

HOUSE BILL 41

D3

5lr0548

By: **Delegate Rosenberg**

Introduced and read first time: January 15, 2015

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 3, 2015

CHAPTER _____

1 AN ACT concerning

2 **Immunities – Associations, Organizations, and Charities – Liability of Agents**
3 **and Volunteers**

4 FOR the purpose of altering the ~~definitions of “association or organization” and definition~~
5 of “community association” for purposes of certain provisions of law limiting the civil
6 liability of certain ~~community~~ associations and their agents under certain
7 circumstances; altering certain definitions, for purposes of the Maryland
8 Associations, Organizations, and Agents Act, to include certain former tax exempt
9 entities; providing that certain agents of an association or organization may not be
10 held personally liable for the obligations of the association or organization under
11 certain circumstances; altering certain definitions, for purposes of the Maryland
12 Volunteer Service Act, to include certain former tax exempt entities; providing that
13 certain volunteers of certain associations or organizations may not be held personally
14 liable for the obligations of the association or organization under certain
15 circumstances; providing for the application of this Act; providing for the termination
16 of certain provisions of this Act; and generally relating to limiting the civil liability
17 of certain associations, organizations, and charities and their agents and volunteers.

18 BY repealing and reenacting, with amendments,
19 Article – Courts and Judicial Proceedings
20 Section 5–406 and 5–407
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2014 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

Article – Courts and Judicial Proceedings

5–406.

(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.

(ii) “Agent of an association or organization” does not include an independent contractor who provides services or performs duties on behalf of the association or organization on a contractual basis.

(3) “Association or organization” means:

(i) An athletic club;

(ii) A charitable organization;

(iii) A civic league or organization;

(iv) A community association;

(v) A cooperative housing corporation as that term is defined under § 5–6B–01 of the Corporations and Associations Article;

(vi) A council of unit owners of a condominium as that term is defined in § 11–101 of the Real Property Article; ~~or~~

(vii) A homeowners’ association; ~~OR~~

~~(VIII) AN ORGANIZATION, INSTITUTION, ASSOCIATION, SOCIETY, OR CORPORATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(5) OR § 501(C)(6) OF THE INTERNAL REVENUE CODE, INCLUDING AN ENTITY THAT WOULD OTHERWISE QUALIFY FOR EXEMPTION FROM TAXATION UNDER THOSE SECTIONS EXCEPT THAT THE ENTITY FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN THE EXEMPT STATUS.~~

(4) “Athletic club” means a club organized and operated exclusively for recreational purposes that [is]:

1 (I) IS exempt from taxation under § 501(c)(7) of the Internal
2 Revenue Code; OR

3 (II) ~~WAS HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS~~
4 AND WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(7) OF THE
5 INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR
6 EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE CLUB FAILED
7 TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN THE EXEMPT STATUS.

8 (5) “Charitable organization” means an organization, institution,
9 association, society, or corporation that [is]:

10 (I) IS exempt from taxation under § 501(c)(3) of the Internal
11 Revenue Code; OR

12 (II) ~~WAS HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS~~
13 AND WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE
14 INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR
15 EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE ENTITY
16 FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN THE EXEMPT
17 STATUS.

18 (6) “Civic league or organization” means an organization, operated
19 exclusively for the promotion of social welfare, that [is]:

20 (I) IS exempt from taxation under § 501(c)(4) of the Internal
21 Revenue Code; OR

22 (II) ~~WAS HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS~~
23 AND WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(4) OF THE
24 INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR
25 EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE
26 ORGANIZATION FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN
27 THE EXEMPT STATUS.

