

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 16, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes  
Julian Efird, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Connie Burns, Committee Assistant

Conferees appearing before the Committee:

Senator Barnett  
Kimberly Steves, Kansas Department Health and Environment  
Roger Dahlby, Advanced Environmental Services  
Gary Hodgen, The American Association of Radon Scientists and Technologists  
Stephen E. Albright,  
Bruce Snead, Kansas State University, Kansas Industrial Extension  
Michael Greenwalt, Kansas Association of Residential and Commercial Inspectors  
Whitney Damron, on behalf of Lukas Liquor Super Store  
Philip Bradley, Kansas Viticulture and Farm Winery Association  
Sarah Byrne, Division of Alcoholic Beverage Control

Others attending:

See attached list.

**Introduction of Bills:**

Mike Murray, Kansas Food Dealers Association/Retail Grocers Association of Greater KC requested a bill introduction that would allow retail grocers to sale single strength beer, wine and spirits.

Senator Reitz moved that this request should be introduced as a committee bill. Senator Morris seconded the motion. The motion carried.

**SB 531 - Radon certification law**

Chairman Brungardt opened the hearing on **SB 531**.

Staff provided an overview of the bill. (Attachment 1)

Senator Barnett appeared as a proponent on the bill. (Attachment 2) Currently there are no requirements for individuals who perform radon measurements or radon mitigation to be trained or certified. As a result, testing may be performed incorrectly and outside of established protocols and standards; the same is true for mitigation. The risks of improperly performed radon testing and improperly installed mitigation systems are significant. Improper testing may result in below-actual radon concentration measurements, and improper mitigation system installation may result in an increase of radon gas rather than a decrease. Both are key factors contributing to increased radon gas exposure and the development of lung cancer. Senator Barnett support the passing of this measure to develop a minimum set of skills that are critical for protection of our fellow Kansans and the prevention of lung cancer.

Kimberly Steves, Supervisor Kansas Radon, Kansas Department Health and Environment, spoke in favor of the bill. (Attachment 3) The bill would require the department to establish and administer a certification program for persons performing radon testing and mitigation in Kansas, promulgate rules and regulations for the implementation and administration of the program, and give the department authority to collect radon test and mitigation data.

CONTINUATION SHEET

Minutes of the Senate Federal and State Affairs Committee at 10:30 a.m. on February 16, 2010, in Room 144-S of the Capitol.

Roger Dahlby, P.E., Advanced Environmental Services, provided testimony in support of the bill. (Attachment 4) Mr. Dahlby stated that this is a life safety issue and deserves serious consideration to require licensure and make Kansas a safer place.

Gary Hodgen, The American Association of Radon Scientists and Technologists,(AARST) spoke in support of the bill. (Attachment 5) AARST observes this legislation to highly emphasize consumer protection, by doing so, the bill mutually aids industry by insisting on adherence to responsible professional standards (and regulations) of practice. Mr. Hodgen provided amended language from KAREI to the Revisor.

Stephen E. Albright, appeared in support of the bill. (Attachment 6) Mr. Albright stated that it is critical that the measurements be conducted with the strict adherence to test protocols and with equipment that meets the requirements for the type of test conducted and executed by credentialed technicians. Expensive decisions will be made or falsely avoided based on these test results.

Bruce Snead, Kansas State University, Kansas Industrial Extension, provided testimony in support of the bill. (Attachment 7) Mr. Snead stated that when a consistent requirement for competence, standards compliant services is in place, the public is better served, the industry operates on a level playing field, and it can grow to replace poor practices and sub-standard services.

Michael Greenwalt, President, Kansas Association of Residential and Commercial Inspectors, (KARCI) appeared in favor of the bill with concerns. (Attachment 8) The Association has concerns with Section 5, Section 10 (d), Section 13, and the bill does not have provision to regulate radon tests performed by private homeowners, as it pertains to the real estate transaction.

Written testimony in support of the bill was provided:

Gloria Linnertz, Cancer Survivors Against Radon, Waterloo, IL (Attachment 9)

Ronald Naab, HomePro of Kansas, Inc., (Attachment 10)

William J. Angell, President, American Association of Radon Scientists and Technologists, (Attachment 11)

Kerry Parham, President, Kansas Association of Real Estate Inspectors, (Attachment 12)

Chairman Brungardt closed the hearing on **SB 532**.

**SB 532 - Alcoholic beverages; issuance of farm winery license to spouse of retailer licensee.**

Chairman Brungardt opened the hearing on **SB 532**.

Staff provided an overview of the bill.

Whitney Damron, on behalf of Lukas Liquor Super Store, appeared in favor of the bill. (Attachment 13) The bill would permit the spouse of a retail liquor store licensee to apply for a farm winery license if they are not themselves a retail liquor store licensee.

Philip Bradley, Kansas Viticulture and Farm Winery Association, spoke in favor of the bill with added language. (Attachment 14) The Association believes that the requirements under this act should apply to Farm Winery licensees and Microbrewery licensees on behalf of the Craft Brewers Guild.

Sarah Byrne, Division of Alcoholic Beverage Control, appeared neutral on the bill. (Attachment 15) The department suggests that the bill be amended on page 2, lines 28-31, and feels this amendment clarifies the intent of the bill and averts potential confusion over the terms "licensee" and "they".

Chairman Brungardt closed the hearing on **SB 532**.

**Final Action:**

**SB 513 - County alternative project delivery construction; hospital districts; other changes.**

CONTINUATION SHEET

Minutes of the Senate Federal and State Affairs Committee at 10:30 a.m. on February 16, 2010, in Room 144-S of the Capitol.

**SB 514 - Kansas unified school district alternative project delivery building construction procurement act**

Staff provided a proposed substitute for **SB 513** and **SB 514**, that includes both bills.(9rs1865)

Senator Francisco moved to adopt the substitute bill and add the wording on page 25 in section (A) to the existing section on page 10. Senator Owens seconded the motion. The motion carried.

Senator Morris moved to pass Substitute for **SB 513** out favorably as amended. Senator Reitz seconded the motion. The motion carried.

**SB 478 - Revision of the Kansas cigarette and tobacco products act**

Staff provided a balloon on the bill. (Attachment 16)

Senator Owens moved to adopt the balloon. Senator Reitz seconded the motion. The motion carried.

Senator Reitz moved to pass **SB 478** out favorably as amended. Senator Owens seconded the motion. The motion carried.

The next meeting is scheduled for February 17, 2010. The meeting was adjourned at 11:57 a.m.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 2-16-10

NAME	REPRESENTING
Stephen E. Albright	self
Gary Hodgden	AAP
Bruce Spear	KSU
Kim Spence	KOMF
Brian Hansen	Kansas State University
Spencer Duncan	Capitol Connection
SARAH BYRNE	ABC/KDOR
Ann Zink	<del>ABC/KDOR</del>
Tom Groneman	ABC/KDOR
Roger Dahlby	Advanced Environmental Services
Hali Dahlby	Advanced Environmental Services
Sarah Nolting	self
Zach Butler	self
Christopher munn	Self
Tiffany Pedersen	Solomon School
Lindsey Jeeters	Solomon School
JUDITH BARD	CAPITOL ADVANTAGE
Mike Murray	Ks Food Plus 4524
Ron Clark	
Randy Mader	
Jeff Boenke	Polkville Style
Tom Gaches	GBA
TOM PALACE	PMCA
Michael Greenwalt	KARLI
John Clason	self
DAVID STOFFEN	SELF



MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES  
JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR  
GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

**Senate Bill 531**  
**Radon Certification Law**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

February 16, 2010

SB 531 creates the Radon Certification Law, which would require certification of radon measurement technicians, radon mitigation technicians, and radon measurement laboratories by the Secretary of the Department of Health and Environment.

Section 3 of the bill establishes the Secretary's authority to create a radon certification program. This includes the authority to adopt the necessary rules and regulations, and hire appropriate staff to administer the program. Section 4 establishes a maximum fee schedule for fees the Secretary can charge applicants seeking certification under the program. All fees are to be credited to the radiation control operations fee fund, which is already established in the state treasury.

Section 5 of the bill requires that a person be certified as a radon measurement technician before performing any radon measurements or holding oneself out as a person who can perform radon measurements. Certification requires completing a training course and passing an examination. This section does not apply to persons who are performing radon measurements on a building they own or live in, or who are performing such measurements without receiving compensation.

Section 6 governs radon mitigation technicians, and imposes requirements and restrictions similar to those of section 5 on such technicians. However, more persons are exempt from the provisions of section 6. In addition to persons who own or reside in the building or are not receiving any compensation, there are also exemptions for mitigation performed in the course of construction, performed by laborers or trade professionals under the supervision of a certified technician, and for individuals selling radon measurement devices at retail.

Sections 7 and 8 of the bill require that any radon measurement business or radon mitigation business be owned by, employ or retain as a consultant a certified technician. Such businesses are also required to have the certified technician perform all testing and installing of measurement devices and mitigation systems.

Section 9 governs radon measurement laboratories, and imposes requirements and restrictions similar to those of sections 5 and 6 on such laboratories. Such laboratories are used to perform analysis of radon measurement devices and samples. A certification of a laboratory is nontransferable.

