

HOUSE BILL 1221

D3

4lr2746

By: **Delegate Glass**

Introduced and read first time: February 7, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Discovery – Disclosures Regarding Anonymous Internet Communications**

3 FOR the purpose of providing that, in a certain civil action, a party seeking
4 information identifying a certain anonymous communicator shall file a certain
5 subpoena and supporting materials in the court under certain circumstances;
6 requiring the party to include a copy of certain communications; requiring the
7 party to serve certain documents on and provide certain payment to the person
8 to whom the subpoena is addressed; requiring the person to whom the subpoena
9 is addressed, under certain circumstances, to send a certain notification and
10 documentation to the anonymous communicator; requiring any interested
11 person to file an application to the court within a certain period of time;
12 requiring an anonymous communicator and a certain party to serve a certain
13 objection or motion on certain parties under certain circumstances; specifying
14 the contents of a certain written objection or application to the court;
15 prohibiting a certain party from complying with the subpoena within a certain
16 time period; providing that compliance with the subpoena shall be deferred
17 under certain circumstances; prohibiting the party serving the subpoena from
18 inspecting or copying certain materials under certain circumstances;
19 authorizing an interested person to request a certain hearing; requiring notice
20 of the hearing to be served on the subpoenaed party under certain
21 circumstances; requiring the subpoenaed party to mail the notice to the
22 anonymous communicator in a certain manner; defining a certain term; and
23 generally relating to subpoenas concerning discovery and the disclosures
24 concerning certain anonymous Internet communicators.

25 BY adding to

26 Article – Courts and Judicial Proceedings

27 Section 9–501 to be under the new subtitle “Subtitle 5. Discovery – Disclosures
28 Regarding Anonymous Internet Communications”

29 Annotated Code of Maryland

30 (2013 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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 **SUBTITLE 5. DISCOVERY – DISCLOSURES REGARDING ANONYMOUS INTERNET**
5 **COMMUNICATIONS.**

6 **9-501.**

7 **(A) IN THIS SECTION, “SUPPORTING MATERIALS” MEANS INFORMATION**
8 **DEMONSTRATING THAT:**

9 **(1) ONE OR MORE COMMUNICATIONS THAT ARE OR MAY BE**
10 **TORTIOUS OR ILLEGAL HAVE BEEN MADE BY AN ANONYMOUS INDIVIDUAL**
11 **COMMUNICATING ON THE INTERNET, OR THE PARTY REQUESTING THE**
12 **SUBPOENA HAS A LEGITIMATE, GOOD-FAITH BASIS TO CONTEND THAT THE**
13 **PARTY IS THE VICTIM OF ACTIONABLE CONDUCT IN THE JURISDICTION WHERE**
14 **THE SUIT WAS FILED;**

15 **(2) OTHER REASONABLE EFFORTS TO IDENTIFY THE ANONYMOUS**
16 **COMMUNICATOR HAVE BEEN UNSUCCESSFUL;**

17 **(3) THE IDENTITY OF THE ANONYMOUS COMMUNICATOR:**

18 **(I) IS IMPORTANT;**

19 **(II) IS CENTRALLY NEEDED TO ADVANCE THE CLAIM;**

20 **(III) RELATES TO A CORE CLAIM OR DEFENSE; OR**

21 **(IV) IS DIRECTLY AND MATERIALLY RELEVANT TO THAT**
22 **CLAIM OR DEFENSE;**

23 **(4) NO MOTION TO DISMISS, MOTION FOR SUMMARY JUDGMENT,**
24 **OR OTHER MOTION CHALLENGING THE VIABILITY OF THE ACTION IS PENDING;**
25 **AND**

26 **(5) THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED IS**
27 **LIKELY TO HAVE RESPONSIVE INFORMATION.**

28 **(B) IN A CIVIL ACTION IN WHICH A PARTY ALLEGES THAT AN**
29 **ANONYMOUS INDIVIDUAL HAS ENGAGED IN INTERNET COMMUNICATIONS THAT**

1 ARE TORTIOUS, ANY SUBPOENA SEEKING INFORMATION HELD BY A
2 NONGOVERNMENTAL PERSON OR ENTITY THAT WOULD IDENTIFY THE
3 TORTFEASOR SHALL COMPLY WITH THIS SECTION UNLESS THE COURT, HAVING
4 CONSIDERED THE INTERESTS OF EACH PERSON AFFECTED BY THE ACTION,
5 ORDERS MORE EXPEDITED PROCEDURES.

6 (C) AT LEAST 30 DAYS BEFORE THE DATE ON WHICH DISCLOSURE IS
7 SOUGHT, A PARTY SEEKING INFORMATION IDENTIFYING AN ANONYMOUS
8 COMMUNICATOR SHALL FILE WITH THE COURT A COMPLETE COPY OF THE
9 SUBPOENA AND SUPPORTING MATERIALS.

10 (D) A PARTY FILING A SUBPOENA UNDER SUBSECTION (B) OF THIS
11 SECTION SHALL INCLUDE A COPY OF THE COMMUNICATIONS THAT ARE THE
12 SUBJECT OF THE SUBPOENA.

13 (E) A PARTY SEEKING INFORMATION IDENTIFYING AN ANONYMOUS
14 COMMUNICATOR SHALL:

15 (1) SERVE ON THE PERSON TO WHOM THE SUBPOENA IS
16 ADDRESSED TWO COPIES OF THE SUBPOENA, SUPPORTING MATERIALS, AND
17 COMMUNICATIONS THAT ARE THE SUBJECT OF THE SUBPOENA; AND

18 (2) PROVIDE PAYMENT SUFFICIENT TO COVER POSTAGE FOR
19 MAILING ONE COPY OF THE APPLICATION WITHIN THE UNITED STATES BY
20 REGISTERED MAIL, RETURN RECEIPT REQUESTED.

