

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 323
Judiciary

(Delegate Palakovich Carr)

Judicial Proceedings

Real Property - Limitations on Summoning Law Enforcement or Emergency Services - Prohibition

This bill prohibits a landlord from including provisions in a lease or form of lease that (1) limit the ability of a tenant to summon the assistance of law enforcement or emergency services or penalize a tenant solely for doing so or (2) penalize a tenant for the actions of another individual solely because the individual summoned the assistance of law enforcement or emergency services. A landlord is also prohibited from taking specified retaliatory actions solely because the tenant or another individual summoned the assistance of law enforcement or emergency services to the property. The bill also prohibits the governing body of a county or municipality from enacting local laws or ordinances that (1) establish a threshold of requests to summon law enforcement or emergency services to a residential property as grounds for designating a property as a nuisance or (2) otherwise penalize or authorize a penalty against an operator, owner, owner-occupant, or tenant for the act of summoning law enforcement or emergency services to a residential property (including if another individual summoned the assistance).

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill creates a presumption that a local law or ordinance related to summoning law enforcement or emergency services to a residential property is prohibited if it authorizes or requires (1) the assessment of a monetary penalty or fine on an operator, owner, owner-occupant, or tenant; (2) the use of an action for repossession of a dwelling unit from a tenant or termination or nonrenewal of a tenant's lease; or (3) the revocation, suspension, or nonrenewal of a rental license. The bill's provisions are not applicable to a local law or ordinance governing the following:

- the installation and use of residential security alarm systems;
- the physical condition, sanitation, maintenance, or repair of real property, including vacant buildings;
- parking enforcement; or
- calls to law enforcement concerning social gatherings or excessive noise that do not involve an offense set forth in the Criminal Law Article and are (1) made with the intent to harass another or (2) knowingly false, as a whole or in material part.

An operator, owner, owner-occupant, or tenant may raise the issue of a local law or ordinance being in violation of the bill's provisions as a defense to an action to enforce the local law or ordinance or as an affirmative claim for damages resulting from the enforcement of the law or ordinance.

If, in any proceeding, the court finds in favor of the operator, owner, owner-occupant, or tenant, the court may enter a judgment against the county or municipality attempting to enforce the prohibited local law or ordinance and award the operator, owner, owner-occupant, or tenant (1) reasonable damages; (2) reasonable attorney's fees; (3) court costs; (4) reinstatement of a rental license; and (5) other relief as deemed appropriate by the court.

Current Law:

Prohibited Lease Provisions

Among other requirements regarding leases, a landlord may not use a lease or form of lease containing any provision that:

- has the tenant authorize any person to confess judgment on a claim arising out of the lease;
- has the tenant agree to waive/forego any right or remedy provided by applicable law;

- imposes a penalty for the late payment of rent in excess of specified thresholds;
- has the tenant waive the right to a jury trial;
- has the tenant agree to a period required for the landlord's notice to quit that is shorter than the period required by applicable law, as specified;
- authorizes the landlord to take possession of the leased premises or the tenant's personal property unless the lease has been terminated by action of the parties or by operation of law, and the personal property has been abandoned by the tenant without the benefit of a formal legal process;
- is against public policy and void, as specified; or
- permits a landlord to commence an eviction proceeding or issue a notice to quit solely as retaliation against a tenant for planning, organizing, or joining a tenant's organization with the purpose of negotiating collectively with the landlord.

Retaliatory Actions

Generally, a landlord of residential property may not bring or threaten to bring an action for possession against a tenant, arbitrarily increase the rent or decrease services to which the tenant has been entitled, or terminate a periodic tenancy for any of the following reasons:

- the tenant or the tenant's agent has provided to the landlord or any public agency written or actual notice of a good faith complaint about 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;
- the tenant or agent has filed a lawsuit against the landlord;
- the tenant or agent has testified or participated in a lawsuit involving the landlord; or
- the tenant has participated in any tenants' organization.

A violation of the above requirements is a "retaliatory action." A tenant may raise a retaliatory action of a landlord in defense to an action for possession or as an affirmative claim for damages.

If a judgment in any proceeding is for the tenant because the landlord engaged in a retaliatory action, the court may enter judgment for damages not to exceed the equivalent of three months' rent, reasonable attorney fees, and court costs against the landlord. If the court finds that the tenant's assertion of a retaliatory action defense was in bad faith or without substantial justification, the court may enter judgment for damages for the landlord not to exceed the equivalent of three months' rent, reasonable attorney fees, and court costs against the tenant.

Relief under these provisions is not available if the tenant is not current on the rent due and owing to the landlord at the time of the alleged retaliatory action unless the tenant withholds the rent for specified permissible reasons.

Nuisance Abatement

Statutory provisions establish causes of actions to abate a nuisance in specified circumstances. For example, a civil action to abate a “nuisance” (as defined in § 14-120 of the Real Property Article) based on criminal activity at a property may be brought in the District Court by (1) the State’s Attorney of the county in which the nuisance is located; (2) the county attorney or solicitor of the county in which the nuisance is located; (3) a community association within whose boundaries the nuisance is located; or (4) a municipal corporation within whose boundaries the nuisance is located. The action may be brought against (1) a tenant of the property where the nuisance is located; (2) an owner of the property where the nuisance is located; or (3) an operator of the property where the nuisance is located. Before filing an action, specified notice and timeliness requirements must be met.

Statutory provisions also establish causes of action for nuisance abatement in broader circumstances within Anne Arundel, Baltimore, Harford, and Prince George’s counties and Baltimore City. In such provisions, “nuisance” generally includes an act or condition created, performed, or maintained on private property that constitutes a local code violation and that meets specified adverse conditions, such as being injurious to the public health, safety, or welfare of neighboring residents. Such actions are generally authorized to be brought by the State’s Attorney, the county attorney, and/or a community association within whose boundaries the nuisance is located, as specified.

Statutory provisions generally authorize injunctive and other equitable relief, among other specified remedies.

Additional Information

Prior Introductions: HB 1093 of 2021, a similar bill, was withdrawn prior to a hearing.

Designated Cross File: None.

Information Source(s): Garrett County; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History:
km/jkb

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