

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 921

(Delegate V. Clagett, *et al.*)

Environmental Matters

Judicial Proceedings

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

This bill expands the relief the District Court may order in an action to abate a drug-related nuisance and authorizes the release of specified information to potential plaintiffs in a drug-related nuisance abatement action.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State finances.

Local Effect: Any change in local government activities would not materially affect local government finances.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill specifies that an action to abate a drug-related nuisance action may be brought in District Court against a tenant, an owner, or an operator of the property where the nuisance is located. Under the bill, an “operator” is a property manager or any other person authorized to evict a tenant. In addition to or as a component of any remedy, the court may order an owner or operator of the property to submit for court approval a plan of correction to ensure, to the extent reasonably possible, that the property will not again be used for a drug-related nuisance if: (1) the owner or operator is a party to the action; and (2) the owner or operator knew or reasonably should have known of the nuisance.

If a tenant fails to comply with an order and the owner or operator, in addition to the tenant, are parties to the action, the court, after a hearing, may order restitution of the possession of the property to the owner or operator.

If an owner, including an owner-occupant, fails to comply with an order, after a hearing the court may, in addition to issuing a contempt order or an order for any other relief, order that: (1) the property be sold, at the owner's expense, in accordance with the Maryland Rules governing judicial sales; or (2) the property be demolished if it is unfit for habitation and its estimated cost of rehabilitation significantly exceeds its estimated market value after rehabilitation.

If an owner-occupant fails to comply with an order regarding a nuisance in the owner-occupied unit of the property, after a hearing the court may, in addition to issuing a contempt order or an order for any other relief, order that: (1) the owner-occupied unit be vacated within 72 hours; and (2) the owner-occupied unit remain unoccupied for up to one year or until the property is sold in an arm's length transaction.

The bill provides that all drug-related nuisance abatement proceedings are equitable in nature.

Except for a sealed affidavit, a law enforcement officer, an attorney in a municipal or county attorney's office, or an attorney in an Office of the State's Attorney may disclose the contents of an executed search warrant issued under the drug-related nuisance abatement provisions and papers filed with the warrant to: (1) an officer or director of the community association in which the nuisance is located, or their attorney; (2) an owner, tenant, or operator of the searched property, or their agents; or (3) an attorney in a municipal or county attorney's office.

Current Law: Under the State's drug-related nuisance provisions, a "nuisance" is a property that is used: (1) by persons who assemble for the specific purpose of illegally administering a controlled dangerous substance; (2) for the illegal manufacture of a controlled dangerous substance or controlled paraphernalia; or (3) for the storage or concealment of a controlled dangerous substance indicating an intent to manufacture, distribute, or dispense a controlled dangerous substance or controlled paraphernalia.

Generally, in a drug-related nuisance abatement case, the court may issue an injunction or order other equitable relief whether or not there is an adequate remedy at law. The court may grant restitution of the premises to the owner if: (1) the owner and tenant are parties to the action; and (2) a tenant has failed to obey an order issued in the action. The defendant's knowledge of the nuisance need not be proven for this relief.

In addition to any other equitable relief, the court may order a tenant who knew or should have known of the existence of the nuisance to vacate the property within 72 hours and grant possession of the property to the owner, notwithstanding any other provision of law.

In addition to or as part of an injunction, restraining order, or other relief order, the court may order an owner to submit a plan for court approval to ensure that the property will not again be used for a nuisance if the owner: (1) is a party; and (2) knew or should have known about the nuisance. If an owner fails to comply with a nuisance abatement order, a court may order the property to be demolished if the cost of rehabilitation significantly exceeds the market value after rehabilitation.

For a commercial property, a plaintiff may not bring an abatement action until 45 days after the tenant and owner of record receive notice that a nuisance exists. The notice must specify the date and time that the nuisance was discovered and the location on the property where the nuisance is allegedly occurring. It must be hand delivered or sent by certified mail.

A drug-related nuisance action may be brought by a community association, the local State's Attorney, the local county attorney or solicitor, or a municipal corporation within whose boundaries the nuisance is located. In addition to other relief, a court may award costs and reasonable attorney's fees to a community association that is a prevailing plaintiff.

Background: During the 2004 interim, a workgroup composed of House and Senate members, law enforcement officials, and other interested parties met to discuss solutions to abating drug-related nuisances. This bill is a product of that workgroup.

Additional Information

Prior Introductions: Similar bills, SB 802 and HB 1383, were introduced during the 2004 session. SB 802 was heard in the Judicial Proceedings Committee. HB 1383 was heard in the Environmental Matters Committee. No further action was taken on either bill.

Cross File: SB 674 (Senators Hughes and Della) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), State's Attorneys Association, Montgomery County, Baltimore City, Department of Legislative Services

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