

HOUSE BILL No. 5252

November 5, 2003, Introduced by Reps. Phillips, Byrum, Pumford, Clack, Anderson, Jamnick, Garfield, Wenke, Ehardt, Richardville, Stallworth, Hunter, Plakas, Ruth Johnson, McConico, Murphy, Gillard, Hood, Tobocman, Williams, Farrah, Cheeks, Reeves, Lipsey, Meisner, Hopgood, Paletko, Kolb, Vagnozzi, O'Neil and Mortimer and referred to the Committee on Regulatory Reform.

A bill to license and regulate persons engaged in radon testing and mitigation; to create a board of radon mitigation professionals; to provide for certain powers and duties of certain state agencies; to provide for the establishment of certain qualifications and standards; to prescribe fees; to provide for the promulgation of rules; and to prescribe remedies and penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "radon mitigation licensure act".

3 Sec. 3. As used in this act:

4 (a) "Board" means the board of radon mitigation
5 professionals.

6 (b) "Department" means the department of consumer and
7 industry services.

1 (c) "Radon mitigation professional" means an individual who
2 tests the indoor air of a building for radon concentrations,
3 installs a radon mitigation system, or maintains and repairs a
4 radon mitigation system.

5 (d) "Radon mitigation system" means any system or steps to
6 reduce radon concentrations in the indoor air of a building.

7 (e) "Rule" means a rule promulgated under the administrative
8 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

9 Sec. 5. (1) There is created within the department a board
10 of radon mitigation professionals consisting of 9 residents of
11 the state to be appointed by the governor with the advice and
12 consent of the senate. Appointed members shall be not less than
13 18 years of age and qualified in their respective fields. Of the
14 members first appointed, 3 members shall have a term of 2 years,
15 3 members shall have a term of 3 years, and 3 members shall have
16 a term of 4 years. Appointed members of the board shall include
17 the following:

18 (a) At least 5 members who are radon mitigation
19 professionals. The initial members appointed under this
20 subdivision shall be individuals required to be licensed under
21 this act, have actively been engaged as radon mitigation
22 professionals for at least 3 out of the 5 years immediately
23 preceding the date of appointment, and become licensed under this
24 act within 1 year after the effective date of this act.

25 (b) The remaining members shall be members of the general
26 public. Of the initial membership of the board, at least
27 1 member of the general public shall serve for a term of

1 4 years.

2 (2) Except for the initial members, a member of the board
3 shall be appointed for a term of 4 years. A vacancy shall be
4 filled for the unexpired portion of the term. A member of the
5 board may be removed from office by the governor in accordance
6 with section 10 of article V of the state constitution of 1963.
7 A member of the board who has a pecuniary interest in a matter
8 shall disclose that interest before the board takes action in the
9 matter, which disclosure shall be made a matter of record in the
10 board's official proceedings. A member of the board shall not
11 serve more than 2 consecutive terms. Each member of the board
12 shall receive per diem compensation and actual expenses incurred
13 by the member in the performance of his or her duties as a member
14 of the board.

15 (3) Annually, the legislature shall fix the per diem
16 compensation of a member of the board. Travel or other expenses
17 incurred by a member of a board in the performance of an official
18 function shall be payable by the department pursuant to the
19 standardized travel regulations of the department of management
20 and budget.

21 (4) The board shall hold an organizational meeting within 60
22 days after the effective date of this act. At the first meeting
23 of each year, the board shall elect from its membership a
24 chairperson, vice-chairperson, and secretary. The chairperson,
25 vice-chairperson, and secretary shall be elected from those
26 members appointed to the board by the governor.

27 Sec. 7. (1) The board shall hold regular quarterly

1 meetings. Special meetings may be held at the call of the
2 chairperson or 5 members of the board. Written notice of a
3 special meeting shall be mailed to each member not less than 12
4 days before the date of the meeting.

5 (2) Six members of the board shall constitute a quorum for
6 the transaction of business. An approval, decision, or ruling of
7 the board shall not become effective unless approved by 2/3 of
8 the board members attending a meeting.

9 (3) The board may request a person to appear before the board
10 to advise the board regarding the implementation of this act.

11 (4) The business which the board performs shall be conducted
12 at a public meeting of the board held in compliance with the open
13 meetings act, 1976 PA 267, MCL 15.261 to 15.275, and public
14 notice of the time, date, and place of the meeting shall be given
15 in the manner required by that act.

16 (5) A writing prepared, owned, used, in the possession of, or
17 retained by the board in the performance of an official function
18 shall be made available to the public in compliance with the
19 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

20 Sec. 9. (1) The board shall adopt or develop, or both,
21 professional standards and licensure qualifications that are
22 consistent with applicable certification requirements of 1 or
23 more established and nationally recognized certification programs
24 or the federal government, and otherwise acceptable to the
25 board. The board shall adopt these standards and qualifications,
26 including written and practical examinations, by promulgation of
27 rules. The board may amend or supplement the standards and

1 qualifications by adoption of those amendments or supplements, by
2 reference or otherwise, pursuant to rules.

3 (2) Beginning the effective date of this act and until such
4 time as the board promulgates a rule as described in
5 subsection (1), the following standards and qualifications, in
6 existence on the effective date of this act, are adopted by
7 reference as interim standards:

8 (a) The licensure qualifications and professional standards
9 of the national environmental health association national radon
10 proficiency program and the national radon safety board
11 certification program.

