

HOUSE BILL 41

D3

5lr0548

By: **Delegate Rosenberg**

Introduced and read first time: January 15, 2015

Assigned to: Judiciary

A BILL ENTITLED

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

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

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

24 **Article – Courts and Judicial Proceedings**

25 5–406.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

7 (3) “Association or organization” means:

8 (i) An athletic club;

9 (ii) A charitable organization;

10 (iii) A civic league or organization;

11 (iv) A community association;

12 (v) A cooperative housing corporation as that term is defined under
 13 § 5–6B–01 of the Corporations and Associations Article;

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

16 (vii) A homeowners’ association; OR

17 **(VIII) AN ORGANIZATION, INSTITUTION, ASSOCIATION, SOCIETY,**
 18 **OR CORPORATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(5) OR §**
 19 **501(C)(6) OF THE INTERNAL REVENUE CODE, INCLUDING AN ENTITY THAT WOULD**
 20 **OTHERWISE QUALIFY FOR EXEMPTION FROM TAXATION UNDER THOSE SECTIONS**
 21 **EXCEPT THAT THE ENTITY FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO**
 22 **MAINTAIN THE EXEMPT STATUS.**

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

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

27 **(II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §**
 28 **501(C)(7) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE**
 29 **QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT**
 30 **THAT THE CLUB FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO MAINTAIN**
 31 **THE EXEMPT STATUS.**

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

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

5 (II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §
6 501(C)(3) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE
7 QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT
8 THAT THE ENTITY FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO
9 MAINTAIN THE EXEMPT STATUS.

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

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

14 (II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §
15 501(C)(4) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE
16 QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT
17 THAT THE ORGANIZATION FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO
18 MAINTAIN THE EXEMPT STATUS.

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

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

24 A. Consists of at least 40 households; and

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

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

28 3. Promotes social welfare and general civic improvement;
29 and

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

1 (ii) 1. Is composed of at least 100 adult residents, but less than
2 25% of the adult residents of a local community that:

3 A. Consists of at least 40 households; and

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

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

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

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

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

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

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

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

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

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

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

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

4 (3) The insurance has:

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

6 1. \$200,000 per individual claim, and \$500,000 per total
7 claims that arise from the same occurrence; or

8 2. \$750,000 per policy year, and \$500,000 per total claims
9 that arise from the same occurrence; and

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

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

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

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

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

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.

33 **(3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN AGENT OF**
34 **AN ASSOCIATION OR ORGANIZATION MAY NOT BE HELD PERSONALLY LIABLE FOR**

1 THE OBLIGATIONS OF THE ASSOCIATION OR ORGANIZATION, WHETHER ARISING IN
2 CONTRACT, TORT, OR OTHERWISE, SOLELY BY REASON OF BEING AN AGENT OF THE
3 ASSOCIATION OR ORGANIZATION.

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

6 5-407.

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

8 (2) "Association or organization" means:

9 (i) A business league;

10 (ii) A charitable organization;

11 (iii) A civic league;

12 (iv) A club;

13 (v) A labor, agricultural, or horticultural organization; or

14 (vi) A local association of employees.

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

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

19 (II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §
20 501(C)(6) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE
21 QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT
22 THAT THE ENTITY FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO
23 MAINTAIN THE EXEMPT STATUS.

24 (4) "Charitable organization" means an organization, institution,
25 association, society, or corporation that [is]:

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

28 (II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §
29 501(C)(3) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE

1 **QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT**
2 **THAT THE ENTITY FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO**
3 **MAINTAIN THE EXEMPT STATUS.**

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

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

8 (II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §
9 501(C)(4) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE
10 QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT
11 THAT THE ENTITY FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO
12 MAINTAIN THE EXEMPT STATUS.

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

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

17 (II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §
18 501(C)(7) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE
19 QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT
20 THAT THE ENTITY FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO
21 MAINTAIN THE EXEMPT STATUS.

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

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

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

30 (II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §
31 501(C)(5) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE
32 QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT
33 THAT THE ENTITY FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO
34 MAINTAIN THE EXEMPT STATUS.

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

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

6 (II) WAS PREVIOUSLY EXEMPT FROM TAXATION UNDER §
7 501(C)(4) OF THE INTERNAL REVENUE CODE AND CONTINUES TO SATISFY THE
8 QUALIFICATIONS FOR EXEMPTION FROM TAXATION UNDER THAT SECTION EXCEPT
9 THAT THE ASSOCIATION FAILED TO MAKE INFORMATIONAL FILINGS REQUIRED TO
10 MAINTAIN THE EXEMPT STATUS.

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

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

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

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

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

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

32 (c) A volunteer is not liable in damages beyond the limits of any personal
33 insurance the volunteer may have in any suit that arises from the volunteer’s act or
34 omission in connection with any services provided or duties performed by the volunteer on
35 behalf of the association or organization, unless an act or omission of the volunteer

1 constitutes gross negligence, reckless, willful, or wanton misconduct, or intentionally
2 tortious conduct.

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

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

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

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
18 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. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2015.