

HOUSE BILL 1224

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By: **Delegates Kramer, Arora, Barkley, Carr, Cullison, Dumais, Hucker, A. Kelly, Reznik, B. Robinson, Simmons, Stein, and Valderrama**

Introduced and read first time: February 10, 2012

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health Nuisance – Tobacco Smoke in Multidwelling Units –**
3 **Abatement and Enforcement Authority**

4 FOR the purpose of amending the definition of “nuisance” to include tobacco smoke
5 that drifts from certain units into other residential units in a multidwelling
6 property over a certain period of time as it relates to authorizing certain entities
7 or individuals to bring certain actions in a circuit court for relief from the
8 nuisance; prohibiting a certain community association from bringing a certain
9 action under certain circumstances; requiring certain notices to the local health
10 officer and to certain tenants and property owners before a certain nuisance
11 abatement action may be brought; providing for certain remedies; providing
12 that the court shall determine the conditions for which a community association
13 is required to file a bond under certain circumstances; providing for the
14 construction of this Act; providing for the application of this Act; defining a
15 certain term; and generally relating to the abatement and enforcement
16 authority of the public health nuisance of tobacco smoke in multidwelling units.

17 BY repealing and reenacting, with amendments,
18 Article – Health – General
19 Section 20–301 and 20–305
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2011 Supplement)

22 BY adding to
23 Article – Health – General
24 Section 20–307.1
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Health – General**

4 20–301.

5 (a) In this subtitle[, “nuisance”] **THE FOLLOWING WORDS HAVE THE**
6 **MEANINGS INDICATED.**

7 **(B) “COMMUNITY ASSOCIATION” MEANS A MARYLAND NONPROFIT**
8 **CORPORATION THAT:**

9 **(1) IS COMPRISED OF AT LEAST 20% OF THE TOTAL NUMBER OF**
10 **HOUSEHOLDS AS MEMBERS, WITH A MINIMUM MEMBERSHIP OF 25**
11 **HOUSEHOLDS, OF A LOCAL COMMUNITY THAT CONSISTS OF 40 OR MORE**
12 **INDIVIDUAL HOUSEHOLDS AS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES**
13 **IN THE BYLAWS OR CHARTER OF THE COMMUNITY ASSOCIATION;**

14 **(2) REQUIRES, AS A CONDITION OF MEMBERSHIP, THE PAYMENT**
15 **OF MONETARY DUES AT LEAST ANNUALLY;**

16 **(3) IS OPERATED PRIMARILY FOR THE PROMOTION OF SOCIAL**
17 **WELFARE AND GENERAL NEIGHBORHOOD IMPROVEMENT AND ENHANCEMENT;**

18 **(4) HAS BEEN IN EXISTENCE FOR AT LEAST 1 YEAR WHEN IT**
19 **FILES SUIT UNDER THIS SECTION;**

20 **(5) IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OR (4) OF THE**
21 **INTERNAL REVENUE CODE; AND**

22 **(6) IS IN GOOD STANDING.**

23 **(C) (1) “NUISANCE” means a condition that is dangerous to health or**
24 **safety OR IS AN OBSTRUCTION TO THE FREE USE OF PROPERTY SO AS TO**
25 **INTERFERE WITH THE COMFORTABLE ENJOYMENT OF LIFE OR PROPERTY**
26 **including:**

27 **[(1)] (I) An inadequately protected swimming pool;**

28 **[(2)] (II) An unprotected open ditch;**

29 **[(3)] (III) An unsanitary outhouse;**

1 20-305.

2 (A) The Secretary or a local health officer may bring an action to enjoin any
3 person from committing any nuisance subject to this subtitle.

4 (B) SUBJECT TO § 20-307.1 OF THIS SUBTITLE, A COMMUNITY
5 ASSOCIATION MAY BRING AN ACTION TO ABATE A NUISANCE UNDER §
6 20-301(B)(1)(XIV) OF THIS SUBTITLE ON SHOWING:

7 (1) THE NUISANCE WAS WITHIN THE BOUNDARIES OF THE
8 COMMUNITY REPRESENTED BY THE COMMUNITY ASSOCIATION;

9 (2) THE NOTICE REQUIREMENTS OF § 20-307.1 OF THIS
10 SUBTITLE HAVE BEEN SATISFIED; AND

11 (3) THE NUISANCE HAS NOT BEEN ABATED.

12 (C) ANY PERSON WHO HAS BEEN HARMED BY THE NUISANCE UNDER §
13 20-301(B)(1)(XIV) OF THIS SUBTITLE MAY BRING AN ACTION TO ABATE THE
14 NUISANCE OR ANY OTHER COMPENSATORY OR EQUITABLE RELIEF AGAINST THE
15 PERSON FOUND TO HAVE CREATED THE NUISANCE.

