

SENATE BILL 159

N1

9lr1366
CF HB 99

By: **Senator McFadden (By Request – Baltimore City Administration) and
Senator Simonaire**

Introduced and read first time: January 19, 2009

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 10, 2009

CHAPTER _____

1 AN ACT concerning

2 **Commercial Real Property – Action to Abate Drug Nuisance – ~~Repeal of Prior~~**
3 **Notice Requirement**

4 FOR the purpose of ~~repealing~~ altering certain advance notification requirements
5 concerning certain drug-related nuisances on commercial real property; and
6 generally relating to nuisances and commercial real property.

7 BY repealing and reenacting, without amendments,
8 Article – Real Property
9 Section 14–120(a)(1) and (5) and (e) through (q)
10 Annotated Code of Maryland
11 (2003 Replacement Volume and 2008 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Real Property
14 Section 14–120(d)
15 Annotated Code of Maryland
16 (2003 Replacement Volume and 2008 Supplement)

17 ~~BY repealing and reenacting, with amendments,~~
18 ~~Article – Real Property~~
19 ~~Section 14–120(e) through (q)~~
20 ~~Annotated Code of Maryland~~
21 ~~(2003 Replacement Volume and 2008 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.



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

Article – Real Property

14–120.

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

(5) “Nuisance” means a property that is used:

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

(ii) For the illegal manufacture, or distribution of:

1. A controlled dangerous substance; or

2. Controlled paraphernalia, as defined in § 5–101 of the Criminal Law Article; or

(iii) For the illegal storage or concealment of a controlled dangerous substance in sufficient quantity to reasonably indicate under all the circumstances an intent to manufacture, distribute, or dispense:

1. A controlled dangerous substance; or

2. Controlled paraphernalia, as defined in § 5–101 of the Criminal Law Article.

~~¶~~(d) (1) **(I) ~~AN~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN** action may not be brought under this section concerning a commercial property until ~~45~~ **30** days after the tenant, if any, and owner of record receive notice from a person entitled to bring an action under this section that a nuisance exists.

(II) IN BALTIMORE CITY, AN ACTION MAY NOT BE BROUGHT UNDER THIS SECTION CONCERNING A COMMERCIAL PROPERTY UNTIL 15 DAYS AFTER THE TENANT, IF ANY, AND OWNER OF RECORD RECEIVE NOTICE FROM A PERSON ENTITLED TO BRING AN ACTION UNDER THIS SECTION THAT A NUISANCE EXISTS.

(2) The notice shall specify:

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

1 (ii) The location on the property where the nuisance is allegedly
2 occurring.

3 (3) The notice shall be:

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

6 (ii) Sent by certified mail to the tenant, if any, and the owner of
7 record.‡

8 ~~[(e)] (D)~~ (1) In addition to any service of process required by the
9 Maryland Rules, the plaintiff shall cause to be posted in a conspicuous place on the
10 property no later than 48 hours before the hearing the notice required under
11 paragraph (2) of this subsection.

12 (2) The notice shall indicate:

13 (i) The nature of the proceedings;

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

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

17 ~~[(f)] (E)~~ A plaintiff is entitled to relief under this section whether or not an
18 adequate remedy exists at law.

19 ~~[(g)] (F)~~ (1) If, after a hearing, the court determines that a nuisance
20 exists, the court may order any appropriate injunctive or other equitable relief.

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

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

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

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

30 2. The owner or operator knew or should have known of
31 the existence of the nuisance.

1 ~~[(h)] (G)~~ (1) (i) If a tenant fails to comply with an order under
2 subsection ~~[(g)] (F)~~ of this section and the owner or operator, and tenant, are parties
3 to the action, the court, after a hearing, may order restitution of the possession of the
4 property to the owner or operator.

5 (ii) If the court orders restitution of the possession of the
6 property under subparagraph (i) of this paragraph, the court shall immediately issue
7 its warrant to the sheriff or constable commanding execution of the warrant within 5
8 days after issuance of the warrant.

9 (2) If an owner, including an owner-occupant, fails to comply with an
10 order under subsection ~~[(g)] (F)~~ of this section, after a hearing the court may, in
11 addition to issuing a contempt order or an order for any other relief, order that:

12 (i) The property be sold, at the owner's expense, in accordance
13 with the Maryland Rules governing judicial sales; or

14 (ii) The property be demolished if the property is unfit for
15 habitation and the estimated cost of rehabilitation significantly exceeds the estimated
16 market value of the property after rehabilitation.

17 (3) If an owner-occupant fails to comply with an order under
18 subsection ~~[(g)] (F)~~ of this section regarding a nuisance in the owner-occupied unit of
19 the property, after a hearing the court may, in addition to issuing a contempt order or
20 an order for any other relief, order that:

21 (i) The owner-occupied unit be vacated within 72 hours; and

22 (ii) The owner-occupied unit remain unoccupied for a period not
23 to exceed 1 year or until the property is sold in an arm's length transaction.

24 ~~[(i)] (H)~~ Except as provided in paragraph ~~[(g)(2)] (F)(2)~~ of this section, the
25 court may order appropriate relief under subsection ~~[(g)] (F)~~ of this section without
26 proof that a defendant knew of the existence of the nuisance.

27 ~~[(j)] (I)~~ In any action brought under this section:

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

32 (2) Evidence that the nuisance had been discontinued at the time of
33 the filing of the complaint or at the time of the hearing does not bar the imposition of
34 appropriate relief by the court under subsection ~~[(g)] (F)~~ of this section.

~~[(k)]~~ ~~(J)~~ The court may award court costs and reasonable attorney's fees to a community association that is the prevailing plaintiff in an action brought under this section.

~~[(l)]~~ ~~(K)~~ An action under this section shall be heard within 14 days after service of process on the parties.

~~[(m)]~~ ~~(H)~~ This section does not abrogate any equitable or legal right or remedy under existing law to abate a nuisance.

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

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

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

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

~~[(o)]~~ ~~(N)~~ Provisions of the Real Property Article or public local laws applicable to actions between a landlord and tenant are not applicable to actions brought against a landlord or a tenant under this section.

~~[(p)]~~ ~~(O)~~ All proceedings under this section are equitable in nature.

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.