



The other 30 states don't require any qualifications and allow unprotective radon work:

- While the EPA-funded state radon program is required to publish lists of persons credentialed by private proficiency programs, others not on the list have unlimited access to unsuspecting consumers.
- The absence of proficiency requirements in these states allows unqualified personnel and fly-by-night contractors to conduct radon-related services and disregard standards without any accountability, and interferes with creating capacity to comply with national lending policy certification requirements.

State	Required Credential(s)		Current Standard(s) in Effect	
	Private Certification	State License	ANSI-AARST	EPA, ASTM, other
California	X		All	
Colorado* ~	X	X	All	
Connecticut	X		All	
Florida		X		All'
Illinois		X		All
Indiana*	X	X	All	
Iowa		X	Measurement	Mitigation
Kansas		X		All'
Kentucky*	X	X	All	
Maine		X		All
Minnesota		X	All	
Nebraska		X		All'
New Hampshire	Mitigation		Mitigation	
New Jersey		X	All	
Ohio		X		All
Pennsylvania		X	Multifamily	Single Family
Rhode Island*	X	X	All	
Utah*	Mitigation	Mitigation	Mitigation	
Virginia	X			Single Family
West Virginia*	X	X	All	

\* Both private certification and state credential required    'Rulemaking pending

Congress has directed EPA to prioritize radon grants to states that have in place adequate certification or credentialing requirements for radon measurement and mitigation workers. AARST Chapters, state leaders and others have been working to secure recognition of national consensus standards and regulation through private certification programs that require adherence to such standards.

Some of the trouble spots for state regulatory programs can be statutory or regulatory references to outdated standards, allowing someone to test and mitigate a property that they own but don't occupy, failure to ensure that multifamily and large building (including schools) projects correctly characterize radon potential by testing 100% of ground floor units as required in the ANSI-AARST standard, and the absence of requirements pertaining to approved radon measurement devices and/or quality control.

The model legislation that follows provides the critical components needed in a statute to save lives, leverage private proficiency infrastructure, optimize any state regulatory burden, and ensure a level playing field for professionals who are willing to adhere to current standards within a framework of accountability.

## Model Legislation: Radon Regulation through Certification

AN ACT relating to radon gas certifications.

Be it enacted by the General Assembly:

Title

Radon Measurement and Mitigation - Certification and Registration

### 1. Definitions.

As used in this section, unless the context requires otherwise:

- (1) “Alter” means to change or modify a building or building design, or to revise, rather than repair, 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 certification requirements of a proficiency program for radon measurement, radon mitigation, or radon laboratory analysis;
- (4) “Commissioner” means the commissioner of the [Department of Health]; [or Director etc.]
- (5) “Committee” means the Radon Advisory Committee;
- (6) “Compensation” means something of value given or received in exchange for radon measurement, radon mitigation, or laboratory analysis;
- (7) “Department” means the [Department of Health];
- (8) “Direct supervision” means onsite supervision by a certified person who accepts responsibility for ensuring compliance by his or her employees, subcontractors, or other designated agents with all applicable requirements under this Act;
- (9) “Government agency” means the State, a state agency, a political subdivision, or any entity of local government;
- (10) “Laboratory analysis” means the act of analyzing the radon or radon progeny concentrations with passive measurement devices, or 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;
- (11) “Measurement” means the act of testing the air, water, or soil using an active or passive measurement device for the presence of radon or radon progeny in the indoor environment of a building;
- (12) “Measurement device” means any active or passive device approved by a proficiency program and used for the measurement of radon or radon progeny in air, water, or soil in the indoor environment of a building;
- (13) “Measurement professional” means a person certified by a proficiency program who provides radon measurement for compensation and who meets the requirements of Section 3 of this Act;
- (14) “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;
- (15) “Mitigation professional” means a person certified by a proficiency program who provides radon mitigation for compensation and who meets the requirements of Section 4 of this Act;
- (16) “Mitigation system” means any active or passive system designed to reduce radon concentrations in the indoor environment of a building;
- (17) “Person” has the same meaning as in [applicable State law];
- (18) “Prescribed” means promulgated by administrative regulation by the department;
- (19) “Proficiency program” means the National Radon Proficiency Program or other national radon credentialing body that is currently recognized by the US Environmental Protection Agency;
- (20) “Radon” means a naturally occurring radioactive element that is produced by the breakdown of uranium and exists as a colorless, odorless, and tasteless inert gas;

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- (21) “Radon laboratory” means a business entity approved by a proficiency program that provides laboratory analysis for compensation and meets the requirements of Section 6 of this Act;
- (22) “Radon progeny” means any combination of the radioactive decay products of radon;
- (23) “Registrant” means a person or business entity registered with the department as a measurement professional, mitigation professional, or radon laboratory;
- (24) “Research” means department-approved scientific investigation that includes radon measurement, radon mitigation, or laboratory analysis;
- (25) “Standard” means a current written document developed and continuously maintained by a standards development organization accredited by the American National Standards Institute that describes in detail commonly accepted methods for the performance of certain tasks.

