



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1549

Introduced 2/10/2005, by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

420 ILCS 44/5
420 ILCS 44/10
420 ILCS 44/15
420 ILCS 44/20
420 ILCS 44/25
420 ILCS 44/30
420 ILCS 44/35
420 ILCS 44/45
420 ILCS 44/50
420 ILCS 44/55
420 ILCS 44/60
420 ILCS 44/65
420 ILCS 44/70

Amends the Radon Industry Licensing Act. Changes references in the Act from the "Department of Nuclear Safety" to the "Illinois Emergency Management Agency". Provides that it is grounds for disciplinary action against a licensee to fail to pay child support orders. Makes other changes. Provides that IEMA disciplinary actions against licensees may occur upon a conviction of the licensee for a felony (now, a felony or a misdemeanor when dishonesty is an essential element of the crime). Makes other changes. Effective immediately.

LRB094 08376 RSP 41086 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning public health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Radon Industry Licensing Act is amended by
5 changing Sections 5, 10, 15, 20, 25, 30, 35, 45, 50, 55, 60,
6 65, and 70 as follows:

7 (420 ILCS 44/5)

8 Sec. 5. Legislative declaration. The General Assembly
9 declares that it is in the interest of the people of Illinois
10 to establish a comprehensive program for determining the extent
11 to which radon and radon progeny are present in dwellings and
12 other buildings in Illinois at concentrations ~~levels~~ that pose
13 a potential risk to the occupants and for determining measures
14 that can be taken to reduce and prevent such risk. The General
15 Assembly also finds that public concerns over the dangers from
16 radon and radon progeny may give rise to unscrupulous practices
17 that exploit those concerns but do not mitigate the dangers
18 from radon and radon progeny. It is therefore declared to be
19 the public policy of this State that in order to safeguard the
20 health, property, and public welfare of its citizens, persons
21 engaged in the business of measuring ~~detecting~~ the presence of
22 radon or radon progeny in dwellings and reducing the presence
23 of radon and radon progeny in the indoor atmosphere shall be
24 regulated by the State through licensing requirements.

25 (Source: P.A. 90-262, eff. 7-30-97.)

26 (420 ILCS 44/10)

27 Sec. 10. Primary responsibility with Illinois Emergency
28 Management Agency ~~Department of Nuclear Safety~~. The Illinois
29 Emergency Management Agency ~~Department~~ shall have primary
30 responsibility for coordination, oversight, and implementation
31 of all State functions in matters concerning the presence,

1 effects, measurement, and mitigation of risks of radon and
2 radon progeny in dwellings and other buildings. The Department
3 of Natural Resources, the Environmental Protection Agency, the
4 Department of Public Health, and other State agencies shall
5 consult and cooperate with the Agency ~~Department~~ as requested
6 and as necessary to fulfill the purposes of this Act.

7 (Source: P.A. 90-262, eff. 7-30-97.)

8 (420 ILCS 44/15)

9 Sec. 15. Definitions. As used in this Act, unless the
10 context requires otherwise:

11 (a) "Agency" means the Illinois Emergency Management
12 Agency ~~"Department" means the Illinois Department of Nuclear~~
13 ~~Safety.~~

14 (b) "Client" means any person who contracts for measurement
15 or mitigation services.

16 (c) "Director" means the Director of the Illinois Emergency
17 Management Agency.

18 (d) ~~(b)~~ "Interfere" means to adversely or potentially
19 adversely impact the successful completion of an indoor radon
20 measurement by changing the radon or radon progeny
21 concentrations or altering the performance of measurement
22 equipment or an indoor radon mitigation system installation or
23 operation.

24 (e) ~~(c)~~ "Laboratory analysis" means the act of analyzing
25 the determining radon or radon progeny concentrations with in
26 air, water, soil, or passive radon testing devices, or the act
27 of calibrating radon or radon progeny measurement devices, or
28 the act of exposing radon or radon progeny devices to known
29 concentrations of radon or radon progeny as a compensated
30 service.

31 (f) ~~(d)~~ "Mitigation" means the act of repairing or altering
32 a building or building design for the purpose in whole or in
33 part of reducing the concentration of radon in the indoor
34 atmosphere.

