STATE OF NEW YORK

6851

2017-2018 Regular Sessions

IN SENATE

August 16, 2017

Introduced by Sen. AKSHAR -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the real property law, in relation to radon service professional licensing

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property law is amended by adding a new article 12-D to read as follows:

ARTICLE 12-D

RADON SERVICE PROFESSIONAL LICENSING

Section 447-a. Short title.
447-b. Definitions.
447-c. State radon service professional council.
447-d. License requirements.
447-e. Qualifications for licensure.
447-f. License periods, renewals and fees.
447-g. Duty of care of radon service professionals.
447-h. Suspension and revocation of licenses.
447-i. Denial of license; complaints; notice of hearing.
447-j. Liability coverage.
447-k. Duties of the secretary.
447-l. Unlicensed activities.
447-m. Violations and penalties for unlicensed activities.
447-n. Judicial review.
447-o. Severability.

§ 447-a. Short title. This article shall be known and may be cited as the "radon service professional licensing act".

§ 447-b. Definitions. As used in this article, the following terms shall have the following meanings:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1. "Council" means the state radon service council established pursuant to the provisions of section four hundred forty-seven-c of this article.

2. "Client" means any person who engages or seeks to engage the services of a radon service professional for the purpose of obtaining a radon measurement test or radon mitigation service of a property.

3. "Department" means the department of state.

4. "Radon service professional" means a person licensed pursuant to the provisions of this article.

5. "Radon measurement professional" means a radon service professional who deploys and retrieves radon detectors and provides a report of the associated measurement results that are generated by a radon analytical laboratory.

6. "Radon mitigation professional" means a radon service professional who interprets radon test results and determines the most effective way to manage radon concentrations within buildings. Management plans may include requirements for further diagnostic testing and/or the design and installation of radon mitigation systems.

7. "Radon measurement test" means a test performed or procedures used to determine if radon mitigation is necessary in order to protect current and future occupants.

8. "Radon mitigation service" means application of materials and/or installation of systems and materials to reduce radon concentrations in the indoor atmosphere or prevent entry of radon into the indoor atmosphere.

9. "Radon analytical laboratory" means a radiological laboratory that analyzes samples for the presence of radon and/or radon decay in products in a facility separate from the location in which the sample was taken using stationary detection equipment.

10. "Person" means an individual, firm, company, partnership, limited liability company, or corporation.

11. "Residential building" means a structure consisting of one to four dwelling units and their garages and carport but shall not include any such structure newly constructed or not previously occupied as a dwelling unit.

12. "Secretary" means the secretary of the department of state.

§ 447-c. State radon service professional council. 1. There is hereby established a state radon service professional council within the department. The council shall consist of the secretary or the secretary's designee and six additional members who are residents of the state, of whom four shall be persons licensed and actively engaged in the business of professional radon services. The four radon service professionals shall include two individuals who have specialized in radon measurement services and two who specialized in radon mitigation services in the state of New York for at least five years immediately preceding their appointment. The remaining two members shall be consumers who are the owners and principal residents of a building in the state of New York. Appointments shall reflect the geographical diversity of the state.

2. For a period of one year after the effective date of this section, and notwithstanding any other provisions of this section to the contrary, the first radon service professionals appointed as members of the committee shall not be required, at the time of their first appointment, to be licensed to practice radon professional services, provided that such members be licensed pursuant to this article within one year of appointment.

3. The governor shall appoint each member of the council for a term of three years except that of the members first appointed, two shall serve for terms of three years, two shall serve for terms of two years and two shall serve for a term of one year. The governor shall appoint two radon service professionals and one consumer upon the recommendation of the temporary president of the senate and two radon service professionals and one consumer upon the recommendation of the speaker of the assembly. Each member shall hold office until his or her successor has been qualified. Any vacancy in the membership of the council shall be filled for the unexpired term in the manner provided for the original appointment. No member of the council may serve more than two successive terms in addition to any unexpired term to which he or she has been appointed.

4. Members of the council shall receive no compensation but shall be reimbursed for their actual and necessary expenses and provided with office and meeting facilities and personnel required for the proper conduct of the council's business.

