

HOUSE BILL 55

D3

11r0853

(PRE-FILED)

By: **Delegate Crosby**

Requested: October 5, 2020

Introduced and read first time: January 13, 2021

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 providing that certain provisions of law specifying that a certain agent
5 or volunteer of a certain association or organization is not personally liable for
6 damages under certain circumstances do not apply to certain suits brought against
7 a certain agent or volunteer alleging certain sexually assaultive behavior or certain
8 conduct of a sexual nature; providing for the application of this Act; and generally
9 relating to the civil liability of agents and volunteers of associations, organizations,
10 and charities.

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 5–406 and 5–407
14 Annotated Code of Maryland
15 (2020 Replacement Volume)

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

18 **Article – Courts and Judicial Proceedings**

19 5–406.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

4 (3) “Association or organization” means:

5 (i) An athletic club;

6 (ii) A charitable organization;

7 (iii) A civic league or organization;

8 (iv) A community association;

9 (v) A cooperative housing corporation as that term is defined under
10 § 5–6B–01 of the Corporations and Associations Article;

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

13 (vii) A homeowners’ association.

14 (4) “Athletic club” means a club organized and operated exclusively for
15 recreational purposes that is exempt from taxation under § 501(c)(7) of the Internal
16 Revenue Code.

17 (5) “Charitable organization” means an organization, institution,
18 association, society, or corporation that is exempt from taxation under § 501(c)(3) of the
19 Internal Revenue Code.

20 (6) “Civic league or organization” means an organization, operated
21 exclusively for the promotion of social welfare, that is exempt from taxation under §
22 501(c)(4) of the Internal Revenue Code.

23 (7) “Community association” means a nonprofit association, corporation, or
24 other organization that registers with the Secretary of State under § 7–108 of the State
25 Government Article and:

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

28 A. Consists of at least 40 households; and

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

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

1 or organization is not personally liable for damages in any suit if:

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

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

9 (3) The insurance has:

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

11 1. \$200,000 per individual claim, and \$500,000 per total
12 claims that arise from the same occurrence; or

13 2. \$750,000 per policy year, and \$500,000 per total claims
14 that arise from the same occurrence; and

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

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

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

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

28 (e) The provisions of this section do not apply to suits [brought]:

29 (1) **BROUGHT** by the Attorney General upon referral by the Secretary of
30 State in which willful violations of Title 6 of the Business Regulation Article are alleged
31 and proven; **OR**

32 (2) **THAT ALLEGE:**

1 **(I) SEXUALLY ASSAULTIVE BEHAVIOR AS DEFINED IN § 10-923**
2 **OF THIS ARTICLE; OR**

3 **(II) CONDUCT THAT WOULD VIOLATE § 3-709 OF THE CRIMINAL**
4 **LAW ARTICLE.**

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

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

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

14 5-407.

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

16 (2) “Association or organization” means:

17 (i) A business league;

18 (ii) A charitable organization;

19 (iii) A civic league;

20 (iv) A club;

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

22 (vi) A local association of employees.

23 (3) “Business league” means a league, chamber of commerce, real estate
24 board, or board of trade that is exempt from taxation under § 501(c)(6) of the Internal
25 Revenue Code.

26 (4) “Charitable organization” means an organization, institution,
27 association, society, or corporation that is exempt from taxation under § 501(c)(3) of the
28 Internal Revenue Code.

29 (5) “Civic league” means an organization, institution, association, society,
30 or corporation that is exempt from taxation under § 501(c)(4) of the Internal Revenue Code.

1 (6) "Club" means an organization, institution, association, society, or
2 corporation that is exempt from taxation under § 501(c)(7) of the Internal Revenue Code.

3 (7) "Compensation" does not include actual and necessary expenses that
4 are incurred by a volunteer in connection with the services provided or duties performed by
5 the volunteer on behalf of an association or organization, and that are reimbursed to the
6 volunteer or otherwise paid.

7 (8) "Labor, agricultural, or horticultural organization" means an
8 organization, institution, association, society, or corporation that is exempt from taxation
9 under § 501(c)(5) of the Internal Revenue Code.

10 (9) "Local association of employees" means an association of employees, the
11 membership of which is limited to the employees of a designated person or persons in a
12 particular municipality, that is exempt from taxation under § 501(c)(4) of the Internal
13 Revenue Code.

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

19 (11) (i) "Volunteer" means an officer, director, trustee, or other person
20 who provides services or performs duties for an association or organization without
21 receiving compensation.

22 (ii) In a health care malpractice action, "volunteer" does not include
23 a provider of health care services or an employee who performs duties on behalf of a
24 charitable organization.

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

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

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

35 (c) A volunteer is not liable in damages beyond the limits of any personal
36 insurance the volunteer may have in any suit that arises from the volunteer's act or
37 omission in connection with any services provided or duties performed by the volunteer on

1 behalf of the association or organization, unless an act or omission of the volunteer
2 constitutes gross negligence, reckless, willful, or wanton misconduct, or intentionally
3 tortious conduct.

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

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

9 (e) The provisions of this section do not apply to suits [brought]:

10 (1) **BROUGHT** by the Attorney General upon referral by the Secretary of
11 State in which willful violations of Title 6, Subtitles 3, 4, 5, and 6 of the Business Regulation
12 Article are alleged and proven; **OR**

13 (2) **THAT ALLEGE:**

14 (I) **SEXUALLY ASSAULTIVE BEHAVIOR AS DEFINED IN § 10-923**
15 **OF THIS ARTICLE; OR**

16 (II) **CONDUCT THAT WOULD VIOLATE § 3-709 OF THE CRIMINAL**
17 **LAW ARTICLE.**

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

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

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2021.