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

Introduced and read first time: February 8, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Barbers - State Board of Cosmetologists - Citations**

3 FOR the purpose of authorizing inspectors for the State Board of Barbers and
4 inspectors for the State Board of Cosmetologists to issue certain citations to and
5 impose certain civil penalties on licensees and permit holders for violations of
6 certain laws and regulations; providing for the form, content, and service of the
7 citations; requiring the civil penalty set forth in the citation to be paid in a
8 certain period of time; establishing that the failure to pay the citation within a
9 certain period of time will result in a certain increase of the penalty;
10 establishing that a citation and civil penalty shall be considered a final order of
11 the Boards unless the licensee or permit holder contests the citation in a certain
12 manner; requiring the Boards to hold a certain hearing if the licensee or permit
13 holder contests the citation; requiring the Boards to adopt regulations
14 establishing a schedule of certain civil penalties; authorizing the Boards to take
15 certain disciplinary action against a licensee or permit holder if the licensee or
16 permit holder fails to pay a civil penalty imposed by the Boards under this Act;
17 and generally relating to the regulation of licensees and permit holders by the
18 State Board of Barbers and the State Board of Cosmetologists.

19 BY repealing and reenacting, with amendments,
20 Article - Business Occupations and Professions
21 Section 4-314, 4-513, 5-314, and 5-522
22 Annotated Code of Maryland
23 (2004 Replacement Volume and 2004 Supplement)

24 BY adding to
25 Article - Business Occupations and Professions
26 Section 4-608 and 5-610
27 Annotated Code of Maryland
28 (2004 Replacement Volume and 2004 Supplement)

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

1 **Article - Business Occupations and Professions**

2 4-314.

3 (a) (1) Subject to the hearing provisions of § 4-315 of this subtitle, the Board
4 may deny a license to any applicant, reprimand any licensee, or suspend or revoke a
5 license if the applicant or licensee:

6 (i) fraudulently or deceptively obtains or attempts to obtain a
7 license for the applicant or licensee or for another;

8 (ii) fraudulently or deceptively uses a license;

9 (iii) is incompetent;

10 (iv) habitually is intoxicated or under the influence of any drug;

11 (v) falsifies a record submitted to the Board;

12 (vi) fails to use proper sanitary methods while practicing barbering;

13 (vii) fails to keep a barbershop in a sanitary condition;

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

16 1. a felony; or

17 2. a misdemeanor that is directly related to the fitness and
18 qualification of the applicant or licensee to practice barbering; [or]

19 (ix) violates any provision of this title or any regulation adopted by
20 the Board under this title; OR

21 (X) FAILS TO PAY A CIVIL PENALTY IMPOSED BY THE BOARD
22 UNDER § 4-608 OF THIS TITLE.

23 (2) (i) Instead of or in addition to reprimanding a licensee or
24 suspending or revoking a license under this subsection, the Board may impose a
25 penalty not exceeding \$300 for all violations cited on a single date.

26 (ii) To determine the amount of the penalty under this subsection,
27 the Board shall consider:

28 1. the seriousness of the violation;

29 2. the good faith of the violator;

30 3. the violator's history of previous violations;

1 (3) If a complaint is made by any person other than a member of the
2 Board, the complaint shall be made under oath by the person who submits the
3 complaint.

4 (e) (1) Except as provided in subsection (f) of this section, if the Board finds
5 that a complaint alleges facts that are adequate grounds for action under this section,
6 the Board shall act on the complaint as provided under § 4-315 of this subtitle to
7 deny, suspend, or revoke a license, reprimand a licensee, or assess a penalty.

8 (2) If the Board does not make the finding, the Board shall dismiss the
9 complaint.

10 (f) (1) If the Board makes the finding under subsection (e)(1) of this section
11 for a violation that relates to the sanitary practice of barbering, the Board shall
12 provide the licensee an opportunity to correct the alleged violation.

13 (2) If the licensee fails to correct each alleged violation within 10 days of
14 written notification of the violation by the Board, the Board shall act on the complaint
15 as provided under § 4-315 of this subtitle.

16 (3) If the licensee corrects each alleged violation within 10 days of notice,
17 the Board shall:

18 (i) dismiss the complaint; and

19 (ii) provide the licensee written notification of the dismissal.

20 4-513.

21 (a) (1) Subject to the hearing provisions of § 4-514 of this subtitle, the Board
22 may deny a barbershop permit to any applicant, reprimand any permit holder, or
23 suspend or revoke a barbershop permit:

24 (i) for any applicable ground under § 4-314 of this title;

25 (ii) if the applicant or holder fraudulently or deceptively obtains or
26 attempts to obtain a barbershop permit for the applicant or holder or for another; [or]

27 (iii) if the applicant or holder fraudulently or deceptively uses a
28 barbershop permit; OR

29 (IV) IF THE HOLDER FAILS TO PAY A CIVIL PENALTY IMPOSED BY
30 THE BOARD UNDER § 4-608 OF THIS TITLE.

