

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 670

(Delegate Frush, *et al.*)

Environmental Matters

Judicial Proceedings

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**Real Property - Retaliatory Actions - Landlords and Mobile Home Park Owners**

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This bill repeals current provisions governing retaliatory evictions of tenants of residential rental property and mobile home park residents, and expands protections for tenants and mobile home park residents against retaliatory actions by landlords and mobile home park owners.

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**Fiscal Summary**

**State Effect:** General fund expenditures likely increase due to both the increased amount of time spent on each landlord-tenant dispute as well as the number of total cases filed in the District Court. Revenues are not affected.

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

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** The bill changes the term used for adverse actions by a landlord or park owner taken because of a tenant or resident's actions from "retaliatory evictions" to "retaliatory action."

In addition to the prohibitions in current law, the bill prohibits a landlord or park owner from threatening to bring an action for possession or terminating a periodic tenancy or rental agreement because of specified actions by the tenant or resident. The bill also modifies the reasons for which a landlord of residential property or park owner is prohibited from taking a retaliatory action. The bill (1) specifies that a tenant's or resident's written or actual notice of a good faith complaint is subject to the prohibition

only if it relates to an alleged violation of the lease, violation of law, or condition on the leased premises that is a substantial threat to the health or safety of occupants; (2) adds as a reason the testimony or participation of a tenant or resident in a lawsuit involving the landlord or the park owner; and (3) requires only that a tenant *participate* in a tenant's organization rather than become a member or organizer.

The bill also changes the standard that must be met to prove a retaliatory action by repealing the requirement that a tenant or resident prove retaliation "solely" due to engaging in a protected activity.

A tenant or resident may raise the landlord's retaliatory action as a defense in an action for possession or as an affirmative claim for damages resulting from a retaliatory action of a landlord or park owner during a tenancy. An action by a landlord or park owner may not be deemed to be retaliatory if the alleged action occurs more than six months after the tenant's or resident's protected actions.

If the court finds in favor of the tenant or mobile home resident because the landlord or mobile home park owner engaged in a retaliatory action, the court may enter judgment against the landlord or mobile home park owner for damages up to the equivalent of three months' rent, as well as reasonable attorney's fees and court costs. If the court finds that a tenant's assertion of a retaliatory action was in bad faith or without substantial justification, the court may enter judgment for damages up to the equivalent of three months' rent, as well as reasonable attorney's fees and court costs, against the tenant.

For a tenant to gain relief in a retaliatory action by a landlord, the tenant must be current on the rent due and owed at the time of the alleged retaliatory action unless the rent is withheld due to a need for repair of dangerous defects. If the alleged retaliatory action was the termination of a periodic tenancy, relief is also conditioned upon whether the court has entered judgment against the tenant for nonpayment of rent more than a specified number of times within the preceding 12-month period.

The bill also states that if any county has enacted or enacts a comparable ordinance, the bill supersedes the ordinance to the extent that the ordinance provides less protection to the tenant or resident.

### **Current Law:**

#### *Retaliatory Eviction Against a Tenant of Residential Property (Amended by the Bill)*

Generally, a landlord may not evict a tenant of residential property or arbitrarily increase the rent or decrease services to which the tenant is entitled solely because:

- the tenant or the tenant's agent has filed a good faith written complaint with the landlord or with a public agency against the landlord;
- the tenant or agent has filed a lawsuit or lawsuits against the landlord; or
- the tenant is a member or organizer of any tenants' organization.

If a judgment in an eviction proceeding is for the tenant for any of these defenses, the court may enter judgment for reasonable attorney's fees and court costs against the landlord. If the court finds that the tenant's assertion of a retaliatory eviction defense was in bad faith or without substantial justification, the court may enter judgment for reasonable attorney's fees and court costs against the tenant. Relief under these provisions is not available if a specified number of judgments have been entered against the tenant for failing to pay rent within a specified period, depending on the obligation to pay rent under the tenancy.

An eviction may not be deemed retaliatory upon the expiration of a six-month period following the determination of the initial case by a court or administrative agency. These provisions do not alter the landlord's or tenant's rights to terminate or not renew a tenancy governed by a written lease for a stated term of greater than one month at the expiration of the term or at any other time as the parties may agree. If a county or Baltimore City enacts a comparable ordinance, that ordinance supersedes these provisions.

A landlord or tenant may terminate or not renew a tenancy governed by a written lease of greater than one month at the expiration of the term or at any other time as the parties may specifically agree.

*Other Retaliatory Eviction Provisions Against Tenants (Not Amended by the Bill)*

Similar requirements apply to a tenant providing information to a landlord under the State's lead paint requirements. If a landlord's action is found to be retaliatory under these provisions, the tenant is entitled to the relief provided under the State's retaliatory eviction statute and is eligible for reasonable attorney's fees and costs. This does not alter the landlord's or tenant's rights arising from a breach of any provision of a lease. By State law, a landlord may not evict a tenant of residential property in Montgomery County because the tenant:

- has filed a complaint with a public agency against the landlord;
- has filed a lawsuit against the owner; or
- is a member of any tenants' organization.

In an eviction action, if the judgment is in favor of the tenant for any of these defenses, the court may enter judgment for reasonable attorney's fees and court costs against the landlord. These provisions do not restrict the authority of Montgomery County to legislate in the area of landlord-tenant affairs. In addition to any other remedies, Montgomery County may, by local law, establish authorization for a local agency to invoke enforcement procedures upon an administrative determination that a proposed eviction is retaliatory as prohibited by State or local law. These procedures may include injunctive or other equitable relief.

*Retaliatory Eviction Against a Mobile Home Park Resident (Amended by the Bill)*

A mobile home park owner may not evict a resident or arbitrarily increase the rent or decrease services to which the resident is entitled solely because:

- the resident or the resident's agent has filed a written complaint with the park owner or with a public agency against the park owner;
- the resident or agent has filed a lawsuit or lawsuits against the owner; or
- the resident is a member or organizer of any tenants' organization.

If a judgment in an eviction proceeding is for the resident for any of these defenses, the court may enter judgment for reasonable attorney's fees and court costs against the park owner. An eviction may not be deemed retaliatory upon the expiration of a six-month period following the determination of the initial case by a court or administrative agency. These provisions do not alter the park owner's or resident's rights arising from breach of any provision of a rental agreement or rule, or either party's right to terminate or not renew the agreement.

**State Expenditures:** In fiscal 2010, approximately 605,000 landlord-tenant actions were filed in District Court. The Judiciary does not track the retaliatory action defenses raised in each case; however, because the bill adds another protected activity, along with other modifications, by a tenant and another prohibited activity by a landlord, general fund expenditures likely increase due to both the increased amount of time spent on each landlord-tenant dispute as well as the number of total cases filed.

**Small Business Effect:** The bill may have a meaningful impact on small property management companies and sole proprietor landlords. The bill prohibits landlords from terminating a tenancy because of specified protected activities by a tenant. A tenant may raise a retaliatory action defense when a landlord has terminated a tenancy. This could result in higher legal fees for small businesses.

## **Additional Information**

**Prior Introductions:** SB 512 of 2008 and its cross file HB 1344 included similar provisions. SB 512 received an unfavorable report from the Senate Judicial Proceedings Committee; HB 1344 was withdrawn after being heard by the House Environmental Matters Committee. SB 599 of 2006, which also included similar provisions, received a hearing in the Senate Judicial Proceedings Committee and was referred to interim study by the committee.

**Cross File:** SB 620 (Senator Manno, *et al.*) - Judicial Proceedings.

**Information Source(s):** Anne Arundel, Garrett, Howard, and Montgomery counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2011  
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