

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 436 (Chairman, Economic Matters Committee)
(By Request – Departmental – Labor, Licensing, and Regulation)
Economic Matters Education, Health, and Environmental Affairs

**Maryland Home Improvement Commission - Prosecution of Unlicensed
Contractors, Subcontractors, and Salespersons - Procedures**

This departmental bill clarifies that an administrative hearing and adjudication by the Maryland Home Improvement Commission is not a prerequisite to criminal prosecution of a home improvement contractor, subcontractor, or salesperson for acting without an appropriate license.

Fiscal Summary

State Effect: None. The bill codifies current practice.

Local Effect: None.

Small Business Effect: The Maryland Home Improvement Commission has determined that this bill will have minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: Home improvement work includes alteration, remodeling, repair, or replacement of a building or part of a building used as a residence. Home improvement also includes work done on individual condominium units. Home improvement does not include work done on apartment buildings that contain four or more single-family units or work done on the commonly owned areas of condominiums.

Criminal Penalties

A home improvement contractor, subcontractor, or salesperson that acts without a license is guilty of a misdemeanor and subject to a fine of up to \$1,000 or imprisonment for up to 30 days or both. A second or subsequent offense is punishable by a fine of up to \$5,000 or imprisonment for up to two years or both.

Administrative Proceedings

The commission may deny a license to an applicant, reprimand a licensee, or revoke or suspend a license if an applicant or licensee or the management personnel of an applicant or licensee violates or attempts to violate State home improvement laws or regulations. A person against whom action is contemplated has the right to a hearing prior to the commission taking action with regard to a license. The person must be given sufficient notice, may be represented by counsel, and has the right to appeal to a circuit court if aggrieved by the commission's final decision.

Background: The Maryland Home Improvement Commission advises that as a result of a Court of Appeals case, *Fosler v. Panoramic Design, Ltd.*, 365 Md. 472, 781 A.2d 778 (2001), a District Court judge recently ruled that the commission must first adjudicate whether a defendant acted as an unlicensed contractor before the defendant can be prosecuted on criminal charges. The commission has traditionally preferred pursuing criminal charges against unlicensed contractors rather than taking administrative action which is more time consuming and can only result in a civil penalty.

The commission currently regulates 14,320 licensed contractors, 566 licensed subcontractors, and 1,886 licensed home improvement salespersons (numbers reflect active licensees). The commission received 1,326 complaints of unlicensed contracting in fiscal 2005 and initiated 196 criminal trials. The commission has received 785 complaints to date in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/ljm

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