

SENATE BILL 236

C2

11r0457
CF HB 362

By: **Chair, Education, Health, and Environmental Affairs Committee**

Introduced and read first time: January 27, 2011

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2011

CHAPTER _____

1 AN ACT concerning

2 **Maryland Home Improvement Commission – Sunset Extension and Program**
3 **Evaluation**

4 FOR the purpose of continuing the Maryland Home Improvement Commission in
5 accordance with the provisions of the Maryland Program Evaluation Act (sunset
6 law) by extending to a certain date the termination provisions relating to the
7 statutory and regulatory authority of the Commission; continuing the Maryland
8 Mold Remediation Services Act in accordance with the provisions of the sunset
9 law by extending to a certain date the termination provisions relating to the
10 statutory and regulatory authority of the Commission under the Maryland Mold
11 Remediation Services Act; requiring that an evaluation of the Commission and
12 the statutes and regulations that relate to the Commission and the Maryland
13 Mold Remediation Services Act be performed on or before a certain date;
14 requiring the Commission to submit certain reports about a certain fund to
15 certain committees of the General Assembly under certain circumstances;
16 requiring the Commission to publish certain consumer education materials on
17 its Web site; requiring the Commission to develop a certain searchable Web site
18 that includes certain information; altering certain fees; requiring a home
19 improvement contract to contain the telephone number of the contractor;
20 expanding the notice requirements for home improvement contracts; altering
21 certain criminal penalties for certain individuals; authorizing the Commission
22 to issue certain civil citations under certain circumstances; authorizing a
23 certain hearing for civil citations; authorizing the Commission to establish
24 certain violations and fines by regulation; creating a certain separate account
25 within the Home Improvement Guaranty Fund for collection of certain money;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 specifying the disposition of the money collected as a civil citation; extending
2 the date by which certain companies or firms providing mold remediation must
3 be licensed by the Commission; requiring the Commission to submit a certain
4 report to certain committees of the General Assembly on or before a certain
5 date; and generally relating to the Maryland Home Improvement Commission.

6 BY repealing and reenacting, without amendments,

7 Article – Business Regulation

8 Section 8–101(a), (b), and (e) and 8–707(a)

9 Annotated Code of Maryland

10 (2010 Replacement Volume and 2010 Supplement)

11 BY adding to

12 Article – Business Regulation

13 Section 8–215 and 8–216

14 Annotated Code of Maryland

15 (2010 Replacement Volume and 2010 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article – Business Regulation

18 Section 8–303(a), 8–308(d), 8–312(a), 8–403, 8–501, 8–601(d), 8–620, 8–718, and
19 8–802

20 Annotated Code of Maryland

21 (2010 Replacement Volume and 2010 Supplement)

22 ~~BY repealing and reenacting, without amendments,~~

23 ~~Article – Business Regulation~~

24 ~~Section 8–707(a)~~

25 ~~Annotated Code of Maryland~~

26 ~~(2010 Replacement Volume and 2010 Supplement)~~

27 BY repealing and reenacting, without amendments,

28 Article – State Government

29 Section 8–403(a)

30 Annotated Code of Maryland

31 (2009 Replacement Volume and 2010 Supplement)

32 BY repealing and reenacting, with amendments,

33 Article – State Government

34 Section 8–403(b)(29) and (39)

35 Annotated Code of Maryland

36 (2009 Replacement Volume and 2010 Supplement)

37 BY repealing and reenacting, with amendments,

38 Chapter 537 of the Acts of the General Assembly of 2008

39 Section 3

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

3 **Article – Business Regulation**

4 8–101.

5 (a) In this title the following words have the meanings indicated.

6 (b) “Commission” means the Maryland Home Improvement Commission.

7 (e) “Fund” means the Home Improvement Guaranty Fund.

8 8–215.

9 THE COMMISSION SHALL PUBLISH ON ITS WEB SITE CONSUMER
10 EDUCATION MATERIALS THAT SPECIFY THE PROTECTIONS AVAILABLE TO
11 CONSUMERS THROUGH THE COMMISSION, INCLUDING THE AVAILABILITY OF
12 COMPENSATION FROM THE GUARANTY FUND.

13 8–216.

