

65-1,200. Citation of act. K.S.A. 65-1,200 to 65-1,214, inclusive, of this act shall be known and may be cited as the residential childhood lead poisoning prevention act.

History: L. 1999, ch. 99, § 2; Apr. 22

65-1,201. Definitions. As used in the residential childhood lead poisoning prevention act:

- (a) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards as defined in the federal program.
- (b) "Accredited training program" means a training program that has been accredited by the federal program or the secretary to present training courses to individuals engaged in lead-based paint activities.
- (c) "Business entity" means a company, partnership, corporation, sole proprietorship, association, or other business concern.
- (d) "Certificate" means an authorization issued by the secretary permitting an individual to engage in lead-based paint activities.
- (e) "Federal program" means subpart L, lead-based paint activities of 40 CFR part 745, as in effect on the effective date of this act.
- (f) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or more than 0.5% by weight.
- (g) "Lead-based paint activities" means the inspection, assessment and abatement of lead-based paint, including the disposal of waste generated therefrom.
- (h) "License" means an authorization issued by the secretary permitting a business entity to engage in lead-based paint activities.
- (i) "Public agency" means any state agency or political or taxing subdivision of the state and those federal departments, agencies or instrumentalities thereof which are not subject to preemption.
- (j) "Secretary" means the secretary of health and environment.
- (k) "Residential dwelling" means a detached single family dwelling or a single family dwelling unit in a structure that contains more than one separate residential dwelling unit used as a place of residence for habitation by an individual or the individual's immediate family, or both.
- (l) "Habitation" means a place of abode or residence constructed before 1978 where individuals eat, sleep and reside.
- (m) "Immediate family" means spouse, parent, stepparent, child, stepchild or sibling.

History: L. 1999, ch. 99, § 3; Apr. 22.

65-1,202. Development and implementation of prevention program; licensure training and inspections; fees; rules and regulations. The

secretary shall administer the provisions of the residential childhood lead poisoning prevention act. In administering the provisions of the residential childhood lead poisoning prevention act, the secretary shall be authorized to:

- (a) Develop and implement a childhood lead poisoning prevention program as necessary to protect the health of the children of Kansas, which may include provisions to:
 - (1) Investigate the extent of childhood lead poisoning in Kansas;
 - (2) Develop a data management system designed to collect and analyze information on childhood lead poisoning;
 - (3) Develop and conduct programs to educate health care providers regarding the magnitude and severity of and the necessary responses to lead poisoning in Kansas;
 - (4) Issue recommendations for the methods and intervals for blood lead screening and testing of children, taking into account recommendations by the United States centers for disease control and prevention, except that no child shall be screened or tested if the child's parent or guardian objects in writing on the ground that such screening or testing is contrary to the parent's or guardian's religious beliefs and practices;
 - (5) Develop and issue health advisories urging health care providers to conduct blood lead screening of children;
 - (6) Encourage health care providers to ensure that parents and guardians of children are advised of the availability and advisability of screening and testing for lead poisoning;
 - (7) Develop a program to assist local health departments in identification and follow-up of cases of elevated blood lead levels in children and other high-risk individuals; and
 - (8) In consultation with appropriate federal, state and local agencies, develop a comprehensive public education program regarding environmental lead exposures and lead poisoning by:
 - (A) Identifying appropriate target groups that are in a position to prevent lead poisoning or reduce the number of children who are exposed to lead;
 - (B) Assessing the information needed for each of the target groups and determine the best means of educating the members of each target groups; and
 - (C) Disseminating the information to the target groups in an effective manner.
- (b) Adopt rules and regulations necessary for the administration of the residential childhood lead poisoning prevention act including, but not limited to, licensure of business entities and public agencies, certification of individuals, accreditation of training programs, on-site inspections and requirements, notification and record keeping, procedures and work practice standards relating to lead-based paint activities as are necessary to protect the public health and safety;
- (c) Adopt by rules and regulations a reasonable schedule of fees for the issuance and renewal of certificates and licenses, training program accreditations and on-site inspections. The fees shall be periodically increased or decreased consistent with the need to cover the direct and indirect costs to administer the program. At no time shall such fees exceed those charged by the United States environmental protection agency for the same or similar regulatory programs. The fees shall be based upon the amount of revenue determined by the secretary to be required for proper administration of the provisions of the residential childhood lead poisoning prevention act. State and local health department personnel certifying for the purpose of environmental investigation of lead poisoned children shall be exempted from licensure fees;

- (d) Conduct on-site inspections of procedures being utilized by a licensee during an actual abatement project and conduct inspection of the records pertaining to the residential childhood lead poisoning prevention act;
- (e) Adopt rules and regulations regarding the distribution of lead hazard information to owners and occupants of housing prior to conducting renovation activities in housing;
- (f) Develop rules and regulations to control and disposition and reuse of architectural debris that contains lead-based paint.

History: L. 1999, ch. 99, § 4; Apr. 22.

65-1,203. Licensure or certification to perform lead-based paint activities.