35 (g) ~~(e)~~ "Person" means entities, including, but not limited

1 to, an individual, company, corporation, firm, group,
2 association, partnership, joint venture, trust, or government
3 agency or subdivision.

4 (h) ~~(f)~~ "Radon" means a gaseous radioactive decay product
5 of uranium or thorium.

6 (i) ~~(g)~~ "Radon contractor" or "contractor" means a person
7 licensed to perform radon or radon progeny mitigation or to
8 perform ~~radon~~ measurements of ~~to detect~~ radon or radon progeny
9 in an indoor atmosphere.

10 (j) ~~(h)~~ "Radon progeny" means any combination of the
11 radioactive decay products of radon.

12 (Source: P.A. 90-262, eff. 7-30-97.)

13 (420 ILCS 44/20)

14 Sec. 20. General powers.

15 (a) The Agency ~~Department~~ may undertake projects to
16 determine whether and to what extent radon and radon progeny
17 are present in dwellings and other buildings, to determine to
18 what extent their presence constitutes a risk to public health,
19 and to determine what measures are effective in reducing and
20 preventing the risk to public health.

21 (b) In addition to other powers granted under this Act, the
22 Agency ~~Department~~ is authorized to:

23 (1) Establish a program for measuring radon or radon
24 progeny in dwellings and other buildings.

25 (2) Conduct surveys and studies in cooperation with the
26 Department of Natural Resources and the Department of
27 Public Health to determine the distribution and
28 concentration of radon or radon progeny in dwellings and
29 other buildings and the associated health risk and to
30 evaluate measures that may be used to mitigate a present or
31 potential health risk.

32 (3) Enter into dwellings and other buildings with the
33 consent of the owner or occupant to engage in monitoring
34 activities or to conduct remedial action studies or
35 programs.

1 (4) Enter into contracts for projects undertaken
2 pursuant to subsection (a).

3 (5) Enter into agreements with other departments,
4 agencies, and subdivisions of the federal government, the
5 State, and units of local government to implement this Act.

6 (6) Establish training and educational programs.

7 (7) Apply for, accept, and use grants or other
8 financial assistance and accept and use gifts of money or
9 property to implement this Act.

10 (8) Provide technical assistance to persons and to
11 other State departments, agencies, political subdivisions,
12 units of local government, and school districts.

13 (9) Prescribe forms for application for a license
14 ~~licensure~~.

15 (10) Establish the minimum qualifications for a
16 license ~~licensure~~, including requirements for examinations
17 or performance testing, and issue licenses to persons found
18 to be qualified.

19 (10.5) Investigate any unlicensed activity.

20 (11) Conduct hearings or proceedings to revoke,
21 suspend, or refuse to issue or renew a license, or assess
22 civil penalties.

23 (12) Adopt rules for the administration and
24 enforcement of this Act.

25 (13) Establish by rule fees to recover the cost of the
26 ~~application and inspection fees for the licensing~~ program.

27 (Source: P.A. 92-387, eff. 8-16-01.)

28 (420 ILCS 44/25)

29 Sec. 25. License requirement. Beginning January 1, 1998, no
30 person shall sell a device or perform a service for
31 compensation to detect the presence of radon or radon progeny
32 in the indoor atmosphere, perform laboratory analysis, or
33 perform a service to reduce the presence of radon or radon
34 progeny in the indoor atmosphere unless the person has been
35 licensed by the Agency ~~Department~~. The application procedures

1 for a license ~~licensure~~ shall be established by rule of the
2 Agency Department. This Section does not apply to retail stores
3 that only sell or distribute radon sampling devices but are not
4 engaged in a relationship with the client for other services
5 such as home inspection or representation as in a real estate
6 transaction and that do not perform laboratory analysis,
7 measurement, or mitigation services. ~~This Section does not~~
8 ~~apply to persons selling or distributing, but not placing,~~
9 ~~radon sampling devices supplied by a laboratory if the results~~
10 ~~of the laboratory analysis are reported directly to the owner~~
11 ~~or occupant of the building sampled.~~

12 (Source: P.A. 90-262, eff. 7-30-97.)