14 THE COMMISSION SHALL DEVELOP A SEARCHABLE WEB SITE THAT
15 INCLUDES A LISTING OF LICENSED CONTRACTORS AND INFORMATION
16 RELATING TO ANY FINAL DISCIPLINARY ACTION TAKEN BY THE COMMISSION
17 AGAINST A LICENSEE IN EACH LICENSEE’S PROFILE.

18 8–303.

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

20 (i) submit to the Commission an application on the form that
21 the Commission provides;

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

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

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

28 (2) The application fee:

1 (i) for a contractor license is [~~\$225~~] **\$250** for each place of
2 business of the contractor;

3 (ii) for a subcontractor license is [~~\$125~~] **\$150**; or

4 (iii) for a salesperson license is [~~\$75~~] **\$100**.

5 (3) [To cover the cost of] **THE FEE FOR** processing an application[,
6 \$15 of the application fee is nonrefundable] **IS \$20**.

7 8–308.

8 (d) (1) Before a license expires, the licensee periodically may renew it for
9 an additional 2–year term, if the licensee:

10 (i) otherwise is entitled to be licensed;

11 (ii) submits to the Commission a renewal application on the
12 form that the Commission provides;

13 (iii) submits to the Commission proof of compliance with the
14 insurance requirement of § 8–302.1 of this subtitle, if the licensee is renewing a
15 contractor license;

16 (iv) submits to the Commission the Department of the
17 Environment lead paint abatement accreditation number and accreditation expiration
18 date, if the licensee provides lead paint abatement services; and

19 (v) pays to the Commission a renewal fee.

20 (2) The renewal fee:

21 (i) for a contractor license is [~~\$225~~] **\$250** for each place of
22 business of the contractor;

23 (ii) for a subcontractor license is [~~\$125~~] **\$150**; or

24 (iii) for a salesperson license is [~~\$75~~] **\$100**.

25 (3) Notwithstanding paragraph (2) of this subsection, a licensee that is
26 incorporated or has its principal office in another state shall pay to the Commission
27 the fee imposed in that state on a similar nonresident business if that fee is higher
28 than the renewal fee under paragraph (2) of this subsection.

29 8–312.

1 (a) Except as otherwise provided in § 10–226 of the State Government
2 Article, before the Commission takes any final action under § 8–311 of this subtitle,
3 **OR IF REQUESTED UNDER § 8–620(C) OF THIS TITLE**, it shall give the person
4 against whom the action is contemplated an opportunity for a hearing before the
5 Commission or, as provided under § 8–313 of this subtitle, a hearing board.

6 8–403.

7 (a) The Commission shall:

8 (1) establish a Home Improvement Guaranty Fund; [and]

9 (2) keep the Fund at a level of at least \$250,000; AND

10 **(3) SUBMIT A REPORT DETAILING ACTIONS BEING TAKEN TO**
11 **RESTORE THE BALANCE OF THE FUND TO A SUSTAINABLE LEVEL TO THE**
12 **SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE**
13 **AND THE HOUSE ECONOMIC MATTERS COMMITTEE WITHIN 30 DAYS OF**
14 **PROJECTING THAT THE FUND BALANCE WILL BE LESS THAN \$250,000.**

15 (b) (1) [The] **EXCEPT AS OTHERWISE PROVIDED BY LAW, THE**
16 Commission shall deposit all money collected to the credit of the Fund with the State
17 Treasurer for placement in a special account.

18 **(2) (I) THE COMMISSION SHALL ESTABLISH AND MAINTAIN**
19 **WITHIN THE FUND A SEPARATE ACCOUNT TO BE HELD WITH THE STATE**
20 **TREASURER FOR THE PAYMENT OF NECESSARY EXPENSES FOR EXPERT**
21 **WITNESSES USED TO RESOLVE CLAIMS AGAINST THE FUND.**

22 **(II) ONE–HALF OF THE MONEY COLLECTED UNDER §**
23 **8–620(C) OF THIS TITLE SHALL BE CREDITED TO THE ACCOUNT ESTABLISHED IN**
24 **SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

25 **(III) ONE–HALF OF THE MONEY COLLECTED UNDER §**
26 **8–620(C) OF THIS TITLE SHALL BE CREDITED TO THE GENERAL FUND OF THE**
27 **STATE.**

28 **[(2)] (3) (i)** The State Treasurer shall invest the money in the
29 Fund in the same way that money in the State Retirement and Pension System is
30 invested.