- (a) A business entity or public agency shall not engage in a lead-based paint activity unless the business entity or public agency holds a license issued by the secretary for that purpose.
- (b) Except as otherwise provided in the residential childhood lead poisoning prevention act, no individual shall engage in lead-based paint activities unless the individual holds a certificate issued by the secretary for the purpose. In order to qualify for a certificate, an individual must have successfully completed an accredited training program and pass a third party exam as required by the secretary. Any individual who owns and resides in a residential dwelling may perform lead-based paint activities within such residential dwelling even though such individual does not hold a certificate for that purpose under the residential childhood lead poisoning prevention act. All work performed by such individual owner of a residential dwelling must be performed in accordance with state and federal guidelines or statutes, or both.
- (c) Any business or public agency that owns or leases a nonresidential dwelling may perform lead-based paint activities within such facility even though such business or public agency does not hold a license for that purpose under the residential childhood lead poisoning prevention act. All work performed by a business or public agency on such facility must be performed in accordance with state and federal guidelines or statutes, or both.

History: L. 1999, ch. 99, § 5; Apr. 22.

65-1,204. Same; qualification requirements. In order to qualify for a license, a business entity or public agency shall:

- (a) Ensure that each employee or agent of the business entity or public agency who will engage in a lead-based paint activity is certified;
- (b) Demonstrate to the satisfaction of the secretary that the business entity or public agency is capable of complying with all requirements, procedures and standards of the United States environmental protection agency, the United States occupational safety and health administration and the secretary, as applicable, to lead-based paint activities;

- (c) Comply with all rules and regulations adopted by the secretary under the residential childhood lead poisoning prevention act; and
- (d) Allow representatives of the secretary, after identification, to enter and inspect any habitation or property on which a habitation is situated at any reasonable time with consent of the owner or under search warrant for the purpose of inspecting lead-based paint activities as required in order to implement provisions of the residential childhood lead poisoning prevention act.

History: L. 1999, ch. 99, § 6; Apr. 22.

65-1,205. Remittance of fees. The secretary shall remit all moneys received from the fees established pursuant to the residential childhood lead poisoning prevention act 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 lead-based paint hazard fee fund established in K.S.A. 65-1,206, and amendments thereto.

History: L. 1999, ch. 99, § 7; L. 2001, ch. 5, § 215; July 1.

65-1,206. Lead-based paint hazard fee fund; sources of revenue; expenditures.

- (a) There is established in the state treasury the lead-based paint hazard fee fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:
 - (1) Fees collected under the residential childhood lead poisoning prevention act for licensure and certification to engage in lead-based paint activities, accreditation of training programs and fees for evaluation of abatement projects;
 - (2) Any moneys recovered by the state under the residential childhood lead poisoning prevention act, including administrative expenses, civil penalties and moneys paid under any agreement, stipulation or settlement;
 - (3) Any moneys collected or received from public or private grants and from gifts and donations; and
 - (4) Interest attributable to investment of moneys in the fund.
- (b) Moneys deposited in the fund shall be expended only for the purpose of administering the residential childhood lead poisoning prevention act and for no other governmental purposes.
- (c) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the lead-based paint hazard fee fund interest earnings based on:
 - (1) The average daily balance of moneys in the lead-based paint hazard fee fund for the preceding month; and
 - (2) The net earnings rate of the pooled money investment portfolio for the preceding month.
- (d) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

History: L. 1999, ch. 99, § 8; Apr. 22.

65-1,207. Denial, suspension or revocation of license or certificate or accreditation of training program, when; suspension of abatement program; administrative review.

- (a) The secretary may refuse to issue a license or may suspend or revoke any license issued under the residential childhood lead poisoning prevention act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant or licensee has:
 - (1) Fraudulently or deceptively obtained or attempted to obtain a license;
 - (2) Failed at any time to meet the qualifications for a license or to comply with any rules and regulations adopted by the secretary under the residential childhood lead poisoning prevention act;
 - (3) Failed at any time to meet any applicable federal or state standard for lead-based paint activities; or
 - (4) Employed or permitted an uncertified individual to work on a lead-based paint activity.
- (b) The secretary may refuse to issue a certificate or may suspend or revoke any certificate issued under the residential childhood lead poisoning prevention act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant for certificate or certificate holder has:
 - (1) Fraudulently or deceptively obtained or attempted to obtain a certificate; or
 - (2) Failed at any time to meet qualifications for a certificate or to comply with any provision or requirement of the residential childhood lead poisoning prevention act or any rules and regulations adopted by the secretary under the residential childhood lead poisoning prevention act.
- (c) The secretary may deny, suspend or revoke any accreditation of a training program under the residential childhood lead poisoning prevention act if the secretary finds, after notice and hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant for training program accreditation or training provider has:
 - (1) Fraudulently or deceptively obtained or attempted to obtain accreditation of a training program;
 - (2) Failed at any time to meet the qualifications to obtain accreditation of a training program or to comply with any rules and regulations adopted by the secretary under the residential childhood lead poisoning prevention act;
 - (3) Failed to maintain or provide information on training programs; or
 - (4) Falsified information, accreditation or approval records, instructor qualification information or other accreditation or approval information required to be submitted by the secretary.
- (d) Any individual, business entity or accredited training program aggrieved by a decision or order of the secretary may appeal the order or decision in accordance with the provisions of the Kansas judicial review act.
- (e)
 - (1) If the secretary finds that the public health or safety is endangered by the continuation of an abatement project, the secretary may temporarily suspend, without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas

administrative procedure act, the license of the business entity or public agency or the certificate of any person engaging in such abatement project.