12 (b) The radon mitigation system standards contained in the
13 standard practice for installing radon mitigation systems in
14 existing low-rise residential buildings, ASTM E 2121.

15 Sec. 11. (1) Upon the filing of an application on a form
16 prescribed by the department and payment of the license fee
17 prescribed in section 17, the department shall determine the
18 qualifications and competency of applicants seeking licensure
19 under this act and, except as otherwise provided, shall issue
20 licenses to qualified applicants after payment of the appropriate
21 license fee.

22 (2) An applicant is not considered eligible for licensure
23 unless the applicant is of good moral character, as defined and
24 determined under 1974 PA 381, MCL 338.41 to 338.47.

25 Sec. 13. (1) A person shall not act or attempt to act as a
26 radon mitigation professional unless licensed under this act.

27 (2) This act does not prevent a person from performing any

1 activities incidental to the scope of licensure under any other
2 licensure act.

3 Sec. 15. (1) Beginning the effective date of this act and
4 until standards and qualifications are adopted by the board under
5 section 9(1), the department shall issue a license as a radon
6 mitigation professional to an individual who applies to the
7 department, pays the appropriate license fee, and meets the
8 interim standards and qualifications adopted under section 9.

9 (2) The department may license, without examination and upon
10 the payment of the license fee prescribed in section 17, an
11 applicant who is a legally authorized radon mitigation
12 professional in another state or country if the licensing
13 requirements of the state or country are considered by the board
14 to be substantially equivalent to the licensing requirements of
15 this state and the state or country observes reciprocity in
16 regard to radon mitigation professionals licensed under this
17 act.

18 (3) The holder of a license issued under this section may
19 renew the license pursuant to section 17.

20 Sec. 17. (1) Except as otherwise provided in this
21 subsection and subsection (2), the initial and per-year fee for
22 the issuance of a license shall be determined by rules
23 promulgated by the board. The board shall not establish initial
24 and per-year license fees under this subsection that exceed
25 \$100.00. The license fees received under this act shall be paid
26 into the general fund for appropriation to the department for the
27 administration and enforcement of this act.

1 (2) A license issued under this act expires on August 31.
2 The department shall issue a 3-year license. A license expires
3 every third year after August 31 and is renewable not later than
4 October 31 upon application and payment of the 3-year license
5 fee. In the case of a person applying for an initial or
6 reinstatement license at a time other than between August 31 and
7 October 31 of the year in which the department issues renewal
8 licenses, the department shall compute and charge the license fee
9 on a yearly pro rata basis beginning in the year of the
10 application until the last year of the 3-year license cycle. All
11 licenses not renewed are void and may be reinstated only upon
12 application for reinstatement and the payment of the license
13 fee. A person who renews his or her license within 5 years after
14 the license is voided under this section is not subject to
15 reexamination for the license.

16 (3) The board, in setting standards under section 9, may
17 provide for written, practical, or physical periodic
18 reexaminations, if the board determines such reexaminations are
19 necessary for the protection of the health, safety, and welfare
20 of the general public as well as for maintenance of the integrity
21 of the regulatory purpose of this act. In such a case, the board
22 shall not impose a requirement for any reexamination without at
23 least 12 months' prior written notice to all current licensees of
24 such a requirement.

25 Sec. 19. (1) The department may investigate the activities
26 of a licensee related to the licensee's activities as a radon
27 mitigation professional. The department may hold administrative

1 hearings, administer oaths, and order relevant testimony to be
2 taken and shall report its findings to the board. The board
3 shall proceed under section 23 if the board finds that any of the
4 following grounds exist:

5 (a) The practice of fraud or deceit in obtaining a license
6 under this act.

7 (b) The practice of fraud or deceit in the performance of
8 work for which a license is required under this act.

9 (c) An act of gross negligence.

10 (d) The practice of false advertising.

11 (e) An act which demonstrates incompetence.

12 (f) A violation of this act or rule promulgated under this
13 act.

14 (2) A revocation, suspension, or other sanction set forth in
15 subsection (1) or section 23 shall be imposed only after notice
16 and an opportunity for a hearing pursuant to the administrative
17 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

18 (3) An individual shall not act as a radon mitigation
19 professional under a license that is suspended, revoked, or
20 expired.

21 Sec. 21. In addition to the administrative penalties
22 prescribed in section 19, a person who violates this act is
23 guilty of a misdemeanor, punishable by a fine of not more than
24 \$500.00, or imprisonment for not more than 90 days, or both.

25 Sec. 23. After finding the existence of 1 or more of the
26 grounds for board action described in section 19(1) and after
27 having provided an opportunity for an administrative hearing, the

1 board shall impose 1 or more of the following sanctions on the
2 license issued under this act for each violation:

3 (a) Suspension.

4 (b) Denial.

5 (c) Revocation.

6 (d) Limitation.

7 (e) A requirement that restitution be made.

8 Sec. 25. If restitution is required to be made under
9 section 23, the department and board may suspend the license of
10 the person required to make the restitution until restitution is
11 made.

12 Sec. 27. This act takes effect July 1, 2004.