

SENATE BILL 512

N1

8lr1930
CF 8lr1764

By: **Senators Jones, Astle, Exum, Gladden, McFadden, Muse, and Pinsky**
Introduced and read first time: February 1, 2008
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Retaliatory Action by Landlords and Mobile Home Park**
3 **Owners**

4 FOR the purpose of repealing certain provisions of law prohibiting a retaliatory
5 eviction of a tenant or resident by a landlord or mobile home park owner;
6 prohibiting a landlord or park owner from taking retaliatory action against a
7 tenant or resident because the tenant or resident engaged in certain protected
8 activities; providing for a certain standard of proof for determining whether an
9 action qualifies as a retaliatory action; providing for a certain rebuttable
10 presumption that an action is a retaliatory action under certain circumstances;
11 authorizing a tenant or resident to bring an action or counterclaim for damages
12 against a landlord or park owner under certain circumstances; providing that a
13 landlord or park owner's retaliatory action is a defense to an action for
14 possession; authorizing a court to invalidate a landlord's or park owner's action
15 under certain circumstances; authorizing a court to enter judgment for costs
16 and reasonable attorney's fees against a landlord, park owner, tenant, or
17 resident under certain circumstances; prohibiting this Act from being construed
18 to alter a landlord's, park owner's, tenant's, or resident's rights arising from a
19 breach of a provision of the lease; providing that this Act preempts or prevails
20 over any ordinance, resolution, law, or rule, unless the ordinance, resolution,
21 law, or rule provides greater protection to the tenant or resident; defining
22 certain terms; and generally relating to retaliatory action against a tenant of
23 leased property or a resident of a mobile home park by a landlord or park
24 owner.

25 BY repealing

26 Article – Real Property
27 Section 8–208.1 and 8A–1301
28 Annotated Code of Maryland
29 (2003 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Real Property
3 Section 8–208.1 and 8A–1301
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2007 Supplement)

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

8 **Article – Real Property**

9 [8–208.1.

10 (a) No landlord shall evict a tenant of any residential property or arbitrarily
11 increase the rent or decrease the services to which the tenant has been entitled for any
12 of the following reasons:

13 (1) Solely because the tenant or the tenant’s agent has filed a good
14 faith written complaint, or complaints, with the landlord or with any public agency or
15 agencies against the landlord;

16 (2) Solely because the tenant or the tenant’s agent has filed a lawsuit,
17 or lawsuits, against the landlord; or

18 (3) Solely because the tenant is a member or organizer of any tenants’
19 organization.

20 (b) Evictions described in subsection (a) of this section shall be called
21 “retaliatory evictions”.

22 (c) (1) If in any eviction proceeding the judgment be in favor of the tenant
23 for any of the aforementioned defenses, the court may enter judgment for reasonable
24 attorney fees and court costs against the landlord.

25 (2) If in any eviction proceeding the court finds that a tenant’s
26 assertion of a retaliatory eviction defense was in bad faith or without substantial
27 justification, the court may enter judgment for reasonable attorney fees and court
28 costs against the tenant.

29 (d) The relief provided under this section is conditioned upon:

30 (1) In the case of tenancies measured by a period of one month or
31 more, the court having not entered against the tenant more than 3 judgments of
32 possession for rent due and unpaid in the 12–month period immediately prior to the
33 initiation of the action by the tenant or by the landlord.

34 (2) In the case of tenancies requiring the weekly payment of rent, the
35 court having not entered against the tenant more than 5 judgments of possession for

1 rent due and unpaid in the 12-month period immediately prior to the initiation of the
2 action by the tenant or by the landlord, or, if the tenant has lived on the premises 6
3 months or less, the court having not entered against the tenant 3 judgments of
4 possession for rent due and unpaid.

5 (e) No eviction shall be deemed to be a “retaliatory eviction” for purposes of
6 this section upon the expiration of a period of 6 months following the determination of
7 the merits of the initial case by a court (or administrative agency) of competent
8 jurisdiction.

9 (f) Nothing in this section may be interpreted to alter the landlord’s or the
10 tenant’s rights to terminate or not renew a tenancy governed by a written lease for a
11 stated term of greater than 1 month at the expiration of the term or at any other time
12 as the parties may specifically agree.

