
By: **Chairman, Economic Matters Committee (Departmental - Labor,
Licensing and Regulation)**

Introduced and read first time: January 27, 1999

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Business Occupations, Professions, and Regulation - Boards - Authority to**
3 **Impose Civil Penalties**

4 FOR the purpose of authorizing the State Board of Public Accountancy, State Board of
5 Barbers, State Board of Cosmetologists, and State Board of Heating,
6 Ventilation, Air-Conditioning, and Refrigeration Contractors to assess certain
7 civil penalties under certain circumstances; and generally relating to the
8 authority of certain licensing boards to impose penalties.

9 BY repealing and reenacting, with amendments,
10 Article - Business Occupations and Professions
11 Section 2-315, 2-605, 4-607, and 5-609
12 Annotated Code of Maryland
13 (1995 Replacement Volume and 1998 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Business Regulation
16 Section 9A-310
17 Annotated Code of Maryland
18 (1998 Replacement Volume)

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

21 **Article - Business Occupations and Professions**

22 2-315.

23 (a) Subject to the hearing provisions of § 2-317 of this subtitle, the Board, on
24 the affirmative vote of a majority of its members, may deny a license to any applicant,
25 reprimand any licensee, or suspend or revoke a license if the applicant or licensee:

26 (1) fraudulently or deceptively obtains or attempts to obtain a license for
27 the applicant or licensee or for another;

- 1 (2) fraudulently or deceptively uses a license;
- 2 (3) under the laws of the United States or of any state, is convicted of:
- 3 (i) a felony; or
- 4 (ii) a misdemeanor that is directly related to the fitness and
5 qualification of the applicant or licensee to practice certified public accountancy;
- 6 (4) is guilty of fraud or other dishonesty in the practice of accountancy;
- 7 (5) is guilty of gross negligence in the practice of accountancy;
- 8 (6) violates any provision of Subtitle 6 of this title;
- 9 (7) has had the right to practice as a certified public accountant in
10 another state denied, revoked, or suspended or has had the renewal of that right
11 denied for any cause other than failure to pay a renewal fee;
- 12 (8) has had the right to practice as a certified public accountant before
13 any unit of the State or federal government revoked or suspended; or
- 14 (9) violates a rule of professional conduct adopted by the Board.

15 (b) The Board shall consider the following facts in the granting, denial,
16 renewal, suspension, or revocation of a license or the reprimand of a licensee when an
17 applicant or licensee is convicted of a felony or misdemeanor described in subsection
18 (a)(3) of this section:

- 19 (1) the nature of the crime;
- 20 (2) the relationship of the crime to the activities authorized by the
21 license;
- 22 (3) with respect to a felony, the relevance of the conviction to the fitness
23 and qualification of the applicant or licensee to practice certified public accountancy;
- 24 (4) the length of time since the conviction; and
- 25 (5) the behavior and activities of the applicant or licensee before and
26 after the conviction.

27 (c) On suspension or revocation of a license, the holder shall surrender to the
28 Board the license certificate of the holder.

29 (d) At the end of a suspension period, the Board shall return to the licensee
30 the license certificate surrendered under this section.

31 (E) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTIES UNDER THIS
32 TITLE, THE BOARD MAY IMPOSE A PENALTY NOT EXCEEDING \$1,000 FOR EACH
33 VIOLATION UNDER SUBSECTION (A) OF THIS SECTION.

1 (2) TO DETERMINE THE AMOUNT OF THE PENALTY IMPOSED UNDER
2 THIS SUBSECTION, THE BOARD SHALL CONSIDER:

- 3 (I) THE SERIOUSNESS OF THE VIOLATION;
4 (II) THE HARM CAUSED BY THE VIOLATION;
5 (III) THE GOOD FAITH OF THE LICENSEE; AND
6 (IV) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE LICENSEE.

7 (3) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS
8 SUBSECTION INTO THE GENERAL FUND OF THE STATE.

9 2-605.

10 (A) A person who violates any provision of this subtitle is guilty of a
11 misdemeanor and on conviction is subject to a fine not exceeding \$500 or
12 imprisonment not exceeding 6 months or both.

13 (B) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTIES UNDER THIS
14 TITLE, THE BOARD MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH
15 VIOLATION UNDER THIS SUBTITLE.

16 (2) TO DETERMINE THE AMOUNT OF THE PENALTY IMPOSED UNDER
17 THIS SUBSECTION, 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;
22 AND
23 (V) ANY OTHER RELEVANT FACTORS.

24 (3) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS
25 SUBSECTION INTO THE GENERAL FUND OF THE STATE.

26 4-607.

27 (A) A person who violates any provision of this title is guilty of a misdemeanor
28 and on conviction is subject to a fine not exceeding \$100 or imprisonment not
29 exceeding 30 days or both.

30 (B) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTIES UNDER THIS
31 TITLE, THE BOARD MAY IMPOSE A CIVIL PENALTY ON A PERSON WHO VIOLATES §
32 4-601, § 4-602, OR § 4-603 OF THIS SUBTITLE IN AN AMOUNT NOT EXCEEDING \$1,000
33 FOR ALL VIOLATIONS CITED ON A SINGLE DAY.

1 (2) IN SETTING THE AMOUNT OF A CIVIL PENALTY, THE BOARD SHALL
2 CONSIDER:

- 3 (I) THE SERIOUSNESS OF THE VIOLATION;
- 4 (II) THE HARM CAUSED BY THE VIOLATION;
- 5 (III) THE GOOD FAITH OF THE VIOLATOR;
- 6 (IV) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE VIOLATOR;
- 7 AND
- 8 (V) ANY OTHER RELEVANT FACTORS.

