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By: **Delegate Rosenberg**

Introduced and read first time: February 13, 1998

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **On-Line Communications - Defamation**

3 FOR the purpose of enacting certain standards governing defamation published by  
4 means of on-line services; providing for personal jurisdiction concerning persons  
5 who publish defamatory statements by means of on-line services; defining  
6 certain terms; providing for the application of this Act; making provisions of this  
7 Act severable; and generally relating to defamation published by means of  
8 on-line services.

9 BY adding to  
10 Article - Courts and Judicial Proceedings  
11 Section 3-505 and 3-506  
12 Annotated Code of Maryland  
13 (1995 Replacement Volume and 1997 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article - Courts and Judicial Proceedings  
16 Section 1-101 and 6-103  
17 Annotated Code of Maryland  
18 (1995 Replacement Volume and 1997 Supplement)

19 **Preamble**

20 WHEREAS, For the most part, the Laws of Maryland concerning defamation  
21 are based not on statute, but instead are found in case law as restated in *Hearst Corp.*  
22 *v. Hughes*, 297 Md. 112 (1983) and *Jacron Sales Co. v. Snider*, 276 Md. 580 (1976); and

23 WHEREAS, The growth of on-line communications has created a new and  
24 unfamiliar medium for committing civil wrongs such as defamation; and

25 WHEREAS, It is the intent of the Maryland General Assembly to provide  
26 guidance to its citizens and its courts in addressing cases of on-line defamation; now,  
27 therefore,

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

3 **Article - Courts and Judicial Proceedings**

4 1-101.

5 (a) In this title, the following words or terms have the meanings indicated.

6 (b) "Circuit court" means the circuit court for a county.

7 (c) "Court" means the Court of Appeals, Court of Special Appeals, circuit  
8 court, and District Court of Maryland, or any of them, unless the context clearly  
9 requires a contrary meaning. It does not include an orphans' court, or the Maryland  
10 Tax Court.

11 (d) "Judge" means a judge of a court.

12 (E) "ON-LINE SERVICE" MEANS ANY INFORMATION SERVICE OR SYSTEM  
13 THAT:

14 (1) PROVIDES OR ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO  
15 A COMPUTER SERVER, INCLUDING A SERVICE OR SYSTEM THAT PROVIDES ACCESS  
16 TO THE INTERNET; AND

17 (2) ALLOWS A USER TO TRANSMIT, RECEIVE, DISPLAY, FORWARD,  
18 CACHE, SEARCH, SUBSET, ORGANIZE, REORGANIZE, OR TRANSLATE INFORMATION  
19 CONTENT.

20 3-505.

21 (A) IN THIS SECTION, "PUBLIC OFFICIAL", "PUBLIC FIGURE", AND "PRIVATE  
22 PERSON" HAVE THE MEANINGS ESTABLISHED BY THE COURT OF APPEALS IN THE  
23 AREA OF DEFAMATION LAW.

24 (B) FOR A PUBLIC OFFICIAL OR A PUBLIC FIGURE, ANY STATEMENT  
25 PUBLISHED THROUGH AN ON-LINE SERVICE AND PROVED BY CLEAR AND  
26 CONVINCING EVIDENCE IS LIBEL IF THE STATEMENT:

27 (1) EXPOSES A PERSON TO PUBLIC SCORN, HATRED, CONTEMPT, OR  
28 RIDICULE;

29 (2) IS FALSE; AND

30 (3) WAS MADE WITH KNOWING FALSITY OR RECKLESS DISREGARD FOR  
31 THE TRUTH.

32 (C) FOR A PRIVATE PERSON, ANY STATEMENT PUBLISHED THROUGH AN  
33 ON-LINE SERVICE IS LIBEL IF:

1 (1) THE STATEMENT EXPOSES A PERSON TO PUBLIC SCORN, HATRED,  
2 CONTEMPT, OR RIDICULE;

3 (2) THE STATEMENT IS FALSE; AND

4 (3) THE PERSON WHO PUBLISHED THE STATEMENT THROUGH THE  
5 ON-LINE SERVICE ACTED WITH NEGLIGENCE IN PUBLISHING THE STATEMENT.

