

SENATE BILL 130

N1

2lr1101

By: **Senators Ferguson and Gladden**

Introduced and read first time: January 18, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Baltimore City – Nuisance Abatement and Local Code Enforcement –**
3 **Community Associations**

4 FOR the purpose of altering the definition of “community association” under certain
5 provisions of law relating to the standing of certain community associations in
6 Baltimore City to seek judicial relief for abatement of certain nuisances;
7 altering the definition of “nuisance” to repeal a certain requirement that a local
8 code violation must diminish the value of neighboring property; prohibiting a
9 community association from filing an action if the community association
10 receives certain information from a certain department regarding an active code
11 enforcement plan; repealing a certain requirement that a community
12 association must file a bond with the court before seeking nuisance abatement;
13 repealing a certain provision that a community association may not be
14 construed to have standing to pursue a nuisance action concerning a vacant
15 dwelling that is boarded up, free from trash and debris, and secure against
16 entry; and generally relating to the right of community associations in
17 Baltimore City to seek judicial abatement of certain nuisances.

18 BY repealing and reenacting, with amendments,
19 Article – Real Property
20 Section 14–123
21 Annotated Code of Maryland
22 (2010 Replacement Volume and 2011 Supplement)

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

25 **Article – Real Property**

26 14–123.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (2) "Community association" means [a Maryland nonprofit
3 association, corporation, or other organization that:

4 (i) Is comprised of at least 25 households or 25% of the
5 households, whichever is less, of a local neighborhood consisting of 40 or more
6 individual households as defined by specific geographic boundaries in the bylaws or
7 charter of the association;

8 (ii) Requires, as a condition of membership, the voluntary
9 payment of monetary dues at least annually;

10 (iii) Is operated primarily for the promotion of social welfare and
11 general neighborhood improvement and enhancement;

12 (iv) Has been in existence for at least 2 years when it files suit
13 under this section;

14 (v) 1. Is exempt from taxation under § 501(c)(3) or (4) of the
15 Internal Revenue Code; or

16 2. Has been included for a period of at least 2 years prior
17 to bringing an action under this section in Baltimore City's Community Association
18 Directory published by the Baltimore City Department of Planning; and

19 (vi) In the case of a Maryland corporation, is in good standing];

20 (I) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER
21 ORGANIZATION THAT IS:

22 1. COMPOSED OF RESIDENTS OF A COMMUNITY
23 WITHIN WHICH A NUISANCE IS LOCATED;

24 2. OPERATED EXCLUSIVELY FOR THE PROMOTION
25 OF SOCIAL WELFARE AND GENERAL NEIGHBORHOOD IMPROVEMENT AND
26 ENHANCEMENT; AND

27 3. EXEMPT FROM TAXATION UNDER § 501(C)(3) OR
28 (4) OF THE INTERNAL REVENUE CODE; OR

29 (II) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER
30 ORGANIZATION THAT IS:

1 **1. COMPOSED OF RESIDENTS OF A CONTIGUOUS**
2 **COMMUNITY THAT IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES, WITHIN**
3 **WHICH A NUISANCE IS LOCATED; AND**

4 **2. OPERATED FOR THE PROMOTION OF THE**
5 **WELFARE, IMPROVEMENT, AND ENHANCEMENT OF THAT COMMUNITY.**

6 (3) “Local code violation” means a violation under the following
7 provisions of the Baltimore City Code as amended from time to time or under any
8 applicable code relating to the following provisions incorporated by Baltimore City by
9 reference:

10 (i) The Fire Prevention Code under Article 9;

11 (ii) Animal control, nuisance and disease prevention, and noise
12 control subheadings of Article 11 (Health);

13 (iii) The Housing Code under Article 13;

14 (iv) Public nuisance provisions under Article 19;

15 (v) Article 23;

16 (vi) The Building Code of Baltimore City, Article 32; and

17 (vii) The zoning ordinance of Baltimore City, Article 30.

18 (4) “Nuisance” means, within the boundaries of the community
19 represented by the community association, an act or condition knowingly created,
20 performed, or maintained on private property that constitutes a local code violation
21 and that:

22 (i) Significantly affects other residents of the neighborhood;

23 **AND**

24 (ii) [Diminishes the value of neighboring property; and

25 (iii)] 1. Is injurious to public health, safety, or welfare of
26 neighboring residents; or

27 2. Obstructs the reasonable use of other property in the
28 neighborhood.

29 (b) This section only applies to a nuisance located within the boundaries of
30 Baltimore City.

1 (c) (1) A community association may seek injunctive and other equitable
2 relief in the circuit court for abatement of a nuisance upon showing:

3 (i) The notice requirements of this subsection have been
4 satisfied; and

5 (ii) The nuisance has not been abated.