31 (ii) Investment earnings shall be credited to the Fund.

32 (c) The Commission shall administer the Fund in accordance with this
33 subtitle.

1 8-501.

2 (a) A home improvement contract that does not comply with this section is
3 not invalid merely because of noncompliance.

4 (b) Each home improvement contract shall:

5 (1) be in writing and legible;

6 (2) describe clearly each document that it incorporates; and

7 (3) be signed by each party to the home improvement contract.

8 (c) (1) In addition to any other matters on which the parties lawfully
9 agree, each home improvement contract shall contain:

10 (i) the name, address, TELEPHONE NUMBER, and license
11 number of the contractor;

12 (ii) the name and license number of each salesperson who
13 solicited the home improvement contract or sold the home improvement;

14 (iii) the approximate dates when the performance of the home
15 improvement will begin and when it will be substantially completed;

16 (iv) a description of the home improvement to be performed and
17 the materials to be used;

18 (v) the agreed consideration;

19 (vi) the number of monthly payments and the amount of each
20 payment, including any finance charge;

21 (vii) a description of any collateral security for the obligation of
22 the owner under the home improvement contract; **[and]**

23 (viii) a notice that gives the telephone number **AND WEB SITE** of
24 the Commission and states that:

25 1. each contractor and each subcontractor must be
26 licensed by the Commission; and

27 2. anyone may ask the Commission about a contractor or
28 subcontractor; **AND**

1 (IX) A NOTICE SET BY THE COMMISSION BY REGULATION
2 THAT:

3 1. SPECIFIES THE PROTECTIONS AVAILABLE TO
4 CONSUMERS THROUGH THE COMMISSION; AND

5 2. ADVISES THE CONSUMER OF THE RIGHT TO
6 PURCHASE A PERFORMANCE BOND FOR ADDITIONAL PROTECTION AGAINST
7 LOSS.

8 (2) If payment for work performed under the home improvement
9 contract will be secured by an interest in residential real estate, a written notice in not
10 smaller than 10 point bold type that is on the first page of the contract shall state in
11 substantially the following form: "This contract creates a mortgage or lien against your
12 property to secure payment and may cause a loss of your property if you fail to pay the
13 amount agreed upon. You have the right to consult an attorney. You have the right to
14 rescind this contract within 3 business days after the date you sign it by notifying the
15 contractor in writing that you are rescinding the contract."

16 (3) The notice under paragraph (2) of this subsection shall be
17 independently initialed by the homeowner.

18 (d) Before the performance of a home improvement begins, the owner shall
19 be given a copy of the home improvement contract signed by the contractor.

20 (e) A salesperson or other agent or employee of a contractor may not make a
21 change in a home improvement contract for an owner.

22 8-601.

23 (d) A person who violates this section is guilty of a misdemeanor and, on first
24 conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding [30
25 days] **6 MONTHS** or both and, on a second or subsequent conviction, is subject to a fine
26 not exceeding \$5,000 or imprisonment not exceeding 2 years or both.

27 8-620.

28 (a) The Commission may impose on a person who violates this title,
29 including § 8-607(4) of this subtitle, a civil penalty not exceeding \$5,000 for each
30 violation, whether or not the person is licensed under this title.

31 (b) In setting the amount of a civil penalty, the Commission shall consider:

32 (1) the seriousness of the violation;

33 (2) the good faith of the violator;

1 (3) any previous violations;

2 (4) the harmful effect of the violation on the complainant, the public,
3 and the business of home improvement;

4 (5) the assets of the violator; and

5 (6) any other relevant factors.

6 (c) (1) THE COMMISSION MAY ESTABLISH BY REGULATION A
7 SCHEDULE OF VIOLATIONS AND FINES TO BE USED FOR CIVIL CITATIONS ISSUED
8 UNDER THIS TITLE.

