

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1327
Economic Matters

(Delegate Ramirez, *et al.*)

Business Regulation - Home Improvement - Providing Services Without a License

This bill establishes the duties of homeowners to only enter into home improvement contracts with persons who are licensed by the Maryland Home Improvement Commission (MHIC) and determine a person's licensure status.

The bill also alters statutory criminal penalty provisions and their applicability so that homeowners are subject to longer periods of incarceration for a violation of the bill than contractors acting without a license.

Fiscal Summary

State Effect: General fund revenues may increase minimally due to criminal fines assessed against homeowners in the State who contract for home improvement services with unlicensed contractors. Special fund expenditures may increase minimally due to additional claims awarded from the Home Improvement Guaranty Fund. Other changes to provisions are not expected to materially affect State finances or operations as discussed below.

Local Effect: The criminal penalty provisions of the bill are not expected to significantly affect local finances or operations as discussed below.

Small Business Effect: Minimal.

Analysis

Bill Summary: Criminal penalties for acting as a home improvement contractor without a license issued by MHIC are reduced. Unlicensed contractors are no longer subject to

up to 30 days of incarceration for a first offense, and the maximum sentence for subsequent offenses is reduced from two years to 60 days.

Homeowners who contract for home improvement services with an unlicensed contractor are subject to the penalty provisions established in the Maryland Home Improvement Law; thus, homeowners may be fined up to \$1,000 or imprisoned for up to six months for violating the bill's provisions. However, civil penalties under existing law may not be imposed against homeowners.

Homeowners who hire an unlicensed contractor are not allowed to use the person's unlicensed status as a defense in a lawsuit where the homeowner is accused of failing to pay for work done by a contractor.

Current Law: MHIC, which is housed within the Department of Labor, Licensing, and Regulation (DLLR), licenses and regulates home improvement contractors, subcontractors, and salespersons in Maryland who perform services at residential properties with fewer than four dwelling units. To obtain a contractor's license an individual must submit the required application, pass the licensing examination, and pay the \$225 licensing fee per place of business. Applicants for a contractor's license must also provide a credit report, proof of \$50,000 in liability insurance, and a personal financial statement.

State law establishes that a contractor who operates without a license is guilty of a misdemeanor and is subject to a fine of up to \$1,000 and/or imprisonment for up to 30 days for a first offense. Unlicensed contractors are subject to a \$5,000 fine and/or imprisonment for up to two years for subsequent offenses. Lesser maximum penalties of a \$1,000 fine and/or six months imprisonment that apply to other violations of the Maryland Home Improvement Law do not apply to this offense.

No penalties currently exist for homeowners who enter into contracts with unlicensed persons.

Background: Chapter 133 of 1962 created MHIC to increase consumer protection for home improvement transactions. MHIC processes complaints and files charges against unlicensed practitioners.

DLLR advises that the bill inhibits MHIC's ability to pursue criminal charges against unlicensed contractors because the threat of imprisonment under current law gives MHIC leverage when attempting to resolve cases and secure restitution, especially for first-time offenders.

Unlicensed contractors are pervasive in the home improvement industry and present licensed contractors with unfair competition. Unlicensed contractors may not be bonded or insured, do not pay licensing fees, and may not have properly classified employees. Because of these and other short cuts, unlicensed contractors have a competitive advantage when bidding on projects.

Consumers hire unlicensed contractors wittingly and unwittingly. MHIC advises that unlicensed contractors sometimes present themselves to consumers as licensed and may present a fake license, which the average consumer cannot distinguish from an authentic license. However, many consumers choose unlicensed practitioners because they work for lower rates than licensed contractors. When unlicensed contractors fail to execute their contracts, consumers often file complaints with MHIC.

The guaranty fund was established to compensate a homeowner for the “actual loss” created by a licensed home improvement contractor. Losses due to actions of unlicensed individuals are not eligible for restitution from the guaranty fund. “Actual loss” is defined as the costs of restoration, repair, replacement, or completion that arise from an unworkman-like, inadequate, or incomplete home improvement.

As of June 2009, there were about 19,000 contractors, subcontractors, and salespeople licensed with MHIC.

State Fiscal Effect: The bill significantly reduces criminal penalties for unlicensed contractors and subjects homeowners to criminal penalties – including incarceration – for contracting with an unlicensed person. As a result, general fund expenditures may increase minimally as more people are committed to Division of Correction facilities in Baltimore City due to additional incarceration costs for homeowners who violate the bill’s provisions. This impact is likely more than offset by incarceration costs actually decreasing due to fewer unlicensed contractors being incarcerated and for significantly shorter periods of time. Because homeowners are also subject to monetary criminal penalties as a result of the bill, general fund revenues may increase due to fines assessed against homeowners for contracting with unlicensed persons; the amount of such an increase is expected to be minimal.

The bill may reduce unlicensed activity in the home improvement industry. To the extent that more consumers suffer actual losses due to the failure of licensed contractors to complete home improvement projects, additional claims may be awarded from the Home Improvement Guaranty Fund. Such an increase in claims cannot be reliably estimated but is expected to be minimal.

Local Fiscal Effect: Similar to the effect on the State, local government expenditures related to incarceration costs are not significantly affected as a result of the bill.

Increases in these expenditures for homeowner violations, which may be for up to one year, are most likely offset by decreases due to significantly reduced criminal penalties for unlicensed practice, which are limited to 60 days.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 9, 2010
mpc/mcr

Analysis by: Michael T. Vorgetts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510