

SENATE BILL 130

N1

2lr1101
CF HB 365

By: ~~Senators Ferguson and Gladden~~, **Gladden, and Jones-Rodwell**

Introduced and read first time: January 18, 2012

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2012

CHAPTER _____

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; altering the
9 definition of “local code violation” to correct references to certain provisions of
10 the Baltimore City Code; prohibiting a community association from filing an
11 action if the community association receives certain information from a certain
12 department regarding an active code enforcement plan; repealing a certain
13 requirement that a community association must file a bond with the court
14 before seeking nuisance abatement; repealing a certain provision that a
15 community association may not be construed to have standing to pursue a
16 nuisance action concerning a vacant dwelling that is boarded up, free from trash
17 and debris, and secure against entry; and generally relating to the right of
18 community associations in Baltimore City to seek judicial abatement of certain
19 nuisances.

20 BY repealing and reenacting, with amendments,
21 Article – Real Property
22 Section 14–123
23 Annotated Code of Maryland
24 (2010 Replacement Volume and 2011 Supplement)

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

3 **Article – Real Property**

4 14–123.

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

6 (2) “Community association” means [a Maryland nonprofit
7 association, corporation, or other organization that:

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

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

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

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

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

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

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

24 **(I) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER**
25 **ORGANIZATION THAT IS:**

26 **1. COMPOSED OF RESIDENTS OF A COMMUNITY**
27 **WITHIN WHICH A NUISANCE IS LOCATED;**

28 **2. OPERATED EXCLUSIVELY FOR THE PROMOTION**
29 **OF SOCIAL WELFARE AND GENERAL NEIGHBORHOOD IMPROVEMENT AND**
30 **ENHANCEMENT; AND**

1 **3. EXEMPT FROM TAXATION UNDER § 501(C)(3) OR**
 2 **(4) OF THE INTERNAL REVENUE CODE; OR**

3 **(II) A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER**
 4 **ORGANIZATION THAT IS:**

5 **1. COMPOSED OF RESIDENTS OF A CONTIGUOUS**
 6 **COMMUNITY THAT IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES, WITHIN**
 7 **WHICH A NUISANCE IS LOCATED; ~~AND~~**

8 **2. OPERATED FOR THE PROMOTION OF THE**
 9 **WELFARE, IMPROVEMENT, AND ENHANCEMENT OF THAT COMMUNITY; AND**

10 **3. IN GOOD STANDING WITH THE STATE**
 11 **DEPARTMENT OF ASSESSMENTS AND TAXATION.**

12 (3) “Local code violation” means a violation under the following
 13 provisions of the Baltimore City Code as amended from time to time or under any
 14 applicable code relating to the following provisions incorporated by Baltimore City by
 15 reference:

16 ~~(i) The Fire Prevention Code under Article 9;~~

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

19 ~~(iii) The Housing Code under Article 13;~~

20 ~~(iv) Public nuisance provisions under Article 19;~~

21 ~~(v) Article 23;~~

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

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

24 **(I) NUISANCE CONTROL, WASTE CONTROL, AND NOISE**
 25 **REGULATION TITLES OF THE HEALTH CODE OF BALTIMORE CITY;**

26 **(II) THE PUBLIC NUISANCE AND NEIGHBORHOOD NUISANCE**
 27 **PROVISIONS UNDER CITY CODE ARTICLE 19, POLICE ORDINANCES;**

28 **(III) CITY CODE ARTICLE 23, SANITATION;**

1 **(IV) THE BUILDING, FIRE, AND RELATED CODES OF**
 2 **BALTIMORE CITY; OR**

3 **(V) THE ZONING CODE OF BALTIMORE CITY.**

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

8 (i) Significantly affects other residents of the neighborhood;
 9 **AND**

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

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

13 2. Obstructs the reasonable use of other property in the
 14 neighborhood.

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

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

19 (i) The notice requirements of this subsection have been
 20 satisfied; and

21 (ii) The nuisance has not been abated.

22 (2) (i) 1. An action may not be brought under this section until
 23 60 days after the community association sends notice of the violation and of the
 24 community association’s intent to bring an action under this section by certified mail,
 25 return receipt requested, to the appropriate code enforcement agency.

26 2. **IF THE APPROPRIATE CODE ENFORCEMENT**
 27 **AGENCY IS THE BALTIMORE CITY DEPARTMENT OF HOUSING AND COMMUNITY**
 28 **DEVELOPMENT, AN ACTION UNDER THIS SECTION MAY NOT BE BROUGHT IF THE**
 29 **DEPARTMENT PROVIDES A WRITTEN RESPONSE TO THE COMMUNITY**
 30 **ASSOCIATION WITHIN 60 DAYS OF RECEIVING THE NOTICE THAT THE PROPERTY**
 31 **IS PART OF AN ACTIVE CODE ENFORCEMENT PLAN.**

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

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

8 (ii) The notice shall specify:

- 9 1. The nature of the alleged nuisance;
- 10 2. The date and time of day the nuisance was first
11 discovered;
- 12 3. The location on the property where the nuisance is
13 allegedly occurring; and
- 14 4. The relief sought in the action.

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

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

- 22 A. Returned unclaimed or refused;
- 23 B. Designated by the post office to be undeliverable for
24 any other reason; or
- 25 C. Signed for by a person other than the addressee.

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

28 1. What steps the community association has taken to
29 satisfy the notice requirements under this subsection; and

30 2. That each condition precedent to the filing of an
31 action under this section has been met.

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

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

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

16 [(6)] (5) (i) If a violation notice is an essential element of the
17 action, a copy of the notice signed by an official of the appropriate code enforcement
18 agency shall be prima facie evidence of the facts contained in the notice.

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

22 [(7)] (6) A proceeding under this section shall:

23 (i) Take precedence on the docket;

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

25 (iii) Be expedited in every way.

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

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

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

34 (i) Challenging any zoning application or approval;

- 1 (ii) In which the alleged nuisance consists of:
 - 2 1. A condition relating to lead paint; **OR**
 - 3 2. An interior physical defect of a property]; or
 - 4 3. A vacant dwelling that is maintained in a boarded
 - 5 condition, free from trash and debris, and secure against trespassers and weather
 - 6 entry];
- 7 (iii) Involving any violation of alcoholic beverages laws under
- 8 Article 2B of the Code; or
- 9 (iv) Involving any matter in which a certificate, license, permit,
- 10 or registration is required or allowed under the Environment Article.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.