13 (420 ILCS 44/30)

14 Sec. 30. Reporting of information. Within 45 days after
15 testing for radon or radon progeny, a person performing the
16 testing shall report to his or her client ~~the owner or occupant~~
17 ~~of the building~~ the results of the testing. In addition, if the
18 client is not the owner or occupant of the building, a person
19 shall report to the owner or occupant upon request. To the
20 extent that the testing results contain information pertaining
21 to the medical condition of an identified individual or the
22 concentration level of radon or radon progeny in an identified
23 dwelling, information obtained by the Agency Department
24 pursuant to this Act is exempt from the disclosure requirements
25 of the Freedom of Information Act, except that the Agency
26 ~~Department~~ shall make the information available to the
27 identified individual or the owner or occupant on request.

28 (Source: P.A. 90-262, eff. 7-30-97.)

29 (420 ILCS 44/35)

30 Sec. 35. Penalties.

31 (a) A person required to be licensed under Section 25 of
32 this Act who sells a device or performs a service without being
33 properly licensed under this Act may be assessed a civil
34 penalty by the Agency not to the exclusion of any other penalty

1 ~~authorized by law shall, in addition to any other penalty~~
2 ~~provided by law, pay a civil penalty to the Department~~ in an
3 amount not to exceed \$5,000, for each offense, as determined by
4 the Agency Department. Any person assessed a civil penalty
5 under this Section shall be afforded an opportunity for hearing
6 in accordance with Agency Department regulations prior to final
7 action by the Agency Department. The civil penalty must be paid
8 within 30 days after the order becomes a final and binding
9 administrative determination.

10 (b) A person who violates a provision of this Act shall be
11 guilty of a business offense and may ~~shall~~ be fined not less
12 than \$500 nor more than \$1,000 for the first offense and shall
13 be guilty of a Class A misdemeanor for a subsequent offense.
14 Each day that a violation continues constitutes a separate
15 offense. A licensed radon contractor found guilty of a
16 violation of a provision of this Act may ~~shall automatically~~
17 have his or her license terminated by the Agency Department.

18 (Source: P.A. 92-387, eff. 8-16-01.)

19 (420 ILCS 44/45)

20 Sec. 45. Grounds for disciplinary action. The Agency
21 ~~Department~~ may refuse to issue or to renew, or may revoke,
22 suspend, ~~place on probation, reprimand~~ or take other
23 disciplinary action as the Agency Department may deem proper,
24 including fines not to exceed \$1,000 for each violation, with
25 regard to any license for any one or combination of the
26 following causes:

27 (a) Violation of this Act or its rules.

28 (b) Conviction of a crime under the laws of any United
29 States jurisdiction that is a felony ~~or a misdemeanor, an~~
30 ~~essential element of which is dishonesty,~~ or of any crime that
31 directly relates to the practice of detecting or reducing the
32 presence of radon or radon progeny.

33 (c) Making a misrepresentation for the purpose of obtaining
34 a license.

35 (d) Professional incompetence or gross negligence in the

1 practice of detecting or reducing the presence of radon or
2 radon progeny.

3 (e) Gross malpractice, prima facie evidence of which may be
4 a conviction or judgment of malpractice in a court of competent
5 jurisdiction.

6 (f) Aiding or assisting another person in violating a
7 provision of this Act or its rules.

8 (g) Failing, within 60 days, to provide information in
9 response to a written request made by the Agency ~~Department~~
10 that has been sent by ~~certified or registered~~ mail to the
11 licensee's last known address.

12 (h) Engaging in dishonorable, unethical, or unprofessional
13 conduct of a character likely to deceive, defraud, or harm the
14 public.

15 (i) Habitual or excessive use or addiction to alcohol,
16 narcotics, stimulants, or any other chemical agent or drug that
17 results in the inability to practice with reasonable judgment,
18 skill, or safety.

19 (j) Discipline by another United States jurisdiction or
20 foreign nation, if at least one of the grounds for the
21 discipline is the same or substantially equivalent to those set
22 forth in this Section.

23 (k) Directly or indirectly giving to or receiving from a
24 person, ~~firm, corporation, partnership, or association~~ any
25 fee, commission, rebate, or other form of compensation for a
26 professional service not actually or personally rendered.

