

Department of Legislative Services
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 936 (Senator Klausmeier)
Education, Health, and Environmental Affairs

Maryland Locksmith Act - Public Lists of Licensees - Remedies for Violations

This bill establishes specified remedies for violations of the Maryland Locksmiths Act. The remedies are in addition to, and not a substitution for, specified disciplinary actions or criminal prosecution authorized in current law. The bill adds requirements related to advertising for locksmith services, a violation of which is subject to the remedies established under the bill. Violation of the bill's advertising requirements and any other provisions of the Maryland Locksmiths Act is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill is not expected to materially affect District Court caseloads. The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. The Department of Labor, Licensing, and Regulation (DLLR) may experience a slight operational impact; however, any such impact is anticipated to be minimal and absorbable within existing budgeted resources.

Local Effect: The bill is not expected to materially affect circuit court caseloads. The bill's penalty provisions do not have a material effect on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Remedies for Violations

A licensed locksmith or any other person aggrieved by a violation of the Maryland Locksmiths Act may file a petition for a declaratory judgment that an act or a practice violates a provision of the Act.

A licensed locksmith or any other person aggrieved by a violation of the Act may seek a temporary injunction to prohibit a person who has engaged or is engaging in a violation of the Act from continuing to engage or engaging in the violation. If a court finds that an act or a practice violates any provision of the Act, a temporary injunction may be made permanent, modified, or converted into a license suspension for a period of no more than 10 years. The violator is liable to the person bringing the action for an injunction for the person's reasonable attorney's fees and costs if the court issues the injunction. Proof of actual damage or that any person will sustain any damage if an injunction is not granted is not required for an action under this provision.

In addition to any action by the Secretary of Labor, Licensing, and Regulation authorized by the Act and any other action otherwise authorized by law, any person may bring an action to recover for injury or loss sustained by the person as the result of an act or a practice that violates any provision of the Act. Any person who brings an action to recover for injury or loss under this provision and who is awarded damages may also seek, and the court may award, reasonable attorney's fees. However, if it appears to the satisfaction of the court, at any time, that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay to the other party reasonable attorney's fees.

Advertising Requirements

Current law specifying that each locksmith advertisement, business card, or any other means of providing notice to the public of the business providing locksmith services include the name of the licensed locksmith and the license number of the licensed locksmith is expanded to explicitly apply to websites and email that provide similar notice.

Any advertisement, directory of service providers, or search result information that publicly displays lists of locksmiths must include the following information:

- the verbatim name, fixed business address, and telephone number of the licensed locksmith that is on file with the Secretary;
- the license number of the licensed locksmith; and
- the date that it was verified that the locksmith is licensed.

The advertiser, directory publisher, or search result provider must verify with the Secretary that the locksmith listed in the advertisement, directory listing, or search result information is licensed in accordance with the Act before allowing the public display of the advertisement, directory listing, or search result information.

In addition to any other remedies provided under the Act, a violation of the advertising requirements is subject to an action for injunctive relief established under the bill.

Current Law:

Licensing and Expectations of Locksmiths

To obtain a locksmith license, an applicant must provide specified identifying information to the Secretary. Applicants, and all prospective employees who are to perform locksmith services on behalf of a licensed locksmith, must also undergo a State and national criminal history records check (CHRC) and pay all associated fees. The Secretary must periodically verify the continued employment or licensure of individuals who require a CHRC.

The State may issue licenses only to applicants who have a fixed business address. Making a false statement on an application is a misdemeanor and may result in a \$10,000 fine, a two-year prison sentence, or both. A license is valid for two years and may be renewed for an additional two-year term.

Licensed locksmiths must maintain general liability insurance in the amount of at least \$300,000, with appropriate coverage for the practice of the business. Licensees must also display the license conspicuously at the place of business. The owner of a business must issue a photo identification card to each employee who provides locksmith services on behalf of the business, and employees are required to display the card while providing services on behalf of the business. Any advertisements, business cards, or other public notifications must include the name and license number of the licensed locksmith.

Grounds for Suspension or Revocation of a License

The Secretary may deny a license, reprimand a licensee, or suspend or revoke a license if the applicant, licensee, or agent thereof:

- fraudulently uses a license or photo identification card or fraudulently obtains or attempts to obtain one for another person;
- uses or attempts to use an expired, suspended, or revoked license or false photo identification card or one of another licensee or employee;
- fails to maintain liability insurance;

- had a similar license or certificate denied, suspended, or revoked in another jurisdiction;
- has been convicted of a felony or a misdemeanor related to the fitness and qualification of the applicant or licensee, or knowingly employs a person who has been convicted of such a crime;
- engages in a pattern of unfair or deceptive trade practices under MCPA, as determined by a final administrative order or judicial decision;
- knowingly uses or allows the use of any of the licensee's or an employee of the licensee's skills, tools, or facilities for the commission of a crime; or
- fails to provide, or misrepresents, any information required to be provided by law or adopted regulation.

Instead of, or in addition to, reprimanding, suspending, or revoking a license, the Secretary may penalize a licensee up to \$5,000 for each violation of the Maryland Locksmiths Act. Licensees have the opportunity for a hearing before the Secretary takes any final action and may file an administrative appeal.

Additional Prohibited Acts

Locksmiths or their employees are guilty of a misdemeanor if they intentionally violate building or safety laws; use their skills, tools, or facilities to facilitate unlicensed or criminal activity; or fail in any material respect to complete the installation, repair, opening, or modification of a lock for a stated price. Individuals who violate these provisions (and most other provisions) may be fined up to \$10,000, imprisoned for up to two years, or both. However, individuals who impersonate a locksmith are guilty of a misdemeanor and may be fined up to \$1,000 for a first offense and up to \$5,000 for subsequent offenses. The Secretary may also bring civil administrative action against individuals who impersonate a locksmith; following an administrative hearing, the Secretary may impose additional fines of \$100 for each day of unlawful behavior. The subject of the hearing may file an administrative appeal.

Maryland Consumer Protection Act

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off

consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: Chapters 551 and 552 of 2009 established a regulatory framework for locksmiths and required persons providing locksmith services to be licensed by July 1, 2010. The law has remained largely unchanged since its initial enactment. DLLR currently licenses approximately 234 locksmiths. DLLR received fewer than a dozen complaints in the previous year. The initial application fee and the renewal fee are each \$225.

Small Business Effect: Most locksmiths are considered small businesses. Licensed locksmiths benefit to the extent that the bill provides a disincentive for unlicensed individuals to provide locksmith services. Further, some advertisers, directory publishers, and providers of search result information may be small businesses. These businesses must publish specific information about locksmiths, after verifying the information with DLLR.

Additional Information

Prior Introductions: None.

Cross File: HB 1255 (Delegate Impallaria) - Rules and Executive Nominations.

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

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