

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

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

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

6. Testing by tenants; disputed test results. A tenant may conduct a test for the presence of radon in the tenant's dwelling unit in a residential building in conformity with rules adopted by the Department of Health and Human Services or have a test conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165. After receiving notice of a radon test from a tenant indicating the presence of radon at or in excess of 4.0 picocuries per liter of air, either the landlord shall disclose those results as required by subsection 2 or the landlord or other person acting on behalf of the landlord shall have a test conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165 and shall disclose the results of that test to the tenant as required by subsection 2.

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

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

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

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

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

SUMMARY

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

1. Testing remains required by March 1, 2014 and every 10 years thereafter but only upon request by a tenant and only if a mitigation system is not in place.
2. Landlords must disclose testing results prior to renting rather than to all potential tenants. Landlords must also disclose results of a test to existing tenants within 30 days of receiving results.
3. Landlords are authorized to perform radon testing except in certain complex buildings as defined in rules adopted by the Department of Health and Human Services.
4. Landlords are required to test for radon and disclose the results. The requirement in statute to mitigate is eliminated.
5. The disclosure must include the results of the test, the date of the test, that the tenant has the right to test and a reference to where the tenant can get more information about radon. The Department of Health and Human Services is required to modify the standard disclosure statement form to reflect the changes.
6. If a tenant and the landlord get different results for tests, the landlord may hire a professional and disclose the result of the testing performed by the professional. The landlord may also choose to accept the tenant's results.
7. Tenants explicitly have the right to test for radon.

8. Results of testing by a landlord must be reported to the Department of Health and Human Services within 30 days.

9. By November 1, 2013, the Department of Health and Human Services must adopt rules for testing that incorporate existing protocols by reference.

10. The failure of a landlord to disclose test results or the falsification of records by a landlord is considered a breach of the warranty of habitability.

11. If radon test results exceed 4.0 picocuries per liter, a landlord or tenant may terminate the lease with 30 days' notice in accordance with current law. A landlord may not retain a security deposit for a termination based on radon test results.

12. If a landlord brings an action for forcible entry and detainer, a tenant's assertion of rights under the law regarding residential radon testing creates a rebuttable presumption of retaliation against the tenant.