

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #6

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APR 29 1 49 PM '99

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Health, Department of Health & Human Resources TITLE NUMBER: 64

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 78

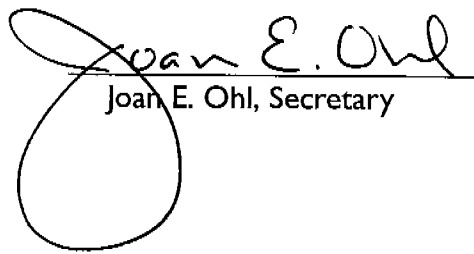
TITLE OF RULE BEING PROPOSED: Radon Licensure

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 305

SECTION 64-5-2(m), PASSED ON March 10, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: July 1, 1999

  
Joan E. Ohl, Secretary

\$3.80

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
RULE PROMULGATION HISTORY ABSTRACT**

**Rule Title:** 64 Radon Licensure

**Series Number:** 78

**Amendment of Existing Rule:**  **New Rule:**

**Responsible Agency:** Division of Health

**Date Filed for Public Hearing or Comment Period:** June 30, 1998

**Date of Public Hearing (if any):**

**Date Public Comment Period Ended:** July 30, 1998

**Date Agency-Approved Rule Filed with the  
Legislative Rule-Making Review Committee:** August 3, 1998

**Date of Filing of Modified Rule as Approved by  
the Legislative Rule-Making Review Committee:** November 20, 1998

**Date of Final Filing:** April 29, 1999

**Effective Date:** July 1, 1999

**Authorized by:** S.B. 305 (With amendments? Yes  No )  
**Passed:** March 10, 1999

**Dates Emergency Rule in Effect (if any):**

**TITLE 64  
LEGISLATIVE RULES  
DIVISION OF HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

FILED

APR 29 1 44 PM '99

**SERIES 78  
RADON LICENSURE**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§64-78-1. General.**

1.1. Scope - This legislative rule establishes procedures and standards for the licensure and training of persons engaged in activities related to radon measurement or mitigation. This rule should be read in conjunction with the definitions and provisions of W. Va. Code §16-34-1 et seq. (Licensure of Radon Mitigators, Testers, Contractors and Laboratories).

1.2. Authority - W. Va. Code §§16-34-6 and 16-1-7.

1.3. Filing Date - April 29, 1999.

1.4. Effective Date - July 1, 1999.

**§64-78-2. Application and enforcement.**

2.1. Application - This rule applies to radon mitigators, radon testers, radon contractors, radon training facilities and radon laboratories.

2.2. Enforcement - The enforcement of this legislative rule is vested with the director of the Division of Health.

**§64-78-3. Definitions.**

3.1. EPA - The United States Environmental Protection Agency.

**§64-78-4. General prohibitions.**

4.1. In addition to the prohibitions in W. Va. Code §16-34-3(a), no training shall be conducted without a valid radon training license.

4.2. Subsection 4.1 of this section does not apply to the individuals or entities described in W. Va. Code §16-34-3(b) or any of the following:

4.2.a. The regulation of construction practices; and

4.2.b. The regulation of retail sales of radon test kits for the use by individuals to conduct their own radon testing in buildings owned or leased by them.

**§64-78-5. Application for licensure as a radon mitigation contractor, radon tester, mitigation specialist, radon laboratory, radon testing or radon training facility.**

5.1. To apply for a license as a radon mitigation contractor, the applicant shall submit to the director an application provided by the director which shall include the following:

5.1.a. The name and business address of the applicant;

5.1.b. The name of the chief executive officer, partners or the sole proprietor of the business;

5.1.c. The names of employees directly involved in radon testing or mitigation and the following:

5.1.c.1. Documentation that each applicant or employee has successfully completed the training approved by the director. The documentation shall include the course title, course sponsor, names of course instructors, date and place of course; and

5.1.c.2. Documentation that the applicant has passed the examination recommended by the United States Environmental Protection Agency;

