

Chapter 333

(House Bill 362)

AN ACT concerning

Maryland Home Improvement Commission – Sunset Extension and Program Evaluation

FOR the purpose of continuing the Maryland Home Improvement Commission in accordance with the provisions of the Maryland Program Evaluation Act (sunset law) by extending to a certain date the termination provisions relating to the statutory and regulatory authority of the Commission; continuing the Maryland Mold Remediation Services Act in accordance with the provisions of the sunset law by extending to a certain date the termination provisions relating to the statutory and regulatory authority of the Commission under the Maryland Mold Remediation Services Act; requiring that an evaluation of the Commission and the statutes and regulations that relate to the Commission and the Maryland Mold Remediation Services Act be performed on or before a certain date; requiring the Commission to submit certain reports about a certain fund to certain committees of the General Assembly under certain circumstances; requiring the Commission to publish certain consumer education materials on its Web site; requiring the Commission to develop a certain searchable Web site that includes certain information; altering certain fees; requiring a home improvement contract to contain the telephone number of the contractor; expanding the notice requirements for home improvement contracts; altering certain criminal penalties for certain individuals; authorizing the Commission to issue certain civil citations under certain circumstances; authorizing a certain hearing for civil citations; authorizing the Commission to establish certain violations and fines by regulation; creating a certain separate account within the Home Improvement Guaranty Fund for collection of certain money; specifying the disposition of the money collected as a civil citation; extending the date by which certain companies or firms providing mold remediation must be licensed by the Commission; requiring the Commission to submit a certain report to certain committees of the General Assembly on or before a certain date; and generally relating to the Maryland Home Improvement Commission.

BY repealing and reenacting, without amendments,

Article – Business Regulation

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

Annotated Code of Maryland

(2010 Replacement Volume and 2010 Supplement)

BY adding to

Article – Business Regulation

Section 8–215 and 8–216
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
 Article – Business Regulation
 Section 8–303(a), 8–308(d), 8–312(a), 8–403, 8–501, 8–601(d), 8–620, 8–718, and
 8–802
 Annotated Code of Maryland
 (2010 Replacement Volume and 2010 Supplement)

~~BY repealing and reenacting, without amendments,
 Article – Business Regulation
 Section 8–707(a)
 Annotated Code of Maryland
 (2010 Replacement Volume and 2010 Supplement)~~

BY repealing and reenacting, without amendments,
 Article – State Government
 Section 8–403(a)
 Annotated Code of Maryland
 (2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
 Article – State Government
 Section 8–403(b)(29) and (39)
 Annotated Code of Maryland
 (2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
 Chapter 537 of the Acts of the General Assembly of 2008
 Section 3

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

Article – Business Regulation

8–101.

- (a) In this title the following words have the meanings indicated.
- (b) “Commission” means the Maryland Home Improvement Commission.
- (e) “Fund” means the Home Improvement Guaranty Fund.

8-215.

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

8-216.

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

8-303.

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

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

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

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

(iv) pay to the Commission an application fee.

(2) The application fee:

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

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

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

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

8-308.

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

- (i) otherwise is entitled to be licensed;
- (ii) submits to the Commission a renewal application on the form that the Commission provides;
- (iii) submits to the Commission proof of compliance with the insurance requirement of § 8-302.1 of this subtitle, if the licensee is renewing a contractor license;
- (iv) submits to the Commission the Department of the Environment lead paint abatement accreditation number and accreditation expiration date, if the licensee provides lead paint abatement services; and
- (v) pays to the Commission a renewal fee.

(2) The renewal fee:

- (i) for a contractor license is [~~\$225~~] **\$250** for each place of business of the contractor;
- (ii) for a subcontractor license is [~~\$125~~] **\$150**; or
- (iii) for a salesperson license is [~~\$75~~] **\$100**.

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

8-312.

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

8-403.

(a) The Commission shall:

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

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

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

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

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

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

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

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

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

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

8-501.

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

(b) Each home improvement contract shall:

(1) be in writing and legible;

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

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

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

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

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

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

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

(v) the agreed consideration;

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

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

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

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

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

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

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

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

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

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

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

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

8-601.

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

8-620.

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

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

- (1) the seriousness of the violation;
- (2) the good faith of the violator;
- (3) any previous violations;
- (4) the harmful effect of the violation on the complainant, the public, and the business of home improvement;
- (5) the assets of the violator; and
- (6) any other relevant factors.

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

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

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

(II) THE NATURE OF THE VIOLATION;

(III) THE LOCATION AND TIME OF THE VIOLATION;

(IV) THE AMOUNT OF THE FINE;

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

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

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

1. IS AN ADMISSION OF LIABILITY; AND

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

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

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

8-707.

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

8-718.

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

8–802.

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

Article – State Government

8–403.

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

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

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

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

Chapter 537 of the Acts of 2008

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

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1, 2012, the Maryland Home Improvement Commission shall submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee, in accordance with § 2–1246 of the State Government Article, on the implementation of nonstatutory recommendations contained in the Sunset Review: Evaluation of the Maryland Home Improvement Commission conducted by the Department of Legislative Services, specifically:

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

- (i) encourage ease of access into the industry;
 - (ii) facilitate upward mobility for licensees to accept larger projects based on experience and capital;
 - (iii) limit the size of projects that inexperienced contractors may accept;
 - (iv) reserve use of the Home Improvement Guaranty Fund for claims against new entry-level licensees; and
 - (v) require surety bonds for licensees in the upper tiers;
- (2) a summary of efforts taken to reduce the investigation and processing times for claims referred to the Office of Administrative Hearings;
- (3) the advisability of a requirement for the posting of a performance bond for all licensees, and if advisable, in what amounts, and triggered by what price contracts;
- (4) a plan for facilitating better communication between licensees and consumers relating to contract performance completion dates;
- ~~(3)~~ (5) data regarding the number of Fund claims settled through mediation; and
- ~~(4)~~ (6) any changes in the number of Fund claims filed and whether or not the average time to resolve Fund claims decreased after implementing certain measures.

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

Approved by the Governor, May 10, 2011.