16 20-307.1.

17 (A) (1) A COMMUNITY ASSOCIATION MAY NOT BRING AN ACTION
18 UNDER § 20-305 OF THIS SUBTITLE UNTIL 60 DAYS AFTER THE COMMUNITY
19 ASSOCIATION GIVES NOTICE OF THE VIOLATION AND OF THE COMMUNITY
20 ASSOCIATION'S INTENT TO BRING AN ACTION UNDER THIS SECTION BY
21 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE LOCAL HEALTH
22 OFFICER.

23 (2) AN ACTION UNDER THIS SECTION MAY NOT BE BROUGHT IF
24 THE LOCAL HEALTH OFFICER HAS FILED AN ACTION FOR EQUITABLE RELIEF
25 FROM THE NUISANCE.

26 (B) (1) AN ACTION MAY NOT BE BROUGHT UNDER § 20-305 OF THIS
27 SUBTITLE UNTIL 60 DAYS AFTER THE TENANT, IF ANY, AND OWNER OF RECORD
28 RECEIVE NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, FROM THE
29 COMMUNITY ASSOCIATION THAT A NUISANCE UNDER § 20-301(B)(1)(XIV) OF
30 THIS SUBTITLE EXISTS AND THAT LEGAL ACTION MAY BE TAKEN IF THE
31 NUISANCE IS NOT ABATED.

32 (2) THE NOTICE SHALL SPECIFY:

1 **(I) THE NATURE OF THE ALLEGED NUISANCE;**

2 **(II) THE DATES AND TIMES OF DAY THE NUISANCE WAS**
3 **FIRST DOCUMENTED;**

4 **(III) THE LOCATION ON THE PROPERTY WHERE THE**
5 **NUISANCE IS ALLEGEDLY OCCURRING; AND**

6 **(IV) THE RELIEF SOUGHT.**

7 **(C) (1) THE COMMUNITY ASSOCIATION MAY FILE A COMPLAINT IN**
8 **THE CIRCUIT COURT FOR THE COUNTY WHERE THE NUISANCE EXISTS IF:**

9 **(I) THE PERSON SERVED WITH THE NOTICE UNDER**
10 **SUBSECTION (B) OF THIS SECTION FAILS TO COMPLY WITH THE REQUIREMENTS**
11 **OF THE NOTICE; OR**

12 **(II) ALTHOUGH THE PERSON SERVED COMPLIES WITH THE**
13 **REQUIREMENTS OF THE NOTICE, THE NUISANCE IS LIKELY TO RECUR ON THE**
14 **SAME PROPERTY.**

15 **(2) A COMPLAINT FILED UNDER THIS SUBSECTION MAY SEEK A**
16 **COURT ORDER REQUIRING THE PERSON SERVED WITH THE NOTICE TO:**

17 **(I) COMPLY WITH THE REQUIREMENTS OF THE**
18 **COMMUNITY ASSOCIATION'S ABATEMENT NOTICE;**

19 **(II) ABATE THE NUISANCE WITHIN A TIME SPECIFIED IN**
20 **THE ORDER;**

21 **(III) PREVENT THE NUISANCE FROM RECURRING; OR**

22 **(IV) PAY A FINE OF NOT MORE THAN \$1,000.**

23 **(D) IN FILING A SUIT UNDER THIS SECTION, AN OFFICER OF THE**
24 **COMMUNITY ASSOCIATION SHALL CERTIFY TO THE COURT:**

25 **(1) WHAT STEPS THE COMMUNITY ASSOCIATION HAS TAKEN TO**
26 **SATISFY THE NOTICE REQUIREMENTS UNDER THIS SUBSECTION; AND**

27 **(2) THAT EACH CONDITION PRECEDENT TO THE FILING OF AN**
28 **ACTION UNDER THIS SECTION HAS BEEN MET.**

1 **(E) THE COURT SHALL DETERMINE IN WHAT AMOUNT AND UNDER**
2 **WHAT CONDITIONS, IF ANY, A BOND SHALL BE FILED BY A COMMUNITY**
3 **ASSOCIATION IN AN ACTION FOR RELIEF UNDER THIS SECTION.**

4 **(F) THIS SECTION MAY NOT BE CONSTRUED TO ABROGATE ANY**
5 **EQUITABLE OR LEGAL RIGHT OR REMEDY OTHERWISE AVAILABLE UNDER THE**
6 **LAW TO ABATE A NUISANCE.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
8 construed to apply only prospectively and may not be applied or interpreted to have
9 any effect on or application to any cause of action arising before the effective date of
10 this Act.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2012.