

HOUSE BILL 362

C2

(11r0458)

ENROLLED BILL

— *Economic Matters/Education, Health, and Environmental Affairs* —

Introduced by **Chair, Economic Matters Committee**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Maryland Home Improvement Commission – Sunset Extension and Program**
3 **Evaluation**

4 FOR the purpose of continuing the Maryland Home Improvement Commission in
5 accordance with the provisions of the Maryland Program Evaluation Act (sunset
6 law) by extending to a certain date the termination provisions relating to the
7 statutory and regulatory authority of the Commission; continuing the Maryland
8 Mold Remediation Services Act in accordance with the provisions of the sunset
9 law by extending to a certain date the termination provisions relating to the
10 statutory and regulatory authority of the Commission under the Maryland Mold
11 Remediation Services Act; requiring that an evaluation of the Commission and
12 the statutes and regulations that relate to the Commission and the Maryland
13 Mold Remediation Services Act be performed on or before a certain date;
14 requiring the Commission to submit certain reports about a certain fund to
15 certain committees of the General Assembly under certain circumstances;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 requiring the Commission to publish certain consumer education materials on
2 its Web site; requiring the Commission to develop a certain searchable Web site
3 that includes certain information; altering certain fees; requiring a home
4 improvement contract to contain the telephone number of the contractor;
5 expanding the notice requirements for home improvement contracts; altering
6 certain criminal penalties for certain individuals; authorizing the Commission
7 to issue certain civil citations under certain circumstances; authorizing a
8 certain hearing for civil citations; authorizing the Commission to establish
9 certain violations and fines by regulation; creating a certain separate account
10 within the Home Improvement Guaranty Fund for collection of certain money;
11 specifying the disposition of the money collected as a civil citation; extending
12 the date by which certain companies or firms providing mold remediation must
13 be licensed by the Commission; requiring the Commission to submit a certain
14 report to certain committees of the General Assembly on or before a certain
15 date; and generally relating to the Maryland Home Improvement Commission.

16 BY repealing and reenacting, without amendments,
17 Article – Business Regulation
18 Section 8–101(a), (b), and (e) and 8–707(a)
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2010 Supplement)

21 BY adding to
22 Article – Business Regulation
23 Section 8–215 and 8–216
24 Annotated Code of Maryland
25 (2010 Replacement Volume and 2010 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Business Regulation
28 Section 8–303(a), 8–308(d), 8–312(a), 8–403, 8–501, 8–601(d), 8–620, 8–718, and
29 8–802
30 Annotated Code of Maryland
31 (2010 Replacement Volume and 2010 Supplement)

32 ~~BY repealing and reenacting, without amendments,~~
33 ~~Article – Business Regulation~~
34 ~~Section 8–707(a)~~
35 ~~Annotated Code of Maryland~~
36 ~~(2010 Replacement Volume and 2010 Supplement)~~

37 BY repealing and reenacting, without amendments,
38 Article – State Government
39 Section 8–403(a)
40 Annotated Code of Maryland
41 (2009 Replacement Volume and 2010 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article – State Government
3 Section 8–403(b)(29) and (39)
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2010 Supplement)

6 BY repealing and reenacting, with amendments,
7 Chapter 537 of the Acts of the General Assembly of 2008
8 Section 3

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Business Regulation**

12 **8–101.**

- 13 (a) In this title the following words have the meanings indicated.
14 (b) “Commission” means the Maryland Home Improvement Commission.
15 (e) “Fund” means the Home Improvement Guaranty Fund.

16 **8–215.**

17 **THE COMMISSION SHALL PUBLISH ON ITS WEB SITE CONSUMER**
18 **EDUCATION MATERIALS THAT SPECIFY THE PROTECTIONS AVAILABLE TO**
19 **CONSUMERS THROUGH THE COMMISSION, INCLUDING THE AVAILABILITY OF**
20 **COMPENSATION FROM THE GUARANTY FUND.**

21 **8–216.**

22 **THE COMMISSION SHALL DEVELOP A SEARCHABLE WEB SITE THAT**
23 **INCLUDES A LISTING OF LICENSED CONTRACTORS AND INFORMATION**
24 **RELATING TO ANY FINAL DISCIPLINARY ACTION TAKEN BY THE COMMISSION**
25 **AGAINST A LICENSEE IN EACH LICENSEE’S PROFILE.**

26 **8–303.**

- 27 (a) (1) An applicant for a license shall:
28 (i) submit to the Commission an application on the form that
29 the Commission provides;

1 (ii) submit to the Commission with the license application proof
2 of compliance with the insurance requirement of § 8–302.1 of this subtitle, if the
3 applicant is applying for a contractor license;

4 (iii) pay into the Fund the fee required under § 8–404(a) of this
5 title, if the applicant is applying for a contractor license; and

6 (iv) pay to the Commission an application fee.