31 (2) (i) Instead of or in addition to reprimanding a permit holder or
32 suspending or revoking a permit under this subsection, the Board may impose a
33 penalty not exceeding \$300 for all violations cited on a single date.

34 (ii) To determine the amount of penalty imposed under this
35 subsection, the Board shall consider the following:

- 1 1. the seriousness of the violation;
- 2 2. the good faith of the violator;
- 3 3. the violator's history of previous violations;
- 4 4. the deleterious effect of the violation on the complainant,
5 the public, and the barber industry; and
- 6 5. any other factors relevant to the determination of the
7 financial penalty.

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

10 (b) The Board shall commence proceedings under this section on a complaint
11 to the Board by a member of the Board or any person.

12 (c) (1) A complaint shall:

- 13 (i) be in writing;
- 14 (ii) be signed by the complainant;
- 15 (iii) state specifically the facts on which the complaint is based;
- 16 (iv) be submitted to the Executive Director of the Board; and
- 17 (v) be served on the person to whom it is directed:
 - 18 1. personally; or
 - 19 2. by certified mail, return receipt requested, bearing a
20 postmark from the United States Postal Service, to the person's last known address
21 as shown on the Board's records.

22 (2) If service is made by certified mail, the person who mails the
23 document shall file with the Board verified proof of mailing.

24 (3) If a complaint is made by any person other than a member of the
25 Board, the complaint shall be made under oath by the person who submits the
26 complaint.

27 (d) (1) Except as provided in subsection (e) of this section, if the Board finds
28 that a complaint alleges facts that are adequate grounds for action under § 4-514 of
29 this subtitle, the Board shall act on the complaint as provided under § 4-514 of this
30 subtitle to deny, suspend, or revoke a barbershop permit, or reprimand or assess a
31 penalty against the holder of the permit.

32 (2) If the Board does not make the finding, the Board shall dismiss the
33 complaint.

1 (e) (1) If the Board makes the finding under subsection (d)(1) of this section
2 for a violation that relates to the sanitary condition of the barbershop, the Board shall
3 provide the owner of the barbershop an opportunity to correct the alleged violation.

4 (2) If the barbershop owner fails to correct each alleged violation within
5 10 days of written notification by the Board, the Board shall act on the complaint as
6 provided under § 4-514 of this subtitle.

7 (3) If the barbershop owner corrects each alleged violation within 10
8 days of notice, the Board shall:

9 (i) dismiss the complaint; and

10 (ii) provide the barbershop owner written notification of dismissal.
11 4-608.

12 (A) FOLLOWING AN INSPECTION OF A BARBERSHOP, IF A BOARD INSPECTOR
13 DETERMINES THAT A LICENSEE OR PERMIT HOLDER HAS VIOLATED THIS TITLE OR A
14 REGULATION ADOPTED BY THE BOARD, THE INSPECTOR MAY ISSUE A CITATION TO
15 THE LICENSEE OR PERMIT HOLDER.

16 (B) A CITATION ISSUED BY A BOARD INSPECTOR SHALL BE IN WRITING AND
17 SHALL STATE:

18 (1) A BRIEF DESCRIPTION OF EACH VIOLATION;

19 (2) THE AMOUNT OF A CIVIL PENALTY, AS PRESCRIBED BY REGULATION,
20 FOR EACH VIOLATION; AND

21 (3) AS PROVIDED IN THIS SECTION:

22 (I) THE TIME WITHIN WHICH THE CIVIL PENALTY IS TO BE PAID;

23 (II) THE OPPORTUNITY TO CONTEST THE CITATION;

24 (III) THE FINALITY OF THE CITATION IF IT IS NOT CONTESTED; AND

25 (IV) THAT THE CIVIL PENALTY WILL BE DOUBLED IF NOT PAID OR
26 CONTESTED WITHIN 30 DAYS.

27 (C) THE CITATION SHALL BE SERVED ON THE LICENSEE OR PERMIT HOLDER
28 ALLEGED TO HAVE COMMITTED THE VIOLATION BY:

29 (1) HAND-DELIVERY; OR

30 (2) CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE LICENSEE
31 OR PERMIT HOLDER.

32 (D) SUBJECT TO SUBSECTIONS (E) AND (F) OF THIS SECTION:

1 (1) THE CIVIL PENALTY SET FORTH IN A CITATION SHALL BE PAID
2 WITHIN 30 DAYS OF ITS RECEIPT; AND

3 (2) THE FAILURE TO PAY THE CIVIL PENALTY WITHIN 30 DAYS OF ITS
4 RECEIPT SHALL RESULT IN THE AMOUNT OF THE CIVIL PENALTY BEING DOUBLED.

