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By: **Senator Hughes**

Introduced and read first time: February 3, 2006

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Retaliatory Actions by Landlords and Mobile Home Park**  
3 **Owners**

4 FOR the purpose of establishing that a tenant is protected from retaliatory action by  
5 the landlord if the tenant engages in certain activities; establishing that a  
6 mobile home park resident is protected from retaliatory action by the park  
7 owner if the resident engages in certain activities; prohibiting a landlord from  
8 taking retaliatory action against a tenant if the tenant engaged in certain  
9 protected activities; prohibiting a park owner from taking retaliatory action  
10 against a resident if the resident engaged in certain protected activities;  
11 providing that a tenant or resident has a certain burden of proof; establishing a  
12 certain presumption; authorizing a tenant or resident to take certain actions  
13 under certain circumstances; authorizing a court to invalidate certain  
14 retaliatory actions; providing that this Act supersedes certain local ordinances;  
15 defining certain terms; repealing certain provisions of law relating to retaliatory  
16 actions; and generally relating to retaliatory actions by landlords and mobile  
17 home park owners.

18 BY repealing  
19 Article - Real Property  
20 Section 8-206, 8-208.1, and 8-208.2; and 8A-1301 and the subtitle "Subtitle 13.  
21 Retaliatory Evictions"  
22 Annotated Code of Maryland  
23 (2003 Replacement Volume and 2005 Supplement)

24 BY adding to  
25 Article - Real Property  
26 Section 8-206; and 8A-1301 to be under the new subtitle "Subtitle 13.  
27 Retaliatory Actions"  
28 Annotated Code of Maryland  
29 (2003 Replacement Volume and 2005 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
31 MARYLAND, That Section(s) 8-206, 8-208.1, and 8-208.2; and 8A-1301 and the

1 subtitle "Subtitle 13. Retaliatory Evictions" of Article - Real Property of the  
2 Annotated Code of Maryland be repealed.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
4 read as follows:

5 **Article - Real Property**

6 8-206.

7 (A) IN THIS SECTION, "RETALIATORY ACTION" INCLUDES:

8 (1) INCREASING THE RENT OR IMPOSING OTHER OBLIGATIONS ON A  
9 TENANT;

10 (2) DECREASING SERVICES OR FAILING TO COMPLY WITH OTHER  
11 OBLIGATIONS OF A LANDLORD;

12 (3) BRINGING OR THREATENING TO BRING AN ACTION FOR POSSESSION  
13 AGAINST A TENANT;

14 (4) REFUSING TO RENEW A TENANT'S LEASE; OR

15 (5) VIOLATING A TENANT'S PRIVACY, HARASSING A TENANT, OR USING  
16 ANY OTHER FORM OF THREAT OR COERCION AGAINST A TENANT.

17 (B) A TENANT IS PROTECTED AGAINST RETALIATORY ACTION BY THE  
18 LANDLORD IF:

19 (1) THE TENANT MADE A GOOD FAITH COMPLAINT TO THE LANDLORD;

20 (2) THE TENANT MADE A GOOD FAITH COMPLAINT TO A GOVERNMENT  
21 AGENCY AGAINST THE LANDLORD;

22 (3) THE LANDLORD RECEIVED A NOTICE OF VIOLATION FROM A  
23 GOVERNMENT AGENCY THAT AFFECTED THE PROPERTY RENTED BY THE TENANT;

24 (4) THE TENANT COMMUNICATED IN GOOD FAITH WITH PUBLIC MEDIA  
25 OR PUBLIC OFFICIALS;

26 (5) THE TENANT OR A GOVERNMENT AGENCY PROVIDED INFORMATION  
27 TO THE LANDLORD UNDER TITLE 6, SUBTITLE 8 OF THE ENVIRONMENT ARTICLE;

28 (6) THE TENANT CONSULTED WITH A LAWYER OR FILED OR  
29 PARTICIPATED IN A LAWSUIT AGAINST THE LANDLORD;

30 (7) THE TENANT FILED OR PARTICIPATED IN A RENT ESCROW ACTION  
31 UNDER § 8-211 OR § 8-211.1 OF THIS SUBTITLE;

32 (8) THE TENANT ORGANIZED, WAS A MEMBER OF, OR PARTICIPATED IN  
33 A TENANTS' ORGANIZATION OR ANY OTHER LAWFUL ORGANIZATION; OR

1 (9) THE TENANT DID NOT CONSENT TO:

2 (I) THE LANDLORD'S PROPOSAL OF A MIDTERM AMENDMENT OF  
3 THE LEASE; OR

4 (II) THE LANDLORD'S PROPOSAL OF A REGULATION OR RULE  
5 ADOPTED AFTER THE TENANT ENTERED INTO THE LEASE THAT EFFECTS A  
6 SUBSTANTIAL MODIFICATION OF THE LEASE.

7 (C) A LANDLORD MAY NOT TAKE RETALIATORY ACTION AGAINST A TENANT  
8 BECAUSE THE TENANT ENGAGED IN ONE OR MORE PROTECTED ACTIVITIES  
9 DESCRIBED IN SUBSECTION (B) OF THIS SECTION.