7 (2) The application fee:

8 (i) for a contractor license is [~~\$225~~] **\$250** for each place of
9 business of the contractor;

10 (ii) for a subcontractor license is [~~\$125~~] **\$150**; or

11 (iii) for a salesperson license is [~~\$75~~] **\$100**.

12 (3) [To cover the cost of] **THE FEE FOR** processing an application[,
13 \$15 of the application fee is nonrefundable] **IS \$20**.

14 8–308.

15 (d) (1) Before a license expires, the licensee periodically may renew it for
16 an additional 2–year term, if the licensee:

17 (i) otherwise is entitled to be licensed;

18 (ii) submits to the Commission a renewal application on the
19 form that the Commission provides;

20 (iii) submits to the Commission proof of compliance with the
21 insurance requirement of § 8–302.1 of this subtitle, if the licensee is renewing a
22 contractor license;

23 (iv) submits to the Commission the Department of the
24 Environment lead paint abatement accreditation number and accreditation expiration
25 date, if the licensee provides lead paint abatement services; and

26 (v) pays to the Commission a renewal fee.

27 (2) The renewal fee:

28 (i) for a contractor license is [~~\$225~~] **\$250** for each place of
29 business of the contractor;

1 (ii) for a subcontractor license is [~~\$125~~] **\$150**; or

2 (iii) for a salesperson license is [~~\$75~~] **\$100**.

3 (3) Notwithstanding paragraph (2) of this subsection, a licensee that is
4 incorporated or has its principal office in another state shall pay to the Commission
5 the fee imposed in that state on a similar nonresident business if that fee is higher
6 than the renewal fee under paragraph (2) of this subsection.

7 8–312.

8 (a) Except as otherwise provided in § 10–226 of the State Government
9 Article, before the Commission takes any final action under § 8–311 of this subtitle,
10 **OR IF REQUESTED UNDER § 8–620(C) OF THIS TITLE**, it shall give the person
11 against whom the action is contemplated an opportunity for a hearing before the
12 Commission or, as provided under § 8–313 of this subtitle, a hearing board.

13 8–403.

14 (a) The Commission shall:

15 (1) establish a Home Improvement Guaranty Fund; [and]

16 (2) keep the Fund at a level of at least \$250,000; AND

17 **(3) SUBMIT A REPORT DETAILING ACTIONS BEING TAKEN TO**
18 **RESTORE THE BALANCE OF THE FUND TO A SUSTAINABLE LEVEL TO THE**
19 **SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE**
20 **AND THE HOUSE ECONOMIC MATTERS COMMITTEE WITHIN 30 DAYS OF**
21 **PROJECTING THAT THE FUND BALANCE WILL BE LESS THAN \$250,000.**

22 (b) (1) [The] **EXCEPT AS OTHERWISE PROVIDED BY LAW, THE**
23 Commission shall deposit all money collected to the credit of the Fund with the State
24 Treasurer for placement in a special account.

25 **(2) (I) THE COMMISSION SHALL ESTABLISH AND MAINTAIN**
26 **WITHIN THE FUND A SEPARATE ACCOUNT TO BE HELD WITH THE STATE**
27 **TREASURER FOR THE PAYMENT OF NECESSARY EXPENSES FOR EXPERT**
28 **WITNESSES USED TO RESOLVE CLAIMS AGAINST THE FUND.**

29 **(II) ONE–HALF OF THE MONEY COLLECTED UNDER §**
30 **8–620(C) OF THIS TITLE SHALL BE CREDITED TO THE ACCOUNT ESTABLISHED IN**
31 **SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

1 **(III) ONE-HALF OF THE MONEY COLLECTED UNDER §**
2 **8-620(C) OF THIS TITLE SHALL BE CREDITED TO THE GENERAL FUND OF THE**
3 **STATE.**

4 **[(2)](3)** (i) The State Treasurer shall invest the money in the
5 Fund in the same way that money in the State Retirement and Pension System is
6 invested.