28 ~~(7) “Community association” means a nonprofit association, corporation, or~~
29 ~~other organization that registers with the Secretary of State under § 7-108 of the State~~
30 ~~Government Article and];~~

31 ~~(i) Is composed of at least 25% of the adult residents of a local~~
32 ~~community that;~~

33 ~~A. Consists of at least 40 households; and~~

HOUSE BILL 41

~~1 B. Is defined by specific geographic boundaries in the bylaws,
2 GOVERNING DOCUMENT, or charter of the organization;~~

~~3 2. At least annually, requires the payment of dues;~~

~~4 3. Promotes social welfare and general civic improvement;
5 and~~

~~6 4. In the case of a corporation, is in good standing;~~

~~7 (ii) 1. Is composed of at least 100 adult residents, but less than
8 25% of the adult residents of a local community that:~~

~~9 A. Consists of at least 40 households; and~~

~~10 B. Is defined by specific geographic boundaries in the bylaws
11 or charter of the organization;~~

~~12 2. Was organized on or before January 1, 2000, and has been
13 in continuous operation since that date; and~~

~~14 3. Meets the requirements of item (i)2, 3, and 4 of this
15 paragraph; or~~

~~16 (iii) 1. Is composed of more than one of the organizations
17 described in item (i) or item (ii) of this paragraph; and~~

~~18 2. Each of those organizations meets the requirements of
19 item (i) or item (ii) of this paragraph.~~

20 (8) "Compensation" does not include actual and necessary expenses that
21 are incurred by a volunteer in connection with the services provided or duties performed by
22 the volunteer on behalf of an association or organization, and that are reimbursed to the
23 volunteer or otherwise paid.

24 (9) "Homeowners' association" means a nonprofit association, corporation,
25 or other organization comprised of property owners in a subdivision or group of subdivisions
26 whose purpose is to represent the mutual interests of the property owners regarding the
27 construction, protection, and maintenance of the commonly owned or used property and
28 improvements.

29 (10) "Suit" means any civil action, except any health care malpractice action,
30 brought against an agent of an association or organization or against the association or
31 organization by virtue of the agent's act or omission in providing services or performing
32 duties on behalf of the association or organization.

1 (11) "Volunteer" means an officer, director, trustee, or other person who
2 provides services or performs duties on behalf of an association or organization without
3 receiving compensation.

4 (b) Except as provided in subsection (d) of this section, an agent of an association
5 or organization is not personally liable for damages in any suit if:

6 (1) The association or organization maintains insurance covering liability
7 incurred by the association or organization or its agents, or both, as a result of the acts or
8 omissions of its agents in providing services or performing duties on behalf of the
9 association or organization;

10 (2) The terms of the insurance policy under which the insurance is
11 maintained provide coverage for the act or omission which is the subject matter of the suit
12 and no meritorious basis exists for the denial of the coverage by the insurance carrier; and

13 (3) The insurance has:

14 (i) A limit of coverage of not less than:

15 1. \$200,000 per individual claim, and \$500,000 per total
16 claims that arise from the same occurrence; or

17 2. \$750,000 per policy year, and \$500,000 per total claims
18 that arise from the same occurrence; and

19 (ii) 1. If the insurance has a deductible, a deductible amount not
20 greater than \$10,000 per occurrence; or

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

23 (c) In suits to which the provisions of subsection (b) of this section apply, the
24 plaintiff may recover damages from the association or organization only to the extent of the
25 applicable limit of insurance coverage including any amount for which the association or
26 organization is responsible as a result of any deductible or coinsurance provisions of such
27 insurance coverage.

28 (d) An agent of an association or organization shall be liable for damages in any
29 suit in which it is found that the agent acted with malice or gross negligence, to the extent
30 that the judgment for damages exceeds the limits on liability under subsection (c) of this
31 section.

32 (e) The provisions of this section do not apply to suits brought by the Attorney
33 General upon referral by the Secretary of State in which willful violations of Title 6 of the
34 Business Regulation Article are alleged and proven.

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

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

~~(3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN AGENT OF AN ASSOCIATION OR ORGANIZATION MAY NOT BE HELD PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE ASSOCIATION OR ORGANIZATION, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, SOLELY BY REASON OF BEING AN AGENT OF THE ASSOCIATION OR ORGANIZATION.~~

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

5-407.

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

(2) "Association or organization" means:

- (i) A business league;
- (ii) A charitable organization;
- (iii) A civic league;
- (iv) A club;
- (v) A labor, agricultural, or horticultural organization; or
- (vi) A local association of employees.