5.1.d. A description of any of the following matters to which the applicant or a person involved with the applicant on a radon project was a party:

5.1.d.1. Any radon mitigation or radon testing projects which were terminated prior to completion;

5.1.d.2. Any penalties, citations, administrative orders or actions pertaining to radon mitigation or radon testing; or

5.1.d.3. Any lawsuits pertaining to radon mitigation or radon testing. Copies of initial pleadings and final orders shall be attached to the application;

5.1.e. A description of the basic quality assurance and quality control procedures that will be utilized by the applicant for each type of measurement device used;

5.1.f. A description of the radiological safety plan designed to track employee radon exposure and keep it as low as reasonably achievable;

5.1.g. A description by type, manufacture and model number of all instruments to be used in radon measurements. If the applicant intends to use devices requiring non-portable equipment for analysis, the applicant shall list the name and address of the radon laboratory

providing the analysis and its issued license number; and

5.1.h. A description of the method of instrument calibrations.

5.2. To apply for a license as a radon tester, the applicant shall:

5.2.a. Submit to the director an application on a form prescribed and provided by the director, which shall include the information required by paragraphs 5.1.a. and 5.1.e. to 5.1.h. of this section.

5.2.b. Provide documentation that the applicant has successfully completed the training required by paragraph 5.1.c.1. of this section; and

5.2.c. Provide documentation that the applicant has passed the examination required by paragraph 5.1.c.2. of this section.

5.3. To apply for a license as a radon mitigation specialist, the applicant shall:

5.3.a. Submit to the director an application on a form prescribed and provided by the director, which shall include information required by subdivisions 5.1.a. and 5.1.e. to 5.1.h. of this section;

5.3.b. Provide documentation that the applicant has successfully completed the training required by paragraph 5.1.c.1. of this section; and

5.3.c. Provide documentation that the applicant has passed the examination required by paragraph 5.1.c.2. of this section.

5.4. To apply for a license as a radon laboratory, the applicant shall:

5.4.a. Submit to the director an application on a form prescribed and provided by the director, which shall include the information required by subdivisions 5.1.a. and 5.1.e. to 5.1.h. of this section; and

5.4.b. Provide documentation that the applicant is on the United States Environmental Protection Agency's proficiency list or its equivalent.

5.5. To apply for a license to train radon testers and radon mitigators the applicant shall provide evidence that the training center has been approved to conduct radon testing or radon

mitigation training by the United States Environmental Protection Agency.

5.6. An individual, business entity or government entity may hold more than one license. An applicant shall submit a separate application and pay a separate fee with each application, except a holder of a radon mitigation specialist license who is a business owner eligible for a radon mitigation contractor license under the provisions of W. Va. Code §16-34-5(c) is not required to pay the fee for the radon mitigation contractor license.

5.7. An application for licensure shall be accompanied by a nonrefundable check or money order.

**§64-78-6. License renewal.**

6.1. Each license issued under this rule is nontransferable and shall expire one year from the last day of the month in which it is issued. A license may be renewed by the director if an applicant applying for renewal:

6.1.a. Submits an application for renewal, including the licensee's number and appropriate information as required under subsections 5.1 to 5.5. of this rule; and

6.1.b. Submits the application for renewal no less than thirty (30) days before the expiration of the existing license.

6.2. An application for licensure renewal shall be accompanied by a nonrefundable check or money order.

6.3. The director shall issue a license after receiving the appropriate fee and the information requested in the application.

**§64-78-7. Licensee requirements.**

7.1. Licensed radon testers shall:

7.1.a. Operate in strict accordance with licensure requirements;

7.1.b. Obtain, in writing, from the director, approval for any change which would render the information submitted to obtain the original license inaccurate; and

7.1.c. Use only the services of a radon laboratory licensed by the director to

analyze samples for the presence and concentration of radon.

