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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

— ● —

# ENROLLED

*Com. Sub. For*

HOUSE BILL No. *4480*

(By Delegates *Conley and Faircloth*)

— ● —

Passed *March 7,* 1992

In Effect *July 1, 1992* ~~Passage~~

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4480**  
(By DELEGATES CONLEY AND FAIRCLOTH)

[Passed March 7, 1992; in effect July 1, 1992.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-three, relating to public health; legislative findings; definitions; licensure of radon mitigators, radon testers, radon contractors, radon laboratories and exemptions from licensure; special licensure requirements; powers and duties of the director of the division of health, including licensing, setting and collecting fees, accrediting and approving training courses, conducting investigations and collecting information; rule-making authority; complaints of consumers; the confidentiality of records; a special revenue account; reciprocity; access to radon industry records by director; suspension or revocation of licenses and reprimands; orders and hearings; and criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-three, to read as follows:

**ARTICLE 33. LICENSURE OF RADON MITIGATORS, TESTERS,  
CONTRACTORS AND LABORATORIES.**

**§16-33-1. Legislative finding.**

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

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

**§16-33-2. Definitions.**

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

5 (b) "Business entity" means a corporation, partner-  
6 ship, association, firm, sole proprietorship or other  
7 entity engaged in business.

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

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

14 (e) "Radon" means the radioactive noble gas radon-  
15 222 and the short-lived radionuclides which are pro-  
16 ducts of radon-222 decay, including polonium-218, lead-  
17 214, bismuth-214 and polonium-214.

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

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

25 (h) "Radon mitigation specialist" means a person  
26 holding a license to install or apply methods or materials

27 to reduce airborne radon concentrations in a building or  
28 to prevent the entry of radon into the indoor atmosphere.

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

34 (j) "Secretary" means the secretary of the department  
35 of health and human resources.

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

**§16-33-3. License required and exemptions.**

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

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

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

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

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

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

24 license; and

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

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

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

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

39 (3) Employees of the department of health and human  
40 resources' radiological health program.

**§16-33-4. Special licensure requirements.**

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

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

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

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

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

15 (b) (1) No licensed radon tester, licensed radon  
16 mitigation specialist or licensed radon mitigation  
17 contractor involved in the testing of a particular  
18 building, or in the provision of advice with respect to

19 a particular building may be involved in the perfor-  
20 mance of mitigation on that building unless the contract  
21 for mitigation is in writing and clearly and conspicu-  
22 ously states both of the following in language approved  
23 by the director:

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

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

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

43 (c) No licensed radon tester, licensed radon mitigation  
44 specialist or licensed radon mitigation contractor may  
45 perform radon testing or mitigation or provide any  
46 advice related to radon, radon testing or radon mitiga-  
47 tion unless it is performed in accordance with the  
48 requirements of this article and the rules adopted under  
49 this article.

50 (d) No licensed radon tester, licensed radon mitiga-  
51 tion specialist, licensed radon mitigation contractor or  
52 licensed radon laboratory may violate any requirement  
53 of this article or any rule adopted under it.

**§16-33-5. Powers and duties of the director of the division  
of health.**

1 (a) The director shall license radon testers, mitigation  
2 specialists, mitigation contractors and radon laborato-

3 ries located within the state. Each applicant for a license  
4 shall submit a completed application to the director on  
5 a form prescribed and furnished by the director.

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

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

28 (d) A license issued under this section expires annu-  
29 ally and may be renewed by the director in accordance  
30 with criteria and procedures established by the director  
31 under section six of this article and upon payment of the  
32 prescribed license renewal fee.

33 (e) The director may:

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

40 (2) Suspend, revoke or refuse to renew the license of  
41 an individual, business entity or government entity that

42 is or has been in violation of the requirements of this  
43 article or the rules adopted under this article;

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

46 (1) Licenses for radon testers, mitigation specialists,  
47 mitigation contractors and radon laboratories.

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

50 (3) Training courses for employees of mitigation  
51 contractors.

52 (g) Each applicant for approval shall submit a  
53 completed application to the director on a form the  
54 director shall prescribe and furnish.