9 (3) IF AN UNLICENSED PERSON FAILS TO PAY A CIVIL PENALTY WITHIN
10 30 DAYS OF ITS IMPOSITION BY THE BOARD, THE MATTER SHALL BE FORWARDED TO
11 THE CENTRAL COLLECTION UNIT IN THE DEPARTMENT OF BUDGET AND
12 MANAGEMENT FOR THE COLLECTION OF THE CIVIL PENALTY.

13 (4) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS
14 SUBSECTION INTO THE GENERAL FUND OF THE STATE.

15 5-609.

16 (A) A person who violates any provision of this title is guilty of a misdemeanor
17 and on conviction is subject to a fine not exceeding \$100 or imprisonment not
18 exceeding 30 days or both.

19 (B) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTIES UNDER THIS
20 TITLE, THE BOARD MAY IMPOSE A CIVIL PENALTY ON A PERSON WHO VIOLATES §
21 5-601, § 5-602, OR § 5-603 OF THIS SUBTITLE IN AN AMOUNT NOT EXCEEDING \$1,000
22 FOR ALL VIOLATIONS CITED ON A SINGLE DAY.

23 (2) IN SETTING THE AMOUNT OF A CIVIL PENALTY, THE BOARD SHALL
24 CONSIDER:

- 25 (I) THE SERIOUSNESS OF THE VIOLATION;
- 26 (II) THE HARM CAUSED BY THE VIOLATION;
- 27 (III) THE GOOD FAITH OF THE VIOLATOR;
- 28 (IV) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE VIOLATOR;
- 29 AND
- 30 (V) ANY OTHER RELEVANT FACTORS.

31 (3) IF AN UNLICENSED PERSON FAILS TO PAY A CIVIL PENALTY WITHIN
32 30 DAYS OF ITS IMPOSITION BY THE BOARD, THE MATTER SHALL BE FORWARDED TO
33 THE CENTRAL COLLECTION UNIT IN THE DEPARTMENT OF BUDGET AND
34 MANAGEMENT FOR THE COLLECTION OF THE CIVIL PENALTY.

1 (4) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS
2 SUBSECTION INTO THE GENERAL FUND OF THE STATE.

3 **Article - Business Regulation**

4 9A-310.

5 (a) The Board may deny a license to any applicant, reprimand any licensee, or
6 suspend or revoke a license after a public hearing conducted in accordance with the
7 provisions of § 9A-311 of this [title] SUBTITLE, if the Board finds that the individual:

8 (1) obtained a license by false or fraudulent representation;

9 (2) transferred the authority granted by the license to another person;

10 (3) willfully or deliberately disregarded and violated the code established
11 by the Board under this title;

12 (4) willfully or deliberately disregarded and violated building codes,
13 electrical codes, or laws of the State or of any municipality, city, or county of the State;

14 (5) under the laws of the United States or of any state, is convicted of:

15 (i) a felony; or

16 (ii) a misdemeanor that is directly related to the fitness and
17 qualification of the applicant or licensee to provide heating, ventilation,
18 air-conditioning, or refrigeration services;

19 (6) aided or abetted a person to evade a provision of this title by allowing
20 a license to be used by an unlicensed person, firm, or corporation;

21 (7) willfully or deliberately disregarded disciplinary action taken by a
22 municipality, city, or county against the individual in connection with providing
23 heating, ventilation, air-conditioning, or refrigeration services;

24 (8) abandoned or failed to perform, without justification, any contract or
25 project to provide heating, ventilation, air-conditioning, or refrigeration services;

26 (9) performed work under a heating, ventilation, air-conditioning, or
27 refrigeration services contract or project that is inadequate or incomplete;

28 (10) directly or indirectly published any advertisement relating to the
29 providing of heating, ventilation, air-conditioning, or refrigeration services that
30 contained an insertion, representation, or statement of fact that is false, deceptive, or
31 misleading;

32 (11) made any material misrepresentation in the procurement of a
33 heating, ventilation, air-conditioning, or refrigeration services contract or project; or

1 (12) failed in any material respect to comply with the provisions of this
2 title.

3 (b) The Board shall consider the following facts in the granting, denial,
4 renewal, suspension, or revocation of a license or the reprimand of a licensee when an
5 applicant or licensee is convicted of a felony or misdemeanor described in subsection
6 (a)(5) of this section:

7 (1) the nature of the crime;

8 (2) the relationship of the crime to the activities authorized by the
9 license;

10 (3) with respect to a felony, the relevance of the conviction to the fitness
11 and qualification of the applicant or licensee to provide heating, ventilation,
12 air-conditioning, and refrigeration services;

13 (4) the length of time since the conviction; and

14 (5) the behavior and activities of the applicant or licensee before and
15 after the conviction.

16 (C) (1) INSTEAD OF OR IN ADDITION TO ANY OTHER PENALTIES UNDER THIS
17 TITLE, THE BOARD MAY IMPOSE A PENALTY NOT EXCEEDING \$1,000 FOR EACH
18 VIOLATION UNDER SUBSECTION (A) OF THIS SECTION.

19 (2) TO DETERMINE THE AMOUNT OF THE PENALTY IMPOSED UNDER
20 THIS SUBSECTION, THE BOARD SHALL CONSIDER:

21 (I) THE SERIOUSNESS OF THE VIOLATION;

22 (II) THE HARM CAUSED BY THE VIOLATION;

23 (III) THE GOOD FAITH OF THE LICENSEE; AND

24 (IV) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE LICENSEE.

25 (3) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS
26 SUBSECTION INTO THE GENERAL FUND OF THE STATE.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect October 1, 1999.