

SENATE BILL 672

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SB 577/01 - JPR

2002 Regular Session  
2lr1246  
CF 2lr2048

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By: **Senators Munson, Baker, Jimeno, and Middleton**

Introduced and read first time: February 1, 2002

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2                           **Nuisance Control - Authority to Investigate and File a Complaint - Penalties**  
3                           **for Violations**

4 FOR the purpose of authorizing local health officers to investigate suspected  
5 nuisances and to file a complaint for nuisance abatement under certain  
6 circumstances in a certain court; requiring a certain notice for abatement of a  
7 nuisance; specifying the terms of a notice for abatement of a nuisance;  
8 authorizing the Secretary of Health and Mental Hygiene, a local health officer,  
9 or their representative to summarily abate a nuisance under certain  
10 circumstances; specifying certain provisions that may be included in a request  
11 for a court order; providing certain fines for certain violations of this Act;  
12 establishing certain criminal penalties for certain violations of this Act; defining  
13 a certain term; requiring the Secretary of Health and Mental Hygiene to adopt  
14 certain regulations; providing for the construction of certain provisions of law;  
15 and generally relating to the abatement of nuisances.

16 BY adding to  
17 Article - Health - General  
18 Section 20-301 and 20-314  
19 Annotated Code of Maryland  
20 (2000 Replacement Volume and 2001 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article - Health - General  
23 Section 20-301, 20-302, 20-305, 20-306, 20-307, 20-308, 20-309, 20-310,  
24 20-311, 20-312, and 20-313  
25 Annotated Code of Maryland  
26 (2000 Replacement Volume and 2001 Supplement)

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

1

**Article - Health - General**

2 20-301.

3 IN THIS SUBTITLE, "NUISANCE" MEANS A CONDITION THAT IS DANGEROUS TO  
4 HEALTH OR SAFETY INCLUDING:

- 5 (1) AN INADEQUATELY PROTECTED SWIMMING POOL;
- 6 (2) AN UNPROTECTED OPEN DITCH;
- 7 (3) AN UNSANITARY OUTHOUSE;
- 8 (4) A FOUL PIGPEN;
- 9 (5) AN IMPROPERLY FUNCTIONING SEWAGE SYSTEM;
- 10 (6) AN UNKEMPT JUNKYARD;
- 11 (7) AN UNKEMPT SCRAP METAL PROCESSING FACILITY;
- 12 (8) AN EXCESSIVE ACCUMULATION OF TRASH OR GARBAGE;
- 13 (9) A DEAD ANIMAL;
- 14 (10) A CONTAMINATED WATER SUPPLY;
- 15 (11) AN INADEQUATELY PROTECTED WATER SUPPLY;
- 16 (12) A RODENT HARBORAGE;
- 17 (13) POOR HOUSEKEEPING THAT COULD ENDANGER THE HEALTH OF  
18 THE OWNER, OCCUPANT, EMPLOYEE, OR A NEIGHBOR; OR
- 19 (14) ANY CONDITION THAT MAY ENDANGER HEALTH THAT MAY BE  
20 TRANSMITTED BY MEANS INCLUDING:
- 21 (I) RUNNING STREAMS;
- 22 (II) SURFACE DRAINAGE;
- 23 (III) AIR CURRENTS;
- 24 (IV) BIRDS;
- 25 (V) DOMESTIC ANIMALS; OR
- 26 (VI) HUMAN BEINGS.

1 [20-301.] 20-301.1.

2 Notwithstanding the provisions of Title 10 of the Environment Article, the  
3 Secretary is responsible for the general care of the sanitary interests of the people of  
4 the State.

5 20-302.

6 The Secretary OR A LOCAL HEALTH OFFICER [shall] MAY investigate [all  
7 nuisances] A SUSPECTED NUISANCE [that affect the public health] and devise means  
8 for the control of [these nuisances] THE NUISANCE.

9 20-305.

10 The Secretary OR A LOCAL HEALTH OFFICER may bring an action to enjoin any  
11 person from committing any nuisance subject to this subtitle.

12 20-306.