Section 10 requires that individuals testing for radon, analyzing testing devices or installing mitigation systems file reports on such activities with the Secretary. Such reports are required to be filed within 90 days after performance of the activity. All information included in the report is confidential and is not subject to the Open Records Act. Such reports are not required if the individual is performing the activity on their own building or a building where they reside. Furthermore, a radon measurement business is not required to file a report unless the customer or client consents to the release of the information required to be included in the report.

Section 11 provides that willful violation of the Radon Certification Law is a class B misdemeanor. Additionally, any person violating the law may be subject to a fine of up to \$1,000 and may have their certification suspended or revoked.

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STATE OF KANSAS

JIM BARNETT  
SENATOR, 17TH DISTRICT  
CHASE, COFFEY, GREENWOOD  
LYON, MARION, MORRIS, AND OSAGE  
COUNTIES



TOPEKA  
SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
CHAIR: PUBLIC HEALTH AND WELFARE  
CHAIR: KANSAS HEALTH POLICY OVERSIGHT  
COMMITTEE  
MEMBER: AGRICULTURE  
FINANCIAL INSTITUTIONS AND  
INSURANCE  
ORGANIZATION, CALENDAR AND RULES

TESTIMONY TO SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
Tuesday, February 16, 2010

**SB 531** - Radon certification law.

Thank you, Chairman Brungardt and other distinguished members of the Senate Federal and State Affairs Committee, for the opportunity to come before you in support of **SB 531**.

Radon gas is a Class A human carcinogen causing an estimated 200 new cases of lung cancer yearly in Kansas. Radon is undetectable except with specialized equipment or test kits.

Currently in Kansas, there are no requirements for individuals who perform radon measurements or radon mitigation to be trained or certified. As a result, testing may be performed incorrectly and outside of established protocols and standards; the same is true for mitigation.

The risks of improperly performed radon testing and improperly installed mitigation systems are significant. Improper testing may result in below-actual radon concentration measurements, and improper mitigation system installation may result in an increase of radon gas rather than a decrease. Both are key factors contributing to increased radon gas exposure and the development of lung cancer.

I support SB 531 as a measure to develop a minimum set of skills that are critical for protection of our fellow Kansans and the prevention of lung cancer

Senator Jim Barnett

HOME  
1400 LINCOLN  
EMPORIA, KS 66801  
620-342-5387  
E-MAIL: SENATORJB@SBCGLOBAL.NET

DISTRICT OFFICE  
1301 W. 12TH AVE., STE. 202  
EMPORIA, KS 66801  
620-342-2521  
HTTP://WWW.KSLEGISLATURE.ORG/JBARNETT

STATE OFFICE (SESSION ONLY)  
STATE CAI  
TOPEKA  
785  
1-800  
E-MAIL: JIM.BARNETT@KSLEGISLATURE.GOV  
Sn Fed & State  
Attachment 2

2-16-10





Mark Parkinson, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

Division of Health

**Testimony on SB 531  
Enacting the Radon Certification Law**

**Presented to  
Senate Federal and State Affairs**

**By  
Kimberly Steves, Supervisor, Environmental Radiation, Emergency  
Preparedness, and Right-To-Know  
Kansas Department of Health and Environment**

**February 16, 2010**

Chairman Brungardt and members of the committee, I am Kim Steves, Supervisor of the Kansas Radon Program for the Kansas Department of Health and Environment. Thank you for the opportunity to provide testimony in support of SB 531 concerning the creation of a radon certification law.

Radon is a colorless, odorless, tasteless radioactive gas, which naturally comes from uranium in the soil. Radon is everywhere in the environment, and when entering homes and other buildings, builds up to higher concentrations. Radon is a known human Class A carcinogen. It is the second leading cause of lung cancer after cigarette smoking, accounting for 12 percent of lung cancer incidence, according to the American Lung Association. It is the first leading cause of lung cancer in individuals who have never smoked. In Kansas, there are over 1800 new cases of lung cancer every year<sup>1</sup>. This means that over 200 new lung cancer cases occurring in Kansas each year may be caused by exposure to radon gas.<sup>2</sup>

No area of Kansas is safe from the risks of indoor radon exposure. We have documented elevated levels of radon in all 105 Kansas counties. There is no way to predict if a specific location will have elevated radon levels or not. The only way to know is to test. In the Kansas Radon Program database of indoor radon measurements for the state, over 40% of the more than 50,000 Kansas test results are higher than the action level of four pico-Curies per liter (4.0 pCi/l).

Passage of SB 531 would require the department to establish and administer a certification program for persons performing radon testing and mitigation in Kansas, promulgate rules and

CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 300, TOPEKA, KS 66612-1368

Voice 785-296-1086 Fax 785-296-1562

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regulations for the implementation and administration of the program, and give the department authority to collect radon test and mitigation data.

It is our goal to make this certification requirement as simple and painless as possible for Kansas radon contractors, while still ensuring a minimum level of proficiency. In the legislation, two possible options for obtaining certification are listed. The department is also authorized to consider and approve other training and certification programs which are equivalent or better. Currently obtaining certification requires attendance at a training class and passing an examination, and then obtaining continuing education credit every two years. Maximum certification fees are listed in the legislation. They will be collected once every two years, and I believe you will agree they are minimal.

This legislation also requires the radon contractor to share their testing and/or mitigation data with the department, provided the homeowner approves the release of the data. The testing and mitigation data included in this legislation is information each contractor will already have obtained during the process of their radon work. It is our goal to work with each contractor to make the data sharing process as simple as possible. This is valuable epidemiological data which already exists, but is currently being underutilized for consumer protection. This data is critical to us as we study lung cancer incidences and radon occurrences in Kansas and work to prevent future cases of radon induced lung cancer in our citizens.

Why is it so critical that radon contractors in Kansas be certified? Radon gas is colorless, odorless, tasteless, and otherwise undetectable except with specialized equipment or test kits. Because of this it is a risk about which people may be unaware. Without a radon test, our citizens have no other way of knowing if they may be living in a home where they are breathing dangerous radon levels. To be accurate, a radon test must follow established testing standards and protocols. If elevated radon levels are measured, a radon mitigation system installed correctly by a trained and certified contractor ensures the system will function to reduce radon levels in the home.

What can happen – what is happening in Kansas - is that we have contractors performing radon tests or installing radon mitigation systems incorrectly. This is a serious issue. When a radon test is performed incorrectly our citizens are not getting complete information on whether they and their families are being exposed to elevated levels of this radioactive gas – a known human carcinogen. When a radon mitigation system is installed incorrectly, the levels of radon, a radioactive gas, can actually be increased in the home, instead of decreased. Other serious effects, such as increased carbon monoxide levels in the home can also result. Because radon causes lung cancer, a very serious and life threatening disease, it is vital that these radon testing and mitigation services are performed correctly.

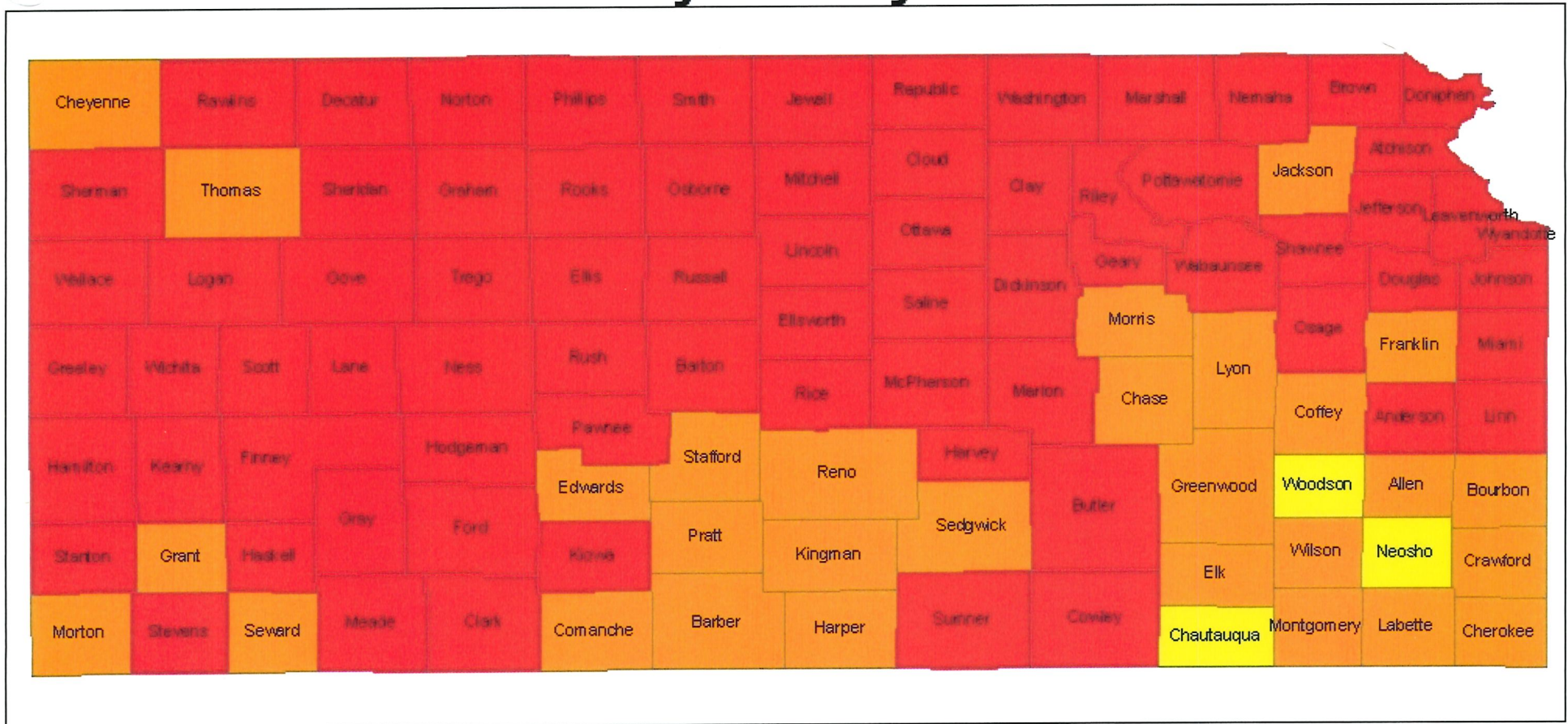
A critical level of proficiency is required by the contractor to ensure that radon is correctly diagnosed and addressed in Kansas homes. The only way to ensure this level of proficiency is to establish a certification program for the contractors to verify that they receive training and follow established standards and protocols for radon. This will increase consumer protection and confidence and is why nineteen other states, including our neighbors of Nebraska and Iowa, have already passed similar legislation requiring certification of the radon contractors and sharing of the radon data in their states.

