regulations adopted  
5 by the secretary under the ~~residential-childhood~~ *child and adult* lead  
6 poisoning prevention act;

7 (3) failed to maintain or provide information on training programs;  
8 or

9 (4) falsified information, accreditation or approval records, instructor  
10 qualification information or other accreditation or approval information  
11 required to be submitted by the secretary.

12 (d) Any individual, business entity or accredited training program ag-  
13 grieved by a decision or order of the secretary may appeal the order or  
14 decision in accordance with the provisions of the act for judicial review  
15 and civil enforcement of agency actions.

16 (e) (1) If the secretary finds that the public health or safety is en-  
17 dangered by the continuation of ~~an abatement project~~ *a lead activity*, the  
18 secretary may temporarily suspend, without notice or hearing in accord-  
19 ance with the emergency adjudication procedures of the provisions of the  
20 Kansas administrative procedure act, the license of the business entity or  
21 public agency or the certificate of any person engaging in such ~~abatement~~  
22 ~~project~~ *lead activity*.

23 (2) In no case shall a temporary suspension of a license or certificate  
24 under this section be in effect for a period of time in excess of 90 days.  
25 At the end of such period of time, the license or certificate shall be re-  
26 instated unless the secretary has suspended or revoked the license or  
27 certificate, after notice and hearing in accordance with the provisions of  
28 the ~~residential-childhood~~ *child and adult* lead poisoning prevention act,  
29 or the license has expired as otherwise provided under the ~~residential~~  
30 ~~childhood~~ *child and adult* lead poisoning prevention act.

31 Sec. 9. K.S.A. 65-1,208 is hereby amended to read as follows: 65-  
32 1,208. Whenever an authorized agency of the secretary finds that any  
33 individual, business entity, accredited program or public agency is not in  
34 compliance with the ~~residential-childhood~~ *child and adult* lead poisoning  
35 prevention act or any rules and regulations adopted under the ~~residential~~  
36 ~~childhood~~ *child and adult* lead poisoning prevention act, it shall be the  
37 duty of such agent to notify the individual, business entity, accredited  
38 program or public agency in writing of such changes or alterations as the  
39 agency shall deem necessary in order to comply with the requirements  
40 of the ~~residential-childhood~~ *child and adult* lead poisoning prevention act  
41 and any rules and regulations adopted under the ~~residential-childhood~~  
42 *child and adult* lead poisoning prevention act, and the agency shall file a  
43 copy of such notice with the secretary. It shall thereupon be the duty of

1 the individual, business entity, accredited program or public agency ~~to~~  
2 ~~make such changes or alterations as are contained in the written notice~~  
3 ~~within five days to inform the secretary of its corrective plan within 24~~  
4 ~~hours~~ from the receipt of such notice.

5 Sec. 10. K.S.A. 65-1,209 is hereby amended to read as follows: 65-  
6 1,209. Any individual, business entity, public agency or accredited training  
7 program which knowingly violates any provision of the ~~residential-child-~~  
8 ~~hood child and adult~~ lead poisoning prevention act or any rules and reg-  
9 ulations adopted under the ~~residential-childhood~~ *child and adult* lead  
10 poisoning prevention act is guilty:

11 (a) For a first offense, of a class C misdemeanor; and

12 (b) for a second offense or subsequent offense, of a class B  
13 misdemeanor.

14 Sec. 11. K.S.A. 65-1,210 is hereby amended to read as follows: 65-  
15 1,210. (a) Any individual, business entity, accredited training program or  
16 public agency who violates any provision of the ~~residential-childhood~~ *child*  
17 *and adult* lead poisoning prevention act or any rules and regulations  
18 adopted under the ~~residential-childhood~~ *child and adult* lead poisoning  
19 prevention act, in addition to any other penalty or litigation provided by  
20 law, may incur a civil penalty imposed under subsection (b) in a maximum  
21 amount not to exceed \$1,000 for the first violation, \$5,000 for each sub-  
22 sequent violation and, in the case of a continuing violation, every day such  
23 previously notified violation continues shall be deemed a separate  
24 violation.