### 2. Prohibition against conduct of radon measurement, mitigation, or laboratory analysis without certification - Business entities - Exception.

- (1) No person or business entity shall conduct radon measurement, mitigation, or laboratory analysis in this State after January 1, 202X, without the appropriate certification pursuant to this Act. No person or business entity shall advertise or claim to be a “radon measurement professional,” “radon mitigation professional,” or “radon laboratory,” unless certified pursuant to this Act.
- (2) A radon business entity may engage in radon measurement, mitigation, or laboratory analysis if the owner or an employee associated with the radon business entity is a measurement or mitigation professional, or radon laboratory, as applicable, and performs or supervises the radon measurement, mitigation, or laboratory analysis work as applicable. Any business entity that employs persons to perform measurement or mitigation must have a radon business entity registration.
- (3) A measurement or mitigation professional directly in charge of measurement or mitigation activities within a radon business entity shall notify the department in writing immediately upon termination of the relationship with the radon business entity.
- (4) Certification requirements under this section shall apply to a radon measurement professional, radon mitigation professional, or radon laboratory, but shall not apply to an individual performing measurement or mitigation on a single-family residential building that he or she owns and occupies.
- (5) Registration shall not be issued to any person or business entity if the applicant:
  - (a) Has been convicted of a felony under the laws of the State of any crime that involves theft or dishonesty, or is a sex crime; or
  - (b) Has had disciplinary action taken in association with a professional license, certification, registration, or permit held by the person or business entity seeking registration.

### 3. Registration of radon measurement professional — Renewal of registration certificate — Duties of measurement professional.

- (1) The department shall issue a radon measurement professional registration certificate to any person certified for measurement who:
  - (a) Completes a registration process and pays a fee prescribed by the department;
  - (b) Presents current proof of certification by a proficiency program and
  - (c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this Act.
- (2) The department shall renew the radon measurement professional registration certificate of any person who:
  - (a) Completes a registration renewal process and pays a fee prescribed by the department;
  - (b) Presents current proof of certification by a proficiency program; and
  - (c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this section;
- (3) A measurement professional shall:

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- (a) Maintain certification by a proficiency program;
- (b) Ensure measurements are conducted in accordance with the applicable standard and administrative regulations;
- (c) Maintain a quality assurance plan in accordance with the standard for measurement systems quality assurance;
- (d) Ensure measurements are conducted by or under the direct supervision of a measurement professional;
- (e) Use or sell only measurement devices approved by the proficiency program that certifies the person;
- (f) Report all measurements as prescribed by the department; and
- (g) Ensure all laboratory analysis is conducted by a radon laboratory.

### 4. Registration of mitigation professional — Renewal of registration certificate — Duties of mitigation professional.

- (1) The department shall issue a mitigation professional registration certificate to any person certified for mitigation who:
  - (a) Completes a registration process and pays a fee prescribed by the department;
  - (b) Presents proof of certification by a proficiency program; and
  - (c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this Act.
- (2) The department shall renew the mitigation professional registration certificate of any person who:
  - (a) Completes a registration renewal process and pays a fee prescribed by the department
  - (b) Presents current proof of certification by a proficiency program; and
  - (c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this Act
- (3) A mitigation professional shall:
  - (a) Maintain certification by a proficiency program;
  - (b) Ensure mitigations are conducted in accordance with the applicable mitigation standard and administrative regulations;
  - (c) Maintain a quality management plan in accordance with the applicable standard for mitigation quality assurance and control;
  - (d) Ensure all mitigation is conducted by or under the direct supervision of a mitigation professional;
  - (e) Report all mitigations as prescribed by the department; and
  - (f) Ensure all radon mitigation systems repaired or altered on or after January 1, 202X, meet the applicable mitigation standard.

### 5. Registration of Business Entities

- (1) The department shall issue a radon business entity registration effective for two years to any business for which the application designates a responsible person and a registered radon professional, and a fee is paid.
- (2) The radon business entity shall notify the Department of the transfer of the radon business entity registration to another business entity within thirty days.