5. The council shall annually elect from among its members a chair and vice-chair and may appoint a secretary, who need not be a member of the council. The council shall meet at least twice a year and may hold additional meetings as necessary to discharge its duties.

6. The role of the council shall be advisory. The council shall advise the secretary in the administration and enforcement of the provisions of this article and recommend to the secretary regulations to implement the provisions of this article including but not limited to:

(a) standards for training including approval of the course of study and examination required for licensure of radon service professionals;

(b) requirements and standards for continuing education of radon service professionals;

(c) a code of ethics and standards of practice for licensed radon service professionals which shall be subject to public notice and comment prior to a council recommendation to the secretary. The standards of practice shall not require a reporting format or limit information which licensees are authorized to provide a client pursuant to this article; and

(d) publicly adopt and reference radon professional standards published by the American National Standards Institute, or other accredited consensus national standards developers, and certification criteria or policies and exams established by either the National Radon Proficiency Program or the National Radon Safety Board or any radon certification agency recognized by the United States Environmental Protection Agency.

Nothing in this section shall be deemed to supersede any established authority, duty and power established by local law, state law or regulation or otherwise granted to any agency, body or entity.

§ 447-d. License requirements. No person shall conduct or represent that he or she has the ability to conduct radon professional services for compensation unless such person is licensed as a radon service professional pursuant to this article or a person providing radon professional services for the purpose of meeting the requirements of four hundred forty-seven-e of this article to qualify for licensure as a radon service professional.

§ 447-e. Qualifications for licensure. 1. An applicant for a license as a radon service professional shall:

(a) have successfully completed high school or its equivalent;

(b) have successfully completed a course of study approved by the secretary, of not less than sixteen hours for radon measurement profes-

sionals and forty hours for radon mitigation professionals. Such hours for radon mitigation professionals shall be composed of sixteen hours of measurement testing and twenty-four hours of mitigation training;

(c) have passed an approved national radon certification program, residential radon measurement provider exam or residential radon mitigation provider exam. An applicant who has passed an existing nationally recognized examination, as approved by the secretary, prior to the effective date of this article shall be in compliance with this paragraph; and

(d) pay the applicable fees.

2. The provisions of this section shall not apply to a person performing radon professional services pursuant to paragraph (b) of subdivision one of this section for the purpose of meeting requirements for a radon service professional license.

3. Upon submission of an application and payment of the application and licensure fee to the secretary, the secretary shall issue a radon service professional's license to a person who holds a valid license as a radon service professional issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to those of this state as determined by the secretary.

§ 447-f. License periods, renewals and fees. 1. Radon service professional licenses and renewals thereof shall be issued for a period of two years, except that the secretary may, in order to stagger the expiration date thereof, provide that those licenses first issued or renewed after the effective date of this section shall expire or become void on a date fixed by the secretary, not sooner than six months nor later than twenty-nine months after the date of issue. No renewal of a license shall be issued unless the applicant has successfully completed a course of continuing education approved by the secretary.

2. The secretary shall collect a fee of seven hundred fifty dollars for the first application for a license and the license as a radon service professional. The secretary shall collect a fee of one thousand dollars to renew a radon service professional license. All fees and any fines imposed by the secretary pursuant to this article shall be deposited in the business and licensing services account established pursuant to section ninety-seven-y of the state finance law.

§ 447-g. Duty of care of radon service professionals. 1. Every radon service professional shall comply with the provisions of this article, and the rules, regulations and standards adopted pursuant thereto. The duty of every radon service professional shall be to the client.

2. Every radon service professional shall display his or her license number and status as a licensed radon service professional on every report and in all advertising. Upon request of any client or interested party to a real estate transaction, every radon service professional shall provide such proof of licensure pursuant to this article as shall be issued by the secretary for such purpose.

3. No later than ten business days after the completion of a radon measurement on behalf of a client, each radon service professional shall provide such client with a written report of the findings of such measurement. Every such written report and the information contained therein shall be deemed confidential and shall not be disclosed without the express consent of the client; provided, however, that department representatives, conducting an investigation or other official business for the purpose of enforcing this article, shall have access to such reports and the information contained therein.

