

SENATE BILL 672

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SB 577/01 - JPR

2002 Regular Session
2lr1246
CF 2lr2048

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

Introduced and read first time: February 1, 2002

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: February 28, 2002

CHAPTER _____

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~~ the representative of the Secretary or local health official
10 to summarily abate a nuisance under certain circumstances; specifying certain
11 provisions that may be included in a request for a court order; providing certain
12 fines for certain violations of this Act; establishing certain criminal penalties for
13 certain violations of this Act; defining a certain term; ~~requiring~~ authorizing the
14 Secretary of Health and Mental Hygiene to adopt certain regulations; providing
15 for the construction of certain provisions of law; and generally relating to the
16 abatement of nuisances.

17 BY adding to
18 Article - Health - General
19 Section 20-301 and 20-314
20 Annotated Code of Maryland
21 (2000 Replacement Volume and 2001 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Health - General
24 Section 20-301, 20-302, 20-305, 20-306, 20-307, 20-308, 20-309, 20-310,
25 20-311, 20-312, and 20-313

1 Annotated Code of Maryland
2 (2000 Replacement Volume and 2001 Supplement)

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

5 **Article - Health - General**

6 20-301.

7 (A) IN THIS SUBTITLE, "NUISANCE" MEANS A CONDITION THAT IS DANGEROUS
8 TO HEALTH OR SAFETY INCLUDING:

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

1 (V) DOMESTIC ANIMALS; OR

2 (VI) HUMAN BEINGS.

3 (B) "NUISANCE" DOES NOT INCLUDE ANY CONDITION RESULTING FROM A
4 FARM OPERATION FOLLOWING COOPERATIVE EXTENSION SERVICE OR SOIL
5 CONSERVATION SERVICE "BEST MANAGEMENT PRACTICES" GENERALLY ACCEPTED
6 AGRICULTURAL PRACTICES THAT ARE NOT CREATING A CONDITION DANGEROUS TO
7 HUMAN HEALTH.

8 [20-301.] 20-301.1.

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

12 20-302.

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

16 20-305.

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

19 20-306.

20 (a) The health officer for each county:

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

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

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

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

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

32 [(c) (B) (1) If the health officer finds that [the condition of the place or
33 thing investigated may injure the life or health of any person, the place or thing is in
34 a state of nuisance and] A NUISANCE EXISTS, the health officer shall serve a written

1 notice to the person who is causing the nuisance, ordering the person to abate the
2 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
6 FOUND, ON THE OWNER OR OCCUPANT OF THE PROPERTY WHERE THE NUISANCE
7 EXISTS.

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

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

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

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

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

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

24 (I) COMPLY WITH THE REQUIREMENTS OF THE HEALTH OFFICER'S
25 ABATEMENT NOTICE;

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

27 (III) PREVENT THE NUISANCE FROM RECURRING; OR

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

29 20-307.

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

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

- 1 (2) Any accumulation or deposit of offensive or noxious matter.
- 2 (3) Any house, building, trades establishment, or manufacturing place.
- 3 (4) Any water in which mosquito larvae breed] THE SECRETARY MAY
4 INVESTIGATE ANY SUSPECTED NUISANCE.

5 (b) (1) If the Secretary finds that [the condition of the place or thing
6 investigated may injure any adjacent property or may injure the life or health of any
7 individual, the place or thing is in a state of nuisance and] A NUISANCE EXISTS, the
8 Secretary shall serve a written notice to the person who is causing the nuisance,
9 ordering the person to abate the nuisance within a time specified in the notice.

10 (2) The notice shall be served:

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

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

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

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

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

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

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

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

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

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

29 20-308.

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

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

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

3 (2) The] A NUISANCE EXISTS THAT PRESENTS AN IMMEDIATE HAZARD
4 TO PUBLIC HEALTH, THE Secretary OR LOCAL HEALTH OFFICER MAY summarily
5 [may] abate [any condition that is in a state of] THE nuisance [under this
6 subsection].

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

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

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

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

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

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

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

20 (d) (1) If the owner, occupant, or tenant served with an abatement order
21 fails to abate or only partially abates the nuisance within the time specified in the
22 order, the Secretary [or a representative of the Secretary], LOCAL HEALTH OFFICER,
23 ~~OR THEIR REPRESENTATIVE~~ THE REPRESENTATIVE OF THE SECRETARY OR LOCAL
24 HEALTH OFFICER shall:

25 (i) Enter on the property; and

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

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

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

35 (f) A person may not:

1 (1) Interfere with the Secretary [or a representative of the Secretary],
2 LOCAL HEALTH OFFICER, OR ~~THEIR REPRESENTATIVE~~ THE REPRESENTATIVE OF
3 THE SECRETARY OR LOCAL HEALTH OFFICER summarily abating a nuisance under
4 this section; or

5 (2) Refuse to allow the Secretary [or a representative of the Secretary],
6 LOCAL HEALTH OFFICER, OR ~~THEIR REPRESENTATIVE~~ THE REPRESENTATIVE OF
7 THE SECRETARY OR LOCAL HEALTH OFFICER to enter on any property for the
8 purpose of summarily abating a nuisance under this section.

9 20-309.

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

13 20-310.

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

17 (1) A fine not exceeding [\$10 for each day the condition is not abated]
18 \$1,000; and

19 (2) The cost of prosecution.

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

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

25 (2) The cost of prosecution.

26 20-311.

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

30 (1) Interferes with the Secretary [or a representative of the Secretary],
31 LOCAL HEALTH OFFICER, OR ~~THEIR REPRESENTATIVE~~ THE REPRESENTATIVE OF
32 THE SECRETARY OR LOCAL HEALTH OFFICER summarily abating a nuisance under §
33 20-308 of this subtitle; or

34 (2) Refuses to allow the Secretary [or a representative of the Secretary],
35 LOCAL HEALTH OFFICER, OR ~~THEIR REPRESENTATIVE~~ THE REPRESENTATIVE OF

1 THE SECRETARY OR LOCAL HEALTH OFFICER to enter on any property for the
2 purpose of summarily abating a nuisance under § 20-308 of this subtitle.

3 20-312.

4 (A) THE SECRETARY ~~SHALL~~ MAY ADOPT REGULATIONS TO IMPLEMENT THE
5 PROVISIONS OF THIS SUBTITLE.

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

10 20-313.

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

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

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

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

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

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

29 20-314.

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

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

