
By: **Delegates V. Clagett, Haynes, Anderson, Benson, Branch, Bromwell, Burns, Cane, C. Davis, DeBoy, Donoghue, Doory, Eckardt, Frank, Gaines, Gutierrez, Hammen, Holmes, Howard, Jones, Kirk, Krysiak, Love, Marriott, McConkey, McHale, McIntosh, Menes, Murray, Nathan-Pulliam, Oaks, Paige, Parker, Patterson, Petzold, Proctor, Rosenberg, Smigiel, Sossi, Taylor, F. Turner, V. Turner, and Vaughn**

Introduced and read first time: February 10, 2005
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Abatement of Nuisances on Property Used for Controlled**
3 **Dangerous Substance Offenses**

4 FOR the purpose of specifying the persons against whom an action may be brought to
5 abate a nuisance on property used for controlled dangerous substance offenses
6 under certain circumstances; clarifying that a plaintiff is entitled to equitable
7 relief in an action to abate a certain nuisance whether or not an adequate
8 remedy exists at law; authorizing a court, if a tenant fails to comply with an
9 order to abate a certain nuisance, to order restitution of the possession of the
10 property to the operator of the property under certain circumstances;
11 authorizing a court, if an owner fails to comply with an order to abate a certain
12 nuisance, to order the property to be sold under certain circumstances;
13 authorizing a court, if an owner-occupant fails to comply with an order to abate
14 a certain nuisance in the owner-occupied unit of a property, to order the
15 owner-occupied unit to be vacated within a certain period of time and remain
16 unoccupied for a certain period of time under certain circumstances; clarifying
17 that all proceedings in an action to abate a certain nuisance are equitable in
18 nature; authorizing a law enforcement officer or an attorney in certain
19 government offices to disclose the contents of an executed search warrant to
20 certain persons under certain circumstances; defining certain terms; making
21 stylistic changes; and generally relating to the abatement of nuisances on
22 property used for controlled dangerous substance offenses.

23 BY repealing and reenacting, with amendments,
24 Article - Real Property
25 Section 14-120
26 Annotated Code of Maryland
27 (2003 Replacement Volume and 2004 Supplement)

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

3 **Article - Real Property**

4 14-120.

5 (a) (1) In this section the following words have the meanings indicated.

6 (2) "COMMERCIAL PROPERTY" DOES NOT INCLUDE RESIDENTIAL
7 RENTAL PROPERTY.

8 [(2)] (3) "Community association" means:

9 (i) A nonprofit association, corporation, or other organization that
10 is:

11 1. Comprised of residents of a community within which a
12 nuisance is located;

13 2. Operated exclusively for the promotion of social welfare
14 and general neighborhood improvement and enhancement; and

15 3. Exempt from taxation under § 501(c)(3) or (4) of the
16 Internal Revenue Code; or

17 (ii) A nonprofit association, corporation, or other organization that
18 is:

19 1. Comprised of residents of a contiguous community that is
20 defined by specific geographic boundaries, within which a nuisance is located; and

21 2. Operated for the promotion of the welfare, improvement
22 and enhancement of that community.

23 [(3)] (4) "Controlled dangerous substance" means a substance listed in
24 Schedule I or Schedule II under § 5-402 or § 5-403 of the Criminal Law Article.

25 [(4)] (5) "Nuisance" means a property that is used:

26 (i) By persons who assemble for the specific purpose of illegally
27 administering a controlled dangerous substance;

28 (ii) For the illegal manufacture, or distribution of:

29 1. A controlled dangerous substance; or

30 2. Controlled paraphernalia, as defined in § 5-101 of the
31 Criminal Law Article; or

1 (iii) For the illegal storage or concealment of a controlled dangerous
2 substance in sufficient quantity to reasonably indicate under all the circumstances an
3 intent to manufacture, distribute, or dispense:

- 4 1. A controlled dangerous substance; or
- 5 2. Controlled paraphernalia, as defined in § 5-101 of the
6 Criminal Law Article.

7 (6) (I) "OPERATOR" MEANS A PERSON THAT EXERCISES CONTROL
8 OVER PROPERTY.

9 (II) "OPERATOR" INCLUDES A PROPERTY MANAGER OR ANY OTHER
10 PERSON THAT IS AUTHORIZED TO EVICT A TENANT.

11 [(5)] (7) "Owner" includes an owner-occupant.

12 (8) "OWNER-OCCUPANT" INCLUDES AN OWNER OF COMMERCIAL
13 PROPERTY THAT CONDUCTS BUSINESS IN ANY PART OF THE PROPERTY.

14 [(6)] (9) "Property" includes a mobile home.

15 [(7)] (10) (i) "Tenant" means the lessee or a person occupying property,
16 whether or not a party to a lease.

17 (ii) "Tenant" includes a lessee or a person occupying a mobile home,
18 whether or not a party to a lease.

19 (iii) "Tenant" does not include:

- 20 1. The owner of the property; or
- 21 2. A mobile home owner who leases or rents a site for
22 residential use and resides in a mobile home park.

