

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 41
Judiciary

(Delegate Rosenberg)

Judicial Proceedings

Immunities - Associations, Organizations, and Charities - Liability of Agents and Volunteers

This bill makes several changes to the Maryland Associations, Organizations, and Agents Act (Courts and Judicial Proceedings Article, § 5-406) and the Maryland Volunteer Service Act (Courts and Judicial Proceedings Article, § 5-407). With respect to the Maryland Associations, Organizations, and Agents Act, the bill (1) alters several definitions and (2) specifies that except as otherwise provided under the Act, an agent of an association or organization may not be held personally liable for the obligations of the association or organization solely because he/she is an agent of the association or organization. With respect to the Maryland Volunteer Service Act, the bill (1) alters several definitions and (2) specifies that except as otherwise provided under the Act, a volunteer of an association or organization may not be held personally liable for the obligations of the association or organization solely because he/she is a volunteer of the association or organization.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2015 effective date. The bill's definitional changes terminate September 30, 2019.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: The bill does not materially affect local finances or circuit court caseloads.

Small Business Effect: Potential meaningful impact on businesses that are eligible for liability protection under the Maryland Associations, Organizations, and Agents Act and the Maryland Volunteer Service Act as a result of the bill's provisions.

Analysis

Bill Summary: The bill expands several definitions under the Acts to include entities with less than \$25,000 in annual gross receipts that were previously exempt from taxation under specified sections of the Internal Revenue Code and continue to satisfy the qualifications for exemption from taxation under those statutes except that the entities failed to make the informational filings required to maintain their tax exempt status.

The bill amends the following definitions under the Maryland Associations, Organizations, and Agents Act: “athletic club,” “charitable organization,” and “civic league or organization.” The bill amends the following definitions under the Maryland Volunteer Services Act: “business league,” “charitable organization,” “civic league,” “club,” “labor, agricultural, or horticultural organization,” and “local association of employees.”

The bill also removes the requirement under the Maryland Associations, Organizations, and Agents Act that a “community association” register with the Secretary of State and permits a “community association” to be defined by specific geographical boundaries in the governing document of the organization.

Current Law: The Maryland Associations, Organizations, and Agents Act and the Maryland Volunteer Services Act provide limited protection from liability to agents (including a director, officer, trustee, or employee who receives compensation) or volunteers of an association or organization.

Maryland Associations, Organizations, and Agents Act: Generally, under the Maryland Associations, Organizations, and Agents Act, an agent of an association or organization is not personally liable for damages in any suit if:

- the association or organization maintains insurance covering liability incurred by it 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;
- the terms of the insurance policy provide coverage for the act or omission that is the subject matter of the suit and there is no meritorious basis denying coverage by the insurer; and
- the insurance has a coverage limit of at least (1) \$200,000 per individual claim and \$500,000 per total claims arising from the same occurrence or \$750,000 per policy year and \$500,000 per total claims that arise from the same occurrence and (2) a deductible amount of no more than \$10,000 or a coinsurance rate of no more than 20%, whichever is applicable.

The plaintiff in a lawsuit to which the Act applies may recover damages from the association or organization up to the applicable limit of the association or organization's insurance coverage, including any applicable deductible or coinsurance. However, the agent of an association or organization is liable for damages if it is found that the agent acted with malice or gross negligence, to the extent that the judgment for damages exceeds the liability limits specified above.

Under the Maryland Associations, Organizations, and Agents Act, an "association or organization" means (1) an athletic club; (2) a charitable organization; (3) a civic league or organization; (4) a community association; (5) a cooperative housing corporation; (6) a condominium's council of unit owners; or (7) a homeowners' association.

The definition of a "community association" under the Act requires the entity to register with the Secretary of State in order to qualify for the Act's liability protections. A nonprofit association, corporation, or other organization that has been in existence for at least five years and promotes social welfare and general civic improvement may register with the Secretary of State as a community association by filing an affidavit that the organization meets the requirements of the Act's definition of a "community association."

Maryland Volunteer Service Act: The Maryland Volunteer Service Act protects volunteers of associations and organizations from liability under specified circumstances. With exceptions, the Act establishes that a volunteer is not liable in damages beyond the limits of the volunteer's personal insurance coverage in any suit that arises from the acts or omissions of an officer, director, employee, trustee, or another volunteer of the association or organization for which the volunteer is volunteering or the volunteer's own acts or omissions.

