

**RADON TESTING FOR HOME PURCHASE**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Aaron Osmond**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts the Radon Testing and Disclosure Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires an owner of a residential building to give a purchaser the following information and disclosures before the purchaser becomes obligated to purchase an interest in the residential building:
  - a copy of a radon hazard information pamphlet, developed by the division; and
  - a written disclosure that states each radon test that has been performed on the residential building within the last 5 years;
- ▶ provides a purchaser of an interest in a residential building no less than 10 days to perform a radon test on the residential building, unless the owner and the purchaser agree to a different time period;
- ▶ requires a real estate purchase contract for the sale of an interest in a residential building to include signed acknowledgments that the owner has complied with the requirements described in this bill;
- ▶ provides a procedure to enforce compliance with the provisions of this bill;
- ▶ allows the division to make rules consistent with the provisions in this bill; and
- ▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **19-1-105**, as last amended by Laws of Utah 2012, Chapter 360

35 **19-3-103.5**, as last amended by Laws of Utah 2012, Chapter 360

36 **19-3-109**, as last amended by Laws of Utah 2013, Chapter 330

37 ENACTS:

38 **57-28-101**, Utah Code Annotated 1953

39 **57-28-102**, Utah Code Annotated 1953

40 **57-28-201**, Utah Code Annotated 1953

41 **57-28-202**, Utah Code Annotated 1953

42 **57-28-203**, Utah Code Annotated 1953

43 **57-28-204**, Utah Code Annotated 1953

44 **57-28-301**, Utah Code Annotated 1953

45 **57-28-302**, Utah Code Annotated 1953

46 **57-28-303**, Utah Code Annotated 1953



48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **19-1-105** is amended to read:

50 **19-1-105. Divisions of department -- Control by division directors.**

51 (1) The following divisions are created within the department:

52 (a) the Division of Air Quality, to administer Title 19, Chapter 2, Air Conservation

53 Act;

54 (b) the Division of Drinking Water, to administer Title 19, Chapter 4, Safe Drinking

55 Water Act;

56 (c) the Division of Environmental Response and Remediation, to administer:

57 (i) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; and

58 (ii) Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

- 59 (d) the Division of Radiation Control, to administer:
- 60 (i) Title 19, Chapter 3, Radiation Control Act; and
- 61 (ii) Title 57, Chapter 28, Radon Testing and Disclosure Act;
- 62 (e) the Division of Solid and Hazardous Waste, to administer:
- 63 (i) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;
- 64 (ii) Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;
- 65 (iii) Title 19, Chapter 6, Part 5, Solid Waste Management Act;
- 66 (iv) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal;
- 67 (v) Title 19, Chapter 6, Part 7, Used Oil Management Act;
- 68 (vi) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act;
- 69 (vii) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act;
- 70 (viii) Title 19, Chapter 6, Part 11, Industrial Byproduct Reuse; and
- 71 (ix) Title 19, Chapter 6, Part 12, Disposal of Electronic Waste Program; and
- 72 (f) the Division of Water Quality, to administer Title 19, Chapter 5, Water Quality Act.

73 (2) Each division is under the immediate direction and control of a division director  
74 appointed by the executive director.

75 (3) (a) A division director shall possess the administrative skills and training necessary  
76 to perform the duties of division director.

77 (b) A division director shall hold one of the following degrees from an accredited  
78 college or university:

- 79 (i) a four-year degree in physical or biological science or engineering;
- 80 (ii) a related degree; or
- 81 (iii) a degree in law.

82 (4) The executive director may remove a division director at will.

83 (5) A division director shall serve as the executive secretary to the policymaking board,  
84 created in Section 19-1-106, that has rulemaking authority over the division director's division.