13 (g) In the event any county or Baltimore City shall have enacted an
14 ordinance comparable in subject matter to this section, that ordinance shall supersede
15 the provisions of this section.]

16 **8-208.1.**

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
18 MEANINGS INDICATED.

19 (2) “PROTECTED ACTIVITY” INCLUDES:

20 (I) MAKING A GOOD FAITH COMPLAINT TO A LANDLORD;

21 (II) MAKING A GOOD FAITH COMPLAINT RELATED TO A
22 TENANCY TO A GOVERNMENT AGENCY;

23 (III) A LANDLORD’S RECEIPT OF A NOTICE OF VIOLATION
24 FROM A GOVERNMENT AGENCY THAT AFFECTED THE PROPERTY RENTED BY
25 THE TENANT;

26 (IV) COMMUNICATING IN GOOD FAITH WITH PUBLIC MEDIA
27 OR A PUBLIC OFFICIAL ABOUT A TENANCY;

28 (V) PROVIDING INFORMATION TO A LANDLORD UNDER
29 TITLE 6, SUBTITLE 8 OF THE ENVIRONMENT ARTICLE;

30 (VI) CONSULTING WITH A LAWYER IN RELATION TO THE
31 TENANCY;

1 (VII) FILING OR PARTICIPATING IN A LAWSUIT AGAINST THE
2 LANDLORD RELATED TO THE TENANCY;

3 (VIII) FILING OR PARTICIPATING IN A RENT ESCROW ACTION
4 UNDER § 8-211 OR § 8-211.1 OF THIS SUBTITLE; OR

5 (IX) ORGANIZING A TENANT ORGANIZATION, MEMBERSHIP
6 IN A TENANT ORGANIZATION, OR PARTICIPATION IN A TENANT ORGANIZATION.

7 (3) "RETALIATORY ACTION" INCLUDES:

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

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

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

14 (IV) REFUSING TO RENEW A TENANT'S LEASE WITHOUT A
15 REASONABLE, NONRETALIATORY BUSINESS JUSTIFICATION; OR

16 (V) VIOLATING A TENANT'S PRIVACY, HARASSING A
17 TENANT, OR USING THREATS OR COERCION AGAINST A TENANT.

18 (B) A LANDLORD MAY NOT TAKE RETALIATORY ACTION AGAINST A
19 TENANT BECAUSE THE TENANT ENGAGED IN A PROTECTED ACTIVITY.

20 (C) (1) A TENANT HAS THE BURDEN OF PROVING THAT A LANDLORD'S
21 RETALIATORY ACTION IS BECAUSE OF THE TENANT'S PROTECTED ACTIVITY.

22 (2) WHETHER AN ACTION QUALIFIES AS A RETALIATORY ACTION
23 IS A QUESTION OF FACT TO BE DETERMINED BY A PREPONDERANCE OF THE
24 EVIDENCE, CONSIDERING ALL RELEVANT FACTS AND CIRCUMSTANCES.

25 (3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, EVIDENCE
26 THAT A TENANT ENGAGED IN A PROTECTED ACTIVITY WITHIN 6 MONTHS
27 BEFORE THE ALLEGED RETALIATORY ACTION CREATES A REBUTTABLE
28 PRESUMPTION THAT THE ACTION QUALIFIES AS A RETALIATORY ACTION.

29 (4) A PRESUMPTION DOES NOT ARISE UNDER PARAGRAPH (3) OF
30 THIS SUBSECTION IF A TENANT IS IN DEFAULT IN RENT.

