

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 55
Judiciary

(Delegate Crosby)

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

This bill establishes that a suit is not eligible for the limitations on civil liability under the Maryland Associations, Organizations, and Agents Act and the Maryland Volunteer Service Act if the suit alleges (1) sexually assaultive behavior, as defined in § 10-923 of the Criminal Law Article or (2) conduct that would violate § 3-709 of the Criminal Law Article (sextortion and revenge porn).

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2021 effective date.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: The bill is not expected to materially affect small business finances, as discussed below.

Analysis

Current Law: The Maryland Associations, Organizations, and Agents Act (§ 5-406 of the Courts and Judicial Proceedings Article) and the Maryland Volunteer Service Act (§ 5-407 of the Courts and Judicial Proceedings Article) provide limited protection from personal liability to agents or volunteers of an association or organization. In general, the Acts apply to suits brought against the agent/volunteer or the association or organization

arising from the actions or omissions of the agent/volunteer in providing services or performing duties on behalf of the association or organization. However, the Acts do not apply to specified suits brought by the Attorney General involving willful violations of statutes pertaining to charitable organizations and charitable representatives.

Maryland Associations, Organizations, and Agents Act

The Maryland Associations, Organizations, and Agents Act provides limited protection from personal liability to agents (including a director, officer, trustee, or employee) of an association or organization if specified insurance coverage requirements are met. Under the 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.

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 meets specified coverage requirements.

A 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.

Maryland Volunteer Service Act

The Maryland Volunteer Service Act protects volunteers of associations and organizations from personal liability under specified circumstances. 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.

The Act generally 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 volunteer's own acts or omissions or the acts or omissions of an officer, director, employee, trustee, or another volunteer of the association or organization. However, with respect to the acts or omission of another individual, the Act's protections do not apply if the volunteer knew or should have known of the act or omission and authorizes, approves, or otherwise actively participates in the act or omission or knowingly ratifies the act or omission after it occurs. The Act's protections also do not apply if the volunteer's own acts or omissions constitute gross negligence, reckless, willful or wanton misconduct, or intentionally tortious conduct.

Charitable Immunity

While these statutes appear to address *personal* immunity for agents and volunteers, charitable immunity (which refers to the immunity of the organization) is a "judge-made doctrine intended to protect charitable organizations from tort liability." *Montrose Christian School Corp. v. Walsh*, 363 Md. 565, 582 (2001). Charitable immunity, which is an affirmative defense, applies when the assets of the charitable organization are held in trust and the corporation does not have liability insurance that covers the underlying act or injury. If an organization carries insurance, recovery is limited to the policy limits. *Eliason v. Funk*, 233 Md. 351 (1964). Under § 19-103 of the Insurance Article, each policy issued to cover the liability of a charitable institution for negligence or any other tort must provide that, for a claim covered by the policy, the insurer may not assert the defense that the insured is immune from liability because it is a charitable institution.

Sexually Assaultive Behavior

Section 10-923 of the Courts and Judicial Proceedings Article defines "sexually assaultive behavior" as an act that would constitute (1) a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article; (2) sexual abuse of a minor under § 3-602 of the Criminal Law Article; (3) sexual abuse of a vulnerable adult under § 3-604 of the Criminal Law Article; (4) a violation of 18 U.S.C. Chapter 109A; or (5) a violation of a law of another state, the United States, or a foreign country that is equivalent to any of these offenses.

Sextortion and Revenge Porn

Section 3-709 of the Criminal Law Article prohibits a person from causing another person to engage in an act of sexual activity or engage as a subject in the production of a visual representation or performance meeting specified criteria by threatening to (1) accuse any person of a crime or of anything that, if true, would bring the person into contempt or disrepute; (2) cause physical injury or economic damage to a person; (3) inflict emotional distress on a person; or (4) cause damage to the property of a person. Violators are guilty

of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$10,000 fine. A sentence imposed for a violation of this prohibition may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation.

Small Business Impact: The bill is not expected to materially affect small business finances. The statutes amended by the bill limit exposure to *personal* liability for agents and volunteers affiliated with associations and organizations (mostly nonprofit organizations). Thus, it appears that exempting specified lawsuits from these statutes means that in lawsuits in which these statutes would normally apply, which depend on the requirements and exceptions specified above, agents face *personal* liability and volunteers face liability beyond the limits of their *personal* insurance coverage.

Additional Information

Prior Introductions: HB 201 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Nonprofit Risk Management Center; People's Law Library of Maryland; Department of Legislative Services

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