27 (l) A finding by the Agency ~~Department~~ that the licensee
28 has violated the terms of a license, ~~after having his or her~~
29 ~~license placed on probationary status, has violated the terms~~
30 ~~of probation.~~

31 (m) Conviction by a court of competent jurisdiction, either
32 within or outside of this State, of a violation of a law
33 governing the practice of detecting or reducing the presence of
34 radon or radon progeny if the Agency ~~Department~~ determines
35 after investigation that the person has not been sufficiently
36 rehabilitated to warrant the public trust.

1 (n) A finding by the Agency Department that a license
2 licensure has been applied for or obtained by fraudulent means.

3 (o) Practicing or attempting to practice under a name other
4 than the full name as shown on the license or any other
5 authorized name.

6 (p) Gross and willful overcharging for professional
7 services, including filing false statements for collection of
8 fees or moneys for which services are not rendered.

9 (q) Failure to file a return or to pay the tax, penalty, or
10 interest shown in a filed return, or to pay any final
11 assessment of tax, penalty, or interest, as required by a tax
12 Act administered by the Department of Revenue, until such time
13 as the requirements of any such tax Act are satisfied.

14 (r) Failure to repay ~~The Department shall deny an original~~
15 ~~or renewal license under this Act to a person who has defaulted~~
16 ~~on an educational loans loan~~ guaranteed by the Illinois Student
17 Assistance State Scholarship Commission, as provided in
18 Section 80 of the Nuclear Safety Law of 2004. However, the
19 Agency Department may issue an original or renewal license if
20 the person in default has established a satisfactory repayment
21 record as determined by the Illinois Student Assistance State
22 Scholarship Commission.

23 (s) Failure to meet child support orders, as provided in
24 Section 10-65 of the Illinois Administrative Procedure Act.

25 (t) Failure to pay a fee or civil penalty properly assessed
26 by the Agency.

27 (Source: P.A. 90-262, eff. 7-30-97.)

28 (420 ILCS 44/50)

29 Sec. 50. Summary suspension. The Director may summarily
30 suspend the license of a radon contractor without a hearing,
31 simultaneously with the institution of proceedings for a
32 hearing, if the Director finds that evidence in his or her
33 possession indicates that continuation of the contractor in
34 practice would constitute an imminent danger to the public. If
35 the Director summarily suspends a license without a hearing, a

1 hearing by the Agency ~~Department~~ shall be held within 30 days
2 after the suspension has occurred and shall be concluded
3 without appreciable delay.

4 (Source: P.A. 90-262, eff. 7-30-97.)

5 (420 ILCS 44/55)

6 Sec. 55. Liability. The Agency ~~Department~~ and other persons
7 under contract or agreement with the Agency ~~Department~~ under
8 this Act, and their officers, agents, and employees, shall not
9 be liable for conduct in the course of administering or
10 enforcing this Act unless the conduct was malicious.

11 (Source: P.A. 90-262, eff. 7-30-97.)

12 (420 ILCS 44/60)

13 Sec. 60. Deposit of moneys. All moneys received by the
14 Agency ~~Department~~ under this Act shall be deposited into the
15 Radiation Protection Fund and are not refundable. Moneys
16 deposited into the Fund may be used by the Agency ~~Department~~,
17 pursuant to appropriation, for the administration and
18 enforcement of this Act.

19 (Source: P.A. 90-262, eff. 7-30-97.)

20 (420 ILCS 44/65)

21 Sec. 65. Illinois Administrative Procedure Act. The
22 provisions of the Illinois Administrative Procedure Act are
23 hereby expressly adopted and shall apply to all administrative
24 rules and procedures of the Agency ~~Department~~ under this Act,
25 except that Section 5-35 of the Illinois Administrative
26 Procedure Act, relating to procedures for rulemaking, does not
27 apply to the adoption of any rule required by federal law in
28 connection with which the Agency ~~Department~~ is precluded from
29 exercising any discretion.

30 (Source: P.A. 92-651, eff. 7-11-02.)

31 (420 ILCS 44/70)

32 Sec. 70. Administrative Review Law. All final

1 administrative decisions of the Agency ~~Department~~ under this
2 Act shall be subject to judicial review under the provisions of
3 the Administrative Review Law and its rules. The term
4 "administrative decision" is defined as in Section 3-101 of the
5 Code of Civil Procedure.

6 (Source: P.A. 90-262, eff. 7-30-97.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.