

Date: (Filing No. S- )

VETERANS AND LEGAL AFFAIRS

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE
SENATE
126TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " 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.