9 (2) A CITATION ISSUED BY THE COMMISSION SHALL INCLUDE:

10 (I) THE NAME AND ADDRESS OF THE PERSON CHARGED;

11 (II) THE NATURE OF THE VIOLATION;

12 (III) THE LOCATION AND TIME OF THE VIOLATION;

13 (IV) THE AMOUNT OF THE FINE;

14 (V) THE MANNER, LOCATION, AND TIME IN WHICH THE FINE
15 MAY BE PAID;

16 (VI) THE CITED PERSON'S RIGHT TO A HEARING FOR THE
17 VIOLATION; AND

18 (VII) A WARNING THAT FAILURE TO PAY THE FINE OR TO
19 CONTEST LIABILITY IN A TIMELY MANNER IN ACCORDANCE WITH THE CITATION:

20 1. IS AN ADMISSION OF LIABILITY; AND

21 2. MAY RESULT IN AN ENTRY OF A DEFAULT
22 JUDGMENT THAT MAY INCLUDE THE FINE, COURT COSTS, AND ADMINISTRATIVE
23 EXPENSES.

24 (3) THE COMMISSION SHALL RETAIN A COPY OF THE CITATION.

25 (4) ALL MONEY COLLECTED UNDER THIS SUBSECTION SHALL BE
26 PAID IN ACCORDANCE WITH § 8-403(B) OF THIS TITLE.

27 8-707.

1 (a) Except as otherwise provided in this subtitle, a company or firm shall be
2 licensed by the Commission before the company or firm provides mold remediation
3 services in the State.

4 8-718.

5 Subject to the evaluation and reestablishment provisions of the Maryland
6 Program Evaluation Act, this subtitle and all regulations adopted under this subtitle
7 shall terminate and be of no effect after July 1, [2016] **2019**.

8 8-802.

9 Subject to the evaluation and reestablishment provisions of the Maryland
10 Program Evaluation Act, this title and all regulations adopted under this title shall
11 terminate on [October 1, 2012] **JULY 1, 2022**.

12 Article – State Government

13 8-403.

14 (a) On or before December 15 of the 2nd year before the evaluation date of a
15 governmental activity or unit, the Legislative Policy Committee, based on a
16 preliminary evaluation, may waive as unnecessary the evaluation required under this
17 section.

18 (b) Except as otherwise provided in subsection (a) of this section, on or before
19 the evaluation date for the following governmental activities or units, an evaluation
20 shall be made of the following governmental activities or units and the statutes and
21 regulations that relate to the governmental activities or units:

22 (29) Home Improvement Commission, Maryland (§ 8-201 of the
23 Business Regulation Article: July 1, [2011] **2021**);

24 (39) mold remediation services, licensing and regulation of (§ 8-701 of
25 the Business Regulation Article: July 1, [2015] **2018**);

26 Chapter 537 of the Acts of 2008

27 SECTION 3. AND BE IT FURTHER ENACTED, That on or before [June 1,
28 2010] **JULY 1, 2013**, a company or firm providing mold remediation services shall be
29 licensed by the Maryland Home Improvement Commission, subject to the qualification
30 and application requirements of this Act.

31 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,
32 2012, the Maryland Home Improvement Commission shall submit a report to the

1 Senate Education, Health, and Environmental Affairs Committee and the House
2 Economic Matters Committee, in accordance with § 2-1246 of the State Government
3 Article, on the implementation of nonstatutory recommendations contained in the
4 Sunset Review: Evaluation of the Maryland Home Improvement Commission
5 conducted by the Department of Legislative Services, specifically:

6 (1) the implementation of multiple licensing levels, in order to:

7 (i) encourage ease of access into the industry;

8 (ii) facilitate upward mobility for licensees to accept larger
9 projects based on experience and capital;

10 (iii) limit the size of projects that inexperienced contractors may
11 accept;

12 (iv) reserve use of the Home Improvement Guaranty Fund for
13 claims against new entry-level licensees; and

14 (v) require surety bonds for licensees in the upper tiers;

15 (2) a summary of efforts taken to reduce the investigation and
16 processing times for claims referred to the Office of Administrative Hearings;

17 (3) the advisability of a requirement for the posting of a performance
18 bond for all licensees, and if advisable, in what amounts, and triggered by what price
19 contracts;

20 (4) a plan for facilitating better communication between licensees and
21 consumers relating to contract performance completion dates;

22 ~~(5)~~ (5) data regarding the number of Fund claims settled through
23 mediation; and

24 ~~(6)~~ (6) any changes in the number of Fund claims filed and whether or
25 not the average time to resolve Fund claims decreased after implementing certain
26 measures.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 July 1, 2011.