13 (a) The health officer for each county:

14 (1) May investigate any [condition in the county that is dangerous to  
15 human health] SUSPECTED NUISANCE; and

16 (2) Shall investigate and report on the sanitary conditions of schools,  
17 places of business, and places of employment in the county.

18 [(b) Except in Baltimore County, on the written complaint of a physician or of  
19 at least 2 persons who claim to be affected by the condition, the health officer for the  
20 county where the condition allegedly exists immediately shall investigate any  
21 complaint that any of the following is in a condition dangerous to human health:

22 (1) Any watercourse, well, spring, open ditch, gutter, cesspool, drain,  
23 outhouse, pigpen, or other place.

24 (2) Any accumulation or deposit of any substance.]

25 [(c) (B) (1) If the health officer finds that [the condition of the place or  
26 thing investigated may injure the life or health of any person, the place or thing is in  
27 a state of nuisance and] A NUISANCE EXISTS, the health officer shall serve a written  
28 notice to the person who is causing the nuisance, ordering the person to abate the  
29 nuisance within a time specified in the notice.

30 (2) THE NOTICE SHALL BE SERVED:

31 (I) ON THE PERSON WHO IS CAUSING THE NUISANCE; OR

32 (II) IF THE PERSON WHO IS CAUSING THE NUISANCE CANNOT BE  
33 FOUND, ON THE OWNER OR OCCUPANT OF THE PROPERTY WHERE THE NUISANCE  
34 EXISTS.

1 [(d)] (C) [A person may not refuse or neglect] FAILURE to comply with the  
2 requirements of a notice served under this section IS A VIOLATION OF THIS SUBTITLE.

3 [(e)] (D) If a question arises between health officers as to the jurisdiction or  
4 duties of a health officer in the abatement of [any unhealthy] A nuisance, the  
5 question shall be referred to the Secretary[, who shall settle the question] FOR  
6 RESOLUTION.

7 (E) (1) A HEALTH OFFICER MAY FILE A COMPLAINT IN THE CIRCUIT COURT  
8 FOR THE COUNTY WHERE THE NUISANCE EXISTS IF:

9 (I) THE PERSON SERVED WITH THE NOTICE UNDER THIS SECTION  
10 FAILS TO COMPLY WITH THE REQUIREMENTS OF THE NOTICE; OR

11 (II) ALTHOUGH THE PERSON SERVED WITH A NOTICE UNDER THIS  
12 SECTION COMPLIES WITH THE REQUIREMENTS OF THE NOTICE, THE NUISANCE IS  
13 LIKELY TO RECUR ON THE SAME PROPERTY.

14 (2) A COMPLAINT FILED UNDER THIS SUBSECTION MAY SEEK A COURT  
15 ORDER REQUIRING THE INDIVIDUAL SERVED WITH A NOTICE UNDER SUBSECTION  
16 (B) OF THIS SECTION TO:

17 (I) COMPLY WITH THE REQUIREMENTS OF THE HEALTH OFFICER'S  
18 ABATEMENT NOTICE;

19 (II) ABATE THE NUISANCE WITHIN A SPECIFIED TIME;

20 (III) PREVENT THE NUISANCE FROM RECURRING; OR

21 (IV) PAY A FINE OF NOT MORE THAN \$1,000.

22 20-307.

23 (a) [On the written complaint of 2 physicians or of at least 3 persons who  
24 claim to be affected by the condition, the Secretary shall investigate any complaint  
25 that any of the following is in a condition that injures any adjacent property or that is  
26 dangerous to human health:

27 (1) Any watercourse, well, spring, open ditch, gutter, cesspool, drain,  
28 outhouse, pigpen, or other place.

29 (2) Any accumulation or deposit of offensive or noxious matter.

30 (3) Any house, building, trades establishment, or manufacturing place.

31 (4) Any water in which mosquito larvae breed] THE SECRETARY MAY  
32 INVESTIGATE ANY SUSPECTED NUISANCE.

