

Substitute for SENATE BILL No. 577

By Committee on Federal and State Affairs

3-6

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

11

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

13 New Section 1. (a) This section shall be known and may be cited as
14 the radon awareness law.

15 (b) As used in the radon awareness law:

16 (1) Words and phrases used in this section have the meanings as-
17 cribed thereto in section 3, and amendments thereto.

18 (2) “Residential real property” means any interest in residential real
19 property which is improved with not less than one nor more than four
20 residential dwelling units.

21 (c) On and after July 1, 2009, each contract for the sale of residential
22 real property shall contain the following language in bold font:

23 “Every buyer of residential real property is notified that the property
24 may present exposure to dangerous concentrations of indoor radon gas
25 that may place occupants at risk of developing radon-induced lung cancer.
26 Radon, a class-A human carcinogen, is the leading cause of lung cancer
27 in non-smokers and the second leading cause overall. Kansas law requires
28 sellers to disclose any information known to the seller that shows elevated
29 concentrations of radon gas in residential real property. The Kansas de-
30 partment of health and environment recommends all home-buyers have
31 an indoor radon test performed prior to purchasing or taking occupancy
32 of residential real property. All testing for radon should be conducted by
33 a certified radon measurement technician. Elevated radon concentrations
34 can be easily reduced by a certified radon mitigation technician.

35 (d) The seller of residential real property shall disclose any information
36 known to the seller which shows elevated concentrations of radon in such
37 property and shall provide the buyer with all available records and reports
38 pertaining to elevated radon concentrations in such property. The buyer
39 and seller of residential real property shall acknowledge that the infor-
40 mation required to be disclosed pursuant to this subsection has been so
41 disclosed in the contract for sale of such property.

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

43 (1) Transfers pursuant to court order including, but not limited to,

- 1 transfers ordered by a probate court in administration of an estate, trans-
2 fers between spouses resulting from a judgment of dissolution of marriage
3 or legal separation, transfers pursuant to an order of possession, transfers
4 by a trustee in bankruptcy, transfers by eminent domain or transfers re-
5 sulting from a decree for specific performance;
 - 6 (2) transfers from a mortgagor to a mortgagee by deed in lieu of
7 foreclosure or consent judgment, transfer by judicial deed issued pursu-
8 ant to a foreclosure sale to the successful bidder or the assignee of a
9 certificate of sale, transfer by a collateral assignment of a beneficial in-
10 terest of a land trust or transfer by a mortgagee or a successor in interest
11 to the mortgagee's secured position or a beneficiary under a deed in trust
12 who has acquired the real property by deed in lieu of foreclosure, consent
13 judgment or judicial deed issued pursuant to a foreclosure sale;
 - 14 (3) transfers by a fiduciary in the course of the administration of a
15 decedent's estate, guardianship, conservatorship or trust;
 - 16 (4) transfers from one co-owner to one or more other co-owners;
 - 17 (5) transfers pursuant to estate or intestate succession;
 - 18 (6) transfers made to a spouse, or to a person or persons in the lineal
19 line of consanguinity of one or more of the sellers;
 - 20 (7) transfers from an entity that has taken title to residential real
21 property from a seller for the purpose of assisting in the relocation of the
22 seller, so long as the entity makes available to all prospective buyers a
23 copy of the disclosure form furnished to the entity by the seller; or
 - 24 (8) transfers of an unimproved lot or parcel of residential real
25 property.
- 26 New Sec. 2. Sections 3 through 12, and amendments thereto, shall
27 be known and may be cited as the radon certification law.
- 28 New Sec. 3. As used in the radon certification law:
- 29 (a) "Mitigate" means to repair or alter a building or design for the
30 purpose in whole or in part of reducing the concentration of radon in the
31 indoor atmosphere.
 - 32 (b) "Person" means any individual, corporation, partnership, firm, as-
33 sociation, trust, estate, public or private institution, group, agency, state,
34 political subdivision or agency of a state or political subdivision or any
35 legal successor or representative thereof.
 - 36 (c) "Radon (Rn)" means the naturally occurring, colorless, odorless,
37 radioactive gaseous element formed by radioactive decay, including ra-
38 don-222, radon-220 (thoron), radon decay products and radon progeny
39 or as defined by rules and regulations adopted by the secretary.
 - 40 (d) "Secretary" means the secretary of the department of health and
41 environment.
 - 42 (e) "Measurement" or "test" means the: (1) Examination of a build-
43 ing, soil or air for the presence of radon, including taking air or soil sam-

