

2013 Kansas Statutes

48-16a01. Radon certification law. K.S.A. 2013 Supp. 48-16a01 through 48-16a12, and amendments thereto, shall be known and may be cited as the radon certification law.

History: L. 2010, ch. 94, § 1; July 1.

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48-16a02. Same; definitions. As used in the radon certification law:

- (a) "Mitigate" means to repair or alter a building or design for the purpose in whole or in part of reducing the concentration of radon in the indoor atmosphere.
- (b) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, state, political subdivision or agency of a state or political subdivision, or any legal successor or representative thereof.
- (c) "Radon (Rn)" means the naturally occurring, colorless, odorless, radioactive gaseous element formed by radioactive decay, including radon 222, radon 220 (thoron), radon decay products and radon progeny or as defined by rules and regulations adopted by the secretary.
- (d) "Secretary" means the secretary of the department of health and environment.
- (e) "Measurement" or "test" means the: (1) Examination of a building, soil, water or air for the presence of radon, including taking air or soil samples; or (2) diagnosis of the source of radon contamination.
- (f) "Radon measurement business" means a business which performs radon measurement and is either owned by, employees [employs], or retains as a consultant a certified radon measurement technician.
- (g) "Radon mitigation business" means a business which performs radon mitigation services and is either owned by, employees [employs] or retains as a consultant a certified radon mitigation technician.
- (h) "Radon measurement laboratory" means a business that performs laboratory analysis of radon measurement devices or samples, but does not include the field analysis of continuous radon monitors or continuous working level monitors.
- (i) "Department" means the department of health and environment.

History: L. 2010, ch. 94, § 2; July 1.

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48-16a03. Same; certification program; rules and regulations, standards and guidelines; implementation agreements. (a) The secretary shall establish a certification program for certified persons performing radon tests or mitigation in the state.

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

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

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

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

History: L. 2010, ch. 94, § 3; July 1.

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48-16a04. Same; fees. (a) The secretary may establish a schedule of fees to pay the costs of administration and implementation of the radon certification law. The secretary shall remit all moneys received from fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the radiation control operations fee fund established by K.S.A. 48-1625, and amendments thereto.

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

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

History: L. 2010, ch. 94, § 4; July 1.

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48-16a05. Same; radon measurement technician; certification; application; training course; examination; when section not applicable. (a) A person may not perform radon measurements or represent or advertise that such person may perform radon measurements unless such person has been certified as a radon measurement technician by the department.

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

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

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

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

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

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

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

History: L. 2010, ch. 94, § 5; July 1.

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48-16a06. Same; radon mitigation technician; certification; training course; examination; when section not applicable. (a) A person may not perform radon mitigation or represent or advertise that such person may perform radon mitigation unless such person has been certified by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: L. 2010, ch. 94, § 6; July 1.

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48-16a07. Same; radon measurement business, conditions required to perform radon testing. A radon measurement business shall comply with the radon certification law and any rules and regulations adopted thereunder. A certified radon measurement technician who is certified with the department shall own, be employed by or be retained as a consultant by a radon measurement business when such business is performing radon measurements. All radon testing, including the initial placement and final retrieval of all measurement devices and post mitigation testing, shall be performed by a certified radon measurement technician.

History: L. 2010, ch. 94, § 7; July 1.

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48-16a08. Same; radon mitigation business; conditions required to perform radon mitigation. A radon mitigation business shall comply with the radon certification law and any rules and regulations adopted thereunder. A certified radon mitigation technician who is certified with the department shall own, be employed by or be retained as a consultant by a radon mitigation business when such business is performing radon mitigation. A radon mitigation business shall ensure that radon mitigation system installations are performed under the supervision of a certified radon mitigation technician.

History: L. 2010, ch. 94, § 8; July 1.

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48-16a09. Same; radon measurement laboratory; certification; application; conditions for certification. (a) A person may not perform laboratory analysis or represent or advertise that it may perform laboratory analysis of radon measurement devices or samples unless such person has been certified as a certified radon measurement laboratory by the department.

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

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

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

History: L. 2010, ch. 94, § 9; July 1.

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48-16a10. Same; reports on testing, analysis and mitigation; confidentiality; research studies; radon measurement or testing contracts, requirements. (a) Except as provided by subsections (d), (e) and (g), any person who tests for radon in this state, analyzes radon testing devices used in this state or performs radon mitigation in this state shall make a report of such testing, analysis or mitigation to the secretary. Such report shall be made within 90 days of performance of such testing, analysis or mitigation and shall include the address where the services were provided, location within the building, approximate age of the building, the date on which the service was provided, the type of equipment or test kit used for radon measurements, specific information regarding pre-mitigation or post-mitigation for radon measurements, and the results of any tests, analysis or mitigation.

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

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

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

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

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

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

History: L. 2010, ch. 94, § 10; July 1.

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48-16a11. Same; violations; penalties. (a) Any person who willfully violates any provision of the radon certification law or any rules and regulations adopted thereunder is guilty of a class B misdemeanor and is subject to a cease and desist order imposed by the secretary after providing notice and a hearing in accordance with the Kansas administrative procedure act.

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

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

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

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

History: L. 2010, ch. 94, § 11; July 1.

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48-16a12. Same; severability. If any section, subsection, sentence, clause, phrase or word of this act is for any reason held to be unconstitutional, such decree shall not affect the validity of any remaining portion of this act.

History: L. 2010, ch. 94, § 12; July 1.