23 (b) An action under § 4-401 of the Courts Article to abate a nuisance may be
24 brought by:

- 25 (1) The State's Attorney of the county in which the nuisance is located;
- 26 (2) The county attorney or solicitor of the county in which the nuisance is
27 located;
- 28 (3) A community association within whose boundaries the nuisance is
29 located; or
- 30 (4) A municipal corporation within whose boundaries the nuisance is
31 located.

32 (C) AN ACTION UNDER § 4-401 OF THE COURTS ARTICLE TO ABATE A
33 NUISANCE MAY BE BROUGHT AGAINST:

- 1 (1) A TENANT OF THE PROPERTY WHERE THE NUISANCE IS LOCATED;
2 (2) AN OWNER OF THE PROPERTY WHERE THE NUISANCE IS LOCATED;
3 OR
4 (3) AN OPERATOR OF THE PROPERTY WHERE THE NUISANCE IS
5 LOCATED.

6 [(c)] (D) (1) An action may not be brought under this section concerning a
7 commercial property until 45 days after the tenant, if any, and owner of record receive
8 notice from a person entitled to bring an action under this section that a nuisance
9 exists.

- 10 (2) The notice shall specify:
11 (i) The date and time of day the nuisance was first discovered; and
12 (ii) The location on the property where the nuisance is allegedly
13 occurring.
14 (3) The notice shall be:
15 (i) Hand delivered to the tenant, if any, and the owner of record; or
16 (ii) Sent by certified mail to the tenant, if any, and the owner of
17 record.

18 [(d)] (E) (1) In addition to any service of process required by the Maryland
19 Rules, the plaintiff shall cause to be posted in a conspicuous place on the property no
20 later than 48 hours before the hearing the notice required under paragraph (2) of this
21 subsection.

- 22 (2) The notice shall indicate:
23 (i) The nature of the proceedings;
24 (ii) The time and place of the hearing; and
25 (iii) The name and telephone number of the person to contact for
26 additional information.

27 [(e)] (F) [The court may issue an injunction or order other equitable relief] A
28 PLAINTIFF IS ENTITLED TO RELIEF UNDER THIS SECTION whether or not an
29 adequate remedy exists at law.

30 [(f)] (G) (1) IF, AFTER A HEARING, THE COURT DETERMINES THAT A
31 NUISANCE EXISTS, THE COURT MAY ORDER ANY APPROPRIATE INJUNCTIVE OR
32 OTHER EQUITABLE RELIEF.

1 [(1)] (2) Notwithstanding any other provision of law, and in addition to
2 or as a component of any remedy ordered under [subsection (e)] PARAGRAPH (1) of
3 this [section] SUBSECTION, the court[, after a hearing,] may order:

4 (I) [a] A tenant who knew or should have known of the existence of
5 the nuisance to vacate the property within 72 hours; OR

6 (II) AN OWNER OR OPERATOR OF THE PROPERTY TO SUBMIT FOR
7 COURT APPROVAL A PLAN OF CORRECTION TO ENSURE, TO THE EXTENT
8 REASONABLY POSSIBLE, THAT THE PROPERTY WILL NOT AGAIN BE USED FOR A
9 NUISANCE IF:

10 1. THE OWNER OR OPERATOR IS A PARTY TO THE ACTION;
11 AND

12 2. THE OWNER OR OPERATOR KNEW OR SHOULD HAVE
13 KNOWN OF THE EXISTENCE OF THE NUISANCE.

14 (H) [(2)] (1) (I) [The] IF A TENANT FAILS TO COMPLY WITH AN ORDER
15 UNDER SUBSECTION (G) OF THIS SECTION AND THE OWNER OR OPERATOR, AND
16 TENANT, ARE PARTIES TO THE ACTION, THE court, after a hearing, may [grant a
17 judgment of] ORDER restitution [or] OF the possession of THE [rental] property to
18 the owner OR OPERATOR [if:

19 (i) The owner and tenant are parties to the action; and

20 (ii) A tenant has failed to obey an order under subsection (e) of this
21 section or paragraph (1) of this subsection].

22 [(3)] (II) If the court orders restitution of the possession of the
23 property under SUBPARAGRAPH (I) OF THIS paragraph [(2) of this subsection], the
24 court shall immediately issue its warrant to the sheriff or constable commanding
25 execution of the warrant within 5 days after issuance of the warrant.

26 [(4)] In addition to or as a part of any injunction, restraining order, or
27 other relief ordered, the court may order the owner of the property to submit for court
28 approval a plan of correction to ensure, to the extent reasonably possible, that the
29 property will not again be used for a nuisance if:

30 (i) The owner is a party to the action; and

31 (ii) The owner knew or should have known of the existence of the
32 nuisance.]