10 (D) (1) THE TENANT HAS THE BURDEN OF PROVING THAT A MATERIAL  
11 PURPOSE OF THE LANDLORD'S ACTION WAS TO RETALIATE AGAINST THE TENANT  
12 BECAUSE OF THE TENANT'S PROTECTED ACTIVITY.

13 (2) RETALIATION IS A QUESTION OF FACT TO BE DETERMINED BY A  
14 PREPONDERANCE OF THE EVIDENCE, CONSIDERING ALL RELEVANT FACTS AND  
15 CIRCUMSTANCES.

16 (E) (1) EVIDENCE THAT THE TENANT ENGAGED IN A PROTECTED ACTIVITY  
17 WITHIN 1 YEAR BEFORE THE ALLEGED RETALIATORY ACTION CREATES A  
18 PRESUMPTION THAT THE LANDLORD'S CONDUCT WAS IN VIOLATION OF SUBSECTION  
19 (C) OF THIS SECTION.

20 (2) THE PRESUMPTION DOES NOT ARISE IF:

21 (I) THE TENANT IS IN DEFAULT IN RENT;

22 (II) THE TENANT ENGAGED IN THE PROTECTED ACTIVITY AFTER  
23 LEGAL NOTICE OF A PROPOSED RENT INCREASE, LEASE TERMINATION, OR A LAWFUL  
24 DIMINUTION OF SERVICES; OR

25 (III) THE VIOLATION OF THE APPLICABLE BUILDING OR HOUSING  
26 CODE COMPLAINED OF BY THE TENANT WAS CAUSED PRIMARILY BY LACK OF  
27 REASONABLE CARE BY THE TENANT, A MEMBER OF THE TENANT'S FAMILY, OR  
28 OTHER PERSON ON THE PREMISES WITH THE TENANT'S CONSENT.

29 (3) (I) THE PRESUMPTION IS REBUTTED IF THE LANDLORD  
30 INTRODUCES EVIDENCE OF A GENUINE, NONRETALIATORY REASON FOR THE  
31 LANDLORD'S ACTION.

32 (II) IF THE TRIER OF FACT DETERMINES THAT THE PRESUMPTION  
33 IS REBUTTED, THEN THE TRIER OF FACT SHALL DETERMINE WHETHER THE TENANT  
34 HAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT THE LANDLORD'S  
35 CONDUCT WAS IN VIOLATION OF SUBSECTION (C) OF THIS SECTION, WITHOUT  
36 REGARD TO THE PRESUMPTION.

1 (F) (1) IF THE LANDLORD ACTS IN VIOLATION OF SUBSECTION (C) OF THIS  
2 SECTION, THE TENANT:

3 (I) MAY BRING AN ACTION OR COUNTERCLAIM AGAINST THE  
4 LANDLORD FOR DAMAGES AND ATTORNEY FEES; AND

5 (II) HAS A DEFENSE IN ANY ACTION FOR POSSESSION BROUGHT BY  
6 THE LANDLORD AGAINST THE TENANT.

7 (2) THE COURT MAY INVALIDATE ANY ACTION FOUND TO BE A  
8 RETALIATORY ACTION.

9 (G) THIS SECTION SUPERSEDES ANY ORDINANCE ENACTED BY A COUNTY  
10 THAT IS COMPARABLE IN SUBJECT MATTER.

11 SUBTITLE 13. RETALIATORY ACTIONS.

12 8A-1301.

13 (A) IN THIS SECTION, "RETALIATORY ACTION" INCLUDES:

14 (1) INCREASING THE RENT OR IMPOSING OTHER OBLIGATIONS ON A  
15 RESIDENT;

16 (2) DECREASING SERVICES OR FAILING TO COMPLY WITH OTHER  
17 OBLIGATIONS OF A PARK OWNER;

18 (3) BRINGING OR THREATENING TO BRING AN ACTION FOR POSSESSION  
19 AGAINST A RESIDENT;

20 (4) REFUSING TO RENEW A RESIDENT'S RENTAL AGREEMENT; OR

21 (5) VIOLATING A RESIDENT'S PRIVACY, HARASSING A RESIDENT, OR  
22 USING ANY OTHER FORM OF THREAT OR COERCION AGAINST A RESIDENT.

23 (B) A RESIDENT IS PROTECTED AGAINST RETALIATORY ACTION BY THE PARK  
24 OWNER IF:

25 (1) THE RESIDENT MADE A GOOD FAITH COMPLAINT TO THE PARK  
26 OWNER;

27 (2) THE RESIDENT MADE A GOOD FAITH COMPLAINT TO A GOVERNMENT  
28 AGENCY AGAINST THE PARK OWNER;

29 (3) THE PARK OWNER RECEIVED A NOTICE OF VIOLATION FROM A  
30 GOVERNMENT AGENCY THAT AFFECTED THE PREMISES RENTED BY THE RESIDENT;

31 (4) THE RESIDENT COMMUNICATED IN GOOD FAITH WITH PUBLIC  
32 MEDIA OR PUBLIC OFFICIALS;

