

HOUSE BILL 500

N1
HB 664/14 – ENV

7lr0970

By: **Delegates Kramer, Barkley, Chang, Cullison, Fraser-Hidalgo, Frush, and Morales**

Introduced and read first time: January 27, 2017

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Rental Units, Condominiums, and Homeowners Associations – Smoking**
3 **Restrictions**

4 FOR the purpose of allowing certain leases to include certain restrictions or prohibitions
5 on smoking tobacco products in certain areas; allowing the bylaws or regulations of
6 a condominium to contain certain restrictions or prohibitions on smoking tobacco
7 products in certain areas; authorizing a homeowners association to include in its
8 declaration, bylaws, rules, or recorded covenants and restrictions certain restrictions
9 or prohibitions on smoking tobacco products in multi-unit dwellings or in common
10 areas; defining a certain term; and generally relating to restrictions and prohibitions
11 on smoking in rental units, condominiums, and properties controlled by homeowners
12 associations.

13 BY repealing and reenacting, with amendments,
14 Article – Real Property
15 Section 8–208, 11–104, and 11–111
16 Annotated Code of Maryland
17 (2015 Replacement Volume and 2016 Supplement)

18 BY adding to
19 Article – Real Property
20 Section 11B–111.7
21 Annotated Code of Maryland
22 (2015 Replacement Volume and 2016 Supplement)

23 Preamble

24 WHEREAS, The United States Environmental Protection Agency (EPA) has
25 designated environmental tobacco smoke as a Class A carcinogen, in the same category as
26 such other cancer-causing chemicals as asbestos; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



WHEREAS, The EPA has determined that there is no acceptable level of exposure to Class A carcinogens; and

WHEREAS, The EPA has also determined that exposure to environmental tobacco smoke causes an increase in respiratory diseases and disorders; and

WHEREAS, Environmental tobacco smoke generated in one unit in a multi-unit dwelling may drift into neighboring units, exposing the occupants of those neighboring units to tobacco smoke; and

WHEREAS, Standard construction practices are not effective in preventing the drift of tobacco smoke within multi-unit dwellings; now, therefore,

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

Article – Real Property

8–208.

(a) (1) On or after October 1, 1999, any landlord who offers 5 or more dwelling units for rent in the State may not rent a residential dwelling unit without using a written lease.

(2) If a landlord fails to comply with paragraph (1) of this subsection, the term of the tenancy is presumed to be 1 year from the date of the tenant's first occupancy unless the tenant elects to end the tenancy at an earlier date by giving 1 month's written notice.

(b) A landlord who rents using a written lease shall provide, upon written request from any prospective applicant for a lease, a copy of the proposed form of lease in writing, complete in every material detail, except for the date, the name and address of the tenant, the designation of the premises, and the rental rate without requiring execution of the lease or any prior deposit.

(c) A lease shall include:

(1) A statement that the premises will be made available in a condition permitting habitation, with reasonable safety, if that is the agreement, or if that is not the agreement, a statement of the agreement concerning the condition of the premises;

(2) The landlord's and the tenant's specific obligations as to heat, gas, electricity, water, and repair of the premises; and

(3) A receipt for the security deposit as specified in § 8–203.1 of this subtitle.

1 (d) A LEASE MAY INCLUDE A RESTRICTION OR PROHIBITION ON SMOKING
2 TOBACCO PRODUCTS WITHIN THE DWELLING UNIT OR ELSEWHERE ON THE
3 PREMISES.

4 (E) A landlord may not use a lease or form of lease containing any provision that:

5 (1) Has the tenant authorize any person to confess judgment on a claim
6 arising out of the lease;

7 (2) Has the tenant agree to waive or to forego any right or remedy provided
8 by applicable law;

9 (3) (i) Provides for a penalty for the late payment of rent in excess of
10 5% of the amount of rent due for the rental period for which the payment was delinquent;
11 or

12 (ii) In the case of leases under which the rent is paid in weekly rental
13 installments, provides for a late penalty of more than \$3 per week or a total of no more than
14 \$12 per month;

15 (4) Has the tenant waive the right to a jury trial;

16 (5) Has the tenant agree to a period required for landlord's notice to quit
17 which is less than that provided by applicable law; provided, however, that neither party is
18 prohibited from agreeing to a longer notice period than that required by applicable law;

19 (6) Authorizes the landlord to take possession of the leased premises, or
20 the tenant's personal property unless the lease has been terminated by action of the parties
21 or by operation of law, and the personal property has been abandoned by the tenant without
22 the benefit of formal legal process;

23 (7) Is against public policy and void pursuant to § 8–105 of this title; or

24 (8) Permits a landlord to commence an eviction proceeding or issue a notice
25 to quit solely as retaliation against any tenant for planning, organizing, or joining a tenant
26 organization with the purpose of negotiating collectively with the landlord.