1 **(D) (1) A TENANT MAY BRING AN ACTION OR COUNTERCLAIM FOR**
2 **DAMAGES AGAINST A LANDLORD WHO VIOLATES THIS SECTION.**

3 **(2) A LANDLORD'S RETALIATORY ACTION IS A DEFENSE TO AN**
4 **ACTION FOR POSSESSION.**

5 **(3) IF A COURT FINDS THAT A LANDLORD TOOK RETALIATORY**
6 **ACTION AGAINST THE TENANT, THE COURT MAY INVALIDATE THE LANDLORD'S**
7 **RETALIATORY ACTION.**

8 **(E) IN ANY ACTION INVOLVING AN ALLEGATION OF RETALIATORY**
9 **ACTION UNDER THIS SECTION, A COURT MAY ENTER JUDGMENT FOR COSTS AND**
10 **REASONABLE ATTORNEY'S FEES:**

11 **(1) AGAINST A LANDLORD IF THE LANDLORD IS FOUND TO HAVE**
12 **TAKEN RETALIATORY ACTION AGAINST A TENANT; OR**

13 **(2) AGAINST A TENANT IF THE TENANT IS FOUND TO HAVE**
14 **CLAIMED RETALIATORY ACTION IN BAD FAITH OR WITHOUT SUBSTANTIAL**
15 **JUSTIFICATION.**

16 **(F) THIS SECTION MAY NOT BE CONSTRUED TO ALTER A LANDLORD'S**
17 **OR A TENANT'S RIGHTS ARISING FROM A BREACH OF A PROVISION OF THE**
18 **LEASE.**

19 **(G) THIS SECTION PREEMPTS OR PREVAILS OVER ANY ORDINANCE,**
20 **RESOLUTION, LAW, OR RULE, UNLESS THE RESOLUTION, LAW, OR RULE**
21 **PROVIDES GREATER PROTECTION TO A TENANT THAN THIS SECTION.**

22 [8A-1301.

23 (a) A park owner may not evict a resident or arbitrarily increase the rent or
24 decrease the services to which the resident has been entitled for any of the following
25 reasons:

26 (1) Solely because the resident or his agent has filed a written
27 complaint, or complaints, with the park owner or with any public agency or agencies
28 against the park owner;

29 (2) Solely because the resident or his agent has filed a lawsuit, or
30 lawsuits, against the park owner; or

31 (3) Solely because the resident is a member or organizer of any
32 tenant's organization.

1 (b) Evictions described in subsection (a) of this section shall be called
2 retaliatory evictions.

3 (c) If in any eviction proceeding the judgment is in favor of the resident for
4 any of the aforementioned defenses, the court may enter judgment for reasonable
5 attorney's fees and court costs against the park owner.

6 (d) An eviction may not be deemed to be a "retaliatory eviction" for purposes
7 of this section upon the expiration of a period of 6 months following the determination
8 of the merits of the initial case by a court or administrative agency of competent
9 jurisdiction.

10 (e) Nothing in this section may be interpreted to alter the park owner's or
11 the resident's rights arising from breach of any provision of a rental agreement or rule,
12 or either party's right to terminate or not renew a rental agreement pursuant to the
13 terms of the rental agreement or the provisions of other applicable law.]

14 **8A-1301.**

15 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
16 MEANINGS INDICATED.

17 (2) "PROTECTED ACTIVITY" INCLUDES:

18 (I) MAKING A GOOD FAITH COMPLAINT TO A PARK OWNER;

19 (II) MAKING A GOOD FAITH COMPLAINT RELATED TO A
20 TENANCY TO A GOVERNMENT AGENCY;

21 (III) A PARK OWNER'S RECEIPT OF A NOTICE OF VIOLATION
22 FROM A GOVERNMENT AGENCY THAT AFFECTED THE MOBILE HOME RENTED BY
23 THE RESIDENT;

24 (IV) COMMUNICATING IN GOOD FAITH WITH PUBLIC MEDIA
25 OR PUBLIC OFFICIALS ABOUT A PARK;

26 (V) PROVIDING INFORMATION TO A PARK OWNER UNDER
27 TITLE 6, SUBTITLE 8 OF THE ENVIRONMENT ARTICLE;

28 (VI) CONSULTING WITH A LAWYER IN RELATION TO THE
29 PARK;

30 (VII) FILING OR PARTICIPATING IN A LAWSUIT AGAINST THE
31 PARK OWNER RELATED TO THE PARK; OR

1 (VIII) ORGANIZING A RESIDENT ORGANIZATION, MEMBERSHIP
2 IN A RESIDENT ORGANIZATION, OR PARTICIPATION IN A RESIDENT
3 ORGANIZATION.

