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By: Senators Hoffman, Boozer, Hollinger, and Ruben

Introduced and read first time: January 24, 1996 Assigned to: Judicial Proceedings

Committee Report: Favorable Senate action: Adopted Read second time: February 14, 1996

CHAPTER _____

1 AN ACT concerning

2 Community Associations - Immunity

3 FOR the purpose of limiting the civil liability of certain community associations and

- 4 certain agents of community associations under certain circumstances; providing for
- 5 the application of this Act; and generally relating to immunity fromliability for
- 6 certain associations and organizations and their agents.

7 BY repealing and reenacting, with amendments,

- 8 Article Courts and Judicial Proceedings
- 9 Section 5-312
- 10 Annotated Code of Maryland
- 11 (1995 Replacement Volume and 1995 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

13 MARYLAND, That the Laws of Maryland read as follows:

- 14 Article Courts and Judicial Proceedings
- 15 5-312.

16 (a) (1) In this section the following words have the meanings indicated.

(2) (i) "Agent of an association or organization" means a director, officer,
trustee, employee, or volunteer of an association or organization who provides services or
performs duties on behalf of the association or organization.

- 20 (ii) "Agent of an association or organization" does not include an
- 21 independent contractor who provides services or performs duties on behalf of the

22 association or organization on a contractual basis.

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| | 1 (3) "Association or organization" means: |
| | 2 (i) An athletic club; |
| | 3 (ii) A charitable organization; |
| | 4 (iii) A civic league or organization; |
| | 5 (IV) A COMMUNITY ASSOCIATION; |
| | 6 [(iv)] (V) A cooperative housing corporation as that termis defined 7 under § 5-6B-01 of the Corporations and Associations Article; |
| | 8 [(v)] (VI) A council of unit owners of a condominium as that term is 9 defined in § 11-101 of the Real Property Article; or |
| | 10 [(vi)] (VII) A homeowners' association. |
| | (4) "Athletic club" means a club organized and operated exclusively for recreational purposes, that is exempt from taxation under § 501(c)(7) of the Internal Revenue Code. |
| | (5) "Charitable organization" means an organization, institution, association, society, or corporation that is exempt from taxation under§ 501(c)(3) of the Internal Revenue Code. |
| | 17 (6) "Civic league or organization" means an organization, operated 18 exclusively for the promotion of social welfare, that is exempt from taxation under § 19 501(c)(4) of the Internal Revenue Code. |
| | 20 (7) (I) "COMMUNITY ASSOCIATION" MEANS A NONPROFIT 21 ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT IS: |
| | 221. COMPRISED OF RESIDENTS OF A CONTIGUOUS23COMMUNITY THAT IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES; AND |
| | 24 2. OPERATED FOR THE PROMOTION OF THE WELFARE, 25 IMPROVEMENT, AND ENHANCEMENT OF THAT COMMUNITY. |
| | 26 (II) "COMMUNITY ASSOCIATION" INCLUDES A NONPROFIT 27 ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT REPRESENTS THE 28 COMMON INTEREST OF MORE THAN ONE COMMUNITY ASSOCIATION. |
| | [(7)] (8) "Compensation" does not include actual and necessary expenses that are incurred by a volunteer in connection with the services provided or duties performed by the volunteer on behalf of an association or organization, and that are reimbursed to the volunteer or otherwise paid. |
| | [(8)] (9) "Homeowners' association" means a nonprofit association, corporation, or other organization comprised of property owners in a subdivision or group of subdivisions whose purpose is to represent the mutual interests of the property owners regarding the construction, protection, and maintenance of the commonlyowned or used property and improvements |

37 property and improvements.

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1 [(9)] (10) "Suit" means any civil action, except any health care malpractice 2 action, brought against an agent of an association or organization or against the 3 association or organization by virtue of the agent's act or omission inproviding services or 4 performing duties on behalf of the association or organization. 5 [(10)] (11) "Volunteer" means an officer, director, trustee, or other person 6 who provides services or performs duties on behalf of an association ororganization 7 without receiving compensation. 8 (b) Except as provided in subsection (d) of this section, an agent of an association 9 or organization is not personally liable for damages in any suit if: 10 (1) The association or organization maintains insurance covering liability 11 incurred by the association or organization or its agents, or both, as a result of the acts or 12 omissions of its agents in providing services or performing duties on behalf of the 13 association or organization; 14 (2) The terms of the insurance policy under which the insuranceis 15 maintained provide coverage for the act or omission which is the subject matter of the suit 16 and no meritorious basis exists for the denial of the coverage by the insurance carrier; and 17 (3) The insurance has: 18 (i) A limit of coverage of not less than: 19 1. \$200,000 per individual claim, and \$500,000 per total claims 20 that arise from the same occurrence; or 2. \$750,000 per policy year, and \$500,000 per total claims that 21 22 arise from the same occurrence; and (ii) 1. If the insurance has a deductible, a deductible amount not 23 24 greater than \$10,000 per occurrence; or 2. If there is coinsurance, a rate of coinsurance notgreater than 25 26 20 percent. 27 (c) In suits to which the provisions of subsection (b) of this section apply, the 28 plaintiff may recover damages from the association or organization onlyto the extent of 29 the applicable limit of insurance coverage including any amount for which the association 30 or organization is responsible as a result of any deductible or coinsurance provisions of 31 such insurance coverage. 32 (d) An agent of an association or organization shall be liable for damages in any 33 suit in which it is found that the agent acted with malice or gross negligence, to the extent 34 that the judgment for damages exceeds the limits on liability under subsection (c) of this 35 section. 36 (e) The provisions of this section do not apply to suits brought by the Attorney

37 General upon referral by the Secretary of State in which willful violations of Title 6 of the 38 Business Regulations Article are alleged and proven.

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1 (f) (1) This section does not create, and may not be construed as creating, a 2 new cause of action or substantive legal right against an association or organization or an 3 agent of an association or organization.

4 (2) This section does not affect, and may not be construed as affecting, any 5 immunities from civil liability or defenses established by any other provision of the Code 6 or available at common law, to which an association or organization or an agent of an 7 association or organization may be entitled.

8 (g) This section may be cited as the Maryland Associations, Organizations, and9 Agents Act.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed 11 retroactively and shall be applied to and interpreted to affect any cause of action against 12 an agent of a community association arising on or after October 1, 1994.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect14 July 1, 1996.

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