

MAINE STATE LEGISLATURE

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2013
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MAJORITY

L.D. 328

Date: 6/6/2013

(Filing No. S-224)

VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE

SENATE

126TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 124, L.D. 328, Bill, "An Act Relating to Radon Testing and Disclosure to Tenants"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 14 MRSA §6001, sub-§3, ¶A, as amended by PL 2009, c. 566, §2, is further amended to read:

A. Asserted the tenant's rights pursuant to section 6021 or section 6030-D;

Sec. 2. 14 MRSA §6030-D, as amended by PL 2011, c. 96, §3 and c. 157, §1, is further amended to read:

§6030-D. Radon testing

1. Testing. By March 1, 2014, and, unless a mitigation system has been installed in that residential building, every 10 years thereafter when requested by a tenant, a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building shall have the air of the residential building tested for the presence of radon. A For a residential building constructed or that begins operation after March 1, 2014, a landlord or other person acting on behalf of a landlord shall have the air of the residential building tested for the presence of radon within 12 months of the occupancy of the building by a tenant. Except as provided in subsection 5, a test required to be performed under this section must be conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165.

1-A. Short-term rentals. As used in this section, "residential building" does not include a building used exclusively for rental under short-term leases of 100 days or less where no lease renewal or extension can occur.

2. Notification. A Within 30 days of receiving results of a test with respect to existing tenants or before a tenant enters into a lease or tenancy at will agreement or pays a deposit to rent or lease a property, a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building shall

COMMITTEE AMENDMENT

1 provide written notice, as prescribed by the Department of Health and Human Services,
2 to a tenant ~~or potential tenant~~ regarding the presence of radon in the building, including
3 the date and results of the most recent test conducted under subsection 1, 5 or 6, whether
4 mitigation has been performed to reduce the level of radon, notice that the tenant has the
5 right to conduct a test and the risk associated with radon. Upon request by a prospective
6 tenant, a landlord or other person acting on behalf of a landlord shall provide oral notice
7 regarding the presence of radon in a residential building as required by this subsection.
8 The Department of Health and Human Services shall prepare a standard disclosure
9 statement form for a landlord or other person who on behalf of a landlord enters into a
10 lease or tenancy at will agreement for real property to use to disclose to a tenant ~~or~~
11 ~~potential—tenant~~ information concerning radon. The form must include an
12 acknowledgment that the tenant ~~or potential tenant~~ has received the disclosure statement
13 required by this subsection. The department shall post and maintain the forms required by
14 this subsection on its publicly accessible website in a format that is easily downloaded.

15 ~~3. Mitigation. When the test of a residential building under subsection 1 reveals a~~
16 ~~level of radon of 4.0 picocuries per liter of air or above, the landlord or other person who~~
17 ~~on behalf of a landlord enters into a lease or tenancy at will agreement for that building~~
18 ~~shall, within 6 months, mitigate the level of radon in the residential building until it is~~
19 ~~reduced to a level below 4.0 picocuries per liter of air. If a landlord or other person who~~
20 ~~on behalf of a landlord enters into a lease or tenancy at will agreement for a residential~~
21 ~~building is required to obtain a permit under a local or municipal ordinance, mitigation~~
22 ~~must occur within 6 months after obtaining any necessary permit. Mitigation services~~
23 ~~must be provided by a person registered with the Department of Health and Human~~
24 ~~Services pursuant to Title 22, chapter 165. After mitigation has been performed pursuant~~
25 ~~to this subsection to reduce the level of radon, the landlord or other person who on behalf~~
26 ~~of a landlord enters into a lease or tenancy at will agreement for the residential building~~
27 ~~shall provide written notice to tenants that radon levels have been mitigated.~~

28 **4. Penalty; breach of implied warranty.** A person who violates this section
29 commits a civil violation for which a fine of not more than \$250 per violation may be
30 assessed. The failure of a landlord or other person who on behalf of a landlord enters into
31 a lease or tenancy at will agreement for a residential building to provide the notice
32 required under subsection 2 or the falsification of a test or test results by the landlord or
33 other person is a breach of the implied warranty of fitness for human habitation in
34 accordance with section 6021.

35 **5. Testing by landlords.** A landlord or other person acting on behalf of a landlord
36 may conduct a test required to be performed under this section on a residential building
37 that, at a minimum, does not include an elevator shaft, an unsealed utility chase or open
38 pathway, a forced hot air or central air system or private well water unless the water has
39 been tested for radon by a person registered under Title 22, chapter 165 and the results
40 show a radon level acceptable to the Department of Health and Human Services, or on a
41 building otherwise defined in rules adopted by the Department of Health and Human
42 Services. A test or testing equipment used as permitted under this subsection must
43 conform to any protocols identified in rules adopted by the Department of Health and
44 Human Services.