4 (3) "RETALIATORY ACTION" INCLUDES:

5 (I) INCREASING THE RENT OR IMPOSING OTHER
6 OBLIGATIONS ON A RESIDENT;

7 (II) DECREASING SERVICES OR FAILING TO COMPLY WITH
8 OTHER OBLIGATIONS OF A PARK OWNER;

9 (III) BRINGING OR THREATENING TO BRING AN ACTION FOR
10 POSSESSION AGAINST A RESIDENT;

11 (IV) REFUSING TO RENEW A RESIDENT'S LEASE WITHOUT A
12 REASONABLE, NONRETALIATORY BUSINESS JUSTIFICATION; OR

13 (V) VIOLATING A RESIDENT'S PRIVACY, HARASSING A
14 RESIDENT, OR USING THREATS OR COERCION AGAINST A RESIDENT.

15 (B) A PARK OWNER MAY NOT TAKE RETALIATORY ACTION AGAINST A
16 RESIDENT BECAUSE THE RESIDENT ENGAGED IN A PROTECTED ACTIVITY.

17 (C) (1) A RESIDENT HAS THE BURDEN OF PROVING THAT A PARK
18 OWNER'S RETALIATORY ACTION IS BECAUSE OF THE RESIDENT'S PROTECTED
19 ACTIVITY.

20 (2) WHETHER AN ACTION QUALIFIES AS A RETALIATORY ACTION
21 IS A QUESTION OF FACT TO BE DETERMINED BY A PREPONDERANCE OF THE
22 EVIDENCE, CONSIDERING ALL RELEVANT FACTS AND CIRCUMSTANCES.

23 (3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, EVIDENCE
24 THAT A RESIDENT ENGAGED IN A PROTECTED ACTIVITY WITHIN 6 MONTHS
25 BEFORE THE ALLEGED RETALIATORY ACTION CREATES A REBUTTABLE
26 PRESUMPTION THAT THE ACTION QUALIFIES AS A RETALIATORY ACTION.

27 (4) A PRESUMPTION DOES NOT ARISE UNDER PARAGRAPH (3) OF
28 THIS SUBSECTION IF A RESIDENT IS IN DEFAULT IN RENT.

29 (D) (1) IF A PARK OWNER VIOLATES THIS SECTION, A RESIDENT MAY
30 BRING AN ACTION OR COUNTERCLAIM FOR DAMAGES.

1 **(2) A PARK OWNER'S RETALIATORY ACTION IS A DEFENSE TO AN**
2 **ACTION FOR POSSESSION.**

3 **(3) IF A COURT FINDS THAT THE PARK OWNER TOOK**
4 **RETALIATORY ACTION AGAINST A RESIDENT, THE COURT MAY INVALIDATE THE**
5 **PARK OWNER'S RETALIATORY ACTION.**

6 **(E) IN AN ACTION INVOLVING AN ALLEGATION OF A RETALIATORY**
7 **ACTION UNDER THIS SECTION, THE COURT MAY ENTER JUDGMENT FOR COSTS**
8 **AND REASONABLE ATTORNEY'S FEES:**

9 **(1) AGAINST THE PARK OWNER IF THE PARK OWNER IS FOUND TO**
10 **HAVE TAKEN A RETALIATORY ACTION AGAINST THE RESIDENT; OR**

11 **(2) AGAINST THE RESIDENT IF THE RESIDENT IS FOUND TO HAVE**
12 **CLAIMED RETALIATORY ACTION IN BAD FAITH OR WITHOUT SUBSTANTIAL**
13 **JUSTIFICATION.**

14 **(F) THIS SECTION MAY NOT BE CONSTRUED TO ALTER A LANDLORD'S**
15 **OR A TENANT'S RIGHTS ARISING FROM A BREACH OF A PROVISION OF THE**
16 **LEASE.**

17 **(G) THIS SECTION PREEMPTS OR PREVAILS OVER ANY ORDINANCE,**
18 **RESOLUTION, LAW, OR RULE, UNLESS THE ORDINANCE, RESOLUTION, LAW, OR**
19 **RULE PROVIDES GREATER PROTECTION TO A TENANT THAN THIS SECTION.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2008.