To summarize: Exposure to elevated levels of radon gas for an extended period causes lung cancer. This is a known and scientifically proven fact. Testing for radon and fixing elevated levels may prevent most of the future radon-induced lung cancer cases in our state. The Kansas Department of Health and Environment believes that certifying the contractors who are performing the tests and installing the radon mitigation systems is the best way to ensure that elevated levels of indoor radon are correctly diagnosed and fixed in the homes of our citizens. KDHE urges favorable consideration and support to SB 531. Thank you for the opportunity to appear before the committee today. I will now stand for questions.

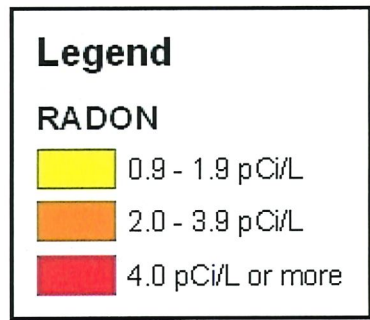
*References: <sup>1</sup>Kansas Cancer Registry (2006 data); <sup>2</sup> American Lung Association 12% lung cancer cases caused by radon*

# 2010 Kansas Radon Average Values by County

3-4



**Average Radon Level = 4.8 pCi/L**  
**Maximum Reported Radon Level = 260**  
**Total Number of Measurements = 50,182**  
**Total Measurements 4 pCi/L or greater = 20,592**



Copyright 2008, KDHE and Kansas State University. Caution: This map has been produced from the results of a limited statewide indoor radon survey completed by KDHE in 1988, with the addition of indoor radon collected since. This map is provided free of charge to the public and is generated for study purposes only. As further data becomes available, revision will be necessary. This map cannot be used to characterize or predict indoor radon levels at any specific area or location. Measurement must be performed to determine radon levels in any given residence or building. Contact the Kansas Radon Program at 800 693-5343. Permission is hereby given to reproduce this map provided it is reproduced in its entirety without modification.



*Advanced  
Environmental  
Services Inc.*

3825 SW Dukeries Rd.  
Topeka KS 66610-1506  
(785) 231-9324

Date: February 15, 2010

Subject: **SB 531 Fine Radon Legislation**

Honorable Senators of the Great State of Kansas,

I and my colleges have witnessed some pitiful excuses for radon mitigations over the years. Electric fans installed near gas meters, over sucking a high efficiency home and creating a CO hazard, humid air exhaust near electric lines, and actually increasing the radon levels rather than lowering them.

My name is Roger Dahlby and I stand before you as a radon mitigator, volunteer fire fighter, and Professional Environmental Engineer that has taken a sworn oath to protect our fellow Kansans. Conducted hundreds of radon mitigations and tested many more homes. Radon mitigation is an art form that requires some training. While you by no means need to be an engineer to figure it out not everyone is cut out for it. I have seen plenty of Kansans taken by what one loosely would call a contractor. Some of those are just making it up as they go along from what I can tell and others use fear in a way that is deplorable. Been embarrassed at times to be in the same industry.

As the cost of mitigations might be an issue to not approve SB531 I cite that radon testing prices have not increased after the passing the legislation requiring the radon question on realty contracts. I expect if there is any price increase it will be just that the incredibly poor and unsafe product will no longer be available. Oddly enough my prices historically have been just above those anyway for a product that fulfills all licensure required components. Believe me when I tell you I will be a lot happier as I will not be asked again to talk a customer down from the fear induced by others working in this industry.

Below is a short list of things we recall over the years:

- Unrealistic fear used as a tool to sell
- A misinformed public by a perceived professional
- Radon tests that take only 1 hour (licensure mandates 44hour test minimum)
- Radon tests under vents, in hallways, near windows, or doors (radon tests are suppose to be conducted in areas where air movement is minimized)
- Radon tests over the sump pit (method to encourage elevated results)
- Falsified Tests

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- Radon tests conducted with open windows and doors (test is to be conducted in “closed home conditions”)
- No second test after mitigation; homeowner assumes professional install has mitigated home but in fact years’ later testing confirms it has not.
- 2” Primary radon vent pipe (ASTM requires 3” minimum)
- Unglued and unsecured radon vent pipes
- Radon fans and switches installed near gas meters (possible explosion hazard)
- Exhaust under and near windows (licensure requires 10’ above ground and 2’ above windows within 10’)
- Exhaust under eaves (licensure requires 1’ above roof plane)
- Exhaust at dryer vent level (Radon latent gas at levels where Children Play)
- Taped radon sump covers
- Improper labeling (unknowingly the pipes have been used for plumbing)
- Using the homes plumbing vent stack as a radon pipe
- Dryer vent hose used as radon pipe (Licensure requires minimum Schedule 20 PVC)
- Vent pipes that no longer work as they are filled with water
- Fans installed in livable space (positive pressure on pipe can bring homes to incredible levels if leaks are present)
- Over sucking a home and not checking for back draft (pulls energy out of home and worse possible CO back into home)
- Installing a radon system without treatment to the crawl space.
- Improper or non-existent sealing (energy waste)
- Use of materials that do not meet minimums (for instance there is a minimum of 6mil poly in crawl spaces but often we see 4mil or 2mil used)

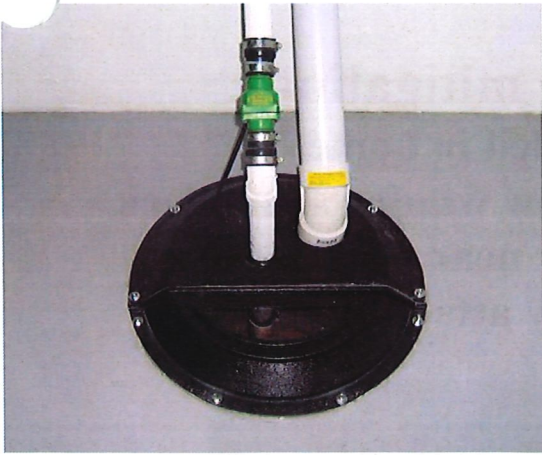
Local Observations:

- The standard professional radon test during a realty transaction is \$100
- \$1.00 to \$15.00 if done by the homeowner.
- Mitigation cost is \$750 to \$1700 but averages about \$1,100.
- Homes only feet apart can test minimal to extremely high.
- All homes from our experience can be mitigated.
- More radon awareness is need in Kansans.
- If you pass this legislation we can be certain lives will be saved.

We whole heartedly support SB 531 and the presented amendments. Hope you can see that this is a life safety issue and deserves serious consideration to require licensure and make Kansas a safer place. We commend your time and efforts along with those that have work so hard getting us to this landmark point. If you have any questions please don’t hesitate to ask us in the radon industry so you too can make an informed decision.