7 (ii) Investment earnings shall be credited to the Fund.

8 (c) The Commission shall administer the Fund in accordance with this
9 subtitle.

10 8-501.

11 (a) A home improvement contract that does not comply with this section is
12 not invalid merely because of noncompliance.

13 (b) Each home improvement contract shall:

14 (1) be in writing and legible;

15 (2) describe clearly each document that it incorporates; and

16 (3) be signed by each party to the home improvement contract.

17 (c) (1) In addition to any other matters on which the parties lawfully
18 agree, each home improvement contract shall contain:

19 (i) the name, address, TELEPHONE NUMBER, and license
20 number of the contractor;

21 (ii) the name and license number of each salesperson who
22 solicited the home improvement contract or sold the home improvement;

23 (iii) the approximate dates when the performance of the home
24 improvement will begin and when it will be substantially completed;

25 (iv) a description of the home improvement to be performed and
26 the materials to be used;

27 (v) the agreed consideration;

28 (vi) the number of monthly payments and the amount of each
29 payment, including any finance charge;

1 (vii) a description of any collateral security for the obligation of
2 the owner under the home improvement contract; [and]

3 (viii) a notice that gives the telephone number AND WEB SITE of
4 the Commission and states that:

5 1. each contractor and each subcontractor must be
6 licensed by the Commission; and

7 2. anyone may ask the Commission about a contractor or
8 subcontractor; AND

9 (IX) A NOTICE SET BY THE COMMISSION BY REGULATION
10 THAT:

11 1. SPECIFIES THE PROTECTIONS AVAILABLE TO
12 CONSUMERS THROUGH THE COMMISSION; AND

13 2. ADVISES THE CONSUMER OF THE RIGHT TO
14 PURCHASE A PERFORMANCE BOND FOR ADDITIONAL PROTECTION AGAINST
15 LOSS.

16 (2) If payment for work performed under the home improvement
17 contract will be secured by an interest in residential real estate, a written notice in not
18 smaller than 10 point bold type that is on the first page of the contract shall state in
19 substantially the following form: "This contract creates a mortgage or lien against your
20 property to secure payment and may cause a loss of your property if you fail to pay the
21 amount agreed upon. You have the right to consult an attorney. You have the right to
22 rescind this contract within 3 business days after the date you sign it by notifying the
23 contractor in writing that you are rescinding the contract."

24 (3) The notice under paragraph (2) of this subsection shall be
25 independently initialed by the homeowner.

26 (d) Before the performance of a home improvement begins, the owner shall
27 be given a copy of the home improvement contract signed by the contractor.

28 (e) A salesperson or other agent or employee of a contractor may not make a
29 change in a home improvement contract for an owner.

30 8-601.

31 (d) A person who violates this section is guilty of a misdemeanor and, on first
32 conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding [30
33 days] 6 MONTHS or both and, on a second or subsequent conviction, is subject to a fine
34 not exceeding \$5,000 or imprisonment not exceeding 2 years or both.

1 8-620.

2 (a) The Commission may impose on a person who violates this title,
3 including § 8-607(4) of this subtitle, a civil penalty not exceeding \$5,000 for each
4 violation, whether or not the person is licensed under this title.

5 (b) In setting the amount of a civil penalty, the Commission shall consider:

6 (1) the seriousness of the violation;

7 (2) the good faith of the violator;

8 (3) any previous violations;

9 (4) the harmful effect of the violation on the complainant, the public,
10 and the business of home improvement;

11 (5) the assets of the violator; and

12 (6) any other relevant factors.

13 (c) (1) **THE COMMISSION MAY ESTABLISH BY REGULATION A**
14 **SCHEDULE OF VIOLATIONS AND FINES TO BE USED FOR CIVIL CITATIONS ISSUED**
15 **UNDER THIS TITLE.**

16 (2) **A CITATION ISSUED BY THE COMMISSION SHALL INCLUDE:**

17 (i) **THE NAME AND ADDRESS OF THE PERSON CHARGED;**

18 (ii) **THE NATURE OF THE VIOLATION;**

19 (iii) **THE LOCATION AND TIME OF THE VIOLATION;**

20 (iv) **THE AMOUNT OF THE FINE;**

21 (v) **THE MANNER, LOCATION, AND TIME IN WHICH THE FINE**
22 **MAY BE PAID;**

23 (vi) **THE CITED PERSON'S RIGHT TO A HEARING FOR THE**
24 **VIOLATION; AND**

25 (vii) **A WARNING THAT FAILURE TO PAY THE FINE OR TO**
26 **CONTEST LIABILITY IN A TIMELY MANNER IN ACCORDANCE WITH THE CITATION;**