33 (b) (1) If the Secretary finds that [the condition of the place or thing  
34 investigated may injure any adjacent property or may injure the life or health of any  
35 individual, the place or thing is in a state of nuisance and] A NUISANCE EXISTS, the

1 Secretary shall serve a written notice to the person who is causing the nuisance,  
2 ordering the person to abate the nuisance within a time specified in the notice.

3 (2) The notice shall be served:

4 (i) On the person who is causing the nuisance; or

5 (ii) If the person who is causing the nuisance cannot be found, on  
6 the owner or occupant of the property where the nuisance exists.

7 (c) (1) The Secretary may file a complaint in the circuit court for the county  
8 where the nuisance exists if:

9 (i) The person served with the notice fails to comply with the  
10 requirements of the notice; or

11 (ii) Although the person served complies with the requirements of  
12 the notice, the nuisance is likely to recur on the same property.

13 (2) A complaint filed under this subsection may seek a court order  
14 requiring the person served with the notice to [do any or all of the following]:

15 (i) [To comply] COMPLY with the requirements of the Secretary's  
16 abatement [notice.] NOTICE;

17 (ii) [To abate] ABATE the nuisance within a time specified in the  
18 [order.] ORDER;

19 (iii) [To prevent] PREVENT the nuisance from [recurring.]  
20 RECURRING; OR

21 (IV) PAY A FINE OF NOT MORE THAN \$1,000.

22 20-308.

23 (a) [(1)] If, after investigation, the Secretary OR A LOCAL HEALTH OFFICER  
24 finds that [any of the following conditions exists, the place or thing as to which the  
25 condition exists is in a state of nuisance:

26 (i) The contents overflow or leak from an outhouse, a water closet,  
27 a septic tank, or a cesspool and present a hazard to public health.

28 (ii) An outhouse, a water closet, or a cesspool is not flytight and  
29 watertight and presents a hazard to public health.

30 (2) The] A NUISANCE EXISTS, THE Secretary OR LOCAL HEALTH  
31 OFFICER MAY summarily [may] abate [any condition that is in a state of] THE  
32 nuisance [under this subsection].

33 (b) Before summarily abating a nuisance under this section, the Secretary OR  
34 A LOCAL HEALTH OFFICER shall:

1           (1)     Serve an abatement order on the owner of the property where the  
2 nuisance exists or, if the owner cannot be found, on the occupant or tenant of the  
3 property; or

4           (2)     If the property is unoccupied and the owner cannot be found, attach  
5 an abatement order to the property where the nuisance exists.

6       (c)     (1)     The abatement order shall require and state:

7                   (i)     A time period within which the owner, occupant, or tenant of the  
8 property where the nuisance exists shall abate the nuisance; and

9                   (ii)    The work and materials necessary to abate the nuisance.

10          (2)     The time period within which to abate the nuisance may not be less  
11 than 24 hours nor more than 5 days from the date and hour that the order is served.

12       (d)     (1)     If the owner, occupant, or tenant served with an abatement order  
13 fails to abate or only partially abates the nuisance within the time specified in the  
14 order, the Secretary [or a representative of the Secretary], LOCAL HEALTH OFFICER,  
15 OR THEIR REPRESENTATIVE shall:

16                   (i)     Enter on the property; and

17                   (ii)    At the expense of the owner, occupant, or tenant of the property,  
18 do any work and use any materials necessary to abate the nuisance.

19          (2)     The Secretary OR LOCAL HEALTH OFFICER may not expend more  
20 than [\$500] \$5,000 to abate the nuisance.

21       (e)     If, within 60 days after the Secretary OR LOCAL HEALTH OFFICER has  
22 completed an abatement under this section, the owner, occupant, or tenant does not  
23 pay to the Secretary OR LOCAL HEALTH OFFICER the cost of the abatement, the  
24 Secretary shall file suit against the owner, occupant, or tenant in the District Court  
25 for the county where the nuisance was abated.

