

SENATE BILL 595

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C2

2002 Regular Session
(2r1371)

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Economic Matters --

Introduced by **Senator Ruben**

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.

President.

CHAPTER _____

1 AN ACT concerning

2 **Home Improvement Contractors - Required General Liability Insurance**

3 FOR the purpose of requiring explicitly that licensed home improvement contractors
4 maintain general liability insurance in a certain amount; ~~requiring an insurer to~~
5 ~~notify the Home Improvement Commission of the cancellation insurer's intent to~~
6 ~~cancel for any reason of the required insurance policy; prohibiting a contractor~~
7 ~~from acting as a contractor or performing home improvement work as of the~~
8 ~~date of cancellation of the required insurance; requiring the Commission to~~
9 ~~revoke the license of a contractor who fails to maintain the required insurance,~~
10 ~~subject to certain hearing provisions; authorizing the Commission to award~~
11 ~~from the Home Improvement Guaranty Fund certain damages and other fees~~
12 ~~and costs under certain circumstances; making stylistic changes requiring a~~
13 ~~licensed contractor that intends to cancel or not renew the required insurance~~
14 ~~policy to notify the Home Improvement Commission of the cancellation of certain~~
15 ~~required insurance at a certain time; and generally relating to required general~~
16 liability insurance for home improvement contractors.

17 BY repealing and reenacting, ~~without~~ with amendments,

1 Article - Business Regulation
 2 Section 8-302.1, ~~8-303(a)(1), and 8-306(e)~~
 3 Annotated Code of Maryland
 4 (1998 Replacement Volume and 2001 Supplement)

5 ~~BY adding to~~
 6 ~~Article - Business Regulation~~
 7 ~~Section 8-307.1~~
 8 ~~Annotated Code of Maryland~~
 9 ~~(1998 Replacement Volume and 2001 Supplement)~~

10 BY repealing and reenacting, ~~with~~ without amendments,
 11 Article - Business Regulation
 12 Section ~~8-303(a)(1), 8-306(e), and 8-308(d)(1) and (f)(2), 8-311, and 8-405~~
 13 Annotated Code of Maryland
 14 (1998 Replacement Volume and 2001 Supplement)

15 BY adding to
 16 Article - Business Regulation
 17 Section 8-308(g)
 18 Annotated Code of Maryland
 19 (1998 Replacement Volume and 2001 Supplement)

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

22 **Article - Business Regulation**

23 8-302.1.

24 (A) An applicant for a contractor license shall maintain general liability
 25 insurance in the amount of at least \$50,000.

26 (B) A LICENSED CONTRACTOR SHALL MAINTAIN GENERAL LIABILITY
 27 INSURANCE IN THE AMOUNT OF AT LEAST \$50,000.

28 (C) IF AN INSURER INTENDS TO CANCEL, FOR ANY REASON, A POLICY OF
 29 GENERAL LIABILITY INSURANCE THAT A LICENSED CONTRACTOR IS REQUIRED TO
 30 MAINTAIN IN COMPLIANCE WITH SUBSECTION (B) OF THIS SECTION, THE INSURER
 31 SHALL NOTIFY THE COMMISSION OF ITS INTENDED ACTION AT THE SAME TIME THAT
 32 THE INSURER PROVIDES REQUIRED NOTICE TO THE LICENSEE.

33 (D) IF A LICENSED CONTRACTOR INTENDS TO CANCEL OR NOT RENEW A
 34 POLICY OF GENERAL LIABILITY INSURANCE THAT THE LICENSEE IS REQUIRED TO
 35 MAINTAIN IN COMPLIANCE WITH SUBSECTION (B) OF THIS SECTION, THE LICENSEE

1 ~~SHALL NOTIFY THE COMMISSION AT LEAST 30 DAYS BEFORE CANCELLATION OR~~
2 ~~EXPIRATION OF THE POLICY.~~

3 8-303.

4 (a) (1) An applicant for a license shall:

5 (i) submit to the Commission an application on the form that the
6 Commission provides;

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

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

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

13 8-306.

14 (e) The Commission may not issue a contractor license to an applicant unless
15 the applicant has submitted to the Commission proof of compliance with the
16 insurance requirement of § 8-302.1 of this subtitle.

