STATE OF NEW YORK

9430

IN SENATE

May 15, 2024

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

AN ACT to amend the labor law, in relation to establishing radon measurement license and mitigation license requirements; and to amend the state finance law, in relation to establishing the radon mitigation and control fund

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

Section 1. The labor law is amended by adding a new article 32-A to read as follows:

ARTICLE 32-A

RADON MEASUREMENT AND RADON MITIGATION LICENSES

Section 949. Definitions.

949-a. Prohibition against conduct of radon measurement or radon mitigation without a license.

949-b. Licensure of a radon measurement professional.

949-c. Licensure of radon mitigation professional.

949-d. Licensure of radon business entities.

949-e. Liability insurance policy requirement.

949-f. Duties of licensees; lapse; report changes.

949-g. Power of the department to examine and inspect.

949-h. Civil penalties and revocation.

949-i. Location and retention of required records.

949-j. Responsibilities and authority of the department.

§ 949. Definitions. As used in this article, unless the context requires otherwise:

1. "Alter" means to change or modify a building or building design or to revise a mitigation system or mitigation system design.

2. "Building" means any structure used or intended to be used for supporting or sheltering any use or occupancy.

3. "Certified" means meeting the requirements of a certification program recognized by the department for radon measurement or radon mitigation.

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

LBD15106-02-4

4. "Compensation" means something of value given or received in exchange for radon measurement or radon mitigation.

5. "Direct supervision" means onsite supervision by a person certified to provide radon measurement or radon mitigation services.

6. "Government agency" means the state, a state agency, a political subdivision, or any entity of local government.

7. "Laboratory analysis" means the act of analyzing for radon or radon progeny concentrations with passive measurement devices or analyzing data from a continuous radon monitor or electrets; "laboratory analysis" also means the act of calibrating radon or radon progeny measurement devices or the act of exposing radon or radon progeny devices to controlled concentrations of radon or radon progeny.

8. "Measurement" means the act of testing the air or potable water for the presence of radon or radon progeny in the indoor environment of a building using an active or passive measurement device.

9. "Measurement device" means any active or passive device approved by a certification or proficiency program and used for the measurement of radon or radon progeny in air or potable water in the indoor environment of a building.

10. "Measurement professional" means a person certified by a credentialing program recognized by the department who provides radon measurement for compensation and who meets the requirements of section nine hundred forty-nine-b of this article.

11. "Mitigation" means the act of installing, repairing, or altering an active or passive system for the purpose, in whole or in part, of reducing the concentration of radon or radon progeny in the indoor environment of a building.

12. "Mitigation professional" means a person certified by a credentialing program recognized by the department who provides radon mitigation for compensation and who meets the requirements of section nine hundred forty-nine-c of this article.

13. "Mitigation system" means any active or passive system designed to reduce radon concentrations in the indoor environment of a building.

14. "Credentialing body" means a provider who is recognized by the environmental protection agency as an entity that can provide radon certification to qualified persons.

15. "Radon" means a naturally occurring radioactive element that exists as a colorless, odorless, and tasteless inert gas.

16. "Radon laboratory" means an entity certified by the department of health's environmental laboratory approval program to measure radon and radon progeny in air and potable water.

17. "Radon progeny" means any combination of the radioactive decay products of radon.

18. "Licensee" means a person or business entity licensed by the department as a radon measurement professional or radon mitigation professional.

19. "Standard" means a current written document developed and continuously maintained according to the requirements of the American National Standards Institute (ANSI) or by a standards development organization accredited by the ANSI that describes in detail commonly accepted methods for the performance of certain tasks.

§ 949-a. Prohibition against conduct of radon measurement or radon mitigation without a license. 1. No person or business entity shall conduct radon measurement or mitigation in this state without a valid radon measurement professional license or radon mitigation professional license pursuant to this article. No person or business entity shall

advertise or claim to be a radon measurement professional or a radon mitigation professional unless such person or business entity is licensed pursuant to this article.

2. A business entity may engage in radon measurement or radon mitigation if the owner or an employee associated with the business entity is a radon measurement or radon mitigation professional, as applicable, and performs or supervises the work as applicable. Any business entity that employs persons to perform radon measurement or radon mitigation shall have a business entity license.