(3) "Business league" means a league, chamber of commerce, real estate board, or board of trade that [is]:

(I) IS exempt from taxation under § 501(c)(6) of the Internal Revenue Code; OR

(II) ~~WAS~~ HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS AND WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(6) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE ENTITY

1 **FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN THE EXEMPT**
2 **STATUS.**

3 (4) “Charitable organization” means an organization, institution,
4 association, society, or corporation that [is]:

5 (I) **IS** exempt from taxation under § 501(c)(3) of the Internal
6 Revenue Code; **OR**

7 (II) ~~WAS~~ **HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS**
8 **AND WAS** PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE
9 INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR
10 EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE ENTITY
11 FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN THE EXEMPT
12 STATUS.

13 (5) “Civic league” means an organization, institution, association, society,
14 or corporation that [is]:

15 (I) **IS** exempt from taxation under § 501(c)(4) of the Internal
16 Revenue Code; **OR**

17 (II) ~~WAS~~ **HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS**
18 **AND WAS** PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(4) OF THE
19 INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR
20 EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE ENTITY
21 FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN THE EXEMPT
22 STATUS.

23 (6) “Club” means an organization, institution, association, society, or
24 corporation that [is]:

25 (I) **IS** exempt from taxation under § 501(c)(7) of the Internal
26 Revenue Code; **OR**

27 (II) ~~WAS~~ **HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS**
28 **AND WAS** PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(7) OF THE
29 INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR
30 EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE ENTITY
31 FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN THE EXEMPT
32 STATUS.

33 (7) “Compensation” does not include actual and necessary expenses that
34 are incurred by a volunteer in connection with the services provided or duties performed by

1 the volunteer on behalf of an association or organization, and that are reimbursed to the
2 volunteer or otherwise paid.

3 (8) “Labor, agricultural, or horticultural organization” means an
4 organization, institution, association, society, or corporation that [is]:

5 (I) IS exempt from taxation under § 501(c)(5) of the Internal
6 Revenue Code; OR

7 (II) ~~WAS~~ **HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS**
8 **AND WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(5) OF THE**
9 **INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR**
10 **EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE ENTITY**
11 **FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN THE EXEMPT**
12 **STATUS.**

13 (9) “Local association of employees” means an association of employees, the
14 membership of which is limited to the employees of a designated person or persons in a
15 particular municipality, that [is]:

16 (I) IS exempt from taxation under § 501(c)(4) of the Internal
17 Revenue Code; OR

18 (II) ~~WAS~~ **HAS LESS THAN \$25,000 IN ANNUAL GROSS RECEIPTS**
19 **AND WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER § 501(C)(4) OF THE**
20 **INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE QUALIFICATIONS FOR**
21 **EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT THAT THE**
22 **ASSOCIATION FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN**
23 **THE EXEMPT STATUS.**

24 (10) “Suit” means a civil action, including a health care malpractice action
25 filed with the Health Care Alternative Dispute Resolution Office, brought against a
26 volunteer of an association or organization or against the association or organization by
27 virtue of the volunteer’s act or omission in providing services or performing duties on behalf
28 of the association or organization.

29 (11) (i) “Volunteer” means an officer, director, trustee, or other person
30 who provides services or performs duties for an association or organization without
31 receiving compensation.

32 (ii) In a health care malpractice action, “volunteer” does not include
33 a provider of health care services or an employee who performs duties on behalf of a
34 charitable organization.

1 (b) A volunteer is not liable in damages beyond the limits of any personal
 2 insurance the volunteer may have in any suit that arises from an act or omission of an
 3 officer, director, employee, trustee, or another volunteer of the association or organization
 4 for which the volunteer performs services, unless:

5 (1) The volunteer knew or should have known of an act or omission of a
 6 particular officer, director, employee, trustee, or another volunteer, and the volunteer
 7 authorizes, approves, or otherwise actively participates in that act or omission; or

8 (2) After an act or omission of a particular officer, director, employee,
 9 trustee, or another volunteer, the volunteer, with full knowledge of that act or omission,
 10 ratifies it.

11 (c) A volunteer is not liable in damages beyond the limits of any personal
 12 insurance the volunteer may have in any suit that arises from the volunteer's act or
 13 omission in connection with any services provided or duties performed by the volunteer on
 14 behalf of the association or organization, unless an act or omission of the volunteer
 15 constitutes gross negligence, reckless, willful, or wanton misconduct, or intentionally
 16 tortious conduct.