- (2) In no case shall a temporary suspension of a license or certificate under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the license or certificate shall be reinstated unless the secretary has suspended or revoked the license or certificate, after notice and hearing in accordance with the provisions of the residential childhood lead poisoning prevention act, or the license has expired as otherwise provided under the residential childhood lead poisoning prevention act.

History: L. 1999, ch. 99, § 9; L. 2010, ch. 17, § 115; July 1.

65-1,208. Noncompliance; notice; duty to meet compliance

requirements. Whenever an authorized agency of the secretary finds that any individual, business entity, accredited program or public agency is not in compliance with the residential childhood lead poisoning prevention act or any rules and regulations adopted under the residential childhood lead poisoning prevention act, it shall be the duty of such agent to notify the individual, business entity, accredited program or public agency in writing of such changes or alterations as the agency shall deem necessary in order to comply with the requirements of the residential childhood lead poisoning prevention act and any rules and regulations adopted under the residential childhood lead poisoning prevention act, and the agency shall file a copy of such notice with the secretary. It shall thereupon be the duty of the individual, business entity, accredited program or public agency to make such changes or alterations as are contained in the written notice within five days from the receipt of such notice.

History: L. 1999, ch. 99, § 10; Apr. 22.

65-1, 209. Violations; criminal penalties. Any individual, business entity, public agency or accredited training program which knowingly violates any provision of the residential childhood lead poisoning prevention act or any rules and regulations adopted under the residential childhood lead poisoning prevention act is guilty:

- (a) For a first offense, of a class C misdemeanor; and
- (b) For a second offense or subsequent offense, of a class B misdemeanor.

History: L. 1999, ch. 99, § 11; Apr. 22.

65-1,210. Same; civil penalties; corrective action; appeals; grants to communities to eliminate hazards.

- (a) Any individual, business entity, accredited training program or public agency who violates any provision of the residential childhood lead poisoning prevention act or any rules and regulations adopted under the residential childhood lead poisoning prevention act, in addition to any other

penalty or litigation provided by law, may incur a civil penalty imposed under subsection (b) in a maximum amount not to exceed \$1,000 for the first violation, \$5,000 for each subsequent violation and, in the case of a continuing violation, every day such previously notified violation continues shall be deemed a separate violation.

- (b) The secretary, upon finding that any individual, business entity, accredited training program or public agency has violated any provision of the residential childhood lead poisoning prevention act or any rules and regulations adopted under the residential childhood lead poisoning prevention act, may impose a civil penalty within the limits provided in this section upon such individual, business entity, accredited training program or public agency which civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed.
- (c) The secretary, upon finding that an individual, business entity, accredited training program or public agency has violated any provision of the residential childhood lead poisoning prevention act or rules and regulations adopted under the residential childhood lead poisoning prevention act, may issue an order finding such individual, business entity, accredited training program or public agency in violation of the residential childhood lead poisoning prevention act and directing the individual, business entity, accredited training program or public agency to take such action as necessary to correct the violation.
- (d) No civil penalty shall be imposed under this section except upon the written order of the secretary after notification and hearing, if a hearing is requested, in accordance with the provisions of the Kansas administrative procedure act.
- (e) Any individual, business entity, accredited training program or public agency aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the Kansas judicial review act.
- (f) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer and deposited in the lead-based paint hazard fee fund.
- (g) The secretary shall use penalties recovered pursuant to the provisions of this section to establish a grant program for communities to conduct activities designed to reduce or eliminate exposure of children to residential lead-based paint hazards.

History: L. 1999, ch. 99, § 12; L. 2010, ch. 17, § 116; July 1.

65-1,211. Same; additional remedies. Notwithstanding any other remedy and in addition to any other remedy, the secretary may maintain, in the manner provided by the Kansas judicial review act, an action in the name of the state of Kansas for injunction or other process against any business entity or individual to restrain or prevent any violation of the provisions of the residential childhood lead poisoning prevention act or of any rules and regulations adopted under the residential childhood lead poisoning prevention act.

History: L. 1999, ch. 99, § 13; L. 2010, ch. 17, § 117; July 1.

65-1,212. Implementation of act by entities engaging in lead-based paint activities; when. Licensure, certification or training program accreditation for a business entity, public agency or individual who engages in lead-based paint activities shall not be required until such time as the secretary adopts rules and regulations to implement the provisions of the residential childhood lead poisoning prevention act.

History: L. 1999, ch. 99, § 14; Apr. 22.

65-1,213. Statutory audit privilege not applicable. The audit privilege recognized in K.S.A. 2002 Supp. 60-332 through 60-339 does not pertain to the residential childhood lead poisoning prevention act.

History: L. 1999, ch. 99, § 15; Apr. 22.

Revisor's Note:

Citation to "60-332 through 60-339" in hardbound volume should be "60-3332 through 60-3339".