3. The licensure requirements of this article shall apply to radon measurement professionals, radon measurement business entities, radon mitigation professionals and radon mitigation business entities; provided, however, that such licensure requirements shall not apply to:

(a) a person performing radon measurement or radon mitigation on a single-family residential building that such person owns and occupies or on a rental property that such person occupies;

(b) a person performing radon measurement who assists and is under the direct supervision of a radon measurement professional;

(c) a person performing radon mitigation who assists and is under the direct supervision of a mitigation professional; or

(d) an agent of a federal, state, or local government agency acting within such agent's official capacity.

§ 949-b. Licensure of a radon measurement professional. 1. The department shall issue a radon measurement professional license to any person certified to measure radon who:

(a) Completes an application and pays a fee as prescribed by the department;

(b) Presents current proof of certification to measure radon issued by a credentialing body approved by the department; and

(c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this article.

2. The department shall renew the radon measurement professional license of any person who:

(a) Completes a renewal application and pays a fee as prescribed by the department;

(b) Presents current proof of certification to measure radon issued by a credentialing body acceptable to the department; and

(c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this article.

3. A radon measurement professional shall:

(a) Maintain certification to measure radon by a credentialing body approved by the department;

(b) Ensure that all radon measurements are conducted in accordance with the applicable radon measurement standard;

(c) Maintain a quality assurance plan in accordance with the standard for radon measurement systems quality assurance;

(d) Ensure that all radon measurements are conducted by or under the direct supervision of a radon measurement professional;

(e) Only use or sell radon measurement devices approved by the credentialing body that issued the radon measurement certification to the radon measurement professional;

(f) Report all radon measurements in the manner prescribed by the department of health; and

(g) Ensure that all sample analysis is conducted by a radon laboratory approved by the department of health environmental laboratory approval program.

§ 949-c. Licensure of radon mitigation professional. 1. The department shall issue a radon mitigation professional license to any person certified to perform radon mitigation who:

(a) Completes an application and pays a fee as prescribed by the department;

(b) Presents current proof of certification to mitigate radon issued by a credentialing body approved by the department; and

(c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this article.

2. The department shall renew the radon mitigation professional license of any person who:

(a) Completes a renewal application and pays a fee as prescribed by the department;

(b) Presents current proof of certification to mitigate radon issued by a credentialing body approved by the department; and

(c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this article.

3. A radon mitigation professional shall:

(a) Maintain certification to mitigate radon issued by a credentialing body approved by the department;

(b) Ensure that all radon mitigation is conducted in accordance with the applicable radon mitigation standard;

(c) Maintain a quality management plan in accordance with the applicable standard for radon mitigation quality assurance;

(d) Ensure that all radon mitigation is conducted by or under the direct supervision of a radon mitigation professional;

(e) Report all radon mitigation in the manner prescribed by the department of health; and

(f) Ensure that all radon mitigation systems repaired or altered by a radon mitigation professional meet the applicable radon mitigation standard and are tested by a radon measurement professional within thirty days of such repair or alteration.

§ 949-d. Licensure of radon business entities. 1. The department shall issue a radon business entity license to any business entity that:

(a) Completes an application and pays a fee as prescribed by the department;

(b) Designates a responsible person certified to perform radon measurement or radon mitigation by a credentialing body approved by the department; and

(c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this article.

2. The department shall renew the radon business entity license of any business entity that:

(a) Completes a renewal application and pays a fee as prescribed by the department;

(b) Designates a responsible person certified to perform radon measurement or radon mitigation by a credentialing body approved by the department; and

(c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this article.

§ 949-e. Liability insurance policy requirement. 1. Each radon measurement professional, radon measurement business entity, radon mitigation professional and radon mitigation business entity shall maintain an insurance policy in effect at all times and concurrent with the licensure and certification period that:

(a) Is issued by an insurance company or other legal entity permitted to transact insurance business in the state;

(b) Provides for general liability coverage for radon measurement professionals, radon measurement business entities, radon mitigation professionals, radon mitigation business entities or radon laboratories, as applicable, in an amount specified by the department; and

(c) Lists the department as a certificate holder of any insurance policy issued pursuant to this article.

2. A liability insurance policy obtained pursuant to this section shall not be cancelled, revoked, or terminated by the owner, nor shall the owner take action that would result in the cancellation, revocation, or termination of such insurance policy, except after notice to the department at least forty-five days in advance of such cancellation, revocation, or termination which is submitted on a form prescribed by the department.

