WEST VIRGINIA CODE CHAPTER 16 ARTICLE 34

WV Legislature

§16-34-1. Legislative finding.

The Legislature hereby finds and declares that radon is a dangerous toxic substance and harmful to the citizens of this state. Therefore, to help ensure the protection of the citizens of this state, persons who come into contact with radon through remediation or testing should be trained and licensed professionals who know how to deal with radon.

It is the intent of the Legislature that this article is be in addition to all other statutes and rules relating to radon.

WV Legislature

§16-34-2. Definitions.

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

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

(c) "Director" means the Commissioner of the Bureau for Health.

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

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

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

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

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

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

(j) "Secretary" means the secretary of the Department of Health.

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

WV Legislature

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

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

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

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

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

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

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

(6) No laboratory shall perform analyses of radon air and soil samples or radon detection devices for the purpose of assessing radon content without a valid radon laboratory license.

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

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

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

(3) Employees of the radiological health program.

WV Legislature

§16-34-4. Special licensure requirements.

(a) No licensed radon mitigation contractor may do any of the following:

(1) Perform radon mitigation without the direct on-site supervision of a licensed radon mitigation specialist;

(2) Provide radon testing other than through the employment of a licensed radon tester or mitigation specialist;

(3) Provide advice regarding radon testing, radon exposure or the health risks associated with radon exposure other than through the employment of a licensed radon tester or mitigation specialist; or

(4) Provide advice regarding radon mitigation or radon entry routes other than through the employment of a licensed radon mitigation specialist.

(b) (1) No licensed radon tester, licensed radon mitigation specialist or licensed radon mitigation contractor involved in the testing of a particular building, or in the provision of advice with respect to a particular building may be involved in the performance of mitigation on that building unless the contract for mitigation is in writing and clearly and conspicuously states both of the following in language approved by the director:

(A) That the radon tester, mitigation specialist or mitigation contractor was involved in the testing or provision of advice that led to the mitigation contract; and

(B) The advantage of long-term testing and the value of a second opinion as ways to verify testing results and to assure that the proposed mitigation is appropriate, especially when the mitigation is to be performed by the tester, mitigation specialist or mitigation contractor that was involved in the testing or provision of advice that led to the mitigation contract.

(2) For purposes of this subsection, a radon tester, mitigation specialist or mitigation contractor involved in testing or providing advice with respect to a particular building will be considered to be "involved in the performance of mitigation on that building" if he or she has any ownership interest in, or has any contractual or employment relationship with, the individual or entity providing the mitigation.

(c) No licensed radon tester, licensed radon mitigation specialist or licensed radon mitigation contractor may perform radon testing or mitigation or provide any advice related to radon, radon testing or radon mitigation unless it is performed in accordance with the requirements of this article and the rules adopted under this article.

(d) No licensed radon tester, licensed radon mitigation specialist, licensed radon mitigation contractor or licensed radon laboratory may violate any requirement of this article or any rule adopted under it.

WVLegislature

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

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

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

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

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

(e) The director may:

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

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

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

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

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

(3) Training courses for employees of mitigation contractors.

(g) Each applicant for approval shall submit a completed application to the director on a

WVLegislature

form the director shall prescribe and furnish.

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

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

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

(1) Administer the radon licensing program established by this article and enforce the requirements of this article and the rules adopted under this article;

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

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

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

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

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

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

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

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

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

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

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

WV Legislature

(2) Regulate construction practices; or

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

WV Legislature

§16-34-6. Rules.

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

(b) The secretary shall adopt rules:

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

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

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

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

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

(6) That require licensed radon testers and mitigation specialists to report to the director, by street address, radon test results. The rules shall require the reporting of the identity of the radon laboratory involved, screening measurements, follow-up measurements, postmitigation measurements and, if it is known that mitigation was performed, the methods of mitigation that were used. Any information required to be reported to the director under the rules is not a public record and shall not be released except in aggregate statistical form.

WVLegislature

§16-34-7. Complaints.

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

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

WV Legislature

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

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

WV Legislature

§16-34-9. Record keeping and confidentiality.

(a) The director, any employee of the Department of Health, or any individual, business entity or government entity with which the director enters into an agreement under §16-34-5(k)(3), shall not release information collected pursuant to this article concerning a specific building used as a private residence or the real property upon which it is located to anyone other than the owner or occupant of the building or real property without his or her consent: *Provided*, That the director may release information if he or she determines that the release is necessary for use in conducting legitimate scientific studies or the information is released in summary statistical or other form that does not reasonably tend to disclose the address of the building or real property or the identity of the owner or occupant.

(b) The bureau shall maintain information pursuant to this article and the rules adopted under this article for at least three years. The bureau may destroy any information that it has maintained for three years.

WV Legislature

§16-34-10. Special revenue account.

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

WV Legislature

§16-34-11. Reciprocity.

The director may set standards for accepting licenses issued by other states. The director may grant licenses to individuals from other states if that other state has licensing requirements which are as stringent as the licensing requirements in this state.

WV Legislature

§16-34-12. Records review.

If the director requests to examine records, no licensed radon tester, mitigation specialist, mitigation contractor or operator of a radon laboratory or a training course approved under section six of this article shall fail to make available to the director any records pertinent to the activities regulated by this article and rules adopted under it.

WV Legislature

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

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

(1) Fraudulently or deceptively obtains or attempts to obtain a license;

(2) Fails at any time to meet the qualifications for a license or to comply with the requirements of this article or any applicable rules adopted by the secretary;

(3) Fails to meet applicable federal or state standards for radon testing or radon mitigation; or

(4) Employs or permits an individual without a radon tester's license or a radon mitigator's license to supervise work on a radon project.

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

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

WV Legislature

§16-34-14. Penalties.

Any person violating any of the provisions of this article, or any of the rules or orders issued pursuant to this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $250 for each violation.

WV Legislature