

# SENATE BILL 159

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CF 9lr1374

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By: **Senator McFadden (By Request – Baltimore City Administration)**

Introduced and read first time: January 19, 2009

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Real Property – Action to Abate Drug Nuisance – Repeal of Prior**  
3 **Notice Requirement**

4 FOR the purpose of repealing certain advance notification requirements concerning  
5 certain drug-related nuisances on commercial real property; and generally  
6 relating to nuisances and real property.

7 BY repealing and reenacting, without amendments,  
8 Article – Real Property  
9 Section 14–120(a)(1) and (5)  
10 Annotated Code of Maryland  
11 (2003 Replacement Volume and 2008 Supplement)

12 BY repealing  
13 Article – Real Property  
14 Section 14–120(d)  
15 Annotated Code of Maryland  
16 (2003 Replacement Volume and 2008 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article – Real Property  
19 Section 14–120(e) through (q)  
20 Annotated Code of Maryland  
21 (2003 Replacement Volume and 2008 Supplement)

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

24 **Article – Real Property**

25 14–120.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

(5) “Nuisance” means a property that is used:

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

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

1. A controlled dangerous substance; or

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

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

1. A controlled dangerous substance; or

2. Controlled paraphernalia, as defined in § 5–101 of the Criminal Law Article.

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

(2) The notice shall specify:

(i) The date and time of day the nuisance was first discovered;  
and

(ii) The location on the property where the nuisance is allegedly occurring.

(3) The notice shall be:

(i) Hand delivered to the tenant, if any, and the owner of record; or

(ii) Sent by certified mail to the tenant, if any, and the owner of record.]

[(e) (D) (1) In addition to any service of process required by the Maryland Rules, the plaintiff shall cause to be posted in a conspicuous place on the

1 property no later than 48 hours before the hearing the notice required under  
2 paragraph (2) of this subsection.

3 (2) The notice shall indicate:

4 (i) The nature of the proceedings;

5 (ii) The time and place of the hearing; and

6 (iii) The name and telephone number of the person to contact for  
7 additional information.

8 [(f)] (E) A plaintiff is entitled to relief under this section whether or not an  
9 adequate remedy exists at law.

10 [(g)] (F) (1) If, after a hearing, the court determines that a nuisance  
11 exists, the court may order any appropriate injunctive or other equitable relief.

12 (2) Notwithstanding any other provision of law, and in addition to or  
13 as a component of any remedy ordered under paragraph (1) of this subsection, the  
14 court may order:

15 (i) A tenant who knew or should have known of the existence of  
16 the nuisance to vacate the property within 72 hours; or

17 (ii) An owner or operator of the property to submit for court  
18 approval a plan of correction to ensure, to the extent reasonably possible, that the  
19 property will not again be used for a nuisance if:

20 1. The owner or operator is a party to the action; and

21 2. The owner or operator knew or should have known of  
22 the existence of the nuisance.

23 [(h)] (G) (1) (i) If a tenant fails to comply with an order under  
24 subsection [(g)] (F) of this section and the owner or operator, and tenant, are parties  
25 to the action, the court, after a hearing, may order restitution of the possession of the  
26 property to the owner or operator.

27 (ii) If the court orders restitution of the possession of the  
28 property under subparagraph (i) of this paragraph, the court shall immediately issue  
29 its warrant to the sheriff or constable commanding execution of the warrant within 5  
30 days after issuance of the warrant.

31 (2) If an owner, including an owner-occupant, fails to comply with an  
32 order under subsection [(g)] (F) of this section, after a hearing the court may, in  
33 addition to issuing a contempt order or an order for any other relief, order that:

1 (i) The property be sold, at the owner's expense, in accordance  
2 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)] **(F)** of this section regarding a nuisance in the owner-occupied unit of  
8 the property, after a hearing the court may, in addition to issuing a contempt order or  
9 an order for any other relief, order that:

10 (i) The owner-occupied unit be vacated within 72 hours; and

11 (ii) The owner-occupied unit remain unoccupied for a period not  
12 to exceed 1 year or until the property is sold in an arm's length transaction.

13 [(i)] **(H)** Except as provided in paragraph [(g)(2)] **(F)(2)** of this section, the  
14 court may order appropriate relief under subsection [(g)] **(F)** of this section without  
15 proof that a defendant knew of the existence of the nuisance.

16 [(j)] **(I)** In any action brought under this section:

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

21 (2) Evidence that the nuisance had been discontinued at the time of  
22 the filing of the complaint or at the time of the hearing does not bar the imposition of  
23 appropriate relief by the court under subsection [(g)] **(F)** of this section.

24 [(k)] **(J)** The court may award court costs and reasonable attorney's fees to  
25 a community association that is the prevailing plaintiff in an action brought under  
26 this section.

27 [(l)] **(K)** An action under this section shall be heard within 14 days after  
28 service of process on the parties.

29 [(m)] **(L)** This section does not abrogate any equitable or legal right or  
30 remedy under existing law to abate a nuisance.

31 [(n)] **(M)** (1) An appeal from a judgment or order under this section shall  
32 be 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  
2   hear the oral argument within 7 days after the request is filed.

3           (3)    (i)    If the appellant files a request for oral argument, the  
4   request 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           ~~[(o)]~~ (N)   Provisions of the Real Property Article or public local laws  
8   applicable to actions between a landlord and tenant are not applicable to actions  
9   brought against a landlord or a tenant under this section.

10          ~~[(p)]~~ (O)   All proceedings under this section are equitable in nature.

11          ~~[(q)]~~ (P)   (1)   Except as provided in paragraph (2) of this subsection, when  
12   necessary to accomplish the purposes of this section, a law enforcement officer, an  
13   attorney in a municipal or county attorney's office, or an attorney in an office of the  
14   State's Attorney may disclose the contents of an executed search warrant and papers  
15   filed in connection with the search warrant to:

16                   (i)    An officer or director of the community association in which  
17   the nuisance is located, or the attorney representing the community association;

18                   (ii)   An owner, tenant, or operator of the searched property or an  
19   agent of the owner, tenant, or operator of the searched property; or

20                   (iii)   An attorney in a municipal or county attorney's office.

21           (2)    An affidavit may not be disclosed under this subsection while  
22   under seal in accordance with § 1-203 of the Criminal Procedure Article.

23          SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24   October 1, 2009.