

2019 HOUSE JUDICIARY COMMITTEE

HB 1372

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1372
1/22/2019
31189

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to the required disclosure of radon hazards by a seller.

Minutes:

1,2, 3,4

Chairman Koppelman: Opened the hearing on HB 1372.

Rep. Mary Adams: (Attachment 1 & 2) Read testimony. (:30-2:10)

Opposition: None

Neutral:

Jill Beck, ND Association of Realtors: (Attachment #3) (3:24- 4:17)

Rep. Satrom: How expensive are these tests.

Jill Beck: You can go to Maynard's and get the kits.

Rep. Vetter: The lab results are \$40-\$60.

Rep. Hanson: Dept. of Health offers free radon testing.

Representative Jones: Everybody in your organization are doing them now, but this will mandate disclosure.

Jill Beck: This mandates it. We don't fill it out but the home seller does since they know about their home. We don't want separate forms or environmental issues that could arise.

Representative Jones: So you are OK if the bill was to pass; it won't cause problems with what you are doing already?

Rep. Vetter: So you are neutral?

Jill Beck: We are staying neutral. Yesterday the bill that passed on the floor was the mandatory disclosure we might want that to be killed. We believe this is covered in the property condition disclosure statement that will be mandated.

Rep. Magrum: Is there any way to manipulate a radon test?

Rep. Adams: I had put this bill in and I found out I am a cosigner on the other bill, 1251. I just want to be sure the radon is covered.

Jeanie Prom, Executive Director of ND Real Estate Commission:(Attachment #4) (Went over testimony. (10:24-11:45.) There is special language in HB 1251 that states specific facts that the seller that could affect an ordinary buyers use and enjoyment of the property. You could make this bill amended.

Hearing closed

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1372
1/22/2019
31201

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to the required disclosure of radon hazards by a seller.

Minutes:

Chairman Koppelman: Reopened the meeting on HB 1372.

Do Not Pass Motion Made by Rep. Roers Jones; Seconded by Vice Chairman Karls

Discussion: None

Roll Call: 13 Yes 1 No 0 Absent Carrier: Rep. McWilliams

Closed.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1372**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Roers Jones Seconded By Rep. Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson		X
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. McWilliams

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1372: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1372 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1372

House Bill #1372 Radon Disclosure

Chairman Koppelman and members of the committee

I am Mary Adams Representative from District 43 Grand Forks

I bring before you HB #1372 This bill when passed will require home seller to make a disclosure regarding radon in their homes.

Radon is a colorless, odorless radioactive gas. It forms naturally from the breaking down of radioactive elements, such as uranium, thorium and radium which is found in different amounts in the soil, rock and water.

Radon gas given off by soil and rock can enter buildings through cracks in floors and walls, or gaps in the foundation around pipes, wires and pumps. Thus, radon levels are highest in basements or crawl spaces. Radon also can occur in building materials such as concrete, wallboard and even granite countertops.

According to the EPA, the average indoor radon level is about 1.3 picocuries per liter. The levels of 4.0 picocuries or higher is when homeowners should take action. Being exposed to radon for a long period can lead to lung cancer. Radon is the second leading cause with cigarette smoking being the leading cause, but it is the number one cause among non-smokers.

I have given you information that radon is not such a good thing for humans. I got a little nervous while reading all the data, all my space is in the basement.

HB 1251 was passed yesterday. This is a property disclosure bill that will include radon. HB 1372 would request more information regarding radon levels

With the nature of radon, I would ask that this disclosure be added with its more in-depth questions.

Like the lead-based paint disclosure, the seller(s) state whether they have any knowledge of radon. If they do or did, they state any action they have taken to lower the levels.

If the sellers have no knowledge, the buyers have the option to have the house tested.

Thank you for your time and please vote Do Pass.

