

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 88 (Chairman, Economic Matters Committee)
(Departmental – Labor, Licensing, and Regulation)
Economic Matters Economic and Environmental Affairs

**Department of Labor, Licensing, and Regulation - Occupational and
Professional Licensing Boards and Commissions - Penalties and Disciplinary
Grounds**

This departmental bill expands and/or grants the authority to a variety of occupational and professional boards of the Department of Labor, Licensing, and Regulation (DLLR) to impose civil penalty fines on both licensees and nonlicensees who violate the licensing law.

The bill also expands the State Board of Plumbing's and the State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractor's authority to take disciplinary actions against licensees.

Fiscal Summary

State Effect: General fund revenue increase of up to \$75,000 annually due to the bill's civil penalty provision. General fund expenditure increase of up to \$15,000 annually due to an expected increase in the number of administrative hearings.

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing, and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill *expands* the authority of seven, and *grants* authority to six, occupational and professional licensing boards and commissions to impose civil penalties on licensees for violating any provision of the licensing law.

The bill also *grants* authority to 15 occupational and professional licensing boards and commissions to impose civil penalties on nonlicensees for practicing without a license.

The bill also expands the grounds for which the State Board of Plumbing and the State Board of Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors may take disciplinary actions against a licensee. The bill allows these boards to take action if a licensee performs services or knowingly allows another licensee to perform services outside the scope of that license.

The bill does not change the current law criminal penalties a court may impose.

Exhibit 1 summarizes the penalties under current law and the bill's changes for both licensees and nonlicensees:

Exhibit 1

Board or <u>Commission</u>	Current Law Civil Penalty on <u>Licensees</u>	House Bill 88 Civil Penalty on <u>Licensees</u>	Current Law Criminal Penalty <u>on Nonlicensees</u>	House Bill 88 Civil Penalty on <u>Nonlicensees</u>
Accountants	No penalty	\$5,000/violation	No penalty	\$5,000/violation
Architects	\$1,000/violation	\$5,000/violation	\$1,000/violation	\$5,000/violation
Barbers	\$300/day for all violations	No change	No penalty	\$1,000/day for all violations
Cosmetologists	\$300/day for all violations	No change	No penalty	\$1,000/day for all violations
Foresters	No penalty	\$5,000/violation	No penalty	\$5,000/violation

<u>Board or Commission</u>	<u>Current Law Civil Penalty on Licensees</u>	<u>House Bill 88 Civil Penalty on Licensees</u>	<u>Current Law Criminal Penalty on Nonlicensees</u>	<u>House Bill 88 Civil Penalty on Nonlicensees</u>
Interior Designers	No penalty	\$5,000/violation	No penalty	\$5,000/violation
Landscape Architects	\$1,000/violation	\$5,000/violation	\$1,000/violation	\$5,000/violation
Plumbing	No penalty	\$5,000/violation	\$1,000/violation	\$5,000/violation
Professional Engineers	\$1,000/violation	\$5,000/violation	\$1,000/violation	\$5,000/violation
Land Surveyors	\$1,000/violation	\$5,000/violation	\$1,000/violation	\$5,000/violation
Real Estate Appraisers	\$5,000	\$5,000/violation	No penalty	\$5,000/violation
Real Estate Brokers	\$2,000/violation	\$5,000/violation	No penalty	\$5,000/violation
Athletic	\$2,000/violation	\$5,000/violation	No penalty	\$5,000/violation
HVACR	No penalty	\$5,000/violation	No penalty	\$5,000/violation
Precious Metals	No penalty	\$5,000/violation	No penalty	\$5,000/violation

Current Law: The penalty provisions are summarized in Exhibit 1 above.

Most of the boards have authority to impose a civil penalty on a licensee for acts violating the relevant title. The boards with no civil penalty authority must take any licensee violator to court to obtain any punishment. All “practicing without a license” violators must be taken to District Court and all boards also have the *option* of taking a licensee to court. The criminal penalties include fines ranging from \$100 to \$5,000 and/or up to six months imprisonment.

The occupational and professional boards not affected by the bill (the Home Improvement Commission, the State Board of Master Electricians, the State Board of Pilots, the State Board of Docking Masters, and the Office of Cemetery Oversight) have civil penalty fines ranging from \$0 to \$3,000.

The State Board of Plumbing and the State Board Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors are authorized to deny or suspend a professional's license if the individual has engaged in one or more of the following: deceptively or fraudulently obtaining or using a professional license; negligence, incompetence, or violating State and/or local plumbing codes; a misdemeanor conviction related to professional duties or any felony; using unfair or deceptive trade practices; failing to train and adequately control a subordinate; or failing to maintain proper liability insurance.

Background: DLLR advises that the boards that must or choose to use the court system to penalize violators have found that this authority is virtually useless in accomplishing its intended goal: to deter unprofessional, unethical, and criminal behavior in the regulated occupations and professions. The main reason cited for this failure is that State's Attorneys are reluctant to pursue these cases because the offenses are often considered minor. With the heavy caseloads many State's Attorney's offices have, these cases are often dropped and never prosecuted.

In addition to the prosecutorial issues, there has also been a general effort to standardize all the occupational and professional boards. A House workgroup that studied the feasibility of increasing the uniformity among the State's occupational and professional licensing boards found that the civil penalty authority was an area that could be made more uniform. The current civil penalty schedule for the various occupational and professional boards is inconsistent, with penalties ranging from no fine for any offense (interior designers) to a \$2,000 fine per violation (real estate brokers).

The retention of the criminal provisions in the bill give DLLR, in conjunction with the appropriate board to which any initial complaints would be brought, the option of taking a violator to court. But, given that the current remedies available through the judicial system have not been satisfactory to DLLR, it is unlikely that many cases would be taken to court.

The bill attempts to create uniformity in the civil penalty provisions amongst the occupational and professional boards as well as increase the fines to the point that they serve as an effective deterrent against undesirable behavior.

State Fiscal Effect: Based on experience, DLLR estimates that there will be 20 additional fines imposed on licensees annually. Based on a historical 75% payment rate and an average fine of \$2,500, general funds could increase by about \$37,500 annually.

DLLR also estimates that there will be 25 additional fines imposed on nonlicensees annually. Based on an estimated 50% payment rate and an average fine of \$3,000,

general funds could increase by about \$37,500 annually. The bill's October 1 effective date could make both potential revenue increases lower in fiscal 2002.

DLLR estimates that the bill could result in ten more Office of Administrative Hearings hearings at a cost of \$1,000 per hearing, and 20 more board hearings at a cost of \$250 per hearing, annually. This could result in a general fund expenditure increase of \$15,000 annually, but slightly less in fiscal 2002 due to the bill's October 1 effective date.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Office of Administrative Hearings; Department of Legislative Services

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