26       (f)     A person may not:

27                   (1)     Interfere with the Secretary [or a representative of the Secretary],  
28 LOCAL HEALTH OFFICER, OR THEIR REPRESENTATIVE summarily abating a nuisance  
29 under this section; or

30                   (2)     Refuse to allow the Secretary [or a representative of the Secretary],  
31 LOCAL HEALTH OFFICER, OR THEIR REPRESENTATIVE to enter on any property for  
32 the purpose of summarily abating a nuisance under this section.

33 20-309.

34       A person who [refuses or neglects] FAILS to comply with the requirements of a  
35 notice served under § 20-306 OR § 20-307 of this subtitle is guilty of a misdemeanor  
36 and on conviction is subject to a fine not exceeding [\$50] \$1,000.

1 20-310.

2 (a) A person who fails to exercise due diligence under a court order to abate a  
3 condition under § 20-306 OR § 20-307 of this subtitle is guilty of a misdemeanor and  
4 on conviction is subject to:

5 (1) A fine not exceeding [\$10 for each day the condition is not abated]  
6 \$1,000; and

7 (2) The cost of prosecution.

8 (b) A person who knowingly or willfully acts contrary to a court order to abate  
9 a condition under § 20-306 OR § 20-307 of this subtitle is guilty of a misdemeanor and  
10 on conviction is subject to:

11 (1) A fine not exceeding [\$20 for each day the violation continues] \$1,000;  
12 and

13 (2) The cost of prosecution.

14 20-311.

15 In addition to any other penalty provided by law, a person is guilty of a  
16 misdemeanor and on conviction is subject to a fine not exceeding [\$100] \$1,000 or  
17 imprisonment not exceeding 30 days or both, if the person:

18 (1) Interferes with the Secretary [or a representative of the Secretary],  
19 LOCAL HEALTH OFFICER, OR THEIR REPRESENTATIVE summarily abating a nuisance  
20 under § 20-308 of this subtitle; or

21 (2) Refuses to allow the Secretary [or a representative of the Secretary],  
22 LOCAL HEALTH OFFICER, OR THEIR REPRESENTATIVE to enter on any property for  
23 the purpose of summarily abating a nuisance under § 20-308 of this subtitle.

24 20-312.

25 (A) THE SECRETARY SHALL ADOPT REGULATIONS TO IMPLEMENT THE  
26 PROVISIONS OF THIS SUBTITLE.

27 (B) A person who violates any rule or regulation that the Secretary adopts  
28 under [Part I of] this subtitle is guilty of a misdemeanor [and on conviction is subject  
29 to a fine for each offense not exceeding the lesser of the penalty provided by the rule  
30 or regulation or \$100].

31 20-313.

32 [(a) In this section, "nuisance" includes:

33 (1) Any condition that is dangerous to health or safety, such as an  
34 inadequately protected swimming pool or ditch;

1           (2)     Any condition that may adversely affect the public health, such as an  
2 unsanitary outhouse, a foul pigpen, an improperly functioning sewage system, an  
3 unkempt junkyard, an unkempt scrap metal processing facility, an excessive  
4 accumulation of trash or garbage, dead animals, a contaminated water supply, an  
5 inadequately protected water supply, or a rat harborage;

6           (3)     Housekeeping in any building that is so poor that the health of the  
7 owner, occupants, employees, or neighbors may be endangered; and

8           (4)     Any condition that may endanger health through the spreading of the  
9 condition by any means, including by streams, surface drainage, air currents, winged  
10 life, domestic animals, or human beings.

11       (b)]     In Cecil County or Allegany County, in addition to any other penalty  
12 imposed by this subtitle, a person who refuses or neglects to comply with a notice or  
13 order to abate a nuisance by the Secretary, or by the health officer for the county  
14 where the nuisance exists, is guilty of a misdemeanor and on conviction is subject to  
15 a fine not exceeding \$100 a day for each day the violation continues.

16 20-314.

17       SECTIONS 20-309 THROUGH 20-313 OF THIS SUBTITLE MAY NOT BE CONSTRUED  
18 TO ABROGATE ANY EQUITABLE OR LEGAL RIGHT OR REMEDY OTHERWISE  
19 AVAILABLE UNDER THE LAW TO ABATE A NUISANCE.

20       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2002.