Mary Adams

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Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Property Address: _____

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
- (i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

- (ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in housing.
- (b) Records and reports available to the seller (check (i) or (ii) below):
- (i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

- (ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgement (Initial)

- (c) _____ Purchaser has received copies of all information listed above.
- (d) _____ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.
- (e) _____ Purchaser has (check (i) or (ii) below):
- (i) _____ received a 1-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
- (ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgement (initial)

- (f) _____ Agent has informed the seller of the seller's obligations under 42 U.S.C 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller _____ Date _____

Seller _____ Date _____

Agent _____ Date _____

Purchaser _____ Date _____

Purchaser _____ Date _____

Agent _____ Date _____

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RADON DISCLOSURE

Copyright 2013 by Minnesota State Bar Association, Minneapolis, Minnesota. No copyright is claimed for statutory text. BEFORE YOU USE OR SIGN THIS FORM, YOU SHOULD CONSULT WITH A LAWYER TO DETERMINE THAT THIS FORM ADEQUATELY PROTECTS YOUR LEGAL RIGHTS. Minnesota State Bar Association disclaims any liability arising out of use of this form.

This document, dated _____, concerns the real property located at:
[street address] _____
and legally described as: _____

MINNESOTA RADON AWARENESS ACT

Minn. Stat. Section 144.496 (2013)

Subdivision 1. Citation. This section may be cited as the "Minnesota Radon Awareness Act."

Subd. 2. Definitions. (a) The following terms used in this section have the meanings given them.

(b) "Buyer" means a person negotiating or offering to acquire for value, legal or equitable title, or the right to acquire legal or equitable title to residential real property.

(c) "Mitigation" means measures designed to permanently reduce indoor radon concentrations.

(d) "Radon test" means a measurement of indoor radon concentrations according to established industry standards for residential real property.

(e) "Residential real property" means property occupied as, or intended to be occupied as, a single-family residence, including a unit in a common interest community as defined in section 515B.1-103, clause (10), regardless of whether the unit is in a common interest community not subject to chapter 515B.

(f) "Seller" means a person who owns legal or equitable title to residential real property.

(g) "Elevated radon concentration" means a radon concentration at or above the United States Environmental Protection Agency's radon action level.

Subd. 3. Radon disclosure. (a) Before signing an agreement to sell or transfer residential real property, the seller shall disclose in writing to the buyer any knowledge the seller has of radon concentrations in the dwelling. The disclosure shall include:

- (1) whether a radon test or tests have occurred on the real property;
- (2) the most current records and reports pertaining to radon concentrations within the dwelling;
- (3) a description of any radon concentrations, mitigation, or remediation;
- (4) information regarding the radon mitigation system, including system description and documentation, if such system has been installed in the dwelling; and
- (5) a radon warning statement meeting the requirements of subdivision 4.

(b) The seller shall provide the buyer with a copy of the Minnesota Department of Health publication entitled "Radon in Real Estate Transactions."

(c) The seller's radon disclosure requirements in this section apply to the transfer of any interest in residential real estate, whether by sale, exchange, deed, contract for deed, lease with an option to purchase, or any other option.

(d) The seller's radon disclosure requirements in this section do not apply to any of the following:

- (1) real property that is not residential real property;
- (2) a gratuitous transfer;
- (3) a transfer made pursuant to a court order;
- (4) a transfer to a government or governmental agency;
- (5) a transfer by foreclosure or deed in lieu of foreclosure;
- (6) a transfer to heirs or devisees of a decedent;

- (7) a transfer from a cotenant to one or more other cotenants;
- (8) a transfer made to a spouse, parent, grandparent, child, or grandchild of the seller;
- (9) a transfer between spouses resulting from a decree of marriage dissolution or from a property settlement agreement incidental to that decree;
- (10) an option to purchase a unit in a common interest community, until exercised;
- (11) a transfer to a person who controls or is controlled by the grantor as those terms are defined with respect to a declarant under section 515B.1-103, clause (2);
- (12) a transfer to a tenant who is in possession of the residential real property; or
- (13) a transfer of special declarant rights under section 515B.3-104.

(e) A seller may provide the written disclosure required under this section to a real estate licensee representing or assisting a prospective buyer. The written disclosure provided to the real estate licensee representing or assisting a prospective buyer is considered to have been provided to the prospective buyer. If the written disclosure is provided to the real estate licensee representing or assisting the prospective buyer, the real estate licensee must provide a copy to the prospective buyer.

