

SENATE BILL 339

N1, E1, D3

9lr0342

By: ~~Senator Raskin~~ **Senators Raskin and Forehand**

Introduced and read first time: January 29, 2009

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 3, 2009

CHAPTER _____

1 AN ACT concerning

2 **Real Property - Abatement of Nuisance - Prostitution**

3 FOR the purpose of establishing that the ~~habitual~~ use of real property for ~~the purpose~~
4 ~~of~~ prostitution is a nuisance that may be the subject of a certain action for
5 abatement; defining a certain term; and generally relating to prostitution and
6 abatement of nuisance actions.

7 BY repealing and reenacting, without amendments,
8 Article - Criminal Law
9 Section 11-301(c)
10 Annotated Code of Maryland
11 (2002 Volume and 2008 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article - Real Property
14 Section 14-120
15 Annotated Code of Maryland
16 (2003 Replacement Volume and 2008 Supplement)

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

19 **Article - Criminal Law**

20 11-301.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (c) "Prostitution" means the performance of a sexual act, sexual contact, or
2 vaginal intercourse for hire.

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 rental
7 property.

8 (3) "Community association" means:

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

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

13 2. Operated exclusively for the promotion of social
14 welfare 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
18 that is:

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

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

24 (4) "Controlled dangerous substance" means a substance listed in
25 Schedule I or Schedule II under § 5–402 or § 5–403 of the Criminal Law Article.

26 (5) "Nuisance" means a property that is used:

27 (i) **1.** By persons who assemble for the specific purpose of
28 illegally administering a controlled dangerous substance;

29 [(ii)] **2.** For the illegal manufacture, or distribution of:

30 [1.] **A.** A controlled dangerous substance; or

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

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

6 [1.] A. A controlled dangerous substance; or

7 [2.] B. Controlled paraphernalia, as defined in § 5–101
 8 of the Criminal Law Article; **OR**

9 (II) ~~HABITUALLY FOR THE PURPOSE OF~~ **FOR**
 10 **PROSTITUTION.**

11 (6) (i) “Operator” means a person that exercises control over
 12 property.

13 (ii) “Operator” includes a property manager or any other person
 14 that is authorized to evict a tenant.

15 (7) “Owner” includes an owner–occupant.

16 (8) “Owner–occupant” includes an owner of commercial property that
 17 conducts business in any part of the property.

18 (9) “Property” includes a mobile home.

19 (10) **“PROSTITUTION” HAS THE MEANING STATED IN § 11–301 OF**
 20 **THE CRIMINAL LAW ARTICLE.**

21 (11) (i) “Tenant” means the lessee or a person occupying property,
 22 whether or not a party to a lease.

23 (ii) “Tenant” includes a lessee or a person occupying a mobile
 24 home, whether or not a party to a lease.

25 (iii) “Tenant” does not include:

26 1. The owner of the property; or

27 2. A mobile home owner who leases or rents a site for
 28 residential use and resides in a mobile home park.

29 (b) An action under § 4–401 of the Courts Article to abate a nuisance may be
 30 brought by:

- 1 (1) The State's Attorney of the county in which the nuisance is located;
- 2 (2) The county attorney or solicitor of the county in which the nuisance
3 is located;
- 4 (3) A community association within whose boundaries the nuisance is
5 located; or
- 6 (4) A municipal corporation within whose boundaries the nuisance is
7 located.

8 (c) An action under § 4-401 of the Courts Article to abate a nuisance may be
9 brought against:

- 10 (1) A tenant of the property where the nuisance is located;
- 11 (2) An owner of the property where the nuisance is located; or
- 12 (3) An operator of the property where the nuisance is located.

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

17 (2) The notice shall specify:

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

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

22 (3) The notice shall be:

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

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

27 (e) (1) In addition to any service of process required by the Maryland
28 Rules, the plaintiff shall cause to be posted in a conspicuous place on the property no
29 later than 48 hours before the hearing the notice required under paragraph (2) of this
30 subsection.

31 (2) The notice shall indicate:

- 1 (i) The nature of the proceedings;
- 2 (ii) The time and place of the hearing; and
- 3 (iii) The name and telephone number of the person to contact for
4 additional information.

5 (f) A plaintiff is entitled to relief under this section whether or not an
6 adequate remedy exists at law.

7 (g) (1) If, after a hearing, the court determines that a nuisance exists, the
8 court may order any appropriate injunctive or other equitable relief.

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

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

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

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

18 2. The owner or operator knew or should have known of
19 the existence of the nuisance.

20 (h) (1) (i) If a tenant fails to comply with an order under subsection (g)
21 of this section and the owner or operator, and tenant, are parties to the action, the
22 court, after a hearing, may order restitution of the possession of the property to the
23 owner or operator.

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

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

31 (i) The property be sold, at the owner's expense, in accordance
32 with the Maryland Rules governing judicial sales; or

1 (ii) The property be demolished if the property is unfit for
2 habitation and the estimated cost of rehabilitation significantly exceeds the estimated
3 market value of the property after rehabilitation.

4 (3) If an owner-occupant fails to comply with an order under
5 subsection (g) of this section regarding a nuisance in the owner-occupied unit of the
6 property, after a hearing the court may, in addition to issuing a contempt order or an
7 order for any other relief, order that:

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

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

11 (i) Except as provided in paragraph (g)(2) of this section, the court may order
12 appropriate relief under subsection (g) of this section without proof that a defendant
13 knew of the existence of the nuisance.

14 (j) In any action brought under this section:

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

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

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

25 (l) An action under this section shall be heard within 14 days after service of
26 process on the parties.

27 (m) This section does not abrogate any equitable or legal right or remedy
28 under existing law to abate a nuisance.

29 (n) (1) An appeal from a judgment or order under this section shall be
30 filed within 10 days after the date of the order or judgment.

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

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

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

3 (o) Provisions of the Real Property Article or public local laws applicable to
4 actions between a landlord and tenant are not applicable to actions brought against a
5 landlord or a tenant under this section.

6 (p) All proceedings under this section are equitable in nature.

7 (q) (1) Except as provided in paragraph (2) of this subsection, when
8 necessary to accomplish the purposes of this section, a law enforcement officer, an
9 attorney in a municipal or county attorney’s office, or an attorney in an office of the
10 State’s Attorney may disclose the contents of an executed search warrant and papers
11 filed in connection with the search warrant to:

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

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

16 (iii) An attorney in a municipal or county attorney’s office.

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.