

SENATE BILL 726

E1

8lr1443

By: **Senator Zirkin**

Introduced and read first time: February 2, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Electronic Harassment and Bullying**
3 **(Grace’s Law 2.0)**

4 FOR the purpose of altering prohibited actions relating to electronic harassment;
5 prohibiting a person from engaging in electronic communication under certain
6 circumstances with a certain intent; prohibiting a person from using an electronic
7 communication to maliciously engage in a certain act or in a course of conduct that,
8 when considered in its entirety, has a certain result; prohibiting a person from using
9 a computer or a computer network to engage in certain activity with the intent to
10 seriously annoy, alarm, intimidate, torment, or harass a minor; prohibiting a person
11 from engaging in certain activity with the intent to seriously annoy, alarm,
12 intimidate, torment, or harass a minor or the parent or guardian of a minor;
13 prohibiting a person from violating this Act with the intent to induce a minor to
14 commit suicide; establishing and applying certain penalties for a violation of this
15 Act; making the provisions of this Act severable; defining certain terms; and
16 generally relating to electronic harassment and bullying.

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Law
19 Section 3–805
20 Annotated Code of Maryland
21 (2012 Replacement Volume and 2017 Supplement)

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

24 **Article – Criminal Law**

25 3–805.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “Electronic communication” means the transmission of ANY
2 information, data, [or a] SIGN, SIGNAL, WRITING, IMAGE, SOUND, INTELLIGENCE, OR
3 communication by the use of a computer or any other electronic means [that is sent to a
4 person and that is received by the person], INCLUDING A COMMUNICATION THAT
5 INVOLVES THE USE OF E-MAIL, AN INSTANT MESSAGING SERVICE, AN INTERNET
6 WEBSITE, A SOCIAL MEDIA APPLICATION, A NETWORK CALL, A FACSIMILE MACHINE,
7 OR ANY OTHER INTERNET-BASED COMMUNICATION TOOL.

8 [(3) “Interactive computer service” means an information service, system,
9 or access software provider that provides or enables computer access by multiple users to
10 a computer server, including a system that provides access to the Internet and cellular
11 phones.]

12 (3) “INSTANT MESSAGING SERVICE” MEANS A COMPUTER SERVICE
13 ALLOWING TWO OR MORE USERS TO COMMUNICATE WITH EACH OTHER IN REAL
14 TIME.

15 (4) “SOCIAL MEDIA APPLICATION” MEANS ANY COMPUTER SYSTEM,
16 PROGRAM, SOFTWARE, OR WEBSITE THAT ALLOWS A PERSON TO BECOME A
17 REGISTERED USER FOR THE PURPOSE OF ESTABLISHING PERSONAL
18 RELATIONSHIPS WITH ONE OR MORE OTHER USERS THROUGH:

19 (I) DIRECT OR REAL-TIME COMMUNICATION; OR

20 (II) THE CREATION OF WEBSITES OR PROFILES CAPABLE OF
21 BEING VIEWED BY THE PUBLIC OR OTHER USERS.

22 (5) “SOCIAL MEDIA PROFILE” MEANS A WEBSITE OR PROFILE
23 CREATED USING A SOCIAL MEDIA APPLICATION.

24 [(b) (1) A person may not maliciously engage in a course of conduct, through
25 the use of electronic communication, that alarms or seriously annoys another:

26 (i) with the intent to harass, alarm, or annoy the other;

27 (ii) after receiving a reasonable warning or request to stop by or on
28 behalf of the other; and

29 (iii) without a legal purpose.

30 (2) A person may not use an interactive computer service to maliciously
31 engage in a course of conduct that inflicts serious emotional distress on a minor or places a
32 minor in reasonable fear of death or serious bodily injury with the intent:

1 (i) to kill, injure, harass, or cause serious emotional distress to the
2 minor; or

3 (ii) to place the minor in reasonable fear of death or serious bodily
4 injury.]

5 **(B) (1) A PERSON MAY NOT ENGAGE IN AN ELECTRONIC**
6 **COMMUNICATION:**

7 **(I) IF THE CONTENT, MANNER, TIME, OR PLACE, OR THE**
8 **CONTEXT OF THE ELECTRONIC COMMUNICATION AS PART OF A SERIES OF**
9 **COMMUNICATIONS, SERIOUSLY ANNOYS, ALARMS, INTIMIDATES, TORMENTS, OR**
10 **HARASSES ANOTHER; AND**

11 **(II) WITH THE INTENT TO SERIOUSLY ANNOY, ALARM,**
12 **INTIMIDATE, TORMENT, OR HARASS THE OTHER.**

13 **(2) A PERSON MAY NOT USE AN ELECTRONIC COMMUNICATION TO**
14 **MALICIOUSLY ENGAGE IN A SINGLE SIGNIFICANT ACT OR IN A COURSE OF CONDUCT**
15 **THAT, WHEN CONSIDERED IN ITS ENTIRETY:**

16 **(I) HAS THE EFFECT OF SERIOUSLY ANNOYING, ALARMING,**
17 **INTIMIDATING, TORMENTING, HARASSING, OR PHYSICALLY HARMING ANOTHER;**

18 **(II) CAUSES ANOTHER TO EXPERIENCE SUBSTANTIAL**
19 **EMOTIONAL DISTRESS;**

20 **(III) RESULTS IN DAMAGE TO ANOTHER'S PROPERTY; OR**

21 **(IV) PLACES ANOTHER IN REASONABLE FEAR OF HARM TO THE**
22 **PHYSICAL SAFETY OF THE OTHER'S:**

23 **1. PARENT OR GUARDIAN;**

24 **2. SIBLING;**

25 **3. SPOUSE; OR**

26 **4. CHILD.**

27 **(3) A PERSON MAY NOT, WITH THE INTENT TO SERIOUSLY ANNOY,**
28 **ALARM, INTIMIDATE, TORMENT, OR HARASS A MINOR, USE A COMPUTER OR A**
29 **COMPUTER NETWORK TO:**

1 **(I) BUILD A FAKE SOCIAL MEDIA PROFILE;**

2 **(II) POSE AS ANOTHER, INCLUDING A FICTITIOUS PERSON, IN AN**
3 **ELECTRONIC COMMUNICATION;**

4 **(III) FOLLOW A MINOR ONLINE OR USING AN INSTANT**
5 **MESSAGING SERVICE; OR**

6 **(IV) DISSEMINATE OR ENCOURAGE OTHERS TO DISSEMINATE**
7 **PRIVATE, PERSONAL, OR SEXUAL INFORMATION, WHETHER TRUE OR FALSE,**
8 **PERTAINING TO THE MINOR.**

9 **(4) A PERSON MAY NOT, WITH THE INTENT TO SERIOUSLY ANNOY,**
10 **ALARM, INTIMIDATE, TORMENT, OR HARASS A MINOR OR THE PARENT OR GUARDIAN**
11 **OF A MINOR, USE A COMPUTER OR A COMPUTER NETWORK TO:**

12 **(I) DISSEMINATE A REAL OR DOCTORED IMAGE OF THE MINOR;**

13 **(II) ACCESS, ALTER, OR ERASE ANY COMPUTER NETWORK,**
14 **COMPUTER DATA, COMPUTER PROGRAM, OR COMPUTER SOFTWARE BELONGING TO**
15 **OR LICENSED FOR USE BY THE MINOR WITHOUT AUTHORIZATION;**

16 **(III) ENGAGE OR ENCOURAGE OTHERS TO ENGAGE IN THE**
17 **REPEATED, CONTINUING, OR SUSTAINED USE OF ELECTRONIC COMMUNICATION TO**
18 **CONTACT THE MINOR;**

19 **(IV) MAKE ANY STATEMENT, WHETHER TRUE OR FALSE,**
20 **INTENDED TO IMMEDIATELY PROVOKE, OR THAT IS LIKELY TO PROVOKE, ANY THIRD**
21 **PARTY TO STALK OR HARASS A MINOR;**

22 **(V) ENGAGE IN OR CAUSE THE UNAUTHORIZED COPYING AND**
23 **DISSEMINATION OF ANY IMAGE, DATA, OR INFORMATION, WHETHER OR NOT IN**
24 **PRINT OR ELECTRONIC FORM, PERTAINING TO THE MINOR;**

25 **(VI) SUBSCRIBE THE MINOR TO A PORNOGRAPHIC WEBSITE; OR**

26 **(VII) SUBSCRIBE THE MINOR TO A MAILING LIST OR TO RECEIVE**
27 **ONE OR MORE ELECTRONIC COMMUNICATIONS, AND CAUSE INTIMIDATION OR**
28 **TORMENT TO THE MINOR.**

29 **(5) A PERSON MAY NOT VIOLATE THIS SECTION WITH THE INTENT TO**
30 **INDUCE A MINOR TO COMMIT SUICIDE.**

1 (c) It is not a violation of this section for any of the following persons to provide
2 information, facilities, or technical assistance to another who is authorized by federal or
3 State law to intercept or provide electronic communication or to conduct surveillance of
4 electronic communication, if a court order directs the person to provide the information,
5 facilities, or technical assistance:

6 (1) a provider of electronic communication;

7 (2) an officer, employee, agent, landlord, or custodian of a provider of
8 electronic communication; or

9 (3) a person specified in a court order directing the provision of
10 information, facilities, or technical assistance to another who is authorized by federal or
11 State law to intercept or provide electronic communication or to conduct surveillance of
12 electronic communication.

13 (d) Subsection (b)(1) of this section does not apply to a peaceable activity intended
14 to express a political view or provide information to others.

15 (e) **(1)** A person who violates **SUBSECTION (B)(1) THROUGH (4) OF** this
16 section is guilty of a misdemeanor and on conviction is subject to imprisonment not
17 exceeding [1 year] **3 YEARS** or a fine not exceeding [\$500] **\$10,000** or both.

18 **(2) A PERSON WHO VIOLATES SUBSECTION (B)(5) OF THIS SECTION IS**
19 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT**
20 **NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
22 the application thereof to any person or circumstance is held invalid for any reason in a
23 court of competent jurisdiction, the invalidity does not affect other provisions or any other
24 application of this Act that can be given effect without the invalid provision or application,
25 and for this purpose the provisions of this Act are declared severable.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2018.