### 6. Liability insurance policy requirement

Each radon mitigation professional, radon measurement professional and radon laboratory shall maintain an insurance policy in effect at all times during the registration period that:

- (1) Is issued by an insurance company or other legal entity permitted to transact insurance business in [State];
- (2) Provides for applicable liability coverage for measurement professionals in an amount of at least two hundred fifty thousand dollars (\$250,000);

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- (3) Provides for applicable liability coverage for mitigation professionals and radon laboratories in an amount of at least five hundred thousand dollars (\$500,000);
- (4) Lists the department as a certificate holder of any insurance policy issued under this section; and
- (5) States that cancellation or nonrenewal of the underlying liability insurance policy is not effective until the department receives written notice of the cancellation or nonrenewal.
- (6) A business entity may meet the requirements of this section on behalf of its employees.

### 7. Registration of radon laboratory — Renewal of registration certificate — Requirements for radon laboratory.

- (1) The department shall issue a radon laboratory registration certificate to any business entity approved for radon laboratory analysis that
  - (a) Completes a registration process and pays a fee prescribed by the department
  - (b) Presents proof of approval by a proficiency program; and
  - (c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this Act.
- (2) The department shall renew the radon laboratory registration certificate of any business entity that:
  - (a) Completes a registration renewal process and pays a fee prescribed by the department
  - (b) Presents current proof of certification by a proficiency program; and
  - (c) Furnishes evidence of a general liability insurance policy that satisfies the requirements of this Act;
- (3) A radon laboratory shall:
  - (a) Maintain approval by a proficiency program;
  - (b) Ensure all laboratory analysis is conducted in accordance with the applicable laboratory analysis standard;
  - (c) Maintain a quality control program plan in accordance with the applicable standard for performance criteria for measurement systems; and
  - (d) Report all laboratory analyses as prescribed by the department.

### 7. Biennial registration — Lapse — Duty to report change of information.

- (1) A person or business entity seeking biennial registration shall complete the registration process and pay the fee prescribed by the department through the promulgation of administrative regulations.
- (2) Registrations not renewed within thirty (30) days after the renewal date shall lapse and may only be reinstated upon the completion of the registration process as prescribed by the department through the promulgation of administrative regulations.
- (3) A registrant shall report any change of information submitted during the registration process in writing to the department within ten (10) days of such change taking place. The department shall not be responsible for a registrant not receiving notices, communications, or other correspondence caused by a failure of the registrant to report changes.

### 8. Department's powers to examine, inspect, and test – Duty to

- (1) The department or its agent or inspector may examine records of *registered* mitigation professionals, measurement professionals, radon laboratories, *unregistered business entities, and unregistered persons and business entities that perform, offer, or claim to perform, activities regulated by this section,*” including but not limited to conducting inspections of mitigation system installations and measurement locations in order to ensure that radon measurement, mitigation, and laboratory analysis are conducted in accordance with the applicable standard *and administrative regulations*.
- (2) The department or its agent or inspector may *inspect or* test any equipment used for measurement, mitigation, or laboratory analysis or photograph or sketch any portion of a site, building, or equipment involved in measurement, mitigation, or laboratory analysis.

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- (3) For purposes of enforcing this Act or any administrative regulation promulgated by the department pertaining to radon measurement, mitigation, or laboratory analysis, an agent or inspector of the department shall have the power to enter upon premises at all reasonable times to make an inspection, question all persons, and require the production of radon mitigation system plans, sketches, diagnostic information, *test reports*, *quality control plans*, *quality management plans*, and other evidence.
- (4) Agents and inspectors of the department shall be empowered to issue a stop order to any owner, agent, or occupant of real property requiring that the radon mitigation system thereon cease operation if that system has been found to be in violation of this Act or any administrative regulation promulgated thereunder by the department or if the radon mitigation system was not constructed, installed, or altered in accordance with the applicable standard.
- (5) A person shall not interfere with an inspection conducted by an agent or inspector of the department.

### 9. Location and retention of required records.

(1) Records required by this chapter or administrative regulations promulgated under this Act or the applicable standard, including but not limited to records of radon measurement, mitigation, quality control program plans, calibration certifications, laboratory analysis activities, worker health and safety plans, and equipment repairs shall be retained by registrants, as applicable, for a minimum period of five (5) years or the length of time of any warranty or guarantee, whichever is greater. Records obtained by the department are exempt from the disclosure requirements of this section, except that the department shall make the records available upon request:

- (a) To the owner or occupant of a building; and
- (b) To the public aggregated at the zip code level without identifying individual homeowners or individual property locations, and
- (c) To a federal agency that provides aggregated data to the public.

(2) Any measurement or mitigation professional applying for registration or renewal of registration shall specify, for approval by the department, the physical or electronic location where records required under this section shall be maintained for inspection by the department.