7.2. Licensed mitigation specialists shall:

7.2.a. Operate in strict accordance with licensure requirements;

7.2.b. Afford the director the opportunity to inspect any radon mitigation project;

7.2.c. Maintain records of each radon mitigation project that the specialist has supervised or performed and make these records available to the director upon request. These records are maintained for a minimum of three (3) years and include the following:

7.2.c.1. The name and license number of the individual who supervised the radon mitigation;

7.2.c.2. The names and license numbers of all radon testers and mitigation specialists involved in the project;

7.2.c.3. The location and description of the project;

7.2.c.4. The radon measurements including the screening measurements, follow-up measurements and the post-mitigation measurements;

7.2.c.5. The start and completion dates of the project; and

7.2.c.6. A summary of the basic procedures that were used to reduce radon concentrations;

7.2.d. Report to the director once every three months the requirements of paragraphs 7.2.c.1. through 7.2.c.6. of this section.

7.3. Licensed radon mitigation contractors shall:

7.3.a. Comply with the requirements of subdivisions 7.1.a, 7.1.b. and 7.2.b. of this section;

7.3.b. Provide adequate equipment for worker protection to keep exposures to radon as low as reasonably achievable; and

7.3.c. Ensure that all radon testers, radon mitigators and radon laboratories involved in a project have a valid West Virginia license.

7.4. Licensed radon laboratories shall:

7.4.a. Report all State radon test results in picocuries per liter (pCi/l) to the director on a three(3)-month basis by city, street, and zip code; and

7.4.b. Maintain radon test results for a minimum of three years.

7.5. Holders of a radon training course license shall:

7.5.a. Comply with provisions of subdivision 7.1.b. of this section;

7.5.b. Issue a certificate of completion to each individual who successfully completes the courses; and

7.5.c. Submit to the director a list of all individuals who successfully complete the course.

**§64-78-8. Special license requirements.**

8.1. Special licensure requirements are as provided in W. Va. Code §16-34-4.

**§64-78-9. Record keeping and confidentiality.**

9.1. The director shall maintain a list of all licensed radon testers, mitigation specialists, mitigation contractors, radon training facilities, and radon laboratories licensed by the state. On request, the director shall provide a copy of all or part of the list to any individual, business entity or government entity in accordance with the Division of Health's Fees for Services rule, 64CSR51.

**§64-78-10. Applications from out of state practitioners.**

Any individual, business entity or government entity that holds a valid license issued by another jurisdiction with requirements for practice as a radon tester, mitigation specialist or mitigation contractor as rigorous as those imposed by West Virginia, may apply for a license as a radon tester, mitigation specialist or mitigation contractor by providing the proper supporting documentation and paying the appropriate fee.



**§64-78-11. Records Review.**

All licensees shall afford the director, at all reasonable times, the opportunity to examine records which are required to be maintained by the provisions of this rule.

**§64-78-12. Reprimands, Suspensions or Revocation of Licenses, Orders, Hearings.**

12.1. W. Va. Code §16-34-13 governs reprimands, suspensions or revocations of licenses, orders and hearings.

12.2. Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Division of Health's rule, Rules and Procedures for Contested Hearings and Declaratory Rulings, 64 CSR 1.

**§64-78-13. Penalties.**

13.1. W. Va. Code §16-34-14 governs penalties.

TABLE 64-78 A

LICENSURE FEE SCHEDULE

Type of License	Fee
Radon Contractor License for Renewal	\$ 100
Radon Mitigation Specialist License Or Renewal Fee	100
Radon Testers License or Renewal Fee	50
Radon Laboratory License or Renewal Fee	100
Radon Training Facility License or Renewal Fee	50

64-78

1558

1 Bill-Health, :

H. B. 2551

2

(By Delegates Hunt, Linch, Compton, Faircloth,  
Jenkins and Riggs)

3

4

[Introduced February 1, 1999; referred to the  
Committee on Government Organization then the  
Judiciary.]