Subd. 4. Radon warning statement. The radon warning statement must include the following language: Radon Warning Statement. "The Minnesota Department of Health strongly recommends that ALL homebuyers have an indoor radon test performed prior to purchase or taking occupancy, and recommends having the radon levels mitigated if elevated radon concentrations are found. Elevated radon concentrations can easily be reduced by a qualified, certified, or licensed, if applicable, radon mitigator."

"Every buyer of any interest in residential real property is notified that the property may present exposure to dangerous levels of indoor radon gas that may place the occupants at risk of developing radon-induced lung cancer. Radon, a Class A human carcinogen, is the leading cause of lung cancer in nonsmokers and the second leading cause overall. The seller of any interest in residential real property is required to provide the buyer with any information on radon test results of the dwelling."

Subd. 5. Liability; transfer not invalidated. (a) A seller who fails to make a radon disclosure as required by this section, and is aware of material facts pertaining to radon concentrations in the dwelling, is liable to the buyer.

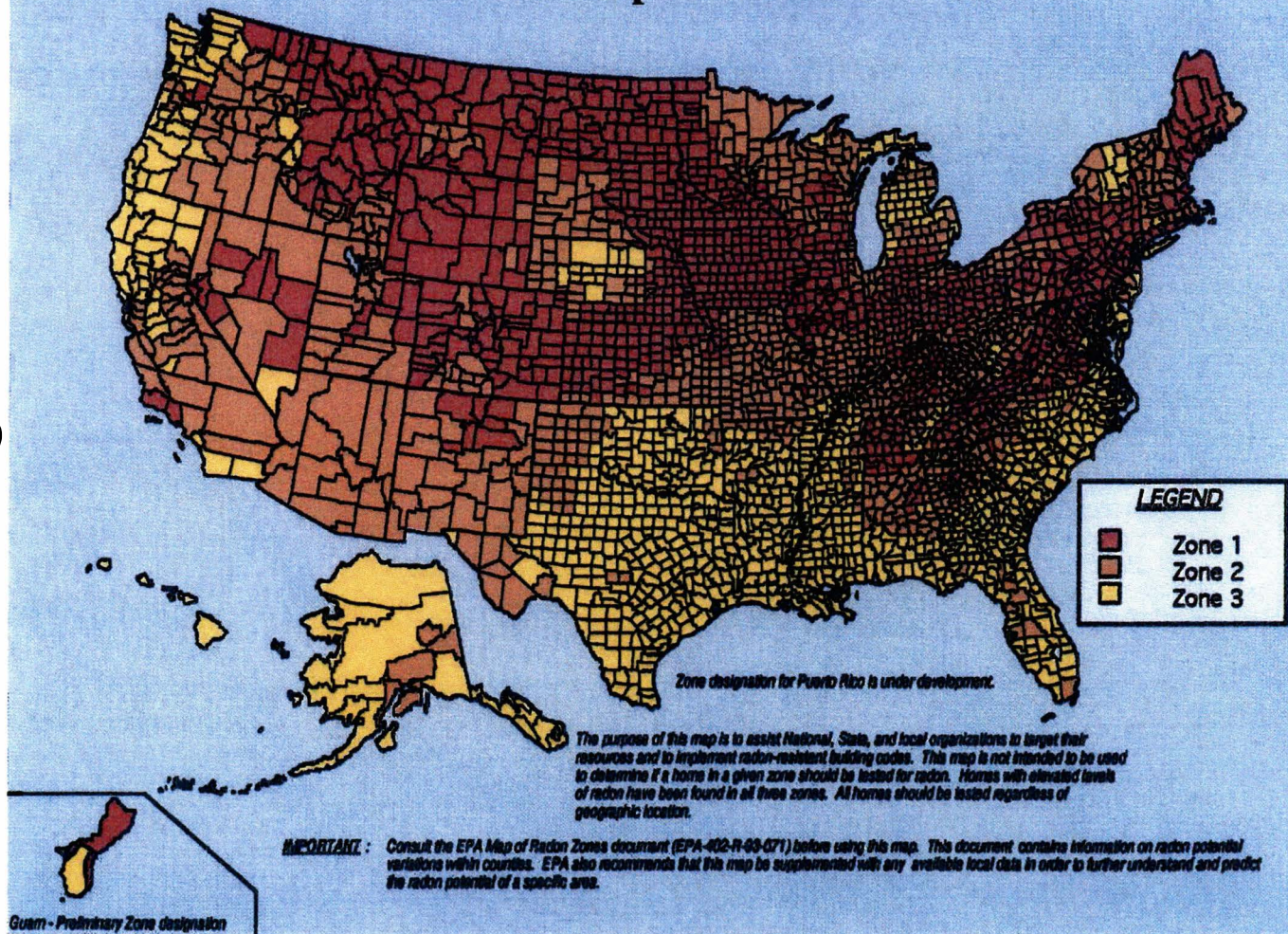
(b) A buyer who is injured by a violation of this section may bring a civil action and recover damages and receive other equitable relief as determined by the court. An action under this subdivision must be commenced within two years after the date on which the buyer closed the purchase or transfer of the real property.