27 [(e)] (F) (1) Except for a lease containing an automatic renewal period of 1
28 month or less, a lease that contains a provision calling for an automatic renewal of the lease
29 term unless prior notice is given by the party or parties seeking to terminate the lease,
30 shall have the provision distinctly set apart from any other provision of the lease and
31 provide a space for the written acknowledgment of the tenant's agreement to the automatic
32 renewal provision.

33 (2) An automatic renewal provision that is not specifically accompanied by
34 either the tenant's initials, signature, or witnessed mark is unenforceable by the landlord.

1 **[(f)] (G)** No provision of this section shall be deemed to be a bar to the
2 applicability of supplementary rights afforded by any public local law enacted by the
3 General Assembly or any ordinance or local law enacted by any municipality or political
4 subdivision of this State; provided, however, that no such law can diminish or limit any
5 right or remedy granted under the provisions of this section.

6 **[(g)] (H)** (1) Any lease provision which is prohibited by terms of this section
7 shall be unenforceable by the landlord.

8 (2) If the landlord includes in any lease a provision prohibited by this
9 section or made unenforceable by § 8–105 of this title or § 8–203 of this subtitle, at any time
10 subsequent to July 1, 1975, and tenders a lease containing such a provision or attempts to
11 enforce or makes known to the tenant an intent to enforce any such provision, the tenant
12 may recover any actual damages incurred as a reason thereof, including reasonable
13 attorney's fees.

14 **[(h)] (I)** If any word, phrase, clause, sentence, or any part or parts of this section
15 shall be held unconstitutional by any court of competent jurisdiction such
16 unconstitutionality shall not affect the validity of the remaining parts of this section.

17 11–104.

18 (a) The administration of every condominium shall be governed by bylaws which
19 shall be recorded with the declaration. If the council of unit owners is incorporated, these
20 bylaws shall be the bylaws of that corporation.

21 (b) The bylaws shall express at least the following particulars:

22 (1) The form of administration, indicating whether the council of unit
23 owners shall be incorporated or unincorporated, and whether, and to what extent, the
24 duties of the council of unit owners may be delegated to a board of directors, manager, or
25 otherwise, and specifying the powers, manner of selection, and removal of them;

26 (2) The mailing address of the council of unit owners;

27 (3) The method of calling the unit owners to assemble; the attendance
28 necessary to constitute a quorum at any meeting of the council of unit owners; the manner
29 of notifying the unit owners of any proposed meeting; who presides at the meetings of the
30 council of unit owners, who keeps the minute book for recording the resolutions of the
31 council of unit owners, and who counts votes at meetings of the council of unit owners; and

32 (4) The manner of assessing against and collecting from unit owners their
33 respective shares of the common expenses.

34 (c) The bylaws also may contain any other provision regarding the management
35 and operation of the condominium, including **[any]**:

1 **(1) ANY** restriction on or requirement respecting the use and maintenance
2 of the units and the common elements; **AND**

3 **(2) A RESTRICTION OR PROHIBITION ON SMOKING TOBACCO**
4 **PRODUCTS WITHIN THE UNITS OR IN THE COMMON ELEMENTS.**

5 (d) The bylaws may contain a provision prohibiting any unit owner from voting
6 at a meeting of the council of unit owners if the council of unit owners has recorded a
7 statement of condominium lien on his unit and the amount necessary to release the lien
8 has not been paid at the time of the meeting.

9 (e) (1) A corrective amendment to the bylaws may be made in accordance with
10 § 11–103.1 of this title, or as provided in paragraph (2) of this subsection.

11 (2) (i) Except as provided in subparagraph (ii) of this paragraph, unless
12 a higher percentage is required in the bylaws, the bylaws may be amended by the
13 affirmative vote of unit owners having at least 66 2/3 percent of the votes in the council of
14 unit owners.

15 (ii) The bylaws may be amended by the affirmative vote of unit
16 owners having at least 51% of the votes in the council of unit owners for the purpose of
17 requiring all unit owners to maintain condominium unit owner insurance policies on their
18 units.

19 (3) (i) Except as provided in paragraph (4) of this subsection, if the
20 declaration or bylaws contain a provision requiring any action on the part of the holder of
21 a mortgage or deed of trust on a unit in order to amend the bylaws, that provision shall be
22 deemed satisfied if the procedures under this paragraph are satisfied.

23 (ii) If the declaration or bylaws contain a provision described in
24 subparagraph (i) of this paragraph, the council of unit owners shall cause to be delivered to
25 each holder of a mortgage or deed of trust entitled to notice, a copy of the proposed
26 amendment to the bylaws.