1 (5) THE RESIDENT OR A GOVERNMENT AGENCY PROVIDED  
2 INFORMATION TO THE PARK OWNER UNDER TITLE 6, SUBTITLE 8 OF THE  
3 ENVIRONMENT ARTICLE;

4 (6) THE RESIDENT CONSULTED WITH A LAWYER OR FILED OR  
5 PARTICIPATED IN A LAWSUIT AGAINST THE PARK OWNER;

6 (7) THE RESIDENT FILED OR PARTICIPATED IN A RENT ESCROW ACTION  
7 UNDER § 8A-1601 OF THIS SUBTITLE;

8 (8) THE RESIDENT ORGANIZED, WAS A MEMBER OF, OR PARTICIPATED  
9 IN A RESIDENTS' ORGANIZATION OR ANY OTHER LAWFUL ORGANIZATION; OR

10 (9) THE RESIDENT DID NOT CONSENT TO:

11 (I) THE PARK OWNER'S PROPOSAL OF A MIDTERM AMENDMENT OF  
12 THE RENTAL AGREEMENT; OR

13 (II) THE PARK OWNER'S PROPOSAL OF A REGULATION OR RULE  
14 ADOPTED AFTER THE RESIDENT ENTERED INTO THE RENTAL AGREEMENT THAT  
15 EFFECTS A SUBSTANTIAL MODIFICATION OF THE RENTAL AGREEMENT.

16 (C) A PARK OWNER MAY NOT TAKE RETALIATORY ACTION AGAINST A  
17 RESIDENT BECAUSE THE RESIDENT ENGAGED IN ONE OR MORE PROTECTED  
18 ACTIVITIES DESCRIBED IN SUBSECTION (B) OF THIS SECTION.

19 (D) (1) THE RESIDENT HAS THE BURDEN OF PROVING THAT A MATERIAL  
20 PURPOSE OF THE PARK OWNER'S ACTION WAS TO RETALIATE AGAINST THE  
21 RESIDENT BECAUSE OF THE RESIDENT'S PROTECTED ACTIVITY.

22 (2) RETALIATION IS A QUESTION OF FACT TO BE DETERMINED BY A  
23 PREPONDERANCE OF THE EVIDENCE, CONSIDERING ALL RELEVANT FACTS AND  
24 CIRCUMSTANCES.

25 (E) (1) EVIDENCE THAT THE RESIDENT ENGAGED IN A PROTECTED  
26 ACTIVITY WITHIN 1 YEAR BEFORE THE ALLEGED RETALIATORY ACTION CREATES A  
27 PRESUMPTION THAT THE PARK OWNER'S CONDUCT WAS IN VIOLATION OF  
28 SUBSECTION (C) OF THIS SECTION.

29 (2) THE PRESUMPTION DOES NOT ARISE IF:

30 (I) THE RESIDENT IS IN DEFAULT IN RENT;

31 (II) THE RESIDENT ENGAGED IN THE PROTECTED ACTIVITY AFTER  
32 LEGAL NOTICE OF A PROPOSED RENT INCREASE, TERMINATION OF THE RENTAL  
33 AGREEMENT, OR A LAWFUL DIMINUTION OF SERVICES; OR

34 (III) THE VIOLATION OF THE APPLICABLE BUILDING OR HOUSING  
35 CODE COMPLAINED OF BY THE RESIDENT WAS CAUSED PRIMARILY BY LACK OF

1 REASONABLE CARE BY THE RESIDENT, A MEMBER OF THE RESIDENT'S FAMILY, OR  
2 OTHER PERSON ON THE PREMISES WITH THE RESIDENT'S CONSENT.

3           (3)    (I)    THE PRESUMPTION IS REBUTTED IF THE PARK OWNER  
4 INTRODUCES EVIDENCE OF A GENUINE, NONRETALIATORY REASON FOR THE PARK  
5 OWNER'S ACTION.

6                   (II)   IF THE TRIER OF FACT DETERMINES THAT THE PRESUMPTION  
7 IS REBUTTED, THEN THE TRIER OF FACT SHALL DETERMINE WHETHER THE  
8 RESIDENT HAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT THE  
9 PARK OWNER'S CONDUCT WAS IN VIOLATION OF SUBSECTION (C) OF THIS SECTION,  
10 WITHOUT REGARD TO THE PRESUMPTION.

11   (F)    (1)    IF THE PARK OWNER ACTS IN VIOLATION OF SUBSECTION (C) OF  
12 THIS SECTION, THE RESIDENT:

13                   (I)    MAY BRING AN ACTION OR COUNTERCLAIM AGAINST THE PARK  
14 OWNER FOR DAMAGES AND ATTORNEY FEES; AND

15                   (II)   HAS A DEFENSE IN ANY ACTION FOR POSSESSION BROUGHT BY  
16 THE PARK OWNER AGAINST THE RESIDENT.

17           (2)    THE COURT MAY INVALIDATE ANY ACTION FOUND TO BE A  
18 RETALIATORY ACTION.

19   (G)    THIS SECTION SUPERSEDES ANY ORDINANCE ENACTED BY A COUNTY  
20 THAT IS COMPARABLE IN SUBJECT MATTER.

21   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2006.