6 (D) AN ANONYMOUS PERSON, OR ONE IDENTIFIED THROUGH AN ALIAS,  
7 CANNOT BE DEFAMED, UNLESS THAT PERSON HAS RATIFIED THE ALIAS.

8 (E) A PERSON IS NOT CONSIDERED A PUBLIC FIGURE MERELY BY THE ACT OF  
9 POSTING A STATEMENT THROUGH AN ON-LINE SERVICE OR BY PARTICIPATING IN  
10 AN ON-LINE DISCUSSION.

11 3-506.

12 (A) FOR THE PURPOSES OF THIS SUBTITLE, AN ON-LINE SERVICE PROVIDER  
13 MAY NOT BE CONSIDERED A COMMON CARRIER OF STATEMENTS POSTED THROUGH  
14 THAT SERVICE BY A SUBSCRIBER TO THAT SERVICE OR RECEIVED FROM ANOTHER  
15 ON-LINE SERVICE PROVIDER.

16 (B) AN ON-LINE SERVICE PROVIDER MAY NOT BE CONSIDERED A PUBLISHER  
17 OF SUCH STATEMENTS EXCEPT THAT AN ON-LINE SERVICE PROVIDER SHALL BE  
18 CONSIDERED THE PUBLISHER OF STATEMENTS THAT:

19 (1) ARE POSTED THROUGH THAT SERVICE BY AN EMPLOYEE OF THE  
20 ON-LINE SERVICE PROVIDER DURING THE COURSE OF EMPLOYMENT;

21 (2) ARE MADE BY A PERSON WHOM THE ON-LINE SERVICE PROVIDER  
22 HAS PAID, IN MONEY OR SERVICES, FOR THE STATEMENT; OR

23 (3) ARE OTHERWISE RATIFIED BY THE ON-LINE SERVICE PROVIDER IN A  
24 MANNER BEYOND A MERE LISTING IN A DIRECTORY.

25 (C) AN ON-LINE SERVICE PROVIDER IS NOT MADE A PUBLISHER BY  
26 ATTEMPTING TO MONITOR OR SUPPRESS DEFAMATORY STATEMENTS.

27 6-103.

28 (a) If jurisdiction over a person is based solely upon this section, he may be  
29 sued only on a cause of action arising from any act enumerated in this section.

30 (b) A court may exercise personal jurisdiction over a person, who directly or by  
31 an agent:

32 (1) Transacts any business or performs any character of work or service  
33 in the State;

34 (2) Contracts to supply goods, food, services, or manufactured products  
35 in the State;

1           (3)     Causes tortious injury in the State by an act or omission in the State;

2           (4)     Causes tortious injury in the State or outside of the State by an act or  
3 omission outside the State if he regularly does or solicits business, engages in any  
4 other persistent course of conduct in the State or derives substantial revenue from  
5 goods, food, services, or manufactured products used or consumed in the State;

6           (5)     Has an interest in, uses, or possesses real property in the State; [or]

7           (6)     Contracts to insure or act as surety for, or on, any person, property,  
8 risk, contract, obligation, or agreement located, executed, or to be performed within  
9 the State at the time the contract is made, unless the parties otherwise provide in  
10 writing; OR

11           (7)     PUBLISHES THROUGH AN ON-LINE SERVICE, A DEFAMATORY  
12 STATEMENT, REGARDING A PERSON RESIDING IN THE STATE, THAT IS DISPLAYED IN  
13 READABLE FORM ON ANY DEVICE OR MATERIAL IN THE STATE.

14     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only  
15 prospectively and may not be applied or interpreted to have any effect on or  
16 application to any case filed before October 1, 1998.

17     SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this  
18 Act or the application thereof to any person or circumstance is held invalid for any  
19 reason in a court of competent jurisdiction, the invalidity does not affect other  
20 provisions or any other application of this Act which can be given effect without the  
21 invalid provision or application, and for this purpose the provisions of this Act are  
22 declared severable.

23     SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take  
24 effect October 1, 1998.