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DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 98

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO FOREIGN DEFAMATION JUDGMENTS AND TO EXPAND PROTECTIONS FOR CITIZENS AGAINST SUCH JUDGMENTS BY PROVIDING FOR DECLARATORY AND INJUNCTIVE RELIEF AND FURTHER LIMIT THE RECOGNITION AFFORDED TO SUCH JUDGMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 46A. Foreign Defamation Judgments

§ 4601A. Definitions

(a) For the purposes of this Chapter:

(1) "foreign defamation action" means a legal proceeding instituted in a jurisdiction outside of any state or territory of the United States which was founded on a cause of action arising from allegations of defamation, libel, or slander.

(2) "foreign defamation judgment" means a judgment or decree rendered in a jurisdiction outside of any state or territory of the United States which was founded on a cause of action arising from allegations of defamation, