

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 904  
Judiciary

(Delegate Howard)

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Civil Actions - Transmission of Altered Electronic Mail

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This bill specifies that a person who receives a communication through electronic mail, alters the communication, and transmits the communication through electronic mail to a third party with the intent to defraud, defame, or otherwise harm the author of the communication is liable to the author for damages in a civil action. A person entitled to bring a civil action may recover economic damages and any other pecuniary loss sustained by the person that were proximately caused by the transmission of the altered mail. The court may also award reasonable attorney's fees to a person who is awarded damages.

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Fiscal Summary

**State Effect:** None. The bill will not materially affect the Judiciary's workload.

**Local Effect:** None. The bill will not materially affect the workload of the circuit courts.

**Small Business Effect:** None.

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Analysis

**Current Law:** A "defamatory statement," is a statement that "tends to expose a person to public scorn, hatred, contempt, or ridicule, thereby discouraging others in the community from having a good opinion of, or associating with, that person." *Independent Newspapers, Inc. v. Brodie*, 407 Md. 415, 441 (2009), quoting *Offen v. Brenner*, 402 Md. 191, 198-99, 935 A.2d at 723-24 (2007).

A *prima facie* common law case for defamation involves four elements: (1) the defendant made a defamatory statement to a third person; (2) the statement was false; (3) the defendant was legally at fault in making the statement; and (4) the plaintiff suffered harm as a result of the defendant's statement. *Smith v. Danielczyk*, 400 Md. 98, 115 (2006) (quoting *Gohari v. Darvish*, 363 Md. 42, 54, 767 A.2d 321, 327 (2001), quoting *Rosenberg v. Helinski*, 328 Md. 664, 675, 616 A.2d 866, 871 (1992).) The statute of limitations in a defamation action is one year.

Under Maryland law, for a plaintiff to prevail on a claim of fraud, "the plaintiff must prove by clear and convincing evidence that (1) the defendant made a false representation to the plaintiff; (2) that its falsity was either known to the defendant or that the representation was made with reckless indifference to the truth; (3) that the misrepresentation was made for the purpose of defrauding the plaintiff; (4) that the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) that the plaintiff actually suffered compensable injury resulting from the misrepresentation." *Alleco, Inc. v. Harry & Jeanette Weinberg Foundation, Inc.*, 340 Md. 176, 195, 665 A.2d 1038, 1047 (1995).

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mlm/kdm

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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510