

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2769

By Delegates Foster, Riley, Smith, Butler, Jennings,
Espinosa, Hanna, Householder, Burkhammer,
Chiarelli, and Summers

[Introduced January 18, 2023; Referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §16-34-2 and §16-34-3 of the Code of West Virginia, 1931, as
 2 amended; to repeal §16-34-4 of said code; and to amend and reenact §16-34-5, §16-34-6,
 3 §16-34-7, §16-34-8, §16-34-10, §16-34-12, and §16-34-13 of said code, all relating to
 4 removing the licensure requirement for radon mitigation contractors, radon mitigation
 5 specialists, and radon testers.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 34. LICENSURE OF RADON MITIGATORS, TESTERS, CONTRACTORS
AND LABORATORIES.**

§16-34-2. Definitions.

1 (a) "Building" means a publicly or privately owned structure consisting of any combination
 2 of foundations, walls, columns, girders, beams, floors and roofs, with or without other elements of
 3 appurtenances.

4 (b) "Business entity" means a corporation, partnership, association, firm, sole
 5 proprietorship or other entity engaged in business.

6 (c) "Director" means the director of the division of health.

7 (d) "Mitigate" means to repair or alter an existing building or design for the purpose, in
 8 whole or in part, of reducing the concentration of radon in the indoor atmosphere.

9 (e) "Radon" means the radioactive noble gas radon-222 and the short-lived radionuclides
 10 which are products of radon-222 decay, including polonium-218, lead-214, bismuth-214 and
 11 polonium-214.

12 (f) "Radon laboratory" means a business entity that offers its laboratory services for the
 13 purpose of studying air, soil samples or passive radon detection devices to determine the
 14 concentration of radon.

15 ~~(g) "Radon mitigation contractor" means a business entity having at least one person~~
 16 ~~licensed as a radon mitigation specialist.~~

17 ~~(h) "Radon mitigation specialist" means a person holding a license to install or apply~~
18 ~~methods or materials to reduce airborne radon concentrations in a building or to prevent the entry~~
19 ~~of radon into the indoor atmosphere.~~

20 ~~(i) "Radon testers" means a business entity or person licensed to examine a building, air,~~
21 ~~soil or water for the presence of radon, including taking air, soil or water samples, or the act of~~
22 ~~diagnosing the cause of radon contamination in a building~~

23 (j) "Secretary" means the secretary of the Department of Health and Human Resources.

24 (k) "Test" means the act of examining a building, soil or air for the presence of radon,
25 including taking air or soil samples, or the act of diagnosing the cause of radon contamination in a
26 building.

§16-34-3. License required and exemptions.

1 ~~(a) Except as otherwise provided in subsection (b) of this section:~~

2 ~~(1) No individual may perform radon testing or hold himself or herself out as performing~~
3 ~~radon testing without a valid radon tester or mitigation specialist license;~~

4 ~~(2) No individual may provide professional or expert advice on radon testing, radon~~
5 ~~exposure or the health risks related to radon exposure or hold himself or herself out as providing~~
6 ~~such advice without a valid radon tester or mitigation specialist license;~~

7 ~~(3) No individual may provide on-site supervision of radon mitigation or hold himself or~~
8 ~~herself out as providing such supervision without a valid radon mitigation specialist license;~~

9 ~~(4) No individual may provide professional or expert advice on radon mitigation or radon~~
10 ~~entry routes or hold himself or herself out as providing such advice without a valid radon mitigation~~
11 ~~specialist license;~~

12 ~~(5) No business or government entity may perform or authorize any individual employed by~~
13 ~~it to perform radon mitigation or hold itself out as performing radon mitigation without a valid radon~~
14 ~~mitigation contractor license; and~~

15 ~~(6) No laboratory shall perform analyses of radon air and soil samples or radon detection~~

16 devices for the purpose of assessing radon content without a valid radon laboratory license.

17 ~~(b) Subsection (a) of this section does not apply to any of the following:~~

18 ~~(1) An individual, business entity or government entity performing its own radon tests or~~
19 ~~mitigation on a building or real property that the individual, business entity or government entity~~
20 ~~owns or leases;~~

21 ~~(2) An individual, business entity or government entity conducting research regarding~~
22 ~~radon testing or mitigation in accordance with section four of this article; or~~

23 ~~(3) Employees of the Department of Health and Human Resources' radiological health~~
24 ~~program~~

§16-34-4. Special licensure requirements.

1 [Repealed.]

§16-34-5. Powers and duties of the director of the division of health.

1 (a) The director shall license radon testers, mitigation specialists, mitigation contractors
2 and radon laboratories located within the state. Each applicant for a license shall submit a
3 completed application to the director on a form prescribed and furnished by the director.

