

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 193
Judiciary

(Delegate Rosenberg)

Judicial Proceedings

**Civil Proceedings - Foreign Defamation Judgments - Recognition, Enforceability,
and Bases of Personal Jurisdiction**

This bill authorizes a State court to exercise personal jurisdiction, to the extent permitted by the U.S. Constitution, over any person who obtains a judgment in a “defamation” proceeding outside of the United States against any person who is a State resident or is otherwise subject to the jurisdiction of the State (“State resident”). This authority is solely for the purpose of providing declaratory relief with respect to determining the personal liability of the State resident for the judgment or determining whether the judgment may not be recognized under State law, if the State resident has assets in this State that might be used to satisfy the foreign judgment or may have to take actions in this State to comply with the foreign judgment.

The bill applies prospectively to cases filed in the State on or after the bill’s October 1, 2010 effective date.

Fiscal Summary

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

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

Small Business Effect: Potential meaningful impact on publishers or other small businesses whose foreign defamation judgments are not enforced as a result of the bill.

Analysis

Bill Summary: A court is prohibited from recognizing a foreign defamation judgment unless the court first determines that defamation laws in the foreign jurisdiction provide as much protection for freedoms of speech and the press as the federal and state constitutions. A court is also prohibited from recognizing a foreign judgment if the cause of action resulted in a defamation judgment against the provider of an interactive computer service, as defined by federal law, unless the State court before which the matter is brought determines that the judgment is in compliance with the applicable federal statute. The bill defines “defamation” to include invasion of privacy by false facts.

Current Law: Under the Maryland Uniform Foreign Money-Judgments Recognition Act, a foreign judgment that is final and conclusive may be enforced under certain circumstances in this State.

A judgment rendered by a foreign court is not conclusive if the court did not have personal jurisdiction over the defendant or the subject matter, the judgment was obtained by fraud, or the judgment was made under a system that does not provide impartial tribunals or procedures compatible with due process. A court in the State cannot refuse to recognize a foreign judgment for lack of personal jurisdiction if certain requirements are met, including if the defendant (1) was served personally in the foreign state; (2) voluntarily appeared in the proceedings, other than to defend the property seized or threatened with seizure or challenge personal jurisdiction; (3) agreed prior to commencement of the proceedings to submit to the jurisdiction of the foreign court with respect to the subject matter involved; or (4) lived in the foreign state when the proceedings were instituted or, in the case of a corporation, had specific types of corporate connections to the foreign state. The court may also recognize bases of jurisdiction other than those specified in statute.

A State court need not recognize a foreign judgment if the defendant did not receive notice of the proceedings in sufficient time to mount a defense; the cause of action is repugnant to the public policy of the State; the judgment conflicts with another final and conclusive judgment; the proceeding in the foreign court contradicts an agreement between the parties to settle the dispute out of court; or the foreign state was a seriously inconvenient forum for a trial in which jurisdiction was based purely on personal service.

In 1996, the U.S. Congress passed the Communications Decency Act (47 U.S.C. §230). The Act protects Internet service providers from liability for third party content and filtering decisions made in good faith. The Act defines an “interactive service provider” as any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service

or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

Background: In 2008, the United Nations' Committee on Human Rights criticized "libel tourism" for its stifling effects on public interest reporting and the press. "Libel tourism" is a term used for instances when plaintiffs use foreign courts with more lenient defamation laws to sue publishers. Libel tourism appears to be a growing problem in the United Kingdom, where with the growth of e-commerce, electronic books, and use of the Internet as a source of news, the pool of potential defendants in British libel cases has grown to include individuals who never actively marketed their work or sought publication in the United Kingdom, but found themselves in British courts based on the single click of a mouse. In recent years, Hollywood celebrities and businesspersons have used British libel laws to sue American authors and publishers. This increase in libel lawsuits has generated responses by the British government, American publishers and publications, and American lawmakers.

According to one British study, the number of reported defamation cases brought in the United Kingdom by celebrities against newspapers jumped from 9 in 2005 to 20 in 2006. The same study cited 66 recorded cases of defamation between May 2004 and May 2005, compared to 74 cases during the following 12 months. An Oxford University study in December 2008 found that defamation cases in England and Wales were 140 times more costly compared to the rest of Europe. The study further noted that the application of conditional fee agreements (CFA) to defamation cases in the United Kingdom in 1995 has generated costlier defamation claims and has led media companies to censor themselves and settle claims out of court rather than deal with the potentially costly result of losing a defamation case. Under a CFA, an attorney can agree to take a case on a no-fee, no-win basis and can claim a success fee of up to 100%. According to a British appellate judge who recently authored an extensive report on the costs of civil proceedings in the United Kingdom, media law is one of the areas in which costs were the highest and media companies typically pay four times the cost of damages in libel cases because of success fees and insurance fees that may not be assessed until after the case has begun. On January 19, 2010, Justice Secretary Jack Straw announced proposals to reduce success fees in libel cases from 100% to 10%.

American newspapers are also taking action. In 2009, a group of American newspapers, including *The Boston Globe*, *The New York Times*, and *The Los Angeles Times*, submitted a memorandum to a committee in the House of Commons stating that the risk of making their publications susceptible to costly libel claims in the United Kingdom is not worth the minimal sales that occur there. American publications have suggested that Britain establish circulation thresholds for libel suits against foreign publications and in some instances, have blocked access to publication web sites and online content.

However, American newspapers are not the only parties susceptible to British libel lawsuits. In 2005, a New York-based author was sued in the United Kingdom for libel even though only 23 copies of her book had been sold there. The case motivated New York lawmakers to enact legislation in 2008 prohibiting New York courts from enforcing foreign defamation judgments unless the country of origin offers protections for freedom of speech that are equivalent or better than those in the United States. California, Florida, and Illinois also enacted similar legislation. In 2009, legislation offering protection for Americans against foreign defamation judgments was introduced in the United States Senate. The bills were referred to committees, but no further action has been taken.

Additional Information

Prior Introductions: None.

Cross File: Although SB 13 (Senator Raskin) - Judicial Proceedings is designated as a cross file, the bills are not identical.

Information Source(s): *The Daily Telegraph* (United Kingdom); *The Times* (United Kingdom); *The Guardian* (United Kingdom); University of Oxford – “A Comparative Study of Costs in Defamation Proceedings Across Europe”; *Wall Street Journal*, “47 U.S.C. 230(c)(2) and Immunity from Online Filtering,” Eric Goldman, High Tech Law Institute, Santa Clara University; Department of Legislative Services

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