(c) This section does not invalidate a transfer solely because of the failure of any person to comply with a provision of this section. This section does not prevent a court from ordering a rescission of the transfer.

Subd. 6. Effective date. This section is effective January 1, 2014, and applies to agreements to sell or transfer residential real property executed on or after that date.

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rj1

EPA Map of Radon Zones





North Dakota Association of REALTORS®

To advocate for the success of our members in partnership with our local Associations and the National Association of REALTORS®

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RJ 1

Testimony on HB 1372 Radon Disclosure

Chairman Koppelman and members of the Judiciary Committee, my name is Jill Beck and I represent the North Dakota Association of REALTORS®. We have more than 1900 REALTOR® and more than 300 business partner (affiliate) members.

NDAR has not taken a position on this bill, thus I stand before you in a neutral position. Our Government Affairs Committee felt that with the introduction of HB 1251 for mandatory property condition statements, which passed the house yesterday 73 to 15, radon would be one of the items required in this written disclosure and was not sure if this bill would be necessary.

NDAR supports efforts to ensure property owners and prospective property owners are safe and not exposed to health hazards, however, our members already are asking sellers to disclose any radon issues. NDAR is composed of seven local boards of REALTORS®, who each manage a multiple listing service. The MLS provides forms for members of the local board to use in their transactions. Some of the forms are required to be used and some are voluntary. Our members currently use property condition disclosure forms although they are not required, but in talking to our members, it is rare that anyone does not use a seller disclosure form. I do have a copy of each of the seven local board property condition statement forms and each one does ask about radon, some are more specific asking for the concentration levels if there was a presence of radon.

Our preference would be that we could continue to practice as we have been, using the property disclosure forms that already exist and that are being used.

The current practice is that if a seller discloses yes on the condition statement or property disclosure form, the real estate agent representing the potential buyer goes over the form with the buyer, informs him or her about the dangers of radon and what options are available to address any concerns and then it is up to the buyer to determine if they want to make testing and/or mitigation if something is discovered a contingency of the purchase.

I would be happy to attempt to answer any questions.

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Testimony in opposition of House Bill 1372 – required disclosure of radon hazards by a seller of residential property

**Jeanne Prom, Executive Director
North Dakota Real Estate Commission**

**House Judiciary Committee
Representative Kim Koppelman, Chair
10:20 a.m., January 22, 2019**

Good morning, Chairman Koppelman and members of the House Judiciary Committee. I am Jeanne Prom, executive director of the North Dakota Real Estate Commission. The commission licenses real estate practitioners.

The N.D. Real Estate Commission requests a Do Not Pass recommendation on House Bill 1372, as written for the following reasons:

- Radon is a human health hazard, and radon testing is a routine and lawful part of the due diligence of those involved in home sales. HB 1372 is not needed for this practice to continue.
- House Bill 1251, which relates to property disclosure requirements, if also passed by the Senate in its current form, would require disclosure of "...all material facts of which the seller is aware that could adversely and significantly affect an ordinary buyer's use and enjoyment of the property ..." If passed, this language may provide more specificity to current law regarding radon and other disclosures.

Thank you, Chairman Koppelman and members of the House Judiciary Committee for your thoughtful consideration. I am available for your questions.

Members of the North Dakota Real Estate Commission are: Roger Cymbaluk, Chair; Scott Breidenbach, Vice Chair; members: Sandra Meyer, Steven Bitz, Diane Louser. Staff: Jeanne Prom, executive director.