

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 159

(Senator McFadden)(By Request - Baltimore City
Administration) and Senator Simonaire

Judicial Proceedings

Environmental Matters

**Commercial Real Property - Action to Abate Drug Nuisance - Prior Notice
Requirement**

This bill reduces the number of days of notice that must be given to the tenant and owner of record of commercial property before an action to abate a drug nuisance may be filed. In Baltimore City, the prior notice period is shortened from 45 days to 15 days; in all other jurisdictions, 30 days of notice must be given.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Current Law: Under the State's drug-related nuisance abatement 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 or distribution of a controlled dangerous substance or controlled paraphernalia; or (3) for the storage or concealment of a controlled dangerous substance in sufficient quantity to indicate an intent to manufacture, distribute, or dispense a controlled dangerous substance or controlled paraphernalia.

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.

For a commercial property, a plaintiff may not bring an abatement action concerning a drug-related nuisance until 45 days after the tenant and owner of record receive notice that the 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. Notice must be hand delivered or sent by certified mail to both the tenant and owner of record.

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 order appropriate relief without proof that the defendant knew about the nuisance.

In addition to or as part of an injunction or other remedy, the court may order (1) a tenant who knew or should have known of the existence of the nuisance to vacate the property within 72 hours; or (2) an owner or operator to submit a plan of correction for court approval to ensure that the property will not again be used for a nuisance if the owner or operator is a party to the action and knew or should have known about the nuisance.

If an owner fails to comply with a nuisance abatement order, in addition to issuing a contempt order or ordering any other relief, the court may order the property to be sold, at the owner's expense, in accordance with the Maryland Rules governing judicial sales, or demolished if the property is unfit for human habitation and the cost of rehabilitation significantly exceeds the estimated market value after rehabilitation. If a tenant fails to comply with an abatement order and the owner or operator and tenant are parties to the action, the court may grant restitution of the premises to the owner or operator.

Background: Chapter 505 of 1991 codified § 14-120 of the Real Property Article, referred to as the Drug Nuisance Abatement statute. The statute was enacted to allow a community association, State's Attorney, or city or county attorney or solicitor to bring an action to abate a nuisance when residential property is being used for certain illegal drug activities. Chapter 700 of 1994 amended the abatement statute to include commercial properties as well. Chapter 501 of 2005 expanded the relief the District Court may order, and authorized the release of certain information to potential plaintiffs in a drug-related nuisance abatement action.

Additional Information

Prior Introductions: None.

Cross File: HB 99 (Delegate Anderson)(By Request - Baltimore City Administration) - Environmental Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mlm/kdm Revised - Senate Third Reader - March 31, 2009

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