17 ~~8-307.1.~~

18 ~~(A) EACH LICENSED CONTRACTOR SHALL MAINTAIN GENERAL LIABILITY~~
19 ~~INSURANCE IN THE AMOUNT OF AT LEAST \$50,000.~~

20 ~~(B) WHENEVER AN INSURER CANCELS FOR ANY REASON A POLICY OF~~
21 ~~GENERAL LIABILITY INSURANCE THAT A LICENSED CONTRACTOR IS REQUIRED TO~~
22 ~~MAINTAIN IN COMPLIANCE WITH SUBSECTION (A) OF THIS SECTION, THE INSURER~~
23 ~~SHALL NOTIFY THE COMMISSION OF ITS ACTION.~~

24 ~~(C) AFTER THE GENERAL LIABILITY INSURANCE OF A CONTRACTOR IS~~
25 ~~CANCELLED, THE CONTRACTOR MAY NOT ACT AS A CONTRACTOR OR PERFORM ANY~~
26 ~~HOME IMPROVEMENT WORK AS OF THE DATE OF CANCELLATION OF THE POLICY.~~

27 8-308.

28 (d) (1) Before a license expires, the licensee periodically may renew it for an
29 additional 2-year term, if the licensee:

30 (i) otherwise is entitled to be licensed;

31 (ii) submits to the Commission a renewal application on the form
32 that the Commission provides;

1 (iii) submits to the Commission proof of compliance with the
 2 insurance requirement of ~~{§ 8-302.1}~~ ~~§ 8-307.1~~ of this subtitle, if the licensee is
 3 renewing a contractor license; and

4 (iv) pays to the Commission a renewal fee.

5 (f) (2) The Commission may not renew a contractor license unless the
 6 contractor submits proof of compliance with the insurance requirement of ~~{§ 8-302.1}~~
 7 ~~§ 8-307.1~~ of this subtitle.

8 (G) A LICENSED CONTRACTOR SHALL GIVE THE COMMISSION NOTICE OF THE
 9 CANCELLATION OF INSURANCE REQUIRED UNDER § 8-302.1 OF THIS SUBTITLE AT
 10 LEAST 10 DAYS BEFORE THE EFFECTIVE DATE OF THE CANCELLATION.

11 ~~§ 311.~~

12 (a) ~~Subject to the hearing provisions of § 8-312 of this subtitle, the~~
 13 ~~Commission may deny a license to an applicant, reprimand a licensee, or suspend or~~
 14 ~~revoke a license if the applicant or licensee or the management personnel of the~~
 15 ~~applicant or licensee:~~

16 (1) ~~fraudulently or deceptively obtains or attempts to obtain a license for~~
 17 ~~the applicant or licensee or for another person;~~

18 (2) ~~fraudulently or deceptively uses a license;~~

19 (3) ~~fails to give the Commission information required by this subtitle~~
 20 ~~about an application for a license;~~

21 (4) ~~fails to pass an examination required by this subtitle;~~

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

23 (i) ~~felony; or~~

24 (ii) ~~misdemeanor that is directly related to the fitness and~~
 25 ~~qualification of the applicant or licensee to engage in home improvement services;~~

26 (6) ~~often fails to perform home improvement contracts;~~

27 (7) ~~falsifies an account;~~

28 (8) ~~engages in fraud;~~

29 (9) ~~as a contractor or subcontractor fails to show financial solvency,~~
 30 ~~based on the intended scope and size of the business in relation to total assets,~~
 31 ~~liabilities, credit rating, and net worth;~~

32 (10) ~~as a contractor or subcontractor lacks competence, as shown by the~~
 33 ~~performance of an unworkmanlike, inadequate, or incomplete home improvement;~~

- 1 (11) violates this title;
- 2 (12) attempts to violate this title; or
- 3 (13) violates a regulation adopted under this title.

4 ~~(B) SUBJECT TO THE HEARING PROVISIONS OF § 8-312 OF THIS SUBTITLE, THE~~
 5 ~~COMMISSION SHALL REVOKE THE LICENSE OF A CONTRACTOR WHO FAILS TO~~
 6 ~~MAINTAIN GENERAL LIABILITY INSURANCE AS REQUIRED BY § 8-307.1 OF THIS~~
 7 ~~SUBTITLE.~~

8 ~~[(b)] (C) Subject to the hearing provisions of § 8-312 of this subtitle, the~~
 9 ~~Commission may reprimand a contractor or subcontractor or suspend or revoke the~~
 10 ~~license of a contractor or subcontractor for a violation of this title by an agent,~~
 11 ~~director, employee, manager, officer, partner, or salesperson of the contractor or~~
 12 ~~subcontractor, unless the Commission finds that the contractor or subcontractor or~~
 13 ~~management personnel of the contractor or subcontractor:~~

- 14 (1) had no knowledge of the wrongful conduct; or
- 15 (2) could not prevent the violation.

