

HOUSE BILL 664

N1

4lr1269

By: **Delegates Kramer, Barkley, Simmons, and Valderrama**

Introduced and read first time: January 31, 2014

Assigned to: Environmental Matters

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
5 prohibitions on smoking tobacco products in certain areas; allowing the bylaws
6 or regulations of a condominium to contain certain restrictions or prohibitions
7 on smoking tobacco products in certain areas; authorizing a homeowners
8 association to include in its declaration, bylaws, rules, or recorded covenants
9 and restrictions certain restrictions or prohibitions on smoking tobacco products
10 in multi-unit dwellings or in common areas; defining a certain term; and
11 generally relating to restrictions and prohibitions on smoking in rental units,
12 condominiums, and homeowners 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 (2010 Replacement Volume and 2013 Supplement)

18 BY adding to
19 Article – Real Property
20 Section 11B–111.7
21 Annotated Code of Maryland
22 (2010 Replacement Volume and 2013 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
26 category as such other cancer-causing chemicals as asbestos; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

12 **Article – Real Property**

13 8–208.

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

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

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

26 (c) A lease shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 11-104.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 11–111.

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

19 (1) Each unit owner is mailed or delivered:

20 (i) A copy of the proposed rule;

21 (ii) Notice that unit owners are permitted to submit written
22 comments on the proposed rule; and

23 (iii) Notice of the proposed effective date of the proposed rule;

24 (2) (i) Before a vote is taken on the proposed rule, an open meeting
25 is held to allow each unit owner or tenant to comment on the proposed rule;

26 (ii) The meeting held under this paragraph may not be held
27 unless:

28 1. Each unit owner receives written notice at least 15
29 days before the meeting; and

30 2. A quorum of the council of unit owners or the body
31 delegated in the bylaws of the condominium to carry out the responsibilities of the
32 council of unit owners is present; and

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

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

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

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

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

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

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

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

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

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

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

27 (i) Written;

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

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

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

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

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

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

6 **11B-111.7.**

7 **(A) IN THIS SECTION, "MULTI-UNIT DWELLING" MEANS A TOWN HOUSE,**
8 **ROW HOUSE, OR OTHER INDIVIDUALLY OWNED DWELLING UNIT THAT SHARES A**
9 **COMMON WALL, FLOOR, OR CEILING WITH ANOTHER INDIVIDUALLY OWNED**
10 **DWELLING UNIT.**

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2014.