

HOUSE BILL 1285

D3, E1, N1
SB 339/09 – JPR

0lr3223
CF SB 399

By: **Delegates Kramer, Hucker, and Mizeur**
Introduced and read first time: February 18, 2010
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: April 4, 2010

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of establishing that the use of real property for prostitution is a
4 nuisance that may be the subject of a certain action for abatement; providing
5 that certain relief is not available in certain actions for abatement of nuisance
6 that alleges the use of a property for prostitution; defining a certain term;
7 making a stylistic change; and generally relating to prostitution and abatement
8 of nuisance actions.

9 BY repealing and reenacting, without amendments,
10 Article – Criminal Law
11 Section 11–301(c)
12 Annotated Code of Maryland
13 (2002 Volume and 2009 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Real Property
16 Section 14–120
17 Annotated Code of Maryland
18 (2003 Replacement Volume and 2009 Supplement)

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

21 **Article – Criminal Law**

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 11-301.

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

4 **Article – Real Property**

5 14-120.

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

7 (2) "Commercial property" does not include residential rental
8 property.

9 (3) "Community association" means:

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

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

14 2. Operated exclusively for the promotion of social
15 welfare and general neighborhood improvement and enhancement; and

16 3. Exempt from taxation under § 501(c)(3) or (4) of the
17 Internal Revenue Code; or

18 (ii) A nonprofit association, corporation, or other organization
19 that is:

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

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

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

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

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

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

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

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

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

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

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

11 **(II) FOR PROSTITUTION.**

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

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

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

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

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

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

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

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

26 (iii) “Tenant” does not include:

27 1. The owner of the property; or

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

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

3 (1) The State’s Attorney of the county in which the nuisance is located;

4 (2) The county attorney or solicitor of the county in which the nuisance
5 is located;

6 (3) A community association within whose boundaries the nuisance is
7 located; or

8 (4) A municipal corporation within whose boundaries the nuisance is
9 located.

10 (c) An action under § 4–401 of the Courts Article to abate a nuisance may be
11 brought against:

12 (1) A tenant of the property where the nuisance is located;

13 (2) An owner of the property where the nuisance is located; or

14 (3) An operator of the property where the nuisance is located.

15 (d) (1) (i) Except as provided in subparagraph (ii) of this paragraph,
16 an action may not be brought under this section concerning a commercial property
17 until 30 days after the tenant, if any, and owner of record receive notice from a person
18 entitled to bring an action under this section that a nuisance exists.

19 (ii) In Baltimore City, an action may not be brought under this
20 section concerning a commercial property until 15 days after the tenant, if any, and
21 owner of record receive notice from a person entitled to bring an action under this
22 section that a nuisance exists.

23 (2) The notice shall specify:

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

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

28 (3) The notice shall be:

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

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

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

7 (2) The notice shall indicate:

8 (i) The nature of the proceedings;

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

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

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

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

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

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

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

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

25 2. The owner or operator knew or should have known of
26 the existence of the nuisance.

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

31 (ii) If the court orders restitution of the possession of the
32 property under subparagraph (i) of this paragraph, the court shall immediately issue

1 its warrant to the sheriff or constable commanding execution of the warrant within 5
2 days after issuance of the warrant.

3 (2) **(I) THIS PARAGRAPH DOES NOT APPLY TO AN ACTION**
4 **BROUGHT UNDER THIS SECTION ALLEGING THE USE OF A PROPERTY FOR**
5 **PROSTITUTION.**

6 **(II)** If an owner, including an owner–occupant, fails to comply
7 with an order under subsection (g) of this section, after a hearing the court may, in
8 addition to issuing a contempt order or an order for any other relief, order that:

9 ~~(i)~~ **1.** The property be sold, at the owner’s expense, in
10 accordance with the Maryland Rules governing judicial sales; or

11 ~~(ii)~~ **2.** The property be demolished if the property is unfit for
12 habitation and the estimated cost of rehabilitation significantly exceeds the estimated
13 market value of the property after rehabilitation.

14 **(3) (I) THIS PARAGRAPH APPLIES ONLY TO AN ACTION**
15 **BROUGHT UNDER THIS SECTION ALLEGING THE USE OF A PROPERTY FOR**
16 **PROSTITUTION.**

17 **(II) IF AN OWNER, INCLUDING AN OWNER–OCCUPANT, FAILS**
18 **TO COMPLY WITH AN ORDER UNDER SUBSECTION (G) OF THIS SECTION, AFTER A**
19 **HEARING, THE COURT MAY ISSUE A CONTEMPT ORDER.**

20 ~~(3)~~ **(4)** If an owner–occupant fails to comply with an order under
21 subsection (g) of this section regarding a nuisance in the owner–occupied unit of the
22 property, after a hearing the court may, in addition to issuing a contempt order or an
23 order for any other relief, order that:

24 (i) The owner–occupied unit be vacated within 72 hours; and

25 (ii) The owner–occupied unit remain unoccupied for a period not
26 to exceed 1 year or until the property is sold in an arm’s length transaction.

27 (i) Except as provided in [paragraph] **SUBSECTION (g)(2)** of this section, the
28 court may order appropriate relief under subsection (g) of this section without proof
29 that a defendant knew of the existence of the nuisance.

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

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

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

4 (k) **(1) THIS SUBSECTION DOES NOT APPLY TO AN ACTION AGAINST**
5 **AN OWNER, OTHER THAN AN OWNER-OCCUPANT, BROUGHT UNDER THIS**
6 **SECTION ALLEGING THE USE OF A PROPERTY FOR PROSTITUTION.**

7 **(2)** The court may award court costs and reasonable attorney's fees to
8 a community association that is the prevailing plaintiff in an action brought under
9 this section.

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

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

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

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

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

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

22 (o) Provisions of this article or public local laws applicable to actions between
23 a landlord and tenant are not applicable to actions brought against a landlord or a
24 tenant under this section.

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

26 (q) (1) Except as provided in paragraph (2) of this subsection, when
27 necessary to accomplish the purposes of this section, a law enforcement officer, an
28 attorney in a municipal or county attorney's office, or an attorney in an office of the
29 State's Attorney may disclose the contents of an executed search warrant and papers
30 filed in connection with the search warrant to:

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

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

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

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.