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

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

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

64 (1) Administer the radon licensing program estab-  
65 lished by this article and enforce the requirements of  
66 this article and the rules adopted under this article;

67 (2) Examine the records of radon testers, mitigation  
68 specialists, mitigation contractors and radon laborato-  
69 ries and training courses approved under section seven  
70 of this article as he or she considers necessary to  
71 determine whether they are in compliance with the  
72 requirements of this article and the rules adopted under  
73 this article;

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

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



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

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

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

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

87 (3) Advise, consult, cooperate with and, with the  
88 consent of the secretary, enter into contracts or grant  
89 agreements with any individual business entity, govern-  
90 ment entity, interstate agency or the federal government  
91 as he or she considers appropriate to fulfill the require-  
92 ments of this article and the rules adopted under this  
93 article; and

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

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

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

100 (2) Regulate construction practices; or

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

**§16-33-6. Rules.**

1 (a) To protect the health of individuals inhabiting,  
2 occupying or frequenting buildings, the department of  
3 health and human resources shall adopt rules to  
4 implement the requirements of this article. All rules  
5 adopted under this section shall be adopted in accor-  
6 dance with article three, chapter twenty-nine-a of this  
7 code.

8 (b) The secretary shall adopt rules:

9 (1) Establishing criteria and procedures to be fol-

10 lowed in issuing and renewing licenses to radon testers,  
 11 mitigation specialists or mitigation contractors, as well  
 12 as the fees for the licenses. The rules may require that  
 13 all applicants for licensure as a radon tester or  
 14 mitigation specialist pass an examination. If an exam-  
 15 ination is required, the rules may require applicants to  
 16 pass an examination conducted by the division of health  
 17 or by a training center accredited by the director;

18 (2) Establishing criteria and procedures to be fol-  
 19 lowed in approving and accrediting training courses  
 20 under section five of this article. The rules shall require  
 21 the participants in training courses to pass an exami-  
 22 nation conducted by the operator of the course;

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

25 (4) Establishing standards to be followed by licensed  
 26 radon testers, mitigation specialists, mitigation contrac-  
 27 tors and radon laboratories for the prevention of hazards  
 28 to the public health, including standards for worker  
 29 protection, record keeping and the training of employees  
 30 or radon testers and mitigation contractors;

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

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

**§16-33-7. Complaints.**

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

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

**§16-33-8. Licensed tester, mitigator and contractor list.**

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

**§16-33-9. Recordkeeping and confidentiality.**

1 (a) The director, any employee of the department of  
2 health and human resources, or any individual, business  
3 entity or government entity with which the director  
4 enters into an agreement under subsection (g), section  
5 six of this article, shall not release information collected  
6 pursuant to this article concerning a specific building  
7 used as a private residence or the real property upon  
8 which it is located to anyone other than the owner or  
9 occupant of the building or real property without his or  
10 her consent: *Provided*, That the director may release

11 information if he or she determines that the release is  
12 necessary for use in conducting legitimate scientific  
13 studies or the information is released in summary  
14 statistical or other form that does not reasonably tend  
15 to disclose the address of the building or real property  
16 or the identity of the owner or occupant.

17 (b) The division of health shall maintain information  
18 pursuant to this article and the rules adopted under this  
19 article for at least three years. The division may destroy  
20 any information that it has maintained for three years.

**§16-33-10. Special revenue account.**

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

**§16-33-11. Reciprocity.**

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

**§16-33-12. Records review.**

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

**§16-33-13. Reprimands; suspension or revocation of  
license; orders; hearings.**

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

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

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

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

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

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

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

**§16-33-14. Penalties.**

1       Any person violating any of the provisions of this  
2       article, or any of the rules or orders issued pursuant to  
3       this article is guilty of a misdemeanor, and, upon  
4       conviction thereof, shall be fined not more than two  
5       hundred fifty dollars for each violation.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Thomas Leck*

Chairman Senate Committee

*Ernest C. Moore*

Chairman House Committee

Originating in the House.

Takes effect July 1, 1992.

*Harold E. Schuler*

Clerk of the Senate

*Donald L. Hopp*

Clerk of the House of Delegates

*Willard B. B. B. B.*

President of the Senate

*Robert C. Cole*

Speaker of the House of Delegates

The within is approved this the 30<sup>th</sup> day of March, 1992.

*Yastin Caperton*

Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 11:53 am