1997 Regular Session

7lr1314 SB 244/96 - JPR CF 7lr1038 By: Senators Hoffman, Boozer, Ruben, and Hollinger Introduced and read first time: January 10, 1997 Assigned to: Judicial Proceedings Committee Report: Favorable with amendments Senate action: Adopted Read second time: February 20, 1997 CHAPTER ____ 1 AN ACT concerning 2 **Community Associations - Civil Liability** 3 FOR the purpose of limiting the civil liability of certain community associations and certain agents of community associations under certain circumstances; providing for 4 the application of this Act; and generally relating to immunity from liability for 5 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 1996 Supplement) SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 12 13 MARYLAND, That the Laws of Maryland read as follows: **Article - Courts and Judicial Proceedings** 14 15 5-312. 16 (a) (1) In this section the following words have the meanings indicated. 17 (2) (i) "Agent of an association or organization" means a director, officer, 18 trustee, employee, or volunteer of an association or organization who provides services or 19 performs duties on behalf of the association or organization. (ii) "Agent of an association or organization" does not include an 20 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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	SENATE BILL 136		
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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 7	[(iv)] (V) A cooperative housing corporation as that term is defined under § 5-6B-01 of the Corporations and Associations Article;		
8 9	[(v)] (VI) A council of unit owners of a condominium as that term is 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.		
	14 (5) "Charitable organization" means an organization, institution, 15 association, society, or corporation that is exempt from taxation under § 501(c)(3) of the 16 Internal Revenue Code.		
	(6) "Civic league or organization" means an organization, operated exclusively for the promotion of social welfare, that is exempt from taxation under § 501(c)(4) of the Internal Revenue Code.		
20	(7) (I) "COMMUNITY ASSOCIATION" MEANS A NONPROFIT		
21	ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT IS:		
22 23	1. COMPRISED OF RESIDENTS OF A CONTIGUOUS COMMUNITY THAT IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES; AND		
24 25	2. OPERATED FOR THE PROMOTION OF THE WELFARE, IMPROVEMENT, AND ENHANCEMENT OF THAT COMMUNITY.		
	(II) "COMMUNITY ASSOCIATION" INCLUDES A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT REPRESENTS THE COMMON INTEREST OF MORE THAN ONE COMMUNITY ASSOCIATION.		
29 30	(7) "COMMUNITY ASSOCIATION" MEANS A NONPROFIT ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT:		
31 32	(I) IS COMPRISED OF AT LEAST 25% OF THE ADULT RESIDENTS OF A LOCAL COMMUNITY THAT:		
33 34	1. CONSISTS OF 40 OR MORE INDIVIDUAL HOUSEHOLDS; <u>AND</u>		

 $\underline{\textbf{2. IS DEFINED BY SPECIFIC GEOGRAPHIC BOUNDARIES IN}}$

36 THE CHARTER OR BYLAWS OF THE NONPROFIT ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION;

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1 2	(II) REQUIRES, AS A CONDITION OF MEMBERSHIP, THE VOLUNTARY PAYMENT OF MONETARY DUES AT LEAST ANNUALLY;
	(III) IS OPERATED EXCLUSIVELY FOR THE PROMOTION OF SOCIAL WELFARE AND GENERAL NEIGHBORHOOD IMPROVEMENT AND ENHANCEMENT; AND
6	(IV) IN THE CASE OF A CORPORATION, IS IN GOOD STANDING.
9	[(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.
13 14	[(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 commonly owned or used property and improvements.
18	[(9)] (10) "Suit" means any civil action, except any health care malpractice action, brought against an agent of an association or organization or against the association or organization by virtue of the agent's act or omission in providing services or performing duties on behalf of the association or organization.
	[(10)] (11) "Volunteer" means an officer, director, trustee, or other person who provides services or performs duties on behalf of an association or organization without receiving compensation.
23 24	(b) Except as provided in subsection (d) of this section, an agent of an association or organization is not personally liable for damages in any suit if:
27	(1) The association or organization maintains insurance covering liability incurred by the association or organization or its agents, or both, as a result of the acts or omissions of its agents in providing services or performing duties on behalf of the association or organization;
	(2) The terms of the insurance policy under which the insurance is maintained provide coverage for the act or omission which is the subject matter of the suit and no meritorious basis exists for the denial of the coverage by the insurance carrier; and
32	(3) The insurance has:
33	(i) A limit of coverage of not less than:
34 35	$1.\ \$200,\!000\ per\ individual\ claim,\ and\ \$500,\!000\ per\ total\ claims$ that arise from the same occurrence; or
36 37	$2.\ \$750,\!000$ per policy year, and $\$500,\!000$ per total claims that arise from the same occurrence; and
38 39	(ii) 1. If the insurance has a deductible, a deductible amount not greater than \$10,000 per occurrence; or

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1	2. If there is coinsurance, a rate of coinsurance not greater than
2. 20 percent.	

- 3 (c) In suits to which the provisions of subsection (b) of this section apply, the 4 plaintiff may recover damages from the association or organization only to the extent of 5 the applicable limit of insurance coverage including any amount for which the association 6 or organization is responsible as a result of any deductible or coinsurance provisions of 7 such insurance coverage.
- 8 (d) An agent of an association or organization shall be liable for damages in any 9 suit in which it is found that the agent acted with malice or gross negligence, to the extent 10 that the judgment for damages exceeds the limits on liability under subsection (c) of this 11 section.
- 12 (e) The provisions of this section do not apply to suits brought by the Attorney
 13 General upon referral by the Secretary of State in which willful violations of Title 6 of the
 14 Business Regulation Article are alleged and proven.
- 15 (f) (1) This section does not create, and may not be construed as creating, a 16 new cause of action or substantive legal right against an association or organization or an 17 agent of an association or organization.
- 18 (2) This section does not affect, and may not be construed as affecting, any 19 immunities from civil liability or defenses established by any other provision of the Code 20 or available at common law, to which an association or organization or an agent of an 21 association or organization may be entitled.
- 22 (g) This section may be cited as the Maryland Associations, Organizations, and 23 Agents Act.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed retroactively and shall be applied to and interpreted to affect any cause of action against an agent of a community association arising on or after October 1, 1994.
- 27 SECTION 3. 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 28 June 1, 1997.