1 ples; or (2) diagnosis of the cause of radon contamination.

2 New Sec. 4. (a) The secretary shall establish a certification program
3 for persons performing radon tests or mitigation in the state.

4 (b) The secretary shall adopt rules and regulations necessary to ad-
5 minister and implement the provisions of the radon certification law. Such
6 rules and regulations shall be adopted no later than April 1, 2009.

7 (c) Within the limitations of appropriation acts, the secretary may
8 employ personnel necessary to carry out the provisions of the radon cer-
9 tification law and rules and regulations adopted thereunder.

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

12 (e) After notice and hearing in accordance with the Kansas admin-
13 istrative procedure act, the secretary may deny, suspend or revoke a cer-
14 tification issued under the radon certification law for a violation of any
15 provision of such law or any rule and regulation adopted thereunder.

16 New Sec. 5. (a) The secretary may fix and impose fees for the initial
17 certification, and annual renewal of such certification, of persons required
18 to be certified under the radon certification law. The secretary also may
19 fix fees for the late submission of applications for renewal of certifications,
20 application fees for training courses and fees for returned or insufficient-
21 fund checks. Fees shall be fixed by the secretary by adoption of rules and
22 regulations. Moneys derived from fees shall be expended solely for the
23 administration and implementation of the radon certification law. The
24 secretary shall remit all moneys received from such fees to the state trea-
25 surer in accordance with the provisions of K.S.A. 75-4215, and amend-
26 ments thereto. Upon receipt of each such remittance, the state treasurer
27 shall deposit the entire amount in the state treasury and credit it to the
28 radiation control operations fee fund established by K.S.A. 48-1625, and
29 amendments thereto.

30 (b) If the owner of a radon measurement business also is a certified
31 radon measurement technician for that business, the radon measurement
32 technician fee for such owner shall be waived. If the owner of a radon
33 mitigation business also is a certified radon mitigation technician for that
34 business, the radon mitigation technician fee for such owner shall be
35 waived.

36 New Sec. 6. (a) A person may not perform radon measurements or
37 represent or advertise that such person may perform radon measure-
38 ments unless such person has been certified as a radon measurement
39 technician by the department.

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

43 (c) A radon measurement technician shall comply with the require-

1 ments of the radon certification law and any rules and regulations adopted
2 thereunder.

3 (d) (1) Except as provided by this section, no person shall be certified
4 as a radon measurement technician unless within one year prior to the
5 date of the submission of an application for certification, such person shall
6 have completed successfully a training course and passed an examination
7 on radon measurement, approved by the department.

8 (2) Applicants who are certified by either the national environmental
9 health association or the national radon safety board on July 1, 2008, and
10 who have been performing the duties of a radon measurement technician
11 for at least one year prior to July 1, 2008, and who have completed an
12 approved training course and passed an examination on radon measure-
13 ment at any time prior to July 1, 2008, shall be deemed to have met the
14 requirements of paragraph (1).

15 (e) The provisions of this section shall not apply to: (1) A person
16 performing radon measurements on a building owned by such person or
17 where such person resides; or (2) a person performing radon measure-
18 ments without remuneration.

19 New Sec. 7. (a) A person may not perform radon mitigation or rep-
20 resent or advertise that such person may perform radon mitigation unless
21 such person has been certified as a radon mitigation technician by the
22 department.