33 [(5)] (2) If an owner, INCLUDING AN OWNER-OCCUPANT, fails to comply
34 with an order [to abate a nuisance] UNDER SUBSECTION (G) OF THIS SECTION, after
35 a hearing the court may, in addition to ISSUING A CONTEMPT ORDER OR AN ORDER
36 FOR any other relief [granted], order that:

1 (I) [the] THE property be SOLD, AT THE OWNER'S EXPENSE, IN
2 ACCORDANCE WITH THE MARYLAND RULES GOVERNING JUDICIAL SALES; OR

3 (II) THE PROPERTY BE demolished if the property is unfit for
4 habitation and the estimated cost of rehabilitation significantly exceeds the estimated
5 market value of the property after rehabilitation.

6 (3) IF AN OWNER-OCCUPANT FAILS TO COMPLY WITH AN ORDER UNDER
7 SUBSECTION (G) OF THIS SECTION REGARDING A NUISANCE IN THE
8 OWNER-OCCUPIED UNIT OF THE PROPERTY, AFTER A HEARING THE COURT MAY, IN
9 ADDITION TO ISSUING A CONTEMPT ORDER OR AN ORDER FOR ANY OTHER RELIEF,
10 ORDER THAT:

11 (I) THE OWNER-OCCUPIED UNIT BE VACATED WITHIN 72 HOURS;
12 AND

13 (II) THE OWNER-OCCUPIED UNIT REMAIN UNOCCUPIED FOR A
14 PERIOD NOT TO EXCEED 1 YEAR OR UNTIL THE PROPERTY IS SOLD IN AN ARM'S
15 LENGTH TRANSACTION.

16 [(g)] (I) Except as provided in [subsection (f)(1) and (4)] PARAGRAPH (G)(2) of
17 this section, the court may order appropriate relief under [subsections (e) and (f)]
18 SUBSECTION (G) of this section without proof that a defendant knew of the existence
19 of the nuisance.

20 [(h)] (J) In any action brought under this section:

21 (1) Evidence of the general reputation of the property is admissible to
22 corroborate testimony based on personal knowledge or observation, or evidence seized
23 during the execution of a search and seizure warrant, but shall not, in and of itself, be
24 sufficient to establish the existence of a nuisance under this section; and

25 (2) Evidence that the nuisance had been discontinued at the time of the
26 filing of the complaint or at the time of the hearing does not bar the imposition of
27 appropriate relief by the court under [subsections (e) and (f)] SUBSECTION (G) of this
28 section.

29 [(i)] (K) The court may award court costs and reasonable attorney's fees to a
30 community association that is the prevailing plaintiff in an action brought under this
31 section.

32 [(j)] (L) An action under this section shall be heard within 14 days after
33 service of process on the parties.

34 [(k)] (M) This section does not abrogate any equitable or legal right or remedy
35 under existing law to abate a nuisance.

36 [(l)] (N) (1) An appeal from a judgment or order under this section shall be
37 filed within 10 days after the date of the order or judgment.

1 (2) If either party files a request for oral argument, the court shall hear
2 the oral argument within 7 days after the request is filed.

3 (3) (i) If the appellant files a request for oral argument, the request
4 shall be filed at the time of the filing of the appeal.

5 (ii) If the appellee files a request for oral argument, the request
6 shall be filed within 2 days of receiving notice of the appeal.

7 [(m)] (O) Provisions of the Real Property Article or public local laws applicable
8 to actions between a landlord and tenant are not applicable to actions brought against
9 a landlord or a tenant under this section.

10 (P) ALL PROCEEDINGS UNDER THIS SECTION ARE EQUITABLE IN NATURE.

11 (Q) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
12 WHEN NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS SECTION, A LAW
13 ENFORCEMENT OFFICER, AN ATTORNEY IN A MUNICIPAL OR COUNTY ATTORNEY'S
14 OFFICE, OR AN ATTORNEY IN AN OFFICE OF THE STATE'S ATTORNEY MAY DISCLOSE
15 THE CONTENTS OF AN EXECUTED SEARCH WARRANT AND PAPERS FILED IN
16 CONNECTION WITH THE SEARCH WARRANT TO:

17 (I) AN OFFICER OR DIRECTOR OF THE COMMUNITY ASSOCIATION
18 IN WHICH THE NUISANCE IS LOCATED, OR THE ATTORNEY REPRESENTING THE
19 COMMUNITY ASSOCIATION;

20 (II) AN OWNER, TENANT, OR OPERATOR OF THE SEARCHED
21 PROPERTY OR AN AGENT OF THE OWNER, TENANT, OR OPERATOR OF THE SEARCHED
22 PROPERTY; OR

23 (III) AN ATTORNEY IN A MUNICIPAL OR COUNTY ATTORNEY'S
24 OFFICE.

25 (2) AN AFFIDAVIT MAY NOT BE DISCLOSED UNDER THIS SUBSECTION
26 WHILE UNDER SEAL IN ACCORDANCE WITH § 1-203 OF THE CRIMINAL PROCEDURE
27 ARTICLE.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 June 1, 2005.