

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1224

(Delegate Kramer, *et al.*)

Environmental Matters

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**Public Health Nuisance - Tobacco Smoke in Multidwelling Units - Abatement and Enforcement Authority**

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This bill expands the definition of “nuisance” to include an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property. In addition, the bill specifies that (1) “nuisance” includes tobacco smoke that drifts into any residential unit of a dwelling from another residential or commercial unit in the same dwelling more than once in a consecutive 14-day period; and (2) a community association may bring an action to abate such a nuisance if specified conditions, including proper notice to the local health officer, are met. In addition, the bill authorizes a person who has been harmed by such a nuisance to bring an action to abate the nuisance or for any other compensatory or equitable relief against the person found to have created the nuisance.

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**Fiscal Summary**

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

**Local Effect:** Potential minimal increase in local government expenditures to the extent that the bill’s expansion of the definition of “nuisance” results in a greater number of nuisance actions brought by local health officers. Potential minimal increase in revenues to the extent fines are imposed.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** Under the bill, “community association” means a Maryland nonprofit corporation that:

- comprises at least 20% of the total number of households as members of a local community that consists of 40 or more individual households (with a minimum membership of 25 households) as defined by specific geographic boundaries in the bylaws or charter of the community association;
- requires, as a condition of membership, the payment of monetary dues at least annually;
- is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;
- has been in existence for at least one year when it files suit under the bill;
- is exempt from taxation under specified sections of the Internal Revenue Code; and
- is in good standing.

A community association is authorized to bring an action to abate the type of nuisance specified in the bill on showing (1) the nuisance was within the boundaries of the community represented by the association; (2) the nuisance has not been abated; and (3) notice requirements have been satisfied. A community association may not bring an action until 60 days after (1) the association gives notice to the local health officer (by certified mail, return receipt requested) of the violation and of the association’s intent to bring an action; and (2) the tenant, if any, and owner of record receive specified notice (by certified mail, return receipt requested) from the community association that the nuisance exists and that legal action may be taken if the nuisance is not abated. The association is prohibited from bringing an action under the bill if the local health officer has filed an action for equitable relief from the nuisance.

If the person served with notice fails to comply with the requirements of the notice, or if the nuisance is likely to recur on the same property, the community association may file a complaint in the circuit court for the county where the nuisance exists. The complaint may seek a court order requiring the person served with the notice to (1) comply with the requirements of the community association’s abatement notice; (2) abate the nuisance within a time specified in the order; (3) prevent the nuisance from recurring; or (4) pay a fine of up to \$1,000.

In filing a suit under the bill, an officer of the community association must certify to the court (1) what steps the association has taken to satisfy the bill’s notice requirements; and (2) that each condition precedent to the filing of an action under the bill has been met.

The court must determine in what amount and under what conditions, if any, a bond must be filed by a community association in an action for relief under the bill.

The bill may not be construed to abrogate any equitable or legal right or remedy otherwise available under the law to abate a nuisance. In addition, the bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the bill's October 1, 2012 effective date.

### **Current Law:**

*In General:* The concept of “nuisance” originates under common law and is something that causes offense, annoyance, trouble, or injury. A private nuisance obstructs the rights of a specific individual or group, while a public nuisance is an act or omission that obstructs, damages, or inconveniences the rights of the community.

Several types of nuisances are specifically addressed in State law, including:

- conditions that are dangerous to health or safety, including an inadequately protected swimming pool, an unprotected open ditch, an unsanitary outhouse, a foul pigpen, an improperly functioning sewage system, an unkempt junkyard or scrap metal processing facility, an excessive accumulation of trash or garbage, a dead animal, a contaminated or inadequately protected water supply, a rodent harborage, poor housekeeping that could endanger an individual's health, or any condition that may endanger health and may be transmitted by means including surface drainage and air currents (Health-General Article);
- the presence of mosquitoes, pests, and noxious weeds (Agriculture Article);
- dwellings, buildings, vehicles, vessels, aircraft, or any other place(s) used by individuals to administer illegally controlled substances or where controlled dangerous substances or controlled substances or controlled paraphernalia are manufactured, distributed, dispensed, stored, or concealed illegally (Criminal Law Article);
- nuisances affecting public health and involving plumbing, drainage, water supplies, and disposal of any waste material (Environment Article);
- the presence of nonnative aquatic organisms (Natural Resources Article); and
- property that is used for prostitution or for the administration, manufacture, distribution, or storage of a controlled dangerous substance or related paraphernalia (Real Property Article).

Each department charged with abating the above nuisances is authorized to enter onto private property to determine its existence.

Additionally, each county board of health is authorized to adopt and enforce rules and regulations on any nuisance or cause of disease in the county. If a county health officer investigates and finds a nuisance, the health officer is required to serve a written notice to the person who is causing the nuisance, ordering the person to abate the nuisance within a specified period of time.

*Local Laws:* In Baltimore City and Anne Arundel, Baltimore, Harford, and Prince George's counties, a community association may bring an action to abate a nuisance based on a local code violation. Each county or city has a slightly different definition for a community association; however, each requires that a community association operate primarily for the promotion of social welfare and general neighborhood improvement and enhancement, be in existence for at least one year, and be tax-exempt under the Internal Revenue Code.

Additionally, each county or city defines nuisance differently. Baltimore City and Prince George's and Anne Arundel counties require that the condition of the property diminish the value of neighboring property.

**Background:** A recent circuit court case held that secondhand smoke from a neighboring dwelling is not an actionable nuisance under current law. The case is now on appeal to the Court of Special Appeals.

**Local Effect:** Montgomery County has advised that one additional staff person is necessary to investigate complaints received under the bill. However, given that Montgomery County has also advised that it receives only about three complaints per week related to secondhand smoke from multidwelling units, Legislative Services advises that any increase in complaints under the bill is likely to be minimal. Legislative Services also notes that the bill does not require local health departments to bring a greater number of abatement actions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** ABC News; Kent, Montgomery, and Washington counties; Office of the Attorney General (Consumer Protection Division); Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Association of County Health Officers; Secretary of State; Department of Legislative Services

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