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

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

29 (d) (1) Except as provided by this section, no person shall be certified
30 as a radon mitigation technician unless within one year prior to the date
31 of the submission of an application for certification, such person shall
32 have completed successfully a training course and passed an examination
33 on radon mitigation approved by the department.

34 (2) Applicants who are certified by either the national environmental
35 health association or the national radon safety board on July 1, 2008, and
36 who have been performing the duties of a radon mitigation technician
37 for at least one year prior to July 1, 2008, and who have completed an
38 approved training course and passed an examination on radon mitigation
39 at any time prior to July 1, 2008, shall be deemed to have met the require-
40 ments of paragraph (1).

41 (e) The provisions of this section shall not apply to: (1) A person
42 performing radon mitigation on a building owned by such person or
43 where such person resides; or (2) a person performing radon mitigation

1 without remuneration.

2 New Sec. 8. (a) A person may not operate a radon measurement
3 business or represent or advertise that such person is a radon measure-
4 ment business unless such person has been certified as a radon measure-
5 ment business by the department.

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

9 (c) A radon measurement business shall comply with the radon cer-
10 tification law and any rules and regulations adopted thereunder. A cer-
11 tified radon measurement technician shall own, be employed by or be
12 retained as a consultant by a radon measurement business when such
13 business is performing radon measurements. All radon testing, including
14 the initial placement and final retrieval of all measurement devices and
15 post-mitigation testing, shall be performed by a radon measurement
16 technician.

17 New Sec. 9. (a) A person may not operate a radon mitigation busi-
18 ness or represent or advertise that such person is a radon mitigation busi-
19 ness unless such person has been certified as a radon mitigation business
20 by the department.

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

24 (c) A radon mitigation business shall comply with the radon certifi-
25 cation law and any rules and regulations adopted thereunder. A certified
26 radon mitigation technician shall own, be employed by or be retained as
27 a consultant by a radon mitigation business when such business is per-
28 forming radon mitigation. A radon mitigation business shall ensure that
29 radon mitigation system installations are performed under the supervision
30 of a radon mitigation technician.

31 New Sec. 10. (a) A person may not perform laboratory analysis or
32 represent or advertise that it may perform laboratory analysis of radon
33 measurement devices or samples unless such person has been certified
34 as an approved radon measurement laboratory by the department.

35 (b) Any person desiring to be certified as an approved radon meas-
36 urement laboratory shall submit an application on a form prescribed by
37 the department along with the non-refundable application fee.

38 (c) A radon measurement laboratory shall comply with the require-
39 ments of the radon certification law and any rules and regulations adopted
40 thereunder. A person shall not be certified as an approved radon meas-
41 urement laboratory unless such person has obtained a laboratory certifi-
42 cation from the national environmental health association, the national
43 radon safety board or a national proficiency-testing program approved by

1 the department.

2 (d) A designation as an approved radon measurement laboratory shall
3 not be transferable.

4 New Sec. 11. (a) Except as provided by subsection (d), any person
5 who tests for radon in this state, analyzes radon testing devices used in
6 this state or performs radon mitigation in this state shall make a report
7 of such testing, analysis or mitigation to the secretary. Such report shall
8 be made within 30 days of the performance of such testing, analysis or
9 mitigation and shall include the address or location where the services
10 were provided and the type and results of any tests, analysis or mitigation.

11 (b) All information obtained pursuant to this section shall be confi-
12 dential and shall not be subject to disclosure under the open records act.

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

16 (d) The provisions of this section shall not apply to a person perform-
17 ing tests or mitigation on a building owned by such person or where such
18 person resides.

19 New Sec. 12. (a) Any person who willfully violates any provision of
20 the radon certification law or any rules and regulations adopted there-
21 under is guilty of: (1) A class C nonperson misdemeanor, for a first of-
22 fense; and (2) a class B nonperson misdemeanor, for a second and sub-
23 sequent offense.

