

# HOUSE BILL 352

C2

3lr0084

---

By: **Chair, Economic Matters Committee (By Request – Departmental – Labor, Licensing and Regulation)**

Introduced and read first time: January 25, 2013

Assigned to: Economic Matters

---

## A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration**  
3 **Contractors – Civil Penalties – Citation Authority**

4 FOR the purpose of clarifying the authority of the State Board of Heating, Ventilation,  
5 Air-Conditioning, and Refrigeration Contractors to impose a certain civil  
6 penalty on a person, whether or not the person is licensed by the Board;  
7 authorizing an investigator employed by the Department of Labor, Licensing,  
8 and Regulation to issue on behalf of the Board a civil citation for a violation of  
9 certain laws or regulations; authorizing the Board to establish by regulation a  
10 certain schedule of violations and fines to be used for civil citations; requiring a  
11 civil citation to include certain information; authorizing a certain hearing for  
12 civil citations; requiring the Board to retain a copy of the citation; and generally  
13 relating to civil penalties and citation authority of the State Board of Heating,  
14 Ventilation, Air-Conditioning, and Refrigeration Contractors.

15 BY repealing and reenacting, with amendments,  
16 Article – Business Regulation  
17 Section 9A-505  
18 Annotated Code of Maryland  
19 (2010 Replacement Volume and 2012 Supplement)

20 BY adding to  
21 Article – Business Regulation  
22 Section 9A-505.1  
23 Annotated Code of Maryland  
24 (2010 Replacement Volume and 2012 Supplement)

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

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Business Regulation**

2 9A–505.

3 (a) (1) In this section, “officer” includes a superintendent, manager, or  
4 agent of a corporation regardless of whether the corporation provides heating,  
5 ventilation, air–conditioning, or refrigeration services.

6 (2) Any person, including an officer, who violates § 9A–501, § 9A–502,  
7 § 9A–503, or § 9A–504 of this subtitle is guilty of a misdemeanor, and on conviction is  
8 subject to a fine not exceeding \$1,000 or imprisonment not exceeding 6 months or both  
9 and, on a second or subsequent conviction, subject to a fine not exceeding \$5,000 or  
10 imprisonment not exceeding 2 years or both.

11 (b) Any person who violates any provision of § 9A–402 of this title is guilty of  
12 a misdemeanor, and on conviction is subject to a fine not exceeding \$1,000 or  
13 imprisonment not exceeding 6 months or both.

14 [(c) (1) Except as otherwise provided by this title, the Board may impose  
15 on a person who violates any provision of this title a penalty not exceeding \$5,000 for  
16 each violation.

17 (2) In setting the amount of the penalty, the Board shall consider:

18 (i) the seriousness of the violation;

19 (ii) the harm caused by the violation;

20 (iii) the good faith of the violator;

21 (iv) any history of previous violations by the violator; and

22 (v) any other relevant factors.

23 (3) The Board shall pay any penalty collected under this subsection  
24 into the General Fund of the State.]

25 **9A–505.1.**

26 **(A) EXCEPT AS OTHERWISE PROVIDED BY THIS TITLE, THE BOARD MAY**  
27 **IMPOSE ON A PERSON WHO VIOLATES THIS TITLE A CIVIL PENALTY NOT**  
28 **EXCEEDING \$5,000 FOR EACH VIOLATION, WHETHER OR NOT THE PERSON IS**  
29 **LICENSED UNDER THIS TITLE.**

30 **(B) IN SETTING THE AMOUNT OF A CIVIL PENALTY, THE BOARD SHALL**  
31 **CONSIDER:**

- 1           (1)    THE SERIOUSNESS OF THE VIOLATION;
- 2           (2)    THE GOOD FAITH OF THE VIOLATOR;
- 3           (3)    ANY PREVIOUS VIOLATIONS;
- 4           (4)    THE HARMFUL EFFECT OF THE VIOLATION ON THE  
5 COMPLAINANT, THE PUBLIC, AND THE BUSINESS OF PROVIDING HEATING,  
6 VENTILATION, AIR-CONDITIONING, OR REFRIGERATION SERVICES;
- 7           (5)    THE ASSETS OF THE VIOLATOR; AND
- 8           (6)    ANY OTHER RELEVANT FACTORS.

9           (C)    AN INVESTIGATOR EMPLOYED BY THE DEPARTMENT WHO  
10 DETERMINES THAT AN INDIVIDUAL HAS VIOLATED THIS TITLE OR A  
11 REGULATION ADOPTED UNDER THIS TITLE, WHETHER OR NOT THE INDIVIDUAL  
12 IS LICENSED UNDER THIS TITLE, MAY ISSUE A CIVIL CITATION TO THE  
13 INDIVIDUAL ON BEHALF OF THE BOARD.

14           (D)   (1)   THE BOARD MAY ESTABLISH BY REGULATION A SCHEDULE OF  
15 VIOLATIONS AND FINES TO BE USED FOR CIVIL CITATIONS ISSUED UNDER THIS  
16 TITLE.

17                   (2)    A CITATION SHALL INCLUDE:

18                           (I)    THE NAME AND ADDRESS OF THE PERSON CHARGED;

19                           (II)   THE NATURE OF THE VIOLATION;

20                           (III)   THE LOCATION AND TIME OF THE VIOLATION;

21                           (IV)   THE AMOUNT OF THE FINE;

22                           (V)    THE MANNER, LOCATION, AND TIME IN WHICH THE FINE  
23 MAY BE PAID;

24                           (VI)   THE CITED PERSON'S RIGHT TO A HEARING FOR THE  
25 VIOLATION; AND

26                           (VII) A WARNING THAT FAILURE TO PAY THE FINE OR TO  
27 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 BOARD SHALL RETAIN A COPY OF THE CITATION.**

6                                   **(E)    THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS**  
7 **SECTION INTO THE GENERAL FUND OF THE STATE.**

8                                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2013.