85 Section 2. Section 19-3-103.5 is amended to read:

86 **19-3-103.5. Board authority and duties.**

87 (1) The board may:

- 88 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
89 Rulemaking Act, that are necessary to implement the provisions of:

- 90 (i) the Radiation Control Act; and
- 91 (ii) Title 57, Chapter 28, Radon Testing and Disclosure Act;
- 92 (b) recommend that the director:
  - 93 (i) issue orders necessary to enforce the provisions of this part;
  - 94 (ii) enforce the orders by appropriate administrative and judicial proceedings; or
  - 95 (iii) institute judicial proceedings to secure compliance with this part;
- 96 (c) (i) hold a hearing that is not an adjudicative proceeding; or
- 97 (ii) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding;
- 98 (d) accept, receive, and administer grants or other funds or gifts from public and
- 99 private agencies, including the federal government, for the purpose of carrying out any of the
- 100 functions of this part; or
- 101 (e) order the director to impound radioactive material in accordance with Section
- 102 19-3-111.
- 103 (2) The board shall:
  - 104 (a) prepare a radioactive waste management plan in compliance with Section 19-3-107
  - 105 as soon as practicable;
  - 106 (b) promote the planning and application of pollution prevention and radioactive waste
  - 107 minimization measures to prevent the unnecessary waste and depletion of natural resources;
  - 108 (c) to ensure compliance with applicable statutes and regulations:
    - 109 (i) review a settlement negotiated by the director in accordance with Subsection
    - 110 19-3-108(3)(b) that requires a civil penalty of \$25,000 or more; and
    - 111 (ii) approve or disapprove the settlement;
    - 112 (d) submit an application to the U.S. Food and Drug Administration for approval as an
    - 113 accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of
    - 114 1992;
    - 115 (e) accredit mammography facilities, pursuant to approval as an accrediting body from
    - 116 the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography
    - 117 Quality Standards Act of 1992; and
    - 118 (f) review the qualifications of, and issue certificates of approval to, individuals who:
      - 119 (i) survey mammography equipment; or
      - 120 (ii) oversee quality assurance practices at mammography facilities.

121 (3) The board may not issue, amend, renew, modify, revoke, or terminate any of the  
122 following that are subject to the authority granted to the director under Section 19-3-108:

- 123 (a) a permit;
- 124 (b) a license;
- 125 (c) a registration;
- 126 (d) a certification; or
- 127 (e) another administrative authorization made by the director.

128 (4) A board member may not speak or act for the board unless the board member is  
129 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

130 Section 3. Section 19-3-109 is amended to read:

131 **19-3-109. Civil penalties -- Appeals.**

132 (1) [A] Except as provided in Subsection (7), a person who violates a provision of this  
133 part, a rule or order issued under the authority of this part, or the terms of a license, permit, or  
134 registration certificate issued under the authority of this part is subject to a civil penalty not to  
135 exceed \$10,000 for each violation.

136 (2) The director may assess and make a demand for payment of a penalty under this  
137 section and may compromise or remit that penalty.

138 (3) In order to make demand for payment of a penalty assessed under this section, the  
139 director shall issue a notice of agency action, specifying, in addition to the requirements for  
140 notices of agency action contained in Title 63G, Chapter 4, Administrative Procedures Act:

- 141 (a) the date, facts, and nature of each act or omission charged;
- 142 (b) the provision of the statute, rule, order, license, permit, or registration certificate  
143 that is alleged to have been violated;
- 144 (c) each penalty that the director proposes to impose, together with the amount and  
145 date of effect of that penalty; and
- 146 (d) that failure to pay the penalty or respond may result in a civil action for collection.

147 (4) A person notified according to Subsection (3) may request an adjudicative  
148 proceeding.

149 (5) Upon request by the director, the attorney general may institute a civil action to  
150 collect a penalty imposed under this section.

151 (6) (a) Except as provided in Subsection (6)(b), the department shall deposit all money

152 collected from civil penalties imposed under this section into the General Fund.

153 (b) The department may reimburse itself and local governments from money collected  
154 from civil penalties for extraordinary expenses incurred in environmental enforcement  
155 activities.

156 (c) The department shall regulate reimbursements by making rules that:

157 (i) define qualifying environmental enforcement activities; and

158 (ii) define qualifying extraordinary expenses.

159 (7) This section does not apply to a violation of, or a rule issued under, Title 57,

160 Chapter 28, Radon Testing and Disclosure Act.

161 Section 4. Section **57-28-101** is enacted to read:

162 **CHAPTER 28. RADON TESTING AND DISCLOSURE ACT**

163 **Part 1. General Provisions**

164 **57-28-101. Title.**

165 (1) This chapter is known as the "Radon Testing and Disclosure Act."