§ 949-f. Duties of licensees; lapse; report changes. 1. A license that is not renewed by the expiration date of such license shall be deemed to be lapsed and shall only be reinstated upon the completion of a renewal application process as prescribed by the department.

2. A licensee shall report any change of information pertaining to an existing license relating to information that was submitted during the application process for such license. Such report shall be made to the department in writing and within ten days of such change taking place. The department shall not be responsible for the failure of a licensee to receive notices, communications, or other correspondence caused by a failure of the licensee to report changes as required by this subdivision.

§ 949-g. Power of the department to examine and inspect. 1. The department or its agent or inspector may examine records of radon measurement professionals, radon measurement business entities, radon mitigation professionals, and radon mitigation business entities, including but not limited to conducting inspections of radon measurement locations and radon mitigation system installations in order to ensure that radon measurement and radon mitigation are conducted in accordance with the applicable standard.

2. The department or its agent or inspector may inspect any equipment used for radon measurement or radon mitigation or photograph or sketch any portion of a site, building, or equipment involved in radon measurement or radon mitigation.

3. The department shall obtain permission from the property owner before agents or inspectors of the department enter private property to perform a radon measurement or radon mitigation inspection.

4. No person shall interfere with a radon measurement or radon mitigation inspection conducted by an agent or inspector of the department.

§ 949-h. Civil penalties and revocation. 1. The commissioner may, after providing notice and a hearing, suspend or revoke any license, or censure, fine, or impose probationary or other restrictions on any licensee for good cause shown which shall include, but not be limited to the following:

(a) conviction of a felony relating to the performance of a radon measurement or radon mitigation;

(b) deceit or misrepresentation in obtaining a license authorized pursuant to this article;

(c) providing false testimony or documents to the department in relation to a license authorized pursuant to this article or any other license issued by the department;

(d) deceiving or defrauding the public in relation to services provided for a fee that require a license pursuant to this article; or

(e) incompetence or gross negligence in relation to radon measurement or radon mitigation.

2. Violators of any of the provisions of this article may be fined by the commissioner in an amount not to exceed two thousand dollars for the initial violation and up to ten thousand dollars for each subsequent violation.

§ 949-i. Location and retention of required records. 1. Records required by this article or administrative regulations promulgated pursuant to this article or the applicable standard, including but not limited to records of radon measurement, radon mitigation, quality assurance plans, quality management plans, calibration certifications, worker health and safety plans, and equipment repairs shall be retained by licensees, as applicable, for a minimum period of five years or the length of time of any warranty or guarantee, whichever is greater.

2. Records obtained by the department shall be exempt from disclosure requirements; provided, however, that the department shall make radon measurement and radon mitigation system records available upon request to:

(a) The owner or occupant of a building;

(b) The public, provided that such records are aggregated at the zip code level without identifying individual property owners or addresses; and

(c) A federal agency that provides aggregated data to the public.

3. Any radon measurement or radon mitigation professional or business entity applying for a license or license renewal pursuant to this article shall specify, for approval by the department, the physical or electronic location where records required under this article shall be maintained for inspection by the department.

§ 949-j. Responsibilities and authority of the department. 1. The department shall be the regulatory agency for the regulation of radon testing and radon mitigating firms and licensed individuals.

2. The department shall:

(a) Promulgate rules and regulations to administer, coordinate, and enforce this article, including the establishment of fees;

(b) Maintain a public list of all persons and business entities licensed by the department;

(c) Issue a license to persons and business entities that meet the qualifications of this article;

(d) Appoint personnel to perform duties to administer this article and fix the compensation of such personnel;

(e) Issue subpoenas, administer oaths, examine witnesses, investigate allegations of wrongdoing, and conduct administrative hearings to enforce this article; and

(f) Collect or receive all fees, fines, and other moneys owed pursuant to this article.

§ 2. The state finance law is amended by adding a new section 99-rr to read as follows:

§ 99-rr. Radon mitigation and control fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance, a fund to be known as the radon mitigation and control fund.

2. Such fund shall consist of all monies collected pursuant to article thirty-two-A of the labor law, and all other monies credited or transferred thereto from any other fund or source pursuant to law.

3. Monies of the fund shall be expended solely for the purposes of carrying out the provisions of article thirty-two-A of the labor law. Monies shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers approved by the commissioner of labor. Any interest received by the comptroller on monies on deposit in the radon mitigation and control fund shall be retained in and become part of such fund.

§ 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.