16 ~~[(e)] (D) Instead of or in addition to reprimanding a licensee or suspending or~~
 17 ~~revoking a license, the Commission may impose a civil penalty under § 8-620 of this~~
 18 ~~title.~~

19 ~~[(d)] (E) The Commission shall consider the following facts in the granting,~~
 20 ~~denial, renewal, suspension, or revocation of a license or the reprimand of a licensee~~
 21 ~~when an applicant or licensee is convicted of a felony or misdemeanor described in~~
 22 ~~subsection (a)(5) of this section:~~

- 23 (1) the nature of the crime;
- 24 (2) the relationship of the crime to the activities authorized by the
 25 license;
- 26 (3) with respect to a felony, the relevance of the conviction to the fitness
 27 and qualification of the applicant or licensee to provide home improvement services;
- 28 (4) the length of time since the conviction; and
- 29 (5) the behavior and activities of the applicant or licensee before and
 30 after the conviction.

31 ~~§ 8-405.~~

32 ~~(a) Subject to this subtitle, an owner may recover compensation from the~~
 33 ~~Fund for an actual loss that results from an act or omission by a licensed contractor~~
 34 ~~or a violation of § 8-607(4) of this title as found by the Commission or a court of~~
 35 ~~competent jurisdiction.~~

1 (b) For purposes of recovery from the Fund, the act or omission of a licensed
 2 contractor includes the act or omission of a subcontractor, salesperson, or employee of
 3 the licensed contractor, whether or not an express agency relationship exists.

4 (c) A claimant shall comply with a written agreement to submit a dispute to
 5 arbitration before seeking recovery from the Fund.

6 (d) ~~The Commission may deny a claim if the Commission finds that the~~
 7 ~~claimant unreasonably rejected good faith efforts by the contractor to resolve the~~
 8 ~~claim.~~

9 (e) The Commission may not award from the Fund:

10 (1) more than \$15,000 to 1 claimant for acts or omissions of 1 contractor;

11 (2) more than \$100,000 to all claimants for acts or omissions of 1
 12 contractor unless, after the Commission has paid out \$100,000 on account of acts or
 13 omissions of the contractor, the contractor reimburses \$100,000 to the Fund;

14 (3) ~~EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, an~~
 15 ~~amount for attorney fees, consequential damages, court costs, interest, personal~~
 16 ~~injury damages, or punitive damages; or~~

17 (4) an amount as a result of a default judgment in court.

18 (F) ~~THE COMMISSION MAY AWARD FROM THE FUND AN AMOUNT FOR~~
 19 ~~ATTORNEY FEES, CONSEQUENTIAL DAMAGES, COURT COSTS, INTEREST, PERSONAL~~
 20 ~~INJURY DAMAGES, OR PUNITIVE DAMAGES IF:~~

21 (1) ~~THE CONTRACTOR PERFORMS HOME IMPROVEMENT WORK~~
 22 ~~WITHOUT THE GENERAL LIABILITY INSURANCE REQUIRED BY § 8-307.1 OF THIS~~
 23 ~~TITLE; AND~~

24 (2) ~~A CLAIM AGAINST THE FUND IS MADE BASED ON THE HOME~~
 25 ~~IMPROVEMENT WORK PERFORMED WITHOUT GENERAL LIABILITY INSURANCE.~~

26 ~~[(f)] (G) (1) A claim against the Fund based on the act or omission of a~~
 27 ~~particular contractor may not be made by:~~

28 (i) a spouse or other immediate relative of the contractor;

29 (ii) an employee, officer, or partner of the contractor; or

30 (iii) an immediate relative of an employee, officer, or partner of the
 31 contractor.

32 (2) An owner may make a claim against the Fund only if the owner:

33 (i) resides in the home as to which the claim is made; or

34 (ii) does not own more than 3 residences or dwelling places.

1 ~~{(g)}~~ (H) A claim shall be brought against the Fund within 3 years after the
2 claimant discovered or, by use of ordinary diligence, should have discovered the loss or
3 damage.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2002.