5 (E) A CITATION AND THE APPLICABLE CIVIL PENALTY SHALL BE CONSIDERED
6 A FINAL ORDER OF THE BOARD UNLESS, WITHIN 30 DAYS OF BEING SERVED WITH
7 THE CITATION, THE LICENSEE OR PERMIT HOLDER NOTIFIES THE BOARD IN
8 WRITING OF AN INTENT TO CONTEST THE CITATION.

9 (F) UPON THE RECEIPT OF A WRITTEN NOTICE OF A LICENSEE OR PERMIT
10 HOLDER'S INTENT TO CONTEST A CITATION, THE BOARD SHALL HOLD A HEARING, IN
11 ACCORDANCE WITH § 4-315 OR § 4-514 OF THIS TITLE, REGARDING THE CITED
12 VIOLATIONS.

13 (G) (1) THE BOARD SHALL ESTABLISH BY REGULATION A SCHEDULE OF
14 CIVIL PENALTIES FOR VIOLATIONS OF THIS TITLE AND REGULATIONS ADOPTED BY
15 THE BOARD.

16 (2) THE CIVIL PENALTIES IMPOSED UNDER THIS SUBSECTION MAY NOT
17 EXCEED \$300 FOR ALL VIOLATIONS CITED ON A SINGLE DAY.

18 5-314.

19 (a) (1) Subject to the hearing provisions of § 5-315 of this subtitle, the Board
20 may deny a license to any applicant, reprimand any licensee, or suspend or revoke a
21 license if the applicant or licensee:

22 (i) fraudulently or deceptively obtains or attempts to obtain a
23 license for the applicant or licensee or for another;

24 (ii) fraudulently or deceptively uses a license;

25 (iii) is incompetent;

26 (iv) engages in dishonest, unethical, immoral, or unprofessional
27 conduct;

28 (v) is addicted to alcohol or drugs to the extent of being unfit to
29 practice cosmetology;

30 (vi) advertises by means of knowingly false or deceptive statements;

31 (vii) under the laws of the United States or of any state, is convicted
32 of:

33 1. a felony; or

34 2. a misdemeanor that is directly related to the fitness and
35 qualification of the applicant or licensee to practice cosmetology; [or]

1 (viii) violates any provision of this title or any regulation adopted by
2 the Board under this title; OR

3 (IX) FAILS TO PAY A CIVIL PENALTY IMPOSED BY THE BOARD
4 UNDER § 5-610 OF THIS TITLE.

5 (2) (i) Instead of or in addition to reprimanding a licensee or
6 suspending or revoking a license under this subsection, the Board may impose a
7 penalty not exceeding \$300 for all violations cited on a single day.

8 (ii) To determine the amount of the penalty imposed under this
9 subsection, the Board shall consider:

- 10 1. the seriousness of the violation;
- 11 2. the good faith of the violator;
- 12 3. the violator's history of previous violations;
- 13 4. the deleterious effect of the violation on the complainant,
14 the public, and the cosmetology industry; and
- 15 5. any other factors relevant to the determination of the
16 financial penalty.

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

19 (b) The Board shall consider the following facts in the granting, denial,
20 renewal, suspension, or revocation of a license or the reprimand of a licensee when an
21 applicant or licensee is convicted of a felony or misdemeanor described in subsection
22 (a)(1)(vii) 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 practice cosmetology;
- 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 (c) (1) The Board shall commence proceedings under this section on a
32 complaint to the Board by a member of the Board or any person.

33 (2) A complaint shall:

- 1 (i) be in writing;
- 2 (ii) be signed by the complainant;
- 3 (iii) state specifically the facts on which the complaint is based;
- 4 (iv) be submitted to the Executive Director of the Board; and
- 5 (v) be served on the person to whom it is directed:
- 6 1. personally; or
- 7 2. by certified mail, return receipt requested, bearing a
- 8 postmark from the United States Postal Service, to the person's last known address
- 9 as shown on the Board's records.

10 (3) If service is made by certified mail, the person who mails the

11 document shall file with the Board verified proof of mailing.

12 (d) (1) Except as provided in subsection (e) of this section, if the Board finds

13 that a complaint alleges facts that are adequate grounds for action under this section,

14 the Board shall act on the complaint as provided under § 5-315 of this subtitle to

15 deny, suspend, or revoke a license, reprimand a licensee, or assess a penalty.

16 (2) If the Board does not make the finding, the Board shall dismiss the

17 complaint.