Sincerely,  
 Roger J. Dahlby, P.E.  
 Licensed Professional,  
 Radon Mitigator  
 Radon Testing Specialist  
 Volunteer Fire fighter/EMT/Swift Water Tech.  
 Environmental/Structural Engineer

**Licensed Mitigations:**



**Properly covered sump pump**



**Exterior mounted radon fan**



**Attic installed radon fan**





## **Unlicensed mitigations:**

- Fan installed in home
- Stack below windows and deck
- Humid air near electrical
- Improperly attached

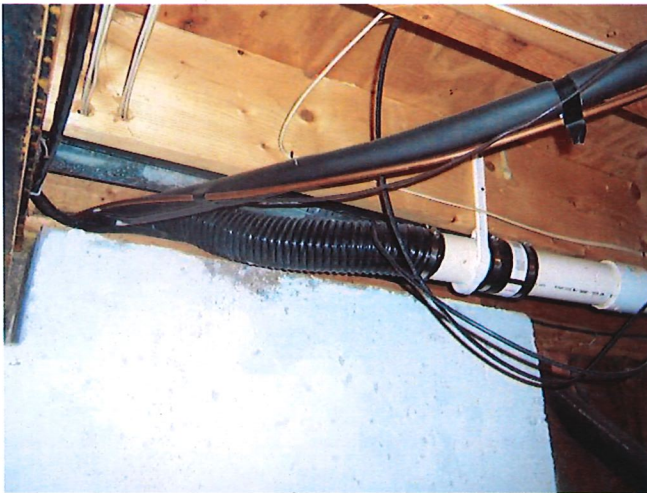


- 2" Vent Pipe, no electrical shut off, and used extension cord does not meet ASTM 2121 standards.
- Overpowered fan for home may actually increase radon levels or worse suck CO back into home.
- General poor quality





- Vent breathing back Radon latent air into soffit vent.
- Used Metal Pipe
- High humidity in exhaust will rot and mold soffit.



- Use of dryer vent hose
- Vent slopes downhill filled in with water due to humidity rendering system ineffective.
- Installers nowhere to be found to repair.



- Radon vents below windows is a no-no



Gary Hodgden: On behalf of the American Association of Radon Scientists and Technologists (AARST)

Hm: 913-782-6799 • Off. 913-780-2000 • gary@aairst.com • 25005 W. 129th Terr., Olathe, KS. 66061

Testimony Regarding Kansas Bill SB531

Mr. Chairperson and Committee Members:

My name is Gary Hodgden and I appear on behalf of the American Association of Radon Scientists and Technologist (AARST). AARST is the largest professional radon organization in the world. As former National Secretary and residing in Olathe Kansas, I am here at the urging of the AARST National President, National Board and local members. To confirm: The association strongly supports regulation of radon services in Kansas.

Why we are all here:

- Radon causes cancer. (Science discussion attached.)
- Kansas is among those states near the top of the list for high percentages of citizens exposed to this danger.
- People place their strongest trust in local consultants and tradesman as their primary source of guidance. Without educated consultants, citizens are quite often effectively denied the tools and even the option to protect themselves.

AARST has witnessed legislation elsewhere. Where strong legislation has been enacted:

- Citizens are witnessed to benefit from improved quality of services (such as for determining their risk, reducing exposure and in responsible guidance).
- Competent professionals are seen to compete successfully on an even playing field. Elsewhere, they are barely able to compete against those who assume no responsibility for their actions, quality, professional education and consumer health.

AARST bears witness to certification criteria and consumer needs:

- Bridging the gap between building technology and the science of radiation was a challenge for the USEPA as they identified criteria for minimal education needs (circa 1986 - 1995). This criteria still serves as the primary basis by which the USEPA and AARST recognizes radon certification programs.
- Make no mistake: A professional radon service without this education cannot consistently meet fiduciary obligations that are inherent to the scope of work they are selling. Be it a consultant's weakness in either a building technology or radiation science, failure to consistently provide reliable service is virtually eminent without a transfer of knowledge from this education.

AARST review of the proposed legislation:

- AARST members, both locally and nationally, have watched legislative efforts in Kansas. Provisions in the bill are seen to be fair and simply reflect long-standing requirements throughout the industry. The fees and costs are not unreasonable. A few days education to set a person on the right track is a bare essential.
- AARST observes this legislation to highly emphasize consumer protection. By doing so, the bill mutually aids industry by insisting on adherence to responsible professional standards (and regulations) of practice.
- We ask that you enact this bill onto law.

Thank you for the opportunity to testify. I will be happy to answer any questions the Committee may wish to ask me.

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Attachment 5

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Testimony Regarding Kansas Bill SB531

Personal / Supplemental Testimony (with discussion of health related science):

- Radon causes cancer.

Created mostly by our soil, the concern of radon and its byproducts is Alpha energy particles acting similar to small bullets with a force to travel up to about two inches and firing randomly in all directions within your lungs. Most hit water but a single hit to a cell can cause cancer. EPA's action level represents about 80 firings per minute within your lungs (4.0 pCi/L) while outside air is only about 12. The World Health Organization has clearly identified trends in cancer at about 53 per minute. It's a numbers game based upon bullets fired per minute and the number of years it's allowed to happen.

- Homemakers and children get the most hours of exposure. Furnace fans mix it throughout the house. If you've known someone with lung cancer, there is about one in ten chance it is the result of radon.
- It doesn't matter which type of house you live in. It doesn't matter if you are rich, poor, in a city, in a suburb or on a farm:

Radon in homes is the number one cause of fatal lung cancer in those who have never smoked. The number two cause in smokers and former smokers. Statistically, the seventh leading cause of all cancer.

- Kansas: It is exceedingly common for potential exposures in Kansas to be between about 80-396 Alpha energy releases per minute within the lungs. 43% of the homes in Johnson County where I live. (See 4-20 pCi/L on state maps). The highest I've measure represents about 5600 per minute.
- Radon is easy to dismiss since there is nobody to blame and no smoking gun. Once cancer begins, it may be kept in check by the body for years until it takes hold in the lungs or travels to other parts of the body to flourish.
- This cancer is easily preventable.

*My family has provided home inspection services since 1976 and I have specialized in radon services since 1988. Too many times I've sat on a front porch in Kansas explaining radiation to someone with lung cancer. I request you take this legislation seriously and convene support to get it passed into law.*

*Gary Hodgden*

Testimony on Senate Bill #531

Presented to Committee on Federal and State Affairs

By: Stephen E. Albright, Broker, Realtor

Distinguished Senators,

I rise to give testimony in favor of the Radon Certification Law, SB531.

For the past eleven years I have been in the real estate industry actively representing buyers and sellers in the transfer of real property in Lawrence, KS. Prior to my real estate career, I was in the business of radon testing, mitigation and training for both government and the private sector for ten years. I believe my experience affords an unusual, if not unique perspective on the issue of radon testing and mitigation in the context of a real estate transaction.

As a real estate professional I rely daily on a variety of professional and trade service providers. The performance of these vendors is critical to my success. My clients depend upon me to solve the problems that arise in their real estate transaction in a prompt and cost effective manner.

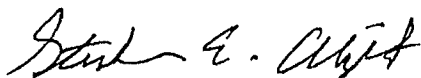
The majority of the problems my clients face occur when the subject property has been put under contract and after the new buyer has conducted his or her inspections to determine the condition of the property. Frequently, the resolution of defects in the property's condition is required for the property to transfer. Just as frequently, there is limited time to fix these conditions. This is when I, and therefore my clients, must rely on credentialed professionals for services. However, with regards to radon problems, there is a lack of clear credentials and demonstrated proficiency among those providing radon services for hire.

With regard to radon measurement, it is critical that the measurements be conducted with the strict adherence to test protocols and with equipment that meets the requirements for the type of test conducted and executed by credentialed technicians. Expensive decisions will be made or falsely avoided based on these test results.

Radon mitigation systems are another mechanical system that is required to "fix" those houses that have elevated radon levels. I believe that those individuals that install and maintain those systems should be treated as mechanical contractors. Licensing and/or certification of plumbers, electricians and heating and cooling professionals has been a common practice for the purpose of assuring that professional standards and practices are provided to consumers for decades and has been of benefit to the common good.

Therefore, I urge you to support the Radon Certification Law and make a positive impact on the lives of many Kansans.

Respectfully,



Stephen E. Albright

**Senate Federal and State Affairs Committee**

**Written Testimony of Bruce Snead**

**Kansas Industrial Extension – Kansas State University**

**Manhattan, Kansas**

**February 16, 2010**

**SB 531**

Mr. Chair and members of the committee, thank you for the opportunity to testify on this bill. I have provided radon training to industry and public education for twenty years here in Kansas, as well as Nebraska, Missouri, Iowa, Michigan and Pennsylvania. We have provided technical assistance and services to KDHE in support of the radon program and are here in that capacity today. In addition, last year, we were selected by the EPA to provide national services through 4 toll free radon phone lines. I also serve as volunteer chair of the Policy Advisory Board of the National Environmental Health Association's National Radon Proficiency Program, which recommends policy issues to the program.

There are many myths and misconceptions about radon that only consistent public messages and professional services can address. Every member of the industry is a public educator about the issue and needs a sound knowledge of fundamentals and understanding of the risk to effectively deliver risk reduction services through testing and mitigation. Where a consistent requirement for competent, standards compliant services is in place, the public is better served, the industry operates on a level playing field, and it can grow to replace poor practices and sub-standard services.

I am sensitive to the concerns and conditions of the industry that I serve, and to the public that needs the services they provide. The industry is subject to real estate market fluctuations to sustain business, and citizens are likely to address radon issues in real estate transactions, as the radon concentration is a unique defect associated with the structure, usually revealed in a home inspection. Availability of competent, quality radon testing and reduction services can easily address this situation for all parties

involved, reducing risk and liability. However, when measurements are improperly conducted, or undetected tampering occurs to secure false low results, or when mitigations are inadequately installed or ineffective, risk may be extended or increased. Recognition of, and requirement for the practices and standards which this legislation details, is the best way to address this risk.