25 (b) The secretary, upon finding that any individual, business entity,  
26 accredited training program or public agency has violated any provision  
27 of the ~~residential-childhood~~ *child and adult* lead poisoning prevention act  
28 or any rules and regulations adopted under the ~~residential-childhood~~ *child*  
29 *and adult* lead poisoning prevention act, may impose a civil penalty within  
30 the limits provided in this section upon such individual, business entity,  
31 accredited training program or public agency which civil penalty shall be  
32 in an amount to constitute an actual and substantial economic deterrent  
33 to the violation for which the civil penalty is assessed.

34 (c) The secretary, upon finding that an individual, business entity,  
35 accredited training program or public agency has violated any provision  
36 of the ~~residential-childhood~~ *child and adult* lead poisoning prevention act  
37 or rules and regulations adopted under the ~~residential-childhood~~ *child*  
38 *and adult* lead poisoning prevention act, may issue an order finding such  
39 individual, business entity, accredited training program or public agency  
40 in violation of the ~~residential-childhood~~ *child and adult* lead poisoning  
41 prevention act and directing the individual, business entity, accredited  
42 training program or public agency to take such action as necessary to  
43 correct the violation.



1 (d) No civil penalty shall be imposed under this section except upon  
2 the written order of the secretary after notification and hearing, if a hear-  
3 ing is requested, in accordance with the provisions of the Kansas admin-  
4 istrative procedure act.

5 (e) Any individual, business entity, accredited training program or  
6 public agency aggrieved by an order of the secretary made under this  
7 section may appeal such order to the district court in the manner provided  
8 by the act for judicial review and civil enforcement of agency actions.

9 (f) Any penalty recovered pursuant to the provisions of this section  
10 shall be remitted to the state treasurer and deposited in the lead-based  
11 paint hazard fee fund.

12 (g) The secretary shall use penalties recovered pursuant to the pro-  
13 visions of this section to establish a grant program for communities to  
14 conduct activities designed to reduce or eliminate exposure of children  
15 to residential ~~lead-based paint~~ *lead* hazards.

16 Sec. 12. K.S.A. 65-1,211 is hereby amended to read as follows: 65-  
17 1,211. Notwithstanding any other remedy and in addition to any other  
18 remedy, the secretary may maintain, in the manner provided by the act  
19 for judicial review and civil enforcement of agency actions, an action in  
20 the name of the state of Kansas for injunction or other process against  
21 any business entity or individual to restrain or prevent any violation of  
22 the provisions of the ~~residential childhood~~ *child and adult* lead poisoning  
23 prevention act or of any rules and regulations adopted under the ~~resi-~~  
24 ~~idential childhood~~ *child and adult* lead poisoning prevention act.

25 Sec. 13. K.S.A. 65-1,212 is hereby amended to read as follows: 65-  
26 1,212. Licensure, certification or training program accreditation for a  
27 business entity, public agency or individual who engages in ~~lead-based~~  
28 ~~paint lead~~ activities shall not be required until such time as the secretary  
29 adopts rules and regulations to implement the provisions of the ~~residential~~  
30 ~~childhood~~ *child and adult* lead poisoning prevention act.

31 Sec. 14. K.S.A. 65-1,213 is hereby amended to read as follows: 65-  
32 1,213. The audit privilege recognized in K.S.A. 2002 Supp. ~~60-332~~  
33 ~~through 60-339~~ *60-3332 through 60-3339, and amendments thereto*, does  
34 not pertain to the ~~residential childhood~~ *child and adult* lead poisoning  
35 prevention act.

36 Sec. 15. K.S.A. 65-1,214 is hereby amended to read as follows: 65-  
37 1,214. On July 1, ~~2004~~ *2010*, the provisions of K.S.A. 65-1,200 to 65-1,214  
38 inclusive, ~~of this act and amendments thereto~~, are hereby repealed.

39 Sec. 16. K.S.A. 65-1,200, 65-1,201, 65-1,202, 65-1,203, 65-1,204, 65-  
40 1,205, 65-1,206, 65-1,207, 65-1,208, 65-1,209, 65-1,210, 65-1,211, 65-  
41 1,212, 65-1,213 and 65-1,214 are hereby repealed.

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