24 (b) In addition to any other penalty provided by law and after provid-
25 ing notice and a hearing in accordance with the Kansas administrative
26 procedure act, the secretary may impose a fine in an amount not to exceed
27 \$10,000 against any person who: (1) Violates any provision of the radon
28 certification law and any rule and regulation adopted or order issued
29 thereunder; (2) violates any term, condition or limitation of any certifi-
30 cation issued under the radon certification law; or (3) commits any vio-
31 lation for which a certification may be revoked under the radon certifi-
32 cation law or any rules and regulations adopted thereunder. If any
33 violation is a continuing one, each day of such violation shall constitute a
34 separate violation for the purpose of computing the amount of the civil
35 penalty. Any action by the secretary pursuant to this section is subject to
36 review in accordance with the act for judicial review and civil enforcement
37 of agency actions.

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

41 (d) All moneys collected from fines imposed under this section shall
42 be remitted to the state treasurer in accordance with the provisions of
43 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such

1 remittance, the state treasurer shall deposit the entire amount in the state
2 treasury to the credit of the state general fund.

3 Sec. 13. K.S.A. 48-1625 is hereby amended to read as follows: 48-
4 1625. (a) There is hereby created in the state treasury the radiation con-
5 trol operations fee fund to administer the provisions of K.S.A. 48-1601
6 through 48-1624, and amendments thereto. Such fund shall be adminis-
7 tered by the secretary of health and environment in accordance with the
8 provisions of this section.

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

11 (1) Fees collected for licenses and registrations, and renewals thereof,
12 issued under the nuclear energy development and radiation control act;

13 (2) reimbursement for administrative, inspection, radioactive mate-
14 rial disposal, investigation and remedial action expenses;

15 (3) excluding civil penalties, moneys paid pursuant to any agreement,
16 stipulation or settlement;

17 (4) grants, gifts, bequests or state appropriations for the purposes of
18 K.S.A. 48-1601 through 48-1624, and amendments thereto; ~~and~~

19 (5) *fees collected pursuant to section 5, and amendments thereto; and*
20 ~~(5)~~ (6) interest attributable to investment of moneys in the fund.

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

26 The secretary of health and environment is authorized to receive from
27 the federal government or any of its agencies or from any private or
28 governmental source any funds made available for the purposes of K.S.A.
29 48-1601 through 48-1624, and amendments thereto.

30 (c) The secretary is authorized to use moneys from the radiation con-
31 trol operations fee fund to pay the cost of:

32 (1) All activities related to licensing and registration, including but
33 not limited to, development and issuance of licenses, registrations and
34 renewals thereof, compliance monitoring, inspections, long term moni-
35 toring and enforcement actions and decontamination, decommissioning,
36 reclamation or remedial actions;

37 (2) design and review of radioactive waste disposal facilities;

38 (3) review and witnessing of test and repair procedures;

39 (4) investigation of violations, complaints, pollution and events af-
40 fecting the environment or public health;

41 (5) design and review of remedial action plans;

42 (6) personnel training programs;

43 (7) contracting for services needed to supplement the department's

1 staff expertise in administering the provisions of K.S.A. 48-1601 through
2 48-1624, and amendments thereto;

3 (8) staff consultation needed to provide radiation protection services
4 provided under this act;

5 (9) mitigation of adverse environmental or public health impacts, in-
6 cluding impounding sources of radiation;

7 (10) emergency or long-term remedial activities;

8 (11) administrative, technical and legal costs incurred by the secretary
9 in administering the provisions of K.S.A. 48-1601 through 48-1624, and
10 amendments thereto; ~~and~~

11 (12) costs of program administration, including the state's share of
12 any grant received from the federal government or from other sources,
13 public or private; *and*

14 (13) *costs of administration of the radon certification law and the*
15 *radon awareness law.*

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

19 (1) The average daily balance of moneys in the radiation control op-
20 erations fee fund for the preceding month; and

21 (2) the net earnings rate of the pooled money investment portfolio
22 for the preceding months.

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

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

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

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