Having provided the professional training for the vast majority of those currently serving Kansas, I fully understand the costs and commitment such training requires, and the costs of certification in the national voluntary programs, as well as comparable licensing fees in states with regulation. The costs proposed in the bill are modest and reasonable, as are the costs for the national proficiency programs. I will continue to work with KDHE and the industry to ensure that opportunities for training and examinations are available across the state, as dictated by demand and need, and help those who need training access it wherever and whenever it is available nationally.

I know that taking time to answer questions about this complex topic is essential to increased understanding and taking appropriate action. I welcome your questions. Thank you.

Bruce Snead

810 Pierre St.

Manhattan, KS 66502

785-537-7260 Home 785-532-4992 Work



# KARCI™

KANSAS ASSOCIATION OF RESIDENTIAL & COMMERCIAL INSPECTORS  
11184 Antioch • Ste. 103 • Overland Park, KS 66210  
(800) 686-1034 • (425) 696-2185 (Efax)  
Email: KARCI4ALL@yahoo.com

Chairman Brungardt and Honorable Senators,

Members of the Kansas Association of Residential and Commercial Inspectors (KARACI) and inspectors across Kansas pray for your attention in the following matters in regards to SB 531 as this bill primarily affects our industry:

1. Sec 5.(d)(1) and Sec 6.(d)(1) requires completion of a training course and examination offered by the NRSB, NEHA or other approved organizations within one year of the application. We would recommend that the one year requirement be stricken and a requirement added for a completion of sixteen (16) CEU hours bi-annually for testers or 24 hours for testers and mitigators, or as required by either the NRSB or NEHA, for re-certification. This would also remove any issue with the implied task of having to belong to a private organization (NEHA or NRSB) which we know was stricken from previous bills by the States Attorney General.
2. There is no provision in the bill to regulate radon tests performed by private homeowners as it pertains to the real estate transaction. This bill would require us to be licensed to assure accurate tests are performed for buyers however it also allows the homeowner to test and submit results to the buyer in that same sale without any knowledge or licensing. As we know the bulk of all radon testing in Kansas is performed in association with a real estate transaction or post-mitigation. I would recommend that a provision is inserted requiring the testing of radon during a real estate transaction, when conducted, be performed by a state certified technician.
3. Sec. 10(d) would require inspectors to submit results of all tests to the KDHE unless the customer rejects this part. The results are to be used to conduct studies on radon and lung cancer incidence in Kansas. To us this is an overt attempt to strong arm private inspectors to perform the work of the KDHE without compensation. If the KDHE wants to gather information regarding Radon levels in the state of Kansas then requests it voluntarily from the customers or fund state agencies to perform this task. This entire section should be stricken from the bill.
4. Sec 13.(c) states that the fees we would pay as certified radon technicians may be used for purposes other than the function of operating the offices to certify Radon Technicians. The fees may be used for numerous other causes for the state. Again, inspectors are being asked to bear the burden of state operations through fees. We would ask that the fees be limited in amount to that needed to operate the certification function and all other monies be deposited to the SGF.

Thank you for your attention to the concerns of our members and inspectors in Kansas.

Sincerely  
Michael Greenwalt  
President, KARCI (Kansas Association of Residential and Commercial Inspectors)  
Board of Directors, NAHI (National Association of Home Inspectors)  
KHIRB Reg # 0110-0060, NAHI Certified # 2007127ASHI Certified # 249594

Sn Fed & State  
Attachment 8

2-16-10

# DIRECTIONS

## IMPORTANT NOTE: PLEASE FOLLOW THE DIRECTIONS CAREFULLY...

Save the detector cap, directions and mailing materials. You will need them to send your detector to the lab at the end of the testing period. In the space provided below, please record the serial number located on the side of the radon gas detector. Also record the date you returned the detector to the lab. You will need this information should you have any questions about your test results.

RADON DETECTOR SERIAL NUMBER # \_\_\_\_\_

DATE RETURNED TO THE LAB / /

### **PREPARING FOR TEST:**

Close all windows and doors for at least 12 hours prior to the start of the test. You must keep them closed as much as possible during the testing. The less fresh air that enters the testing area the more accurate your results will be. Do not operate fans or ventilation systems that use outside air such as attic or bathroom fans.

### **SELECTING TEST LOCATION:**

According to the EPA, radon testing should be conducted in the lowest lived-in area of your home. Make sure your test location is a room where the radon gas detector will not be exposed to drafts from vents, doors or windows. **DO NOT** place the detector in your kitchen, bathroom or laundry room. **DO NOT** place detector in direct sunlight or near any heat source such as a fireplace or heater.

### **BEGINNING TEST:**

After selecting your test location, remove the cap from the radon detector. Place the uncapped radon gas detector on a flat surface at least 2-3 feet above the floor and 2-3 feet from any outside wall. Allow the radon gas detector to remain uncapped for 2 days (48 hours). Once the radon gas detector has been placed, **DO NOT** remove it until the testing period is completed.

### **FILLING OUT THE RADON DATA CARD**

Record the radon gas detector serial number, your name, address, test location, beginning date and exact time you started the test. After filling out this information, put the radon gas detector data card and the detector cap in a safe place. You will need them in order to complete the test.

### **ENDING TEST**

Replace the cap on the radon gas detector and record the date and the exact time the test ended on the radon gas detector data card. Make sure your radon gas detector data card is now completely filled out. (If you leave out any information your radon gas detector will not be analyzed.)

### **FOR LAB RESULTS:**

Place the exposed radon gas detector & the radon data card in the enclosed postage-paid envelope and mail immediately. (Within 24 hours of the completion of the test) Within 1 week after the lab receives your radon gas detector we will send you an easy to read evaluation of the exact radon gas levels in your home or office.

FOR MORE INFORMATION, PLEASE CALL TOLL FREE: (800) 427-0550  
©Professional Laboratories, Inc. 1998



9

## Written Testimony For Support for Kansas State SB531 the Radon Certification Law

When my husband, Joe, mentioned that we should check for radon, I responded, "No, we have a very tight basement and a relatively new house." I didn't know what radon gas was, but I was absolutely sure that it wasn't in our house.

I didn't know that living in a house for a long period of time with high levels of radon was like smoking 48 cigarettes a day; that if a person had ever smoked or was a current smoker living with high levels of radon, the chance was **1 in 4** of developing lung cancer; that radon-induced lung cancer takes the lives of **22,000** people each year; that radon is the leading cause of lung cancer in nonsmokers; that there is only a 15% five-year survivor rate once diagnosed; that lung cancer kills more Americans than colon, prostate, breast, kidney and liver cancer combined; that radon is present all over the world; that it can be present in any type of home, old or new, brick or vinyl, basement or flat slab; that **10 million homes** in the US have high radon levels; that it is easy to test for radon.

In Dec. 2005, Joe was diagnosed with lung cancer that had spread to his liver and bones. We were devastated. On our second visit to the oncologist, we asked what could have caused this; he said, "smoking and radon gas". Joe hadn't smoked in 27 years.

Lung cancer took Joe's life Feb. 8, 2006. One month after his death, I heard on the news "radon gas can be a cause of lung cancer." I remembered what the doctor had said and researched the Internet to find that a test kit could be purchased at the hardware store. The results of this test revealed we had been living for 18 years with a radon level over four times the EPA action level. I secured an Illinois state licensed radon mitigator to install a radon mitigation system immediately. I had great confidence in the qualifications and professionalism of my mitigator. I knew from the referral by Illinois Emergency Management Agency, the Nuclear Safety Division that this individual was legitimate and that his work performance would be exemplary.

Occasionally, the state legislators have an opportunity to save the lives of the citizens of their states. This was achieved when the seat belt law was passed. Another opportunity is at hand. Citizens will not protect themselves from this deadly gas either because of their ignorance or unwillingness. Please support SB531 in its present form and show real interest in the health of the residents of Kansas. Thousands of lives will be saved.

With God's help and my state representative, Dan Reitz, and the support from the Illinois Home Inspectors Association, and the American Association of Radon Scientists and Technologists, the **Illinois Radon Awareness Act** became law January 1, 2008. During the first year of the existence of this law the number of homebuyers that have tested before taking occupancy of the new home has increased from 8 percent to 25 percent. Homes are being tested, and mitigated if the radon level is high, and lives are being saved in Illinois as a result of this law.

You may not know what it feels like to hear the devastating news that your spouse has lung cancer. You may not know the helpless and hopeless feeling that occurs as you wonder how this could have happened, but I know. I hope you never know. **Please test your home for radon and give your support to Kansas Senate Bill 531.**

Sincerely,

Gloria Linnertz  
618 Evansville Ave.  
Waterloo, IL 62298  
[seascape@htc.net](mailto:seascape@htc.net)  
618 830 4660  
Cancer Survivors Against Radon  
[www.cansar.org](http://www.cansar.org)

Sn Fed & State  
Attachment 9

2-16-10



HomePro of Kansas, Inc.  
PO Box 1517  
Garden City, Ks. 67846

**Senate Federal and State Affairs Committee**  
**Written Testimony of Ronald Naab**  
**February 16, 2010**  
**Re: SB 531**

Mr. Chair and members of the committee, thank you for the opportunity to testify on this bill. I encourage you to **VOTE YES** in favor of Senate Bill 531

I am a lifetime resident of Kansas and a Kansas Registered Home Inspector that has been doing Home Inspections and Radon Testing for the past 18 years.