§ 447-h. Suspension and revocation of licenses. 1. The secretary may refuse to grant or may suspend or revoke a radon service professional license, and may impose a civil penalty not to exceed one thousand dollars per violation, upon proof to the satisfaction of the secretary that the holder thereof has:

(a) Violated the provisions of subdivision four of section four hundred forty-seven-g of this article;

(b) Disclosed any information concerning the results of the radon test without the approval of the client or the client's representatives;

(c) Accepted compensation from more than one interested party for the same service without the consent of all interested parties;

(d) Accepted commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible;

(e) Failed to disclose promptly to a client information about any business interest of the licensee which may reasonably affect the client in connection with the radon service report;

(f) Been convicted of a felony involving fraud, theft, perjury or bribery;

(g) Failed to pay a fine or restitution ordered by the secretary within a reasonable time; or

(h) Made a willfully false statement in the context of radon service report or an application for licensure pursuant to this article.

2. Whenever a license is revoked pursuant to this section, such license shall not be reinstated or reissued until after the expiration of a period of five years from the date of such revocation.

§ 447-i. Denial of license; complaints; notice of hearing. The department shall, before making a final determination to deny an application for a license, revoke a license, suspend a license, issue a reprimand, or impose a civil penalty for violation of this article, notify the applicant or licensee in writing of the reasons for such proposed denial, revocation, suspension, reprimand, or imposition of a civil penalty and afford the applicant or licensee an opportunity to be heard in person or by counsel. Such notification shall be served personally or by certified mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe and shall be conducted in accordance with the provisions of the state administrative procedure act. If the applicant or licensee fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification shall become the final determination of the department. The department, acting by such officer or person in the department as the secretary may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state and administer an oath to and take testimony of any person or cause his or her deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. If, after such hearing, the license is denied, revoked, or suspended, a reprimand is issued, or a civil penalty is imposed, written notice of such determination shall be served upon the applicant or licensee personally or by certified mail or in any manner authorized by the civil practice law and rules for the service of a summons.

§ 447-j. Liability coverage. 1. Every licensed radon service professional who is engaged in radon professional services shall secure, maintain, and file with the secretary proof of a certificate of liability

coverage, which terms and conditions shall be determined by the secretary.

2. Every proof of liability coverage required to be filed with the secretary shall provide that cancellation or nonrenewal of the policy shall not be effective unless and until at least ten days' notice of intention to cancel or nonrenew has been received in writing by the secretary.

§ 447-k. Duties of the secretary. The secretary shall establish such rules and regulations as shall be necessary to implement the provisions of this article.

§ 447-l. Unlicensed activities. The secretary may issue an order requiring restitution and/or directing the cessation of any activity for which a license is required by this article upon a determination that a person has engaged in or followed the business or occupation of, or held himself, herself, or itself out as or acted as, temporarily or otherwise, a radon service professional within this state without a valid license. The department shall, before making such determination and order, give such person notice as provided in section four hundred forty-seven-i of this article and afford such person an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to this article.

§ 447-m. Violations and penalties for unlicensed activities. Any person subject to an administrative order issued by the secretary directing the cessation of any activity for which a license is required and/or suspending or revoking a license previously issued who directly or indirectly engages in the business of radon professional services, holds himself, herself, or itself out to the public as being able to engage in the business of radon professional services without a license therefor, engages in the business of home inspection after having his or her license revoked or suspended, or without a license to engage in the business of radon professional services directly or indirectly employs, permits or authorizes an unlicensed person to engage in the business of radon professional services shall be guilty of a misdemeanor and upon the first conviction thereof shall be sentenced to a fine of not more than one thousand dollars; upon a second or subsequent conviction thereof shall be sentenced to a fine of not less than one thousand dollars nor more than five thousand dollars. Each violation of this article shall be deemed a separate offense.

§ 447-n. Judicial review. The action of the secretary in suspending, revoking, or refusing to issue or renew a license, or imposing an order directing the cessation of unlicensed activity or imposing a fine or reprimand may be reviewed by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules.

§ 447-o. Severability. In the event it is determined by a court of competent jurisdiction that any phrase, clause, part, subdivision, paragraph or section, or any of the provisions of this article, is unconstitutional or otherwise invalid or inoperative, such determination shall not affect the validity or effect of the remaining provisions of this article.

§ 2. This act shall take effect immediately.