17 ~~(d) (1) This section does not create, and may not be construed as creating, a~~
 18 ~~new cause of action or substantive legal right against a volunteer.~~

19 ~~(2) This section does not affect, and may not be construed as affecting, any~~
 20 ~~immunities from civil liability or defenses established by any other provision of the Code or~~
 21 ~~available at common law, to which a volunteer may be entitled.~~

22 ~~(3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A~~
 23 ~~VOLUNTEER OF AN ASSOCIATION OR ORGANIZATION MAY NOT BE HELD~~
 24 ~~PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE ASSOCIATION OR~~
 25 ~~ORGANIZATION, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, SOLELY~~
 26 ~~BY REASON OF BEING A VOLUNTEER OF THE ASSOCIATION OR ORGANIZATION.~~

27 (e) The provisions of this section do not apply to suits brought by the Attorney
 28 General upon referral by the Secretary of State in which willful violations of Title 6,
 29 Subtitles 3, 4, 5, and 6 of the Business Regulation Article are alleged and proven.

30 (f) This section may be cited as the Maryland Volunteer Service Act.

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

33 Article – Courts and Judicial Proceedings

34 5-406.

1 (a) (7) “Community association” means a nonprofit association, corporation, or
2 other organization that [registers with the Secretary of State under § 7–108 of the State
3 Government Article and]:

4 (i) 1. Is composed of at least 25% of the adult residents of a local
5 community that:

6 A. Consists of at least 40 households; and

7 B. Is defined by specific geographic boundaries in the bylaws,
8 GOVERNING DOCUMENT, or charter of the organization;

9 2. At least annually, requires the payment of dues;

10 3. Promotes social welfare and general civic improvement;

11 and

12 4. In the case of a corporation, is in good standing;

13 (ii) 1. Is composed of at least 100 adult residents, but less than
14 25% of the adult residents of a local community that:

15 A. Consists of at least 40 households; and

16 B. Is defined by specific geographic boundaries in the bylaws
17 or charter of the organization;

18 2. Was organized on or before January 1, 2000, and has been
19 in continuous operation since that date; and

20 3. Meets the requirements of item (i)2, 3, and 4 of this
21 paragraph; or

22 (iii) 1. Is composed of more than one of the organizations
23 described in item (i) or item (ii) of this paragraph; and

24 2. Each of those organizations meets the requirements of
25 item (i) or item (ii) of this paragraph.

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

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

1 **(3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN AGENT OF**
 2 **AN ASSOCIATION OR ORGANIZATION MAY NOT BE HELD PERSONALLY LIABLE FOR**
 3 **THE OBLIGATIONS OF THE ASSOCIATION OR ORGANIZATION, WHETHER ARISING IN**
 4 **CONTRACT, TORT, OR OTHERWISE, SOLELY BY REASON OF BEING AN AGENT OF THE**
 5 **ASSOCIATION OR ORGANIZATION.**

6 5-407.

7 (d) (1) This section does not create, and may not be construed as creating, a
 8 new cause of action or substantive legal right against a volunteer.

9 (2) This section does not affect, and may not be construed as affecting, any
 10 immunities from civil liability or defenses established by any other provision of the Code or
 11 available at common law, to which a volunteer may be entitled.

12 **(3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A**
 13 **VOLUNTEER OF AN ASSOCIATION OR ORGANIZATION MAY NOT BE HELD**
 14 **PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE ASSOCIATION OR**
 15 **ORGANIZATION, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, SOLELY**
 16 **BY REASON OF BEING A VOLUNTEER OF THE ASSOCIATION OR ORGANIZATION.**

17 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall be construed
 18 to apply only prospectively and may not be applied or interpreted to have any effect on or
 19 application to any cause of action arising before the effective date of this Act.

20 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
 21 October 1, 2015. Section 1 of this Act shall remain effective for a period of 4 years and, at
 22 the end of September 30, 2019, with no further action required by the General Assembly.
 23 Section 1 of this Act shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.