4 (b) The director shall issue the appropriate license to each applicant who pays the license
5 fee, meets the licensing criteria and complies with any other licensing and training requirements
6 established by the director. An individual business entity or government entity may hold more than
7 one license issued under this section, but a separate application is required for each license.

8 ~~(c) Notwithstanding subdivision (1), subsection (a), section three of this article, the director~~
9 ~~shall issue a radon mitigation contractor license on request to the holder of a radon mitigation~~
10 ~~specialist license if the license holder is the owner or chief stockholder of a business entity for~~
11 ~~which he or she is the only individual who will work as a radon mitigation specialist. The licensing~~
12 ~~criteria and any other licensing and training requirements that the individual was required to meet~~
13 ~~to qualify for the radon mitigation specialist license are hereby considered to satisfy any and all~~
14 ~~criteria and requirements for a radon mitigation contractor license. A license issued under this~~

15 ~~section expires at the same time as the individual's radon mitigation specialist license~~

16 ~~(d)~~ (c) A license issued under this section expires annually and may be renewed by the
17 director in accordance with criteria and procedures established by the director under section six of
18 this article and upon payment of the prescribed license renewal fee.

19 ~~(e)~~ (d) The director may:

20 (1) Refuse to issue a license to an individual, business entity or government entity that
21 does not meet the requirements of this article or the rules adopted under this article or that has
22 violated the provisions of this article or of any rules promulgated under this article; or

23 (2) Suspend, revoke or refuse to renew the license of an individual, business entity or
24 government entity that is or has been in violation of the requirements of this article or the rules
25 adopted under this article.

26 ~~(f)~~ (e) The director shall approve and assess fees for all of the following:

27 (1) Licenses for ~~radon testers, mitigation specialists, mitigation contractors and radon~~
28 laboratories;

29 (2) Accredited training courses for radon testers and mitigation specialists; and

30 (3) Training courses for employees of mitigation contractors.

31 ~~(g)~~ (f) Each applicant for approval shall submit a completed application to the director on a
32 form the director shall prescribe and furnish.

33 ~~(h)~~ (g) In accordance with rules adopted under section six of this article, the director shall
34 issue the appropriate approval to each applicant that pays the approval fee and meets the criteria
35 for approval.

36 ~~(i)~~ (h) The director may refuse to issue an approval and may revoke or suspend an
37 approval issued under this section if the operator of the course or laboratory fails to meet the
38 established criteria.

39 ~~(j)~~ (i) The director shall do all of the following:

40 (1) Administer the radon licensing program established by this article and enforce the

41 requirements of this article and the rules adopted under this article;

42 (2) Examine the records of radon testers, mitigation specialists, mitigation contractors and
43 radon laboratories and training courses approved under section seven of this article as he or she
44 considers necessary to determine whether they are in compliance with the requirements of this
45 article and the rules adopted under this article;

46 (3) Coordinate the radon licensing program with any radon programs in schools;

47 (4) Collect and disseminate information relating to radon in this state; and

48 (5) Conduct research on indoor radon contamination, which may include a statewide
49 survey on radon contamination.

50 ~~(k)~~ (j) The director may do any of the following:

51 (1) Conduct inspections as he or she considers necessary to determine whether the
52 requirements of this article and the rules adopted under this article have been met;

53 (2) Conduct training programs and establish and collect fees to cover the cost of
54 conducting them;

55 (3) Advise, consult, cooperate with and, with the consent of the secretary, enter into
56 contracts or grant agreements with any individual business entity, government entity, interstate
57 agency or the federal government as he or she considers appropriate to fulfill the requirements of
58 this article and the rules adopted under this article; and

59 (4) Collect the information required to be reported to him or her under any rules adopted
60 under section six of this article.

61 ~~(l)~~ (k) Nothing in this article shall be construed to allow the director to:

62 (1) Require the performance of a test for radon;

63 (2) Regulate construction practices; or

64 (3) Regulate the retail sales of radon test kits for use by individuals to do their own radon
65 testing in buildings owned by them.

§16-34-6. Rules.

1 (a) To protect the health of individuals inhabiting, occupying or frequenting buildings, the
2 Department of Health and Human Resources shall adopt rules to implement the requirements of
3 this article. All rules adopted under this section shall be adopted in accordance with article three,
4 chapter twenty-nine-a of this code.