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8

9

10 A BILL to amend and reenact section one, article five,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the division of health to promulgate a  
14 legislative rule relating to radon licensure.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section one, article five, chapter sixty-four of  
17 the code of West Virginia, one thousand nine hundred  
18 thirty-one, as amended, be amended and reenacted, to read  
19 as follows:

20 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND**  
21 **HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

22 **§64-5-1. State board of health; division of health.**

23 (a) The legislative rule filed in the state register

1 on the eighteenth day of November, one thousand nine  
2 hundred ninety-six, authorized under the authority of  
3 section three, article thirty-two, chapter sixteen of this  
4 code, modified by the division of health to meet the  
5 objections of the legislative rule-making review committee  
6 and refiled in the state register on the sixteenth day of  
7 December, one thousand nine hundred ninety-seven, relating  
8 to the division of health (asbestos abatement licensing, 64  
9 CSR 63), is authorized.

10 (b) The legislative rule filed in the state register  
11 on the first day of August, one thousand nine hundred  
12 ninety-seven, authorized under the authority of section  
13 eight, article thirty-three, chapter sixteen of this code,  
14 modified by the division of health to meet the objections  
15 of the legislative rule-making review committee and refiled  
16 in the state register on the sixteenth day of December, one  
17 thousand nine hundred ninety-seven, relating to the  
18 division of health (breast and cervical cancer diagnostic  
19 and treatment fund, 64 CSR 69), is authorized.

20 (c) The legislative rule filed in the state register  
21 on the first day of August, one thousand nine hundred  
22 ninety-seven, under the authority of section ten, article  
23 five-j, chapter sixteen of this code, modified by the

1 director of the division of health to meet the objections  
2 of the legislative rule-making review committee and refiled  
3 in the state register on the twenty-third day of January,  
4 one thousand nine hundred ninety-eight, relating to the  
5 division of health (clinical laboratory technician and  
6 technologist licensure and certification, 64 CSR 57), is  
7 authorized.

8 (d) The legislative rule filed in the state register  
9 on the twenty-second day of December, one thousand nine  
10 hundred ninety-seven, authorized under the authority of  
11 section two, article thirteen-c, chapter sixteen of this  
12 code, relating to the division of health (drinking water  
13 treatment revolving fund, 64 CSR 49), is authorized.

14 (e) The legislative rule filed in the state register  
15 on the fourth day of June, one thousand nine hundred  
16 ninety-seven, authorized under the authority of section  
17 seven, article one, chapter sixteen of this code, modified  
18 by the division of health to meet the objections of the  
19 legislative rule-making review committee and refiled in the  
20 state register on the sixteenth day of December, one  
21 thousand nine hundred ninety-seven, relating to the  
22 division of health (sewage systems, 64 CSR 9), is  
23 authorized with the following amendment:

1        On page 7, subsection 5.1. following the sentence  
2 which ends "local health department offices." by inserting  
3 the following: "Provided, That the director shall issue a  
4 permit for the installation of a National Sanitation  
5 Foundation Class I home aeration unit to be installed on a  
6 single family dwelling unit when no other approved system  
7 can be installed."

8        (f) The legislative rule filed in the state register  
9 on the third day of August, one thousand nine hundred  
10 ninety-eight, authorized under the authority of section  
11 six, article thirty-four, chapter sixteen, of this code,  
12 modified by the division of health to meet the objections  
13 of the legislative rule-making review committee and refiled  
14 in the state register on the twentieth day of November, one  
15 thousand nine hundred ninety-eight, relating to the  
16 division of health (radon licensure, 64 CSR 78), is  
17 authorized.

18

19        NOTE: The purpose of this bill is to authorize the  
20 Division of Health to promulgate a legislative rule  
21 relating to Radon Licensure.

22

23        Strike-throughs indicate language that would be  
24 stricken from the present law, and underscoring indicates  
25 new language that would be added.