21 (F) UNLESS THE ANONYMOUS COMMUNICATOR HAS CONSENTED TO
22 DISCLOSURE IN ADVANCE, WITHIN 5 BUSINESS DAYS AFTER RECEIPT OF A
23 SUBPOENA AND SUPPORTING MATERIALS SEEKING DISCLOSURE OF
24 IDENTIFYING INFORMATION CONCERNING AN ANONYMOUS COMMUNICATOR,
25 THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED SHALL:

26 (1) SEND AN ELECTRONIC MAIL NOTIFICATION TO THE
27 ANONYMOUS COMMUNICATOR REPORTING THAT THE SUBPOENA HAS BEEN
28 RECEIVED IF AN ELECTRONIC MAIL ADDRESS IS AVAILABLE; AND

29 (2) FORWARD ONE COPY OF THE SUBPOENA, BY REGISTERED
30 MAIL OR COMMERCIAL DELIVERY SERVICE, RETURN RECEIPT REQUESTED, TO
31 THE ANONYMOUS COMMUNICATOR AT THE LAST KNOWN ADDRESS IF AN
32 ADDRESS IS ON FILE WITH THE PERSON TO WHOM THE SUBPOENA IS
33 ADDRESSED.

1 **(G) (1) AT LEAST 7 BUSINESS DAYS BEFORE THE DATE ON WHICH**
2 **DISCLOSURE IS SOUGHT UNDER THE SUBPOENA, AN INTERESTED PERSON MAY**
3 **APPLY TO THE COURT FOR A PROTECTIVE ORDER OR REQUEST THAT THE**
4 **COURT QUASH OR MODIFY THE SUBPOENA.**

5 **(2) ON OR BEFORE THE DATE OF FILING:**

6 **(I) THE ANONYMOUS COMMUNICATOR SHALL SERVE THE**
7 **OBJECTION OR MOTION ON THE PARTY SEEKING THE SUBPOENA AND THE**
8 **PARTY TO WHOM THE SUBPOENA IS ADDRESSED; AND**

9 **(II) THE PARTY TO WHOM THE SUBPOENA IS ADDRESSED**
10 **SHALL SERVE THE OBJECTION OR MOTION ON THE PARTY SEEKING THE**
11 **SUBPOENA AND THE ANONYMOUS COMMUNICATOR WHOSE IDENTIFYING**
12 **INFORMATION IS SOUGHT.**

13 **(H) A WRITTEN OBJECTION OR AN APPLICATION TO THE COURT FOR A**
14 **PROTECTIVE ORDER OR TO QUASH OR MODIFY A SUBPOENA SHALL:**

15 **(1) ENUMERATE THE REASONS TO DENY THE DISCLOSURE**
16 **SOUGHT IN THE SUBPOENA; AND**

17 **(2) TO THE EXTENT FEASIBLE, ADDRESS WHETHER:**

18 **(I) THE IDENTITY OF THE ANONYMOUS COMMUNICATOR**
19 **HAS BEEN DISCLOSED IN ANY WAY BEYOND ITS RECORDATION IN THE ACCOUNT**
20 **RECORDS OF THE PARTY TO WHOM THE SUBPOENA IS ADDRESSED;**

21 **(II) THE SUBPOENA FAILS TO ALLOW A REASONABLE TIME**
22 **FOR COMPLIANCE;**

23 **(III) THE SUBPOENA REQUIRES DISCLOSURE OF PRIVILEGED**
24 **OR OTHER PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES; OR**

25 **(IV) THE SUBPOENA SUBJECTS A PERSON TO UNDUE**
26 **BURDEN.**

27 **(I) (1) IN ORDER TO ALLOW THE ANONYMOUS COMMUNICATOR AN**
28 **OPPORTUNITY TO OBJECT, THE PARTY TO WHOM THE SUBPOENA IS ADDRESSED**
29 **MAY NOT COMPLY WITH THE SUBPOENA EARLIER THAN 3 BUSINESS DAYS**
30 **BEFORE THE DATE ON WHICH DISCLOSURE IS DUE.**

1 **(2) IF ANY PERSON FILES A WRITTEN OBJECTION OR A MOTION**
2 **FOR A PROTECTIVE ORDER OR TO QUASH OR MODIFY THE SUBPOENA,**
3 **COMPLIANCE WITH THE SUBPOENA SHALL BE DEFERRED UNTIL THE COURT**
4 **RULES ON THE OBLIGATION TO COMPLY.**

5 **(3) IF ANY PERSON FILES AN OBJECTION OR A MOTION:**

6 **(I) THE PARTY SERVING THE SUBPOENA MAY NOT BE**
7 **ENTITLED TO INSPECT OR COPY THE MATERIALS EXCEPT IN ACCORDANCE WITH**
8 **A COURT ORDER; AND**

9 **(II) ANY INTERESTED PERSON MAY REQUEST THAT THE**
10 **COURT HOLD A HEARING ON THE MATTER.**

11 **(4) TWO COPIES OF NOTICE OF A HEARING CONDUCTED IN**
12 **ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION SHALL BE SERVED**
13 **ON THE SUBPOENAED PARTY, WHO SHALL MAIL ONE OF THE COPIES, BY**
14 **REGISTERED MAIL OR COMMERCIAL DELIVERY SERVICE, RETURN RECEIPT**
15 **REQUESTED, TO THE ANONYMOUS COMMUNICATOR WHOSE IDENTIFYING**
16 **INFORMATION IS THE SUBJECT OF THE SUBPOENA AT THAT PERSON'S LAST**
17 **KNOWN ADDRESS.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2014.