On frequent occasions I encounter Radon Testing being done by un-educated and un-qualified people throughout all of Western Kansas.

I have encountered mitigation systems wrongly installed causing more of a health risk than the occupant would have ever encountered without a system.

I have encountered contractors using testing equipment that is out of calibration, sometimes the calibration dates are as much as 5-6 years past due. Thus possibly giving incorrect results. (Equipment should be calibrated annually)

I have encountered testing equipment being set incorrectly and not by correct protocol which could result in incorrect test results. This could cause a consumer unnecessary expenditure from a system being installed that is not needed or it could cause the occupant to live in an unsafe environment that they were led to believe was safe from Radon.

This legislation is needed for the health and safety of Kansas Residents. Radon is a known cause of lung cancer. Preventing one person from the possible hazards of lung cancer would be worth your YES vote for Senate Bill 531

Please VOTE YES for this bill

Sincerely

Ronald Naab

HomePro of Kansas, Inc.



February 16, 2010

Senator Brungardt, Chair of Kansas Senate Federal and State Affairs Committee

**RE: Senate Bill 531**

Dear Chairperson Brungardt and Committee Members:

I offer the following written testimony in support of the proposed requirement for state certification of Kansas radon measurement and mitigation providers.

In my experience over nearly four decades, I find the above named bill to be the most reasoned, balanced, and cost-effective legislative actions to reduce the risk of needless lung cancer deaths due to indoor radon exposure. I strongly encourage passage and enactment of this bill.

I have personally experience the lost of my 38 year old brother-in-law and my mother-in-law, both never smokers, to lung cancer. The most likely reason for their premature deaths was due to exposure of elevated radon in their homes.

Beyond my personal experience, I have had the opportunity to partner with colleagues at Kansas State University since 1989 for delivery of University-based radon measurement, prevention, and mitigation training in more than half of the states and Canadian provinces. Through this experience, I have too often observed absolute terrible radon testing and radon mitigation that in the latter case increased the risk of lung cancer for innocent citizens. This bill will greatly reduce these risks.

As President of the American Association of Radon Scientists and Technologists (AARST), I find the requirements in this bill to be entirely reasonable and a step towards minimum standards of radon practices.

As a member of the World Health Organization's International Radon Project, an editor of the *WHO Radon Handbook: A Public Health Perspective*, and Chair of the Project's Prevent and Mitigation Working Group, I find the proposed bill to be entirely consistent, as a first step, with WHO's 2009 radon recommendations to governments across the globe. You may wish to be aware that the WHO Project reviewed the scientific evidence on the risk of lung cancer due to radon in homes and made two conclusions:

1. The risk is much more serious than we had previously understood; and
2. WHO should (and did) recommend that countries set their action levels 33% lower than the current U.S. Environmental Protect Agency.

---

**AARST**

P.O. Box 2109 Fletcher, NC 28732  
Phone: 828-891-8887 or 866-772-2778  
828-890-8071(F)  
[www.aarst.org](http://www.aarst.org)

Sn Fed & State  
Attachment 11

2-16-10



The only shortcoming I find in the bill is the lack of a statewide building requirement for cost-effective radon control systems in all new Kansas homes. However, this provision could be added in the near future if the proposed bill does not bring this practice into place through builder and public education.

Thank you for the opportunity to support this critically important bill. If you have any questions or desire any further information, please contact me at [wangell@umn.edu](mailto:wangell@umn.edu)

Cordially,

William J. Angell  
President, American Association of Radon Scientists and Technologists  
[www.aarst.org](http://www.aarst.org)

Chair, World Health Organization's International Radon Project's Mitigation and Prevention Working Group [www.who.int/ionizing\\_radiation/env/radon/en/](http://www.who.int/ionizing_radiation/env/radon/en/)

Director, Radon Council (United Kingdom) [www.radoncouncil.org](http://www.radoncouncil.org)

Professor, University of Minnesota, and Director, Midwest Universities Radon Consortium [www.cce.umn.edu/radon](http://www.cce.umn.edu/radon)

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**AARST**

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828-890-8071(F)  
[www.aarst.org](http://www.aarst.org)



# KANSAS ASSOCIATION OF REAL ESTATE INSPECTORS

12601 Jayson Lane - Wichita, Kansas 67235 www.karei.org Phone: 316-393-4043 Fax: 316-722-4463

February 16, 2010

The Honorable Pete Brungardt, Chairman  
Senate Federal and State Affairs Committee  
300 SW 10<sup>th</sup> Street; Room 144-S  
Topeka KS 66612

Re: Position statement on SB531

Dear Senator Brungardt and other esteemed committee members:

As president of the largest state association of home inspectors in Kansas, I wish to acknowledge our support for an amended version of SB531. It is home inspectors that perform the vast majority of fee-paid radon tests. This testing is primarily driven by the sale of real estate or change of occupancy.

We have provided input on suggested amendments of the proposed legislation that has been or will be introduced by the KHIRB (Kansas Home Inspector Registration Board) or others. We support this amended version of SB531 while acknowledging the last thing we want to do is put additional financial burden and reporting requirements upon our members who are already desperately struggling to make ends meet in these tough economic times.

We understand and agree with the need to make it mandatory that all for profit businesses who perform radon testing and mitigation work are qualified; however, we wish to avoid additional financial load that may be placed upon our members. Many of our members are already certified by the NEHA (National Environmental Health Association) and/or NRSB (National Radon Safety Board) and should not be further penalized with added assessments.

The home inspection industry is already suffering through the greatest downturn the real estate business has seen in at least a couple of generations. Many of our members have been forced to leave the business, and currently there are less than 145 registered inspectors in the entire state. Recently enacted home inspector legislation requires an annual \$200 registration fee and includes mandates for surety bonding and insurance; additional expenses are not what we need at this time. As this is a public health issue, we feel the state should fund the expense of this program entirely by exempting registration fees for those that are already certified by NEHA and/or NRSB. Let's not fund another government program by loading more onto the backs of the beleaguered home inspection industry.

Sincerely,

Digitally signed by Kerry Parham  
DN: cn=Kerry Parham, o=Terra  
Inspections, ou,  
email=terrainpections@cox.net,  
c=US  
Date: 2010.02.14 13:59:28 -06'00'

Kerry Parham, President  
Kansas Association of Real Estate Inspectors  
NEHA Radon Measurement Certification #100320RT  
AARST Member #207  
Kansas Registered Home Inspector #0110-0003  
Kansas Licensed Geologist #369

Sn Fed & State  
Attachment 12

2-16-10



**TESTIMONY**

**TO: The Honorable Pete Brungardt, Chair  
And Members of the Senate Committee on Federal and State Affairs**

**FROM: Whitney Damron  
On Behalf of Lukas Liquor Super Store**

**RE: SB 532 - An Act concerning alcoholic beverages; relating to licenses and  
eligibility.**

**DATE: February 16, 2010**

Good morning Chairman Brungardt and Members of the Senate Committee on Federal and State Affairs. I am Whitney Damron and I appear before you this morning on behalf of Harry Lukas and Lukas Liquor Super Store in support of SB 532 that would permit the spouse of a retail liquor store licensee to apply for a farm winery license if they are not themselves a retail liquor store licensee.

Harry Lukas owns and operates the largest liquor store in Kansas, located generally just west of the intersection of 119<sup>th</sup> Street and Metcalf in Overland Park, Kansas. He has similarly-sized stores in Missouri and Colorado as well.

Under K.S.A. 2009 Supp. 41-311, a retailer is not allowed to have a beneficial interest in a manufacturer, distributor, farm winery or microbrewery licensed under the Act. A "beneficial interest" is defined elsewhere in state law to include one's spouse, thereby precluding the spouse from having an interest in these aforementioned licenses.

However, under K.S.A. 2009 Supp. 41-311(b)(4), a spouse may own and hold a retailer's license for another retail establishment.

With SB 532, we are seeking a change that would allow a spouse of a retailer who chooses not to have their own retailer's license to obtain a farm winery license.

By way of history, in 2004, Nancy Lukas began developing a vineyard in Miami County, which is called Sunnye Ridge Winery.

Nancy has planted a wide variety of grapes on 22 acres, including:

- Chardonnay
- Cabernet Franc
- Riesling
- Frontenac
- Frontenac Gris
- Lacressant
- Brianna
- Marquette
- Cabernet Hybrid on Norton Rootstock
- Zinfandel Hybrid on Norton Rootstock

To date her investment in this project exceeds \$400,000.00 and should she be allowed to obtain a farm winery license, her investment will increase significantly.