1 **1. IS AN ADMISSION OF LIABILITY; AND**

2 **2. MAY RESULT IN AN ENTRY OF A DEFAULT**
 3 **JUDGMENT THAT MAY INCLUDE THE FINE, COURT COSTS, AND ADMINISTRATIVE**
 4 **EXPENSES.**

5 **(3) THE COMMISSION SHALL RETAIN A COPY OF THE CITATION.**

6 **(4) ALL MONEY COLLECTED UNDER THIS SUBSECTION SHALL BE**
 7 **PAID IN ACCORDANCE WITH § 8-403(B) OF THIS TITLE.**

8 8-707.

9 (a) Except as otherwise provided in this subtitle, a company or firm shall be
 10 licensed by the Commission before the company or firm provides mold remediation
 11 services in the State.

12 8-718.

13 Subject to the evaluation and reestablishment provisions of the Maryland
 14 Program Evaluation Act, this subtitle and all regulations adopted under this subtitle
 15 shall terminate and be of no effect after July 1, **[2016] 2019.**

16 8-802.

17 Subject to the evaluation and reestablishment provisions of the Maryland
 18 Program Evaluation Act, this title and all regulations adopted under this title shall
 19 terminate on **[October 1, 2012] JULY 1, 2022.**

20 **Article – State Government**

21 8-403.

22 (a) On or before December 15 of the 2nd year before the evaluation date of a
 23 governmental activity or unit, the Legislative Policy Committee, based on a
 24 preliminary evaluation, may waive as unnecessary the evaluation required under this
 25 section.

26 (b) Except as otherwise provided in subsection (a) of this section, on or before
 27 the evaluation date for the following governmental activities or units, an evaluation
 28 shall be made of the following governmental activities or units and the statutes and
 29 regulations that relate to the governmental activities or units:

30 (29) Home Improvement Commission, Maryland (§ 8-201 of the
 31 Business Regulation Article: July 1, **[2011] 2021**);

1 (39) mold remediation services, licensing and regulation of (§ 8–701 of
2 the Business Regulation Article: July 1, [2015] **2018**);

3 **Chapter 537 of the Acts of 2008**

4 SECTION 3. AND BE IT FURTHER ENACTED, That on or before [June 1,
5 2010] **JULY 1, 2013**, a company or firm providing mold remediation services shall be
6 licensed by the Maryland Home Improvement Commission, subject to the qualification
7 and application requirements of this Act.

8 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,
9 2012, the Maryland Home Improvement Commission shall submit a report to the
10 Senate Education, Health, and Environmental Affairs Committee and the House
11 Economic Matters Committee, in accordance with § 2–1246 of the State Government
12 Article, on the implementation of nonstatutory recommendations contained in the
13 Sunset Review: Evaluation of the Maryland Home Improvement Commission
14 conducted by the Department of Legislative Services, specifically:

15 (1) the implementation of multiple licensing levels, in order to:

16 (i) encourage ease of access into the industry;

17 (ii) facilitate upward mobility for licensees to accept larger
18 projects based on experience and capital;

19 (iii) limit the size of projects that inexperienced contractors may
20 accept;

21 (iv) reserve use of the Home Improvement Guaranty Fund for
22 claims against new entry–level licensees; and

23 (v) require surety bonds for licensees in the upper tiers;

24 (2) a summary of efforts taken to reduce the investigation and
25 processing times for claims referred to the Office of Administrative Hearings;

26 (3) the advisability of a requirement for the posting of a performance
27 bond for all licensees, and if advisable, in what amounts, and triggered by what price
28 contracts;

29 (4) a plan for facilitating better communication between licensees and
30 consumers relating to contract performance completion dates;

31 ~~(3)~~ (5) data regarding the number of Fund claims settled through
32 mediation; and

1 ~~(4)~~ (6) any changes in the number of Fund claims filed and whether or not
2 the average time to resolve Fund claims decreased after implementing certain
3 measures.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 July 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.