

# HOUSE BILL 6

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4lr0085

(PRE-FILED)

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By: **Chair, Economic Matters Committee (By Request – Departmental – Labor, Licensing and Regulation)**

Requested: November 7, 2013

Introduced and read first time: January 8, 2014

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 26, 2014

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Home Improvement Commission – Guaranty Fund – Claims**

3 FOR the purpose of altering the maximum amount of a claim against the Home  
4 Improvement Guaranty Fund for which the Maryland Home Improvement  
5 Commission may issue a proposed order; altering the number of days, following  
6 certain notice by the Commission, after which the Commission may bring a  
7 certain action in court against a contractor who fails to reimburse the Fund in  
8 full for payment of a certain claim; and generally relating to the Maryland  
9 Home Improvement Commission and the Home Improvement Guaranty Fund.

10 BY repealing and reenacting, with amendments,  
11 Article – Business Regulation  
12 Section 8–407 and 8–410  
13 Annotated Code of Maryland  
14 (2010 Replacement Volume and 2013 Supplement)

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

17 **Article – Business Regulation**

18 8–407.

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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 (a) The procedures for notice, hearings, and judicial review that apply to  
2 proceedings under Subtitle 3 of this title also apply to proceedings to recover from the  
3 Fund.

4 (b) On receipt of a claim, the Commission shall:

5 (1) send a copy of the claim to the contractor alleged to be responsible  
6 for the actual loss; and

7 (2) require a written response to the claim within 10 days.

8 (c) (1) The Commission:

9 (i) shall review the claim and any response to it; and

10 (ii) may investigate the claim.

11 (2) On the basis of its review and any investigation, the Commission  
12 may:

13 (i) set the matter for a hearing;

14 (ii) dismiss the claim, if the claim is frivolous, legally  
15 insufficient, or made in bad faith; or

16 (iii) issue a proposed order to pay all or part of the claim or deny  
17 the claim if the total claim against a particular contractor does not exceed **[\$5,000]**  
18 ~~\$10,000~~ **\$7,500**.

19 (d) (1) The Commission shall send the proposed order to the claimant and  
20 the contractor, at the most recent address on record with the Commission, by:

21 (i) personal delivery; or

22 (ii) both regular mail and certified mail, return receipt  
23 requested.

24 (2) Within 21 days after service, receipt, or attempted delivery of the  
25 proposed order, the claimant or contractor may submit to the Commission:

26 (i) a written request for a hearing before the Commission; or

27 (ii) a written exception to the proposed order.

28 (3) If the claimant or contractor submits a timely exception to the  
29 proposed order, the Commission may:

1 (i) issue a revised proposed order;

2 (ii) set a hearing on the claim; or

3 (iii) dismiss the claim.

4 (4) Unless the claimant or contractor submits a timely request for a  
5 hearing or a timely exception, the proposed order is final.

6 (e) (1) At a hearing on a claim, the claimant has the burden of proof.

7 (2) If a subcontractor or salesperson is necessary to adjudicate a claim  
8 fairly, the Commission shall issue a subpoena for that person to appear at the hearing.

9 8-410.

10 (a) (1) After the Commission pays a claim from the Fund:

11 (i) the Commission is subrogated to all rights of the claimant in  
12 the claim up to the amount paid;

13 (ii) the claimant shall assign to the Commission all rights of the  
14 claimant in the claim up to the amount paid; and

15 (iii) the Commission has a right to reimbursement of the Fund  
16 by the contractor who the Commission finds responsible for the act or omission giving  
17 rise to the claim for:

18 1. the amount paid from the Fund; and

19 2. interest on that amount at an annual rate of at least  
20 10%, as set by the Commission.

21 (2) All money that the Commission recovers on a claim shall be  
22 deposited in the Fund.

23 (b) If, within [30] 60 days after the Commission gives notice, a contractor on  
24 whose account a claim was paid does not reimburse the Fund in full, the Commission  
25 may sue the contractor in a court of competent jurisdiction for the unreimbursed  
26 amount.

27 (c) The Commission is entitled to a judgment for the unreimbursed amount  
28 if the Commission proves that:

29 (1) a claim was paid from the Fund on account of the contractor;

30 (2) the contractor has not reimbursed the Fund in full;

1           (3) the contractor was given notice and an opportunity to participate  
2 in a hearing on the claim before the Commission; and

3           (4) (i) the Commission directed payment based on a final judgment  
4 of a court of competent jurisdiction or a final award in arbitration; or

5           (ii) the decision or order of the Commission is final in  
6 accordance with Title 10, Subtitle 2 of the State Government Article and there is no  
7 pending appeal.

8           (d) The Commission may refer to the Central Collection Unit for collection  
9 under §§ 13-912 through 13-919 of the Tax – General Article a debt owed to the  
10 Commission by a contractor on whose account a claim was paid from the Fund and  
11 who is at least 1 year behind in reimbursement payments to the Fund.

12           (e) For the purpose of excepting to a discharge of a contractor under federal  
13 bankruptcy law, the Commission is a creditor of the contractor for the amount paid  
14 from the Fund.

15           (f) (1) (i) If a person liable for reimbursing the Guaranty Fund under  
16 this section receives a demand for reimbursement and fails to reimburse the Fund, the  
17 reimbursement amount and any accrued interest or cost are a lien in favor of the State  
18 on any real property of the person if the lien is recorded and indexed as provided in  
19 this subsection.

20           (ii) Interest shall continue at the rate of interest on a judgment  
21 as provided in § 11-107(a) of the Courts Article until the full amount due the Fund is  
22 paid.

23           (2) The lien in favor of the State created by this subsection may not  
24 attach to specific property until the State Central Collection Unit records written  
25 notice of the lien in the office of the clerk of the court for the county in which the  
26 property subject to the lien or any part of the property is located.

27           (3) The lien in favor of the State created by this subsection does not  
28 have priority as to any specific property over any person who is a lienholder of record  
29 at the time the notice required under paragraph (2) of this subsection is recorded.

30           (4) The notice required under paragraph (2) of this subsection shall  
31 contain:

32                   (i) the name and address of the person against whose property  
33 the lien exists;

34                   (ii) the amount of the lien;

1                                    (iii) a description of or reference to the property subject to the  
2 lien; and

3                                    (iv) the date the Guaranty Fund paid the claim giving rise to the  
4 lien.

5                                    (5) Upon presentation of a release of any lien in favor of the State  
6 created by this subsection, the clerk of the court in which the lien is recorded and  
7 indexed shall record and index the release and shall note in the lien docket the date  
8 the release is filed and the fact that the lien is released.

9                                    (6) The notice required under paragraph (2) of this subsection and any  
10 release filed under paragraph (5) of this subsection shall be indexed with the judgment  
11 lien records maintained by the office of the clerk of the court where the notice is  
12 recorded.

13                                    (7) The clerk may collect a reasonable fee for recording and indexing  
14 each notice of lien or release of any lien under this subsection.

15                                    SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 July 1, 2014.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.