18 (e) (1) If the Board makes the finding under subsection (d)(1) of this section

19 for a violation that relates to the sanitary practice of cosmetology, the Board shall

20 provide the licensee an opportunity to correct the alleged violation.

21 (2) If the licensee fails to correct each alleged violation within 10 days of

22 written notification of the violation by the Board, the Board shall act on the complaint

23 as provided under § 5-315 of this subtitle.

24 (3) If the licensee corrects each alleged violation within 10 days of notice,

25 the Board shall:

- 26 (i) dismiss the complaint; and
- 27 (ii) provide the licensee written notification of the dismissal.

28 5-522.

29 (a) (1) Subject to the hearing provisions of § 5-523 of this subtitle, the Board

30 may deny a beauty salon permit to any applicant, reprimand any permit holder, or

31 suspend or revoke a beauty salon permit:

- 32 (i) for any applicable ground under § 5-314 of this title;

1 (ii) if the applicant or holder fraudulently or deceptively obtains or
2 attempts to obtain a beauty salon permit for the applicant or holder or for another;
3 [or]

4 (iii) if the applicant or holder fraudulently or deceptively uses a
5 beauty salon permit; OR

6 (IV) IF THE HOLDER FAILS TO PAY A CIVIL PENALTY IMPOSED BY
7 THE BOARD UNDER § 5-610 OF THIS TITLE.

8 (2) (i) Instead of or in addition to reprimanding a permit holder or
9 suspending or revoking a beauty salon permit, the Board may impose a penalty not
10 exceeding \$300 for all violations cited on a single date.

11 (ii) To determine the amount of penalty imposed under this
12 subsection, the Board shall consider:

- 13 1. the seriousness of the violation;
- 14 2. the good faith of the violator;
- 15 3. the violator's history of previous violations;
- 16 4. the deleterious effect of the violation on the complainant,
17 the public, and the cosmetology industry; and
- 18 5. any other factors relevant to the determination of the
19 financial penalty.

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

22 (b) The Board shall commence proceedings under this section on a complaint
23 to the Board by a member of the Board or any person.

24 (1) A complaint shall:

- 25 (i) be in writing;
- 26 (ii) be signed by the complainant;
- 27 (iii) state specifically the facts on which the complaint is based;
- 28 (iv) be submitted to the Executive Director of the Board; and
- 29 (v) be served on the person to whom it is directed:
 - 30 1. personally; or

1 (III) THE FINALITY OF THE CITATION IF IT IS NOT CONTESTED; AND

2 (IV) THAT THE CIVIL PENALTY WILL BE DOUBLED IF NOT PAID OR
3 CONTESTED WITHIN 30 DAYS.

4 (C) THE CITATION SHALL BE SERVED ON THE LICENSEE OR PERMIT HOLDER
5 ALLEGED TO HAVE COMMITTED THE VIOLATION BY:

6 (1) HAND-DELIVERY; OR

7 (2) CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE LICENSEE
8 OR PERMIT HOLDER.

9 (D) SUBJECT TO SUBSECTIONS (E) AND (F) OF THIS SECTION:

10 (1) THE CIVIL PENALTY SET FORTH IN A CITATION SHALL BE PAID
11 WITHIN 30 DAYS OF ITS RECEIPT; AND

12 (2) THE FAILURE TO PAY THE CIVIL PENALTY WITHIN 30 DAYS OF ITS
13 RECEIPT SHALL RESULT IN THE AMOUNT OF THE CIVIL PENALTY BEING DOUBLED.

14 (E) A CITATION AND THE APPLICABLE CIVIL PENALTY SHALL BE CONSIDERED
15 A FINAL ORDER OF THE BOARD UNLESS, WITHIN 30 DAYS OF BEING SERVED WITH
16 THE CITATION, THE LICENSEE OR PERMIT HOLDER NOTIFIES THE BOARD IN
17 WRITING OF AN INTENT TO CONTEST THE CITATION.

18 (F) UPON THE RECEIPT OF A WRITTEN NOTICE OF A LICENSEE OR PERMIT
19 HOLDER'S INTENT TO CONTEST A CITATION, THE BOARD SHALL HOLD A HEARING, IN
20 ACCORDANCE WITH § 5-315 OR § 5-523 OF THIS TITLE, REGARDING THE CITED
21 VIOLATIONS.

22 (G) (1) THE BOARD SHALL ESTABLISH BY REGULATION A SCHEDULE OF
23 CIVIL PENALTIES FOR VIOLATIONS OF THIS TITLE AND REGULATIONS ADOPTED BY
24 THE BOARD.

25 (2) THE CIVIL PENALTIES IMPOSED UNDER THIS SUBSECTION MAY NOT
26 EXCEED \$300 FOR ALL VIOLATIONS CITED ON A SINGLE DAY.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect October 1, 2005.