

SENATE BILL 596

D3, C1

8lr2359

By: **Senators Brochin, Klausmeier, and Pinsky**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Nonprofit Associations – Standing to Participate in Governmental**
3 **Proceedings**

4 FOR the purpose of authorizing a certain nonprofit association to institute, defend,
5 intervene, or participate in certain governmental proceedings or forms of
6 alternative dispute resolution under certain circumstances; authorizing a
7 certain nonprofit association to assert a claim in its name on behalf of its
8 members under certain circumstances; requiring a certain unincorporated
9 nonprofit association to designate a resident agent and file a certain written
10 consent of a person to be resident agent with the State Department of
11 Assessments and Taxation before it may participate in certain governmental
12 proceedings; defining a certain term; expressing the intent of the General
13 Assembly; providing for the construction and application of this Act; and
14 generally relating to the standing of a nonprofit association to participate in
15 certain governmental proceedings and forms of alternative dispute resolution
16 under certain circumstances.

17 BY renumbering

18 Article – Courts and Judicial Proceedings

19 Section 6–406.1

20 to be Section 6–406.2

21 Annotated Code of Maryland

22 (2006 Replacement Volume and 2007 Supplement)

23 BY adding to

24 Article – Courts and Judicial Proceedings

25 Section 6–406.1

26 Annotated Code of Maryland

27 (2006 Replacement Volume and 2007 Supplement)

28 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Corporations and Associations
2 Section 1–208
3 Annotated Code of Maryland
4 (2007 Replacement Volume)

5 Preamble

6 WHEREAS, Maryland case law provides that an organization does not have
7 common law standing to seek judicial review unless it has a “property interest of its
8 own – separate and distinct from that of its individual members”. Medical Waste
9 Association v. Maryland Waste Coalition, 327 Md. 596, 612 (1992). Moreover, the
10 Court of Appeals has held that under Maryland common law, an organization cannot
11 acquire standing to appeal simply because one or more of its members has standing.
12 Citizens Planning & Housing Association v. County Executive, 273 Md. 333, 345
13 (1974); and

14 WHEREAS, Even if a nonprofit association has a specific interest or property
15 right affected by a government decision, Maryland courts interpret “aggrieved” to
16 require that its suffering of a wrong be different in character and kind than that of the
17 general public. Medical Waste Association v. Maryland Waste Coalition, 327 Md. 596,
18 613 (1992); and

19 WHEREAS, The Maryland Court of Appeals has explicitly rejected any
20 expansion of common law standing in areas, such as land use, where the General
21 Assembly has modified standing requirements. See, e.g., Medical Waste Association,
22 327 Md. at 623 (“common law principles should not be changed contrary to the public
23 policy of the State set forth by the General Assembly of Maryland”); and

24 WHEREAS, In light of Maryland’s case law, if all parties, including nonprofit
25 associations, are to have the same right to seek judicial review of local government
26 decisions, the General Assembly must expressly provide for those rights; now,
27 therefore,

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 6–406.1 of Article – Courts and Judicial Proceedings of
30 the Annotated Code of Maryland be renumbered to be Section(s) 6–406.2.

31 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
32 read as follows:

33 **Article – Courts and Judicial Proceedings**

34 **6–406.1.**

35 (A) IN THIS SECTION, “NONPROFIT ASSOCIATION” MEANS AN
36 ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT:

1 (1) **HAS A RECOGNIZED GROUP NAME; AND**

2 (2) **CONSISTS OF TWO OR MORE MEMBERS JOINED BY MUTUAL**
3 **CONSENT FOR A COMMON, NONPROFIT PURPOSE.**

4 **(B) SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, A**
5 **NONPROFIT ASSOCIATION, IN ITS NAME, MAY INSTITUTE, DEFEND, INTERVENE,**
6 **OR PARTICIPATE IN:**

7 (1) **A JUDICIAL, ADMINISTRATIVE, OR OTHER GOVERNMENTAL**
8 **PROCEEDING; OR**

9 (2) **AN ARBITRATION, MEDIATION, OR ANY OTHER FORM OF**
10 **ALTERNATIVE DISPUTE RESOLUTION.**

11 **(C) A NONPROFIT ASSOCIATION MAY ASSERT A CLAIM IN ITS NAME ON**
12 **BEHALF OF ITS MEMBERS IF:**

13 (1) **ONE OR MORE MEMBERS OF THE ASSOCIATION HAVE**
14 **STANDING TO ASSERT A CLAIM IN THEIR OWN RIGHT;**

15 (2) **THE INTERESTS THAT THE ASSOCIATION SEEKS TO PROTECT**
16 **ARE GERMANE TO ITS PURPOSES; AND**

17 (3) **NEITHER THE CLAIM ASSERTED NOR THE RELIEF REQUESTED**
18 **REQUIRES THE PARTICIPATION OF THE MEMBER.**

19 **(D) BEFORE AN UNINCORPORATED NONPROFIT ASSOCIATION MAY**
20 **PARTICIPATE IN GOVERNMENTAL PROCEEDINGS OR FORMS OF ALTERNATIVE**
21 **DISPUTE RESOLUTION COVERED UNDER SUBSECTION (B) OF THIS SECTION, IT**
22 **SHALL:**

23 (1) **DESIGNATE A RESIDENT AGENT; AND**

24 (2) **FILE THE RESIDENT AGENT'S CONSENT TO SERVE AS A**
25 **RESIDENT AGENT WITH THE STATE DEPARTMENT OF ASSESSMENTS AND**
26 **TAXATION IN ACCORDANCE WITH § 1-208 OF THE CORPORATIONS AND**
27 **ASSOCIATIONS ARTICLE.**

28 **(E) THIS SECTION SHALL BE LIBERALLY CONSTRUED TO:**

29 (1) **PROVIDE A NONPROFIT ASSOCIATION WITH ACCESS TO THE**
30 **GOVERNMENTAL PROCEEDINGS AND FORMS OF ALTERNATIVE DISPUTE**
31 **RESOLUTION COVERED UNDER SUBSECTION (B) OF THIS SECTION; AND**

1 **(2) AUTHORIZE A NONPROFIT ASSOCIATION TO EXERCISE**
2 **STANDING TO ASSERT A CLAIM IN ITS NAME ON BEHALF OF ITS MEMBERS.**

3 **(F) THIS SECTION MAY NOT BE CONSTRUED TO:**

4 **(1) CHANGE THE EXISTING STANDARDS FOR REVIEW OF A ZONING**
5 **ACTION OF A LOCAL LEGISLATIVE BODY; OR**

6 **(2) GRANT STANDING TO A NONPROFIT ASSOCIATION TO ASSERT**
7 **A CLAIM THAT ONE OF ITS MEMBERS MAY NOT ASSERT INDIVIDUALLY.**

8 **Article – Corporations and Associations**

9 1–208.

10 (a) Notwithstanding any other provision of this title, an entity that is
11 required to have a resident agent may not designate a person as a resident agent
12 without first obtaining the person’s written consent.

13 (b) (1) An entity shall file a resident agent’s written consent with the
14 Department.

15 (2) The consent shall be effective upon acceptance by the Department.

16 (c) Subsections (a) and (b) of this section do not apply to resident agents
17 designated before October 1, 1998.

18 (d) A person designated a resident agent may resign without paying the fee
19 under § 1–203(b)(2) of this subtitle.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
21 construed to apply only prospectively and may not be applied or interpreted to have
22 any effect on or application to any governmental proceeding or form of alternative
23 dispute resolution instituted before the effective date of this Act.

24 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2008.