Under current law, as the wife of Harry Lukas, a licensed retailer, Nancy is prohibited from obtaining a farm winery license, so she has been selling her produce to other Kansas farm wineries. In 2009, Nancy sold more than 47 tons of grapes to Somerset Ridge Vineyard and Winery of Somerset, Kansas, owned by Dennis and Cindy Reynolds.

Nancy's vineyard has reached a maturity where she is now interested in developing her own label and vineyard as many others in Kansas have done and developing a national brand making mainstream wines with Kansas grapes, which is why I am before you today requesting a change in state liquor licensing laws that would allow her to apply for a farm winery license with the Division of Alcohol Beverage Control of the State of Kansas.

We would respectfully suggest current law that prohibits a spouse of a retailer from obtaining a farm winery license is discriminatory in nature and application, unfair and perhaps a violation of the 14<sup>th</sup> Amendment to the U.S. Constitution requiring equal protection to all citizens.

Current law discourages marriage; allows for licensure for those who might cohabitate and otherwise live as man and wife absent a marriage license and creates an insurmountable conflict should such respective licenses seek to be married.

I have shared this legislation with representatives of both the Kansas Grape Growers and Winemakers Association and the Kansas Viticulture and Farm Winery Association. The former association has endorsed the contents of SB 532 and I understand Dr. Phil Bradley will provide comments to the Committee for the Viticulturists.

We do not believe allowing the spouse of a retailer to obtain a farm winery license will jeopardize the state's 3-tier alcohol system and will serve to remove a roadblock to further development of the farm winery industry in our state. We have narrowly drawn our proposed amendment to effectively require a spouse to make a choice – they can still seek a retailer's license or they can seek a farm winery license, but not both.

We believe this change will have no impact on ABC's ability to enforce liquor laws and regulate the liquor industry in our state.

In the case of Nancy Lukas, passage of this legislation will lead to the development of a new farm winery, create jobs and advance agri-tourism in our state. Perhaps its passage will create new opportunities for others in Kansas as well.

We ask for your favorable consideration of SB 532 and I would be pleased to stand for questions at the appropriate time.

Thank you.

Whitney Damron

#### **14<sup>th</sup> Amendment to the U.S. Constitution**

*Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*



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Kansas Viticulture and  
Farm Winery Association

kansasfarmwineries.com

785-766-7492

pbb@sunflower.com

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February 16, 2010

Testimony on SB 532

Senate Federal and State Affairs Committee

Chairman Brungardt and Senators of the Committee

We have no problems with the intent of this bill as explained to us. We believe that the requirements under this act should apply to Farm Winery licensees and *Microbrewery licensees on behalf of the Craft Brewers Guild*. We do not see any reason not to allow a separate individual to pursue a career simple because they are married to a licensee. We trust that if any inappropriate or criminal behavior occurs we have statutes and enforcement procedures to address that situation.

**We support SB 532 and ask for this amendment.**

Thank you for your time and service,

Philip Bradley

**Representing the**

**Kansas Viticulture and Farm Winery Association**

**& Craft Brewers Guild of Kansas**

**KVFWA –**

*Kansas Viticulture and Farm Winery Assn: We began our Association in 2004 but our journey began decades ago. Our mission is the promotion of the production of wine from Kansas grapes, the science and practice of viticulture in the State of Kansas, and the development of Kansas Farm Wineries. We include farm wineries (such as **Blue Jacket, Davenport, Holy-Field, Stone Pillar and White Tail Run**) and numerous growers of fine grapes.*

Sn Fed & State  
Attachment 14  
2-16-10

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Senate Federal & State Affairs Committee  
SB 532

Testimony of  
Sarah Byrne  
Assistant Attorney General, Alcoholic Beverage Control

February 16, 2010

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Good morning Mr. Chairman and members of the committee. I thank you for the opportunity to appear here today to present testimony on SB 532.

KDOR does not oppose or support the passage of SB 532. However, the department feels the bill, as written, is potentially confusing and respectfully suggests an amendment.

The department suggests that the bill be amended as follows:

On page 2, lines 28-31:

(3) a person who has a beneficial interest in a manufacturer, distributor, farm winery or microbrewery licensed under this act, *except that the spouse of ~~a licensee~~ an applicant for a retailer's license may own and hold a farm winery license if ~~they do~~ the spouse does not hold a retailer's license under this act;*

The department feels this amendment clarifies the intent of the bill and averts potential confusion over the terms "licensee" and "they".

Thank you for considering the proposed amendment.

**SENATE BILL No. 478**

By Committee on Assessment and Taxation

1-28

9 AN ACT concerning the Kansas cigarette and tobacco products act; vi-  
10 olations of act; amending K.S.A. 79-3304, 79-3309, 79-3371 and 79-  
11 3378 and K.S.A. 2009 Supp. 79-3301, 79-3302, 79-3303, 79-3310, 79-  
12 3311, 79-3312, 79-3316 and 79-3321 and repealing the existing  
13 sections; also repealing K.S.A. 2009 Supp. 79-3310c.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 2009 Supp. 79-3301 is hereby amended to read as  
17 follows: 79-3301. As used in this act:

18 (a) "Carrier" means one who transports cigarettes from a manufac-  
19 turer to a wholesale dealer or from one wholesale dealer to another.

20 (b) "Carton" means the container used by the manufacturer of cig-  
21 arettes in which no more than 10 packages of cigarettes are placed prior  
22 to shipment from such manufacturer.

23 (c) "Cigar" means any roll of tobacco wrapped in leaf tobacco or in  
24 any substance containing tobacco other than any roll of tobacco which is  
25 a cigarette as defined in this section.

26 (d) "Cigarette" means any roll for smoking, made wholly or in part  
27 of tobacco, irrespective of size or shape, and irrespective of tobacco being  
28 flavored, adulterated or mixed with any other ingredient ~~if the wrapper~~  
29 ~~is in greater part made of any material except tobacco wrapped in paper~~  
30 *or any substance not containing tobacco or any roll of tobacco wrapped*  
31 *in any substance containing tobacco that because of appearance, the type*  
32 *of tobacco used in the filler, or packaging and labeling, is likely to be*  
33 *offered to, or purchased by consumers as a cigarette as described in this*  
34 *subsection. Cigarettes include little cigars.*

35 ~~(d)~~ (e) "Consumer" means the person purchasing or receiving ciga-  
36 rettes or tobacco products for final use.

37 ~~(e)~~ (f) "Dealer" means any person who engages in the sale or man-  
38 ufacture of cigarettes in the state of Kansas, and who is required to be  
39 licensed under the provisions of this act.

40 ~~(f)~~ (g) "Dealer establishment" means any location or premises, other  
41 than vending machine locations, at or from which cigarettes are sold, and  
42 where records are kept.

43 ~~(g)~~ (h) "Director" means the director of taxation.

Requested by: Division of ABC  
Prepared by: J. Long

1     ~~(h)~~ (i) “Distributor” means: (1) Any person engaged in the business  
2 of selling tobacco products in this state who brings, or causes to be  
3 brought, into this state from ~~without~~ *outside* the state any tobacco prod-  
4 ucts for sale; (2) any person who makes, manufactures, fabricates or stores  
5 tobacco products in this state for sale in this state; or (3) any person  
6 engaged in the business of selling tobacco products ~~without~~ *outside* this  
7 state who ships or transports tobacco products to any person in the busi-  
8 ness of selling tobacco products in this state.

9     ~~(i)~~ (j) “Division” means the division of taxation.

10    ~~(j)~~ (k) “License” means, in addition to the privilege of a licensee to  
11 sell cigarettes or tobacco products in the state of Kansas, the written  
12 evidence of such authority or privilege to so operate as evidenced by any  
13 license issued by the director of taxation.

14    ~~(k)~~ (l) “Licensee” means any person holding a current license issued  
15 pursuant to this act, *or any person whose license expired and who sub-*  
16 *mitted a renewal application which was received by the director prior to*  
17 *expiration of the previous licensing period.*

18    ~~(l)~~ (m) “Little cigar” means any roll of tobacco wrapped in leaf to-  
19 bacco or any substance containing tobacco and as to which 1,000 units  
20 weigh not more than three pounds.

21    (n) “Manufacturer’s salesperson” means a person employed by a cig-  
22 arette manufacturer who sells cigarettes, manufactured by such employer  
23 and procured from wholesale dealers.

24    ~~(m)~~ ~~(o)~~ “Meter imprints” means tax indicia applied by means of ink  
25 ~~printing machines.~~

26    ~~(n)~~ (p) (1) “Package” means a container in which no more than 25  
27 individual cigarettes are wrapped and sealed by the manufacturer of cig-  
28 arettes prior to shipment to a wholesale dealer.

29    (2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-  
30 3321, and amendments thereto, “package” ~~shall have the meaning as-~~  
31 ~~cribed thereto~~ *means the same as provided in 15 U.S.C. §1332(4).*

32    ~~(o)~~ (q) “Person” means any individual, partnership, society, associa-  
33 tion, joint-stock company, corporation, estate, receiver, trustee, assignee,  
34 referee or any other person acting in a fiduciary or representative capacity  
35 whether appointed by a court or otherwise and any combination of  
36 individuals.

37    ~~(p)~~ (r) “Received” means the coming to rest of cigarettes for sale by  
38 any dealer in the state of Kansas.