45 **6. Testing by tenants; disputed test results.** A tenant may conduct a test for the
46 presence of radon in the tenant's dwelling unit in a residential building in conformity with

1 rules adopted by the Department of Health and Human Services or have a test conducted
2 by a person registered with the Department of Health and Human Services pursuant to
3 Title 22, chapter 165. After receiving notice of a radon test from a tenant indicating the
4 presence of radon at or in excess of 4.0 picocuries per liter of air, either the landlord shall
5 disclose those results as required by subsection 2 or the landlord or other person acting on
6 behalf of the landlord shall have a test conducted by a person registered with the
7 Department of Health and Human Services pursuant to Title 22, chapter 165 and shall
8 disclose the results of that test to the tenant as required by subsection 2.

9 **7. Reporting of test results.** A landlord or a person registered with the Department
10 of Health and Human Services pursuant to Title 22, chapter 165 who has conducted a test
11 of a residential building as required by this section or accepted the results of a tenant-
12 initiated test as set forth in subsection 6 shall report the results of the test to the
13 Department of Health and Human Services within 30 days of receipt of the results in a
14 form and manner required by the department.

15 **8. Termination of lease or tenancy at will.** If a test of a residential building under
16 this section reveals a level of radon of 4.0 picocuries per liter of air or above, then either
17 the landlord or the tenant may terminate the lease or tenancy at will with a minimum of
18 30 days' notice. Except as provided in section 6033, a landlord may not retain a security
19 deposit or a portion of a security deposit for a lease or tenancy at will terminated as a
20 result of a radon test in accordance with this subsection.

21 **Sec. 3. Rulemaking.** By November 1, 2013, the Department of Health and Human
22 Services shall adopt rules, in accordance with the Maine Revised Statutes, Title 5, chapter
23 375, to implement the requirements of this Act regarding the definition of those
24 residential buildings where a radon test must be conducted by a person registered with the
25 department and standards related to testing equipment that may be used by a landlord or
26 other person. Rules adopted pursuant to this section are routine technical rules as defined
27 in Title 5, chapter 375, subchapter 2-A.

28 **Sec. 4. Prior tests.** If a residential building was tested for the presence of radon in
29 accordance with protocols identified by the Department of Health and Human Services
30 prior to November 1, 2013, this Act may not be construed to require a landlord or other
31 person who on behalf of a landlord enters into a lease or tenancy at will agreement for a
32 residential building to conduct another test before March 1, 2014.

33 **Sec. 5. Department of Health and Human Services; modification to**
34 **disclosure statement form.** By November 1, 2013, the Department of Health and
35 Human Services shall modify the standard disclosure statement form required under the
36 Maine Revised Statutes, Title 14, section 6030-D, subsection 2 as necessary to reflect the
37 changes made by this Act.'

38 SUMMARY

39 This amendment replaces the bill. The amendment changes the law regarding radon
40 testing of residential units as follows.

41 1. Testing remains required by March 1, 2014 and every 10 years thereafter but only
42 upon request by a tenant and only if a mitigation system is not in place.

- 1 2. Landlords must disclose testing results prior to renting rather than to all potential
2 tenants. Landlords must also disclose results of a test to existing tenants within 30 days of
3 receiving results.
- 4 3. Landlords are authorized to perform radon testing except in certain complex
5 buildings as defined in rules adopted by the Department of Health and Human Services.
- 6 4. Landlords are required to test for radon and disclose the results. The requirement
7 in statute to mitigate is eliminated.
- 8 5. The disclosure must include the results of the test, the date of the test, that the
9 tenant has the right to test and a reference to where the tenant can get more information
10 about radon. The Department of Health and Human Services is required to modify the
11 standard disclosure statement form to reflect the changes.
- 12 6. If a tenant and the landlord get different results for tests, the landlord may hire a
13 professional and disclose the result of the testing performed by the professional. The
14 landlord may also choose to accept the tenant’s results.
- 15 7. Tenants explicitly have the right to test for radon.
- 16 8. Results of testing by a landlord must be reported to the Department of Health and
17 Human Services within 30 days.
- 18 9. By November 1, 2013, the Department of Health and Human Services must adopt
19 rules for testing that incorporate existing protocols by reference.
- 20 10. The failure of a landlord to disclose test results or the falsification of records by a
21 landlord is considered a breach of the warranty of habitability.
- 22 11. If radon test results exceed 4.0 picocuries per liter, a landlord or tenant may
23 terminate the lease with 30 days' notice in accordance with current law. A landlord may
24 not retain a security deposit for a termination based on radon test results.
- 25 12. If a landlord brings an action for forcible entry and detainer, a tenant's assertion
26 of rights under the law regarding residential radon testing creates a rebuttable
27 presumption of retaliation against the tenant.

FISCAL NOTE REQUIRED
(See attached)



126th MAINE LEGISLATURE

LD 328

LR 686(02)

An Act Relating to Radon Testing and Disclosure to Tenants

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-226)
Committee: Veterans and Legal Affairs
Fiscal Note Required: Yes

Fiscal Note

Minor cost impact - General Fund
Minor revenue decrease - General Fund

Correctional and Judicial Impact Statements

Eliminates civil violations.
A reduction in fines will decrease General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Health and Human Services for rulemaking and other activities related to the provisions of this bill can be absorbed within existing budgeted resources.