6 (2) (i) 1. An action may not be brought under this section until
7 60 days after the community association sends notice of the violation and of the
8 community association's intent to bring an action under this section by certified mail,
9 return receipt requested, to the appropriate code enforcement agency.

10 **2. IF THE APPROPRIATE CODE ENFORCEMENT**
11 **AGENCY IS THE BALTIMORE CITY DEPARTMENT OF HOUSING AND COMMUNITY**
12 **DEVELOPMENT, AN ACTION UNDER THIS SECTION MAY NOT BE BROUGHT IF THE**
13 **DEPARTMENT PROVIDES A WRITTEN RESPONSE TO THE COMMUNITY**
14 **ASSOCIATION WITHIN 60 DAYS OF RECEIVING THE NOTICE THAT THE PROPERTY**
15 **IS PART OF AN ACTIVE CODE ENFORCEMENT PLAN.**

16 (ii) An action under this section may not be brought if the
17 appropriate code enforcement agency has filed an action for equitable relief from the
18 nuisance.

19 (3) (i) An action may not be brought under this section until 60
20 days after the community association sends notice to the tenant, if any, and the owner
21 of record that a nuisance exists and that legal action may be taken if the nuisance is
22 not abated.

23 (ii) The notice shall specify:

24 1. The nature of the alleged nuisance;

25 2. The date and time of day the nuisance was first
26 discovered;

27 3. The location on the property where the nuisance is
28 allegedly occurring; and

29 4. The relief sought in the action.

30 (iii) 1. The notice shall be provided to the tenant, if any, and
31 the owner of record in the same manner as service of process in a civil in personam
32 action under the Maryland Rules.

1 2. Adequate and sufficient notice may be given to the
2 tenant, if any, and the owner of record by sending a copy of the notice by regular mail
3 and posting a copy of the notice on the property where the nuisance is allegedly
4 occurring, if notice sent by certified mail is:

- 5 A. Returned unclaimed or refused;
- 6 B. Designated by the post office to be undeliverable for
7 any other reason; or
- 8 C. Signed for by a person other than the addressee.

9 (iv) In filing a suit under this section, an officer of the
10 community association shall certify to the court:

- 11 1. What steps the community association has taken to
12 satisfy the notice requirements under this subsection; and
- 13 2. That each condition precedent to the filing of an
14 action under this section has been met.

15 (4) [Relief may not be provided under this section unless the
16 community association files with the court a bond in an amount determined by the
17 court and with a surety approved by the court, conditioned to answer to the adverse
18 party for any costs the party may sustain as a result of the suit, including reasonable
19 attorney fees, if the court finds that the action was filed in bad faith or without
20 substantial justification.

21 (5)] (i) An action may not be brought against an owner of
22 residential rental property unless, prior to the giving of notice under subsection
23 (c)(3)(i) of this section, a notice of violation relating to the nuisance has first been
24 issued by an appropriate code enforcement agency.

25 (ii) In the case of a nuisance based on a housing or building code
26 violation, other than a recurrent sanitation violation, relief may not be granted under
27 this section unless a violation notice relating to the nuisance has been issued by the
28 Department of Housing and Community Development and remains outstanding after
29 a period of 75 days.

30 [[6)] (5) (i) If a violation notice is an essential element of the
31 action, a copy of the notice signed by an official of the appropriate code enforcement
32 agency shall be prima facie evidence of the facts contained in the notice.

33 (ii) A notice of abatement issued by the appropriate code
34 enforcement agency in regard to the violation notice shall be prima facie evidence that
35 the plaintiff is not entitled to the relief requested.

1 [(7)] (6) A proceeding under this section shall:

2 (i) Take precedence on the docket;

3 (ii) Be heard at the earliest practicable date; and

4 (iii) Be expedited in every way.

5 (d) A political subdivision of the State or any agency of a political subdivision
6 may not be subject to any action brought under this section or an action resulting from
7 an action brought under this section against a private property owner.

8 (e) (1) Subject to paragraph (2) of this subsection, this section may not be
9 construed as to abrogate any equitable or legal right or remedy otherwise available
10 under the law to abate a nuisance.

11 (2) This section may not be construed as to grant standing for an
12 action:

13 (i) Challenging any zoning application or approval;

14 (ii) In which the alleged nuisance consists of:

15 1. A condition relating to lead paint; **OR**

16 2. An interior physical defect of a property]; or

17 3. A vacant dwelling that is maintained in a boarded
18 condition, free from trash and debris, and secure against trespassers and weather
19 entry];

20 (iii) Involving any violation of alcoholic beverages laws under
21 Article 2B of the Code; or

22 (iv) Involving any matter in which a certificate, license, permit,
23 or registration is required or allowed under the Environment Article.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2012.