27 (iii) If a holder of the mortgage or deed of trust that receives the
28 proposed amendment fails to object, in writing, to the proposed amendment within 60 days
29 from the date of actual receipt of the proposed amendment, the holder shall be deemed to
30 have consented to the adoption of the amendment.

31 (4) Paragraph (3) of this subsection does not apply to amendments that:

32 (i) Alter the priority of the lien of the mortgage or deed of trust;

33 (ii) Materially impair or affect the unit as collateral; or

(iii) Materially impair or affect the right of the holder of the mortgage or deed of trust to exercise any rights under the mortgage, deed of trust, or applicable law.

(5) Each particular set forth in subsection (b) of this section shall be expressed in the bylaws as amended. An amendment under paragraph (2) of this subsection shall be entitled to be recorded if accompanied by a certificate of the person specified in the bylaws to count votes at the meeting of the council of unit owners that the amendment was approved by unit owners having the required percentage of the votes and shall be effective on recordation. This certificate shall be conclusive evidence of approval.

11–111.

(a) (1) The council of unit owners or the body delegated in the bylaws of a condominium to carry out the responsibilities of the council of unit owners may adopt rules for the condominium if:

(i) Each unit owner is mailed or delivered:

1. A copy of the proposed rule;

2. Notice that unit owners are permitted to submit written comments on the proposed rule; and

3. Notice of the proposed effective date of the proposed rule;

(ii) Subject to paragraph (2) of this subsection, before a vote is taken on the proposed rule, an open meeting is held to allow each unit owner or tenant to comment on the proposed rule; and

(iii) After notice has been given to unit owners as provided in this subsection, the proposed rule is passed at a regular or special meeting by a majority vote of those present and voting of the council of unit owners or the body delegated in the bylaws of the condominium to carry out the responsibilities of the council of unit owners.

(2) A meeting held under paragraph (1)(ii) of this subsection may not be held unless:

(i) Each unit owner receives written notice at least 15 days before the meeting; and

(ii) A quorum of the council of unit owners or the body delegated in the bylaws of the condominium to carry out the responsibilities of the council of unit owners is present.

(b) (1) The vote on the proposed rule shall be final unless:

(i) Within 15 days after the vote, to adopt the proposed rule, 15 percent of the council of unit owners sign and file a petition with the body that voted to adopt the proposed rule, calling for a special meeting;

(ii) A quorum of the council of unit owners attends the meeting; and

(iii) At the meeting, 50 percent of the unit owners present and voting disapprove the proposed rule, and the unit owners voting to disapprove the proposed rule are more than 33 percent of the total votes in the condominium.

(2) During the special meetings held under paragraph (1) of this subsection, unit owners, tenants, and mortgagees may comment on the proposed rule.

(3) A special meeting held under paragraph (1) of this subsection shall be held:

(i) After the unit owners and any mortgagees have at least 15 days' written notice of the meeting; and

(ii) Within 30 days after the day on which the petition is received by the body.

(c) (1) Each unit owner or tenant may request an individual exception to a rule adopted while the individual was the unit owner or tenant of the condominium.

(2) The request for an individual exception under paragraph (1) of this subsection shall be:

(i) Written;

(ii) Filed with the body that voted to adopt the proposed rule; and

(iii) Filed within 30 days after the effective date of the rule.

(d) **A RULE ADOPTED UNDER THIS SECTION MAY RESTRICT OR PROHIBIT THE SMOKING OF TOBACCO PRODUCTS WITHIN THE UNITS OR IN THE COMMON ELEMENTS.**

(E) (1) Each rule adopted under this section shall state that the rule was adopted under the provisions of this section.

(2) A rule may not be adopted under this section after July 1, 1984 if the rule is inconsistent with the condominium declaration or bylaws.

(3) This section does not apply to rules adopted before July 1, 1984.

1 11B-111.7.

2 (A) IN THIS SECTION, "MULTI-UNIT DWELLING" MEANS A TOWN HOUSE, A
3 ROW HOUSE, OR ANY OTHER INDIVIDUALLY OWNED DWELLING UNIT THAT SHARES A
4 COMMON WALL, FLOOR, OR CEILING WITH ANOTHER INDIVIDUALLY OWNED
5 DWELLING UNIT.

6 (B) A HOMEOWNERS ASSOCIATION MAY INCLUDE IN ITS DECLARATION,
7 BYLAWS, RULES, OR RECORDED COVENANTS AND RESTRICTIONS A PROVISION THAT
8 RESTRICTS OR PROHIBITS THE SMOKING OF TOBACCO PRODUCTS IN ANY
9 MULTI-UNIT DWELLING OR IN THE COMMON AREAS.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2017.