39    ~~(q)~~ (s) “Retail dealer” means a person, other than a vending machine  
40 operator, in possession of cigarettes for the purpose of sale to a consumer.

41    ~~(r)~~ (t) “Sale” means any transfer of title or possession or both,  
42 exchange, barter, distribution or gift of cigarettes or tobacco products,  
43 with or without consideration.

1 ~~(s)~~ (u) "Sample" means cigarettes or tobacco products distributed to  
2 members of the general public at no cost for purposes of promoting the  
3 product.

4 ~~(t)~~ (v) "Stamps" means tax indicia applied either by means of ~~water~~  
5 ~~applied gummed paper or heat process~~ pressure.

heat process or

6 ~~(u)~~ (w) "Tax indicia" means visible evidence of tax payment in the  
7 form of stamps ~~or meter imprints~~.

8 ~~(v)~~ (x) "Tobacco products" means cigars, cheroots, stogies, periques;  
9 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;  
10 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other  
11 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings  
12 of tobacco, *cigarette wrappers made of tobacco* and other kinds and forms  
13 of tobacco, prepared in such manner as to be suitable for chewing or  
14 smoking in a pipe or otherwise, or both for chewing and smoking. To-  
15 bacco products does not include cigarettes or little cigars.

16 ~~(w)~~ (y) "Vending machine" means any coin operated machine, con-  
17 trivance or device, by means of which merchandise may be sold.

18 ~~(x)~~ (z) "Vending machine distributor" means any person who sells  
19 cigarette vending machines to a vending machine operator operating  
20 vending machines in the state of Kansas.

21 ~~(y)~~ (aa) "Vending machine operator" means any person who places a  
22 vending machine, owned, leased or operated by such person, at locations  
23 where cigarettes are sold from the machine. The owner or lessee of the  
24 premises upon which a vending machine is placed shall not be considered  
25 the operator of the machine, nor shall the owner or lessee, or any em-  
26 ployee or agent of the owner or lessee be considered an authorized agent  
27 of the vending machine operator, if the owner or lessee does not own or  
28 lease the machine and the owner's or lessee's sole remuneration from the  
29 machine is a flat rental fee or commission based upon the number or  
30 value of cigarettes sold from the machine, or a combination of both.

31 ~~(z)~~ (bb) "Wholesale dealer" means any person who sells cigarettes to  
32 other wholesale dealers, retail dealers, vending machine operators and  
33 manufacturer's salespersons for the purpose of resale in the state of  
34 Kansas.

35 ~~(aa)~~ (cc) "Wholesale sales price" means the original net invoice price  
36 for which a manufacturer sells a tobacco product to a distributor, as shown  
37 by the manufacturer's original invoice.

38 ~~(bb)~~ (dd) "Importer" ~~shall have the same meaning ascribed thereto~~  
39 ~~means the same as provided in 26 U.S.C. §5702(l).~~

40 ~~(cc)~~ (ee) "Manufacturer" ~~shall have the same meaning ascribed~~  
41 ~~thereto means the same as provided in 26 U.S.C. §5702(d)(k).~~

42 Sec. 2. K.S.A. 2009 Supp. 79-3302 is hereby amended to read as  
43 follows: 79-3302. (a) ~~K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309,~~

1 3309. (a) Whenever the director has reason to believe that any person  
2 licensed under this act has violated any of the provisions of this act, the  
3 director shall notify the person by certified mail of the director's intention  
4 to suspend or revoke the person's license or licenses. Within 10 days after  
5 the mailing of the notice, the person may request a hearing in writing  
6 before the director. The hearing shall be conducted in accordance with  
7 the provisions of the Kansas administrative procedure act. If, after such  
8 hearing, it appears to the satisfaction of the director that the person has  
9 violated any of the provisions of this act, the director is hereby authorized  
10 and empowered to suspend or revoke the person's license or licenses ~~and~~.  
11 *As used in this act, "revocation" means termination by formal action of a*  
12 *license issued under this act or the privilege to operate as a retailer-dealer*  
13 *or distributor, which termination shall not be subject to renewal or res-*  
14 *toration, except that an application for a new license may be presented*  
15 *and acted upon by the director after the expiration of 10 years. The di-*  
16 *rector may in addition deny the application of the person for a license or*  
17 *licenses for a portion of the succeeding calendar year for such period as*  
18 *the director determines is necessary but in no case for a period ending*  
19 *more than one year following the date upon which the license or licenses*  
20 *were suspended [or revoked]. The suspension or revocation of a vending*  
21 *machine operator's master license shall suspend or revoke all vending*  
22 *machine permits issued to the vending machine operator for the term of*  
23 *the license suspension or revocation. If a person continues to engage in*  
24 *activities requiring a license while such license is suspended, the license*  
25 *shall be immediately revoked and additional fines and penalties may apply*  
26 *pursuant to this act.*

27 (b) If a person continues to engage in activities requiring a license  
28 under this act after having notice or knowledge of the suspension or  
29 revocation of the person's license or licenses or after becoming more than  
30 10 days delinquent in the payment of any tax, penalty or interest imposed  
31 pursuant to this act, the state shall be entitled, in any proceedings brought  
32 for such purposes, to have an order and judgment restraining and enjoin-  
33 ing such unlawful sale and no bond shall be required for the issuance of  
34 any such restraining order or injunction.

35 Sec. 6. K.S.A. 2009 Supp. 79-3310 is hereby amended to read as  
36 follows: 79-3310. There is imposed a tax upon all cigarettes sold, distrib-  
37 uted or given away within the state of Kansas. ~~On and after July 1, 2002~~  
38 ~~and before January 1, 2003, the rate of such tax shall be \$ .70 on each 20~~  
39 ~~cigarettes or fractional part thereof or \$ .75 on each 25 cigarettes, as the~~  
40 ~~case requires. On and after January 1, 2003, the rate of such tax shall be~~  
41 ~~\$.79 on each 20 cigarettes or fractional part thereof or \$.90 on each 25~~  
42 ~~cigarettes, as the case requires. Such tax shall be collected and paid to~~  
43 ~~the director as provided in this act. Such tax shall be paid only once and~~

1 shall be paid by the wholesale dealer first receiving the cigarettes as herein  
2 provided. *For any purchaser of cigarettes on which such tax has not been*  
3 *paid by the wholesale dealer, the director of taxation may proceed directly*  
4 *against such purchaser to collect the full amount of tax due. A purchaser*  
5 *of cigarettes includes a consumer as defined by K.S.A. 79-3301, and*  
6 *amendments thereto.*

7 The taxes imposed by this act are hereby levied upon all sales of ciga-  
8 rettes made to any department, institution or agency of the state of Kan-  
9 sas, and to the political subdivisions thereof and their departments, insti-  
10 tutions and agencies.

11 Sec. 7. K.S.A. 2009 Supp. 79-3311 is hereby amended to read as  
12 follows: 79-3311. The director shall design and designate indicia of tax  
13 payment to be affixed to each package of cigarettes as provided by this  
14 act. The director shall sell water applied stamps only to licensed wholesale  
15 dealers in the amounts of 1,000 or multiples thereof. stamps applied by  
16 the heat process ~~shall be sold~~ only in amounts of 30,000 or multiples  
17 thereof, except that such stamps which are suitable for packages contain-  
18 ing 25 cigarettes each shall be sold in amounts prescribed by the director.  
19 ~~Meter imprints shall be sold only in amounts of 10,000 or multiples~~  
20 ~~thereof. Water applied stamps in amounts of 10,000 or multiples thereof~~  
21 ~~and~~ Stamps applied by the heat process ~~and meter imprints~~ shall be sup-  
22 plied to wholesale dealers at a discount of .90% on and after July 1, 2002,  
23 and before January 1, 2003, and .80% thereafter from the face value  
24 thereof, and shall be deducted at the time of purchase or from the re-  
25 mittance therefor as hereinafter provided. Any wholesale cigarette dealer  
26 who shall file with the director a bond, of acceptable form, payable to the  
27 state of Kansas with a corporate surety authorized to do business in Kan-  
28 sas, shall be permitted to purchase stamps, and remit therefor to the  
29 director within 30 days after each such purchase, up to a maximum out-  
30 standing at any one time of 85% of the amount of the bond. Failure on  
31 the part of any wholesale dealer to remit as herein specified shall be cause  
32 for forfeiture of such dealer's bond. All revenue received from the sale  
33 of such stamps ~~or meter imprints~~ shall be remitted to the state treasurer  
34 in accordance with the provisions of K.S.A. 75-4215, and amendments  
35 thereto. Upon receipt of each such remittance, the state treasurer shall  
36 deposit the entire amount in the state treasury. The state treasurer shall  
37 first credit such amount as the director shall order to the cigarette tax  
38 refund fund and shall credit the remaining balance to the state general  
39 fund. A refund fund designated the cigarette tax refund fund not to ex-  
40 ceed \$10,000 at any time shall be set apart and maintained by the director  
41 from taxes collected under this act and held by the state treasurer for  
42 prompt payment of all refunds authorized by this act. Such cigarette tax  
43 refund fund shall be in such amount as the director shall determine is