With respect to the acts or omissions of another individual, the Act's protections do not apply if (1) the volunteer knew or should have known of the individual's acts or omissions and the volunteer authorizes, approves, or otherwise actively participates in the acts or omissions or (2) the volunteer, with full knowledge, ratifies the act or omission after it occurs. The Act's protections do not apply to the volunteer's own acts or omissions if those acts or omissions constitute gross negligence, reckless, willful or wanton misconduct, or intentionally tortious conduct.

Under the Maryland Volunteer Service Act, an "association or organization" means (1) a business league; (2) a charitable organization; (3) a civic league; (4) a club; (5) a labor, agricultural, or horticultural organization; or (6) a local association of employees.

Background: In *Kimberly Pinsky et al., v. Pikesville Recreation Council, et al.*, No. 52, September Term 2012 (filed October 30, 2013), the Maryland Court of Special Appeals held that the officers of an unincorporated association (Pikesville Recreation Council) could be held personally liable for the association's breach of contract. The case involved two individuals contracted to run a preschool program who were terminated prior to the end of their contracts. The plaintiffs in the case sued Pikesville Recreation Council and its individual officers and directors for payments still owed to them, treble damages, attorneys' fees, and costs. Several of the original individual defendants (the officers and directors) were volunteers. The circuit court ruled in favor of the plaintiffs for their claims against the association for payments owed and treble damages, but rejected the plaintiffs' claims against the individual officers and directors as well as their motions for attorney sanctions, attorneys' fees, and costs. The plaintiffs appealed to the Court of Special Appeals.

The court's opinion repeatedly mentioned that unincorporated associations are a hybrid creation governed by a combination of statutory and common law principles. The court determined that the liability of the officers and directors in the case depends on (1) whether the association is for-profit or nonprofit and (2) whether the officers authorized, assented to, or ratified the contract (which the record did not address). According to the court, the personal liability of an officer or director of a for-profit unincorporated association is analyzed under partnership principles, whereas the liability of a nonprofit association is analyzed under agency principles.

The court also noted that the individual officers and other agents of an association that meets the requirements of the Maryland Associations, Organizations, and Agents Act, including adequate insurance coverage, are statutorily protected from personal liability. However, the court also noted that the record did not indicate whether Pikesville Recreation Council had such insurance coverage. The Court of Special Appeals affirmed the circuit court's decision regarding the liability of Pikesville Recreation Council, but remanded the case to the circuit court for additional fact-finding regarding the personal liability of the individual officers.

State Fiscal Effect: The Comptroller's Office advises that that the bill's provisions may have a minimal impact on revenues collected by the office. The Department of Legislative Services advises that it unlikely that such an impact is appreciable, given the small number of cases that are likely to involve the bill's provisions and tax liability, and since, according to the Comptroller's Office (1) the bill's provisions shield individuals from liability solely because of their status as an agent or volunteer, not because of their specific role in the organization (which is relevant to liability for sales and use and withholding taxes) and (2) volunteers are rarely so closely involved with a business so as to be held personally liable for a trust fund tax.

Local Fiscal Effect: Personal income tax revenues are distributed to the general fund and local jurisdictions. For the reasons stated above, it is unlikely that the bill has an appreciable impact on local revenues from decreased personal income tax revenue.

Small Business Impact: Potential meaningful impact on businesses that are eligible for liability protection under the Maryland Associations, Organizations, and Agents Act. The bill amends several definitions of eligible entities under the Maryland Associations, Organizations, and Agents Act. Most of the changes to the definitions pertain to entities that were formerly tax exempt under the Internal Revenue Code but have lost their tax exempt status because they failed to make the informational filings required to maintain that status, despite meeting all other requirements. As a result, entities that would have been rendered ineligible for the Act's protections may be protected from liability despite their lack of tax exempt status. Entities covered under the Act may also be able to obtain insurance coverage at a lower rate as a result of their eligibility for liability protection under the Act.

Although the bill also amends several definitions under the Maryland Volunteer Service Act, that Act deals primarily with the personal liability of a volunteer, not the liability of the volunteer's organization. However, to the extent that the bill's provisions improve an organization's ability to recruit volunteers, the bill could have a meaningful impact on affected organizations.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Office of the Attorney General, Comptroller's Office, Judiciary (Administrative Office of the Courts), Secretary of State, *Maryland Business Law Developments* (Maryland Bar Association), *Amicus Curiarum* (Office of the State Reporter), Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2015
md/kdm Revised - House Third Reader - March 24, 2015

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