166 (2) This part is known as "General Provisions."

167 Section 5. Section **57-28-102** is enacted to read:

168 **57-28-102. Definitions.**

169 As used in this chapter:

170 (1) "Action level" means the concentration of indoor radon, measured in picocuries per  
171 liter of air, at which the United States Environmental Protection Agency recommends remedial  
172 action to reduce the concentration of radon.

173 (2) "Division" means the Division of Radiation Control, created in Section [19-1-105](#).

174 (3) "Owner" means the holder of a legal or equitable title or interest in real property.

175 (4) "Residential building" means a building or structure, or a portion of a building or  
176 structure, occupied as, or designed or intended for occupancy as, a residence of one or more  
177 individuals.

178 Section 6. Section **57-28-201** is enacted to read:

179 **Part 2. Residential Conveyance Requirements**

180 **57-28-201. Title.**

181 This part is known as "Residential Conveyance Requirements."

182 Section 7. Section **57-28-202** is enacted to read:

183 **57-28-202. Required disclosures.**

184 (1) Before a purchaser is obligated to purchase an interest in a residential building from  
185 an owner, the owner shall:

186 (a) give the purchaser a radon hazard information pamphlet described in Subsection

187 (3);

188 (b) provide the purchaser a reasonable opportunity to review and understand the radon  
189 hazard information pamphlet; and

190 (c) disclose to the purchaser, in writing, each radon test performed on the residential  
191 building within the last five years.

192 (2) For each radon test disclosed under Subsection (1)(c), the written disclosure shall  
193 state:

194 (a) the date that the radon test was performed;

195 (b) the type of test used;

196 (c) the name of the person who performed the test; and

197 (d) the results of the test.

198 (3) The division shall develop and make available to the public a radon hazard  
199 information pamphlet that describes the dangers associated with radon.

200 Section 8. Section **57-28-203** is enacted to read:

201 **57-28-203. Optional radon testing.**

202 (1) Before a purchaser is obligated to purchase an interest in a residential building from  
203 an owner, the owner shall provide the purchaser no less than 10 days to conduct a radon test.

204 (2) The owner and the purchaser may mutually agree to a time period different from  
205 the time period described in Subsection (1).

206 (3) If, during the 10-day period described in Subsection (1) or the time period mutually  
207 agreed to by the owner and the purchaser under Subsection (2), the purchaser learns that the  
208 radon concentration in the residential building is at or above the action level, the purchaser may  
209 revoke any offer, or cancel any agreement, to purchase an interest in the residential building.

210 Section 9. Section **57-28-204** is enacted to read:

211 **57-28-204. Real estate purchase contract -- required contents.**

212 (1) Each contract for the purchase of an interest in a residential building shall contain a  
213 provision, signed by the purchaser, that states that the purchaser has:

- 214 (a) received a radon hazard information pamphlet;
- 215 (b) read the radon hazard information pamphlet;
- 216 (c) understood the contents of the radon hazard information pamphlet; and
- 217 (d) had an opportunity to perform a radon test on the residential building in accordance
- 218 with the requirements described in Section 57-28-203.

219 (2) Except as provided in Subsection 57-28-203(3), nothing in this chapter shall affect  
 220 the validity or enforceability of a sale of an interest in a residential building or a contract to  
 221 purchase an interest in a residential building.

222 Section 10. Section **57-28-301** is enacted to read:

223 **Part 3. Administration and Enforcement**

224 **57-28-301. Title.**

225 This part is known as "Administration and Enforcement."

226 Section 11. Section **57-28-302** is enacted to read:

227 **57-28-302. Rulemaking.**

228 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
 229 consistent with this chapter, the division may make rules governing:

- 230 (1) the content, form, and procedures relating to radon-related disclosures;
- 231 (2) acceptable radon testing; and
- 232 (3) the contents of a real estate purchase contract relating to radon testing and

233 disclosures.

234 Section 12. Section **57-28-303** is enacted to read:

235 **57-28-303. Private action.**

236 (1) A person may file an action in district court to enforce any provision of this chapter.

237 (2) In an action filed under Subsection (1), the court may award costs, including expert  
 238 witness fees, and reasonable attorney fees to the party that commenced the action if the party  
 239 that commenced the action is the prevailing party.