5 (b) The secretary shall adopt rules:

6 ~~(1) Establishing criteria and procedures to be followed in issuing and renewing licenses to~~
7 ~~radon testers, mitigation specialists or mitigation contractors, as well as the fees for the licenses.~~
8 ~~The rules may require that all applicants for licensure as a radon tester or mitigation specialist~~
9 ~~pass an examination. If an examination is required, the rules may require applicants to pass an~~
10 ~~examination conducted by the division of health or by a training center accredited by the director;~~

11 ~~(2) Establishing criteria and procedures to be followed in approving and accrediting~~
12 ~~training courses under section five of this article. The rules shall require the participants in training~~
13 ~~courses to pass an examination conducted by the operator of the course~~

14 ~~(3) (1) Establishing criteria and procedures in approving and licensing radon laboratories;~~

15 ~~(4) (2) Establishing standards to be followed by licensed radon testers, mitigation~~
16 ~~specialists, mitigation contractors and radon laboratories for the prevention of hazards to the~~
17 ~~public health, including standards for worker protection, record keeping and the training of~~
18 ~~employees or radon testers and mitigation contractors;~~

19 ~~(5) (3) Establishing procedures to be followed by an individual business entity or~~
20 ~~government entity licensed by another state to practice as a radon tester, mitigation specialist,~~
21 ~~mitigation contractor or radon laboratory in providing notice to the director prior to commencing~~
22 ~~practice in this state pursuant to section three of this article; and~~

23 ~~(6) That require licensed radon testers and mitigation specialists to report to the director, by~~
24 ~~street address, radon test results. The rules shall require the reporting of the identity of the radon~~
25 ~~laboratory involved, screening measurements, follow-up measurements, postmitigation~~
26 ~~measurements and, if it is known that mitigation was performed, the methods of mitigation that~~

27 were used. Any information required to be reported to the director under the rules is not a public
28 record and shall not be released except in aggregate statistical form

§16-34-7.

Complaints.

1 (a) Any individual, business entity or government entity may file a complaint with the
2 director concerning any ~~radon tester, mitigation specialist, mitigation contractor or a radon~~
3 laboratory or a training course approved under section six of this article. The complainant's name
4 shall be confidential and shall not be released without his or her written consent. The director shall
5 investigate complaints and take action under this article.

6 (b) If a ~~radon tester, mitigation specialist, mitigation contractor or radon laboratory~~ violates
7 any rules promulgated pursuant to this article and as a result of the violation harms or injures in
8 any manner an individual or business entity, that ~~radon tester, mitigation specialist, mitigation~~
9 ~~contractor or radon laboratory~~ shall be considered to have committed an unfair act or practice
10 within the meaning of section one hundred four, article six, chapter forty-six-a of this code.

§16-34-8. Licensed tester, mitigator and contractor list.

1 The director shall maintain a list of all ~~licensed~~ radon testers, mitigation specialists,
2 mitigation contractors and radon laboratories located in the state. On request, the director shall
3 provide a copy of all or part of the list to any individual, business entity or government entity. The
4 director shall not impose a charge for providing the copy that exceeds the actual and necessary
5 expense of copying it.

§16-34-10. Special revenue account.

1 The funds collected from the fees applicable in this article shall be deposited in a special
2 revenue account in the State Treasury to be used by the secretary and dedicated to the purposes
3 of this article which include, but are not limited to, licensing, training, enforcement and program
4 development for radon.

§16-34-12. Records review.

1 If the director requests to examine records, no licensed ~~radon tester, mitigation specialist,~~

2 ~~mitigation contractor or operator~~ of a radon laboratory or a training course approved under section
 3 six of this article shall fail to make available to the director any records pertinent to the activities
 4 regulated by this article and rules adopted under it.

§16-34-13. Reprimands; suspension or revocation of license; orders; hearings.

1 (a) The director shall suspend or revoke the license of or reprimand a ~~radon tester,~~
 2 ~~mitigator, contractor or laboratory~~ if the licensee:

- 3 (1) Fraudulently or deceptively obtains or attempts to obtain a license;
- 4 (2) Fails at any time to meet the qualifications for a license or to comply with the
- 5 requirements of this article or any applicable rules adopted by the secretary;
- 6 ~~(3) Fails to meet applicable federal or state standards for radon testing or radon mitigation;~~
- 7 or
- 8 ~~(4) Employs or permits an individual without a radon tester's license or a radon mitigator's~~
- 9 ~~license to supervise work on a radon project.~~

10 (b) The director shall investigate all alleged violations reported to the division of health.
 11 Upon the finding of a violation in connection with any project involving radon testing or mitigation,
 12 the director shall issue a cease and desist order directing that all work be halted immediately.
 13 Where practicable, the director shall deliver a copy of the order by certified mail, return receipt
 14 requested, to the radon tester and radon mitigator.

15 (c) Hearings regarding violations of this article shall be conducted in accordance with the
 16 administrative procedures act of chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is remove the licensure requirement for radon mitigation contractors, radon mitigation specialists, and radon testers.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.