### 10. Department's role as radon control agency for [State].

- (1) The department shall be the regulatory agency for the control of radon in [State].
- (2) The department shall coordinate, oversee, and implement all state functions in matters concerning the presence, effects, measurement, and mitigation of risks of radon in dwellings and other buildings.
- (3) The department shall:
  - (a) Promulgate administrative regulations in accordance to administer, coordinate, and enforce this section, including the establishment of fees not to exceed anticipated costs to the department;
  - (b) Maintain a public list of all certified persons or business entities registered by the department;
  - (c) Issue a registration certificate to certified persons or business entities registered by the department;
  - (d) Promote the control of radon in [State];
  - (e) Design and administer, or participate in the design and administration of, educational and research programs to ensure citizens of [State] are informed about the health risks associated with radon;
  - (f) Appoint personnel to perform duties and fix their compensation;
  - (g) Issue subpoenas, administer oaths, examine witnesses, investigate allegations of wrongdoing, and conduct administrative hearings to enforce this section; and
  - (h) Collect or receive all fees, fines, and other money owed pursuant to this section.

### 11. Radon mitigation and control fund.

(1) There is created the radon mitigation and control fund as a separate trust and agency fund in the State Treasury, to be administered by the department. All fees, fines, and other moneys received by the

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department pursuant to this section shall be deposited in the fund and shall be used for the implementation of this section and are hereby appropriated for those purposes.

(2) Any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(3) Any interest earnings of the fund shall become part of the fund and shall not lapse.

### 12. [State] Radon Program Advisory Committee

(1) Creation. The [State] Radon Program Advisory Committee is hereby created and shall be attached to the Department for administrative purposes. Each member of the committee shall be a citizen and resident of [State]. The committee shall consist of seven (7) members as follows:

- (a) Four (4) members who shall be a radon measurement professional, a radon mitigation professional, or a person associated with a radon laboratory conducting laboratory analysis, and shall be appointed by the Governor from a list of six (6) names submitted to the Governor by the applicable Chapter of the American Association of Radon Scientists and Technologists;
- (b) One (1) member shall be a representative of a public health organization and shall be appointed by the Governor from a list of three (3) names submitted to the Governor by the [State] Cancer Control Agency;
- (c) One (1) member shall be the commissioner or his or her designee; and
- (d) One (1) member shall be a citizen at large appointed by the Governor who shall represent the public and shall not be associated with or financially interested in the practice of radon measurement, mitigation, or laboratory analysis.

(2) Functions. The Radon Program Advisory Committee shall:

- (a) Advise the Commissioner on the review, development, and maintenance of procedures for radon measurement, radon mitigation, laboratory analysis, and quality control;
- (b) Review and comment on the development of relevant administrative regulations and otherwise advise the Commissioner on these matters provided that the final determination rests with the Commissioner; and
- (c) Perform any other duties and responsibilities relating to the topic of radon that may be assigned by the Commissioner.

(3) Terms

- (a) To be eligible for initial appointment as a member of the committee under subsection (1)(a) of this section, a person shall have been actively engaged in the practice of radon measurement, mitigation, or laboratory analysis for not less than three (3) years immediately preceding the date of appointment to the committee.
- (b) Upon expiration of the initial appointments, to be eligible for appointment as a member of the committee under subsection (1)(a) of this section, a person shall have been actively engaged in performing or managing the practice of radon measurement, mitigation, or laboratory analysis for not less than three (3) years immediately preceding the date of the appointment to the committee and hold a valid certification as a radon measurement professional or radon mitigation professional, or be associated with a radon laboratory with a valid certification.
- (c) Except for the commissioner, who shall serve as long as he or she holds his or her appointment as commissioner, the Governor shall initially appoint three (3) members for a term of two (2) years, and three (3) members for a term of one (1) year. All appointments shall expire on June 30 of the last year of the terms. Thereafter, members shall be appointed for terms of two (2) years. No person shall serve more than four (4) consecutive terms. Members shall serve until their successors are appointed.
- (d) Upon recommendation of the committee, the Governor may remove any member of the committee appointed by the Governor for poor attendance, neglect of duty, misfeasance, or malfeasance in office.

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(e) Vacancies in the membership of the committee for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.

(4) Organization.

(a) A majority of the committee shall constitute a quorum to do business. The committee shall meet at least once each calendar year in a location or teleconference designated by the chairperson. The committee may meet upon special call by the chairperson or a majority of the committee.

The committee shall elect a chairperson and a vice chairperson. The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at all meetings in the absence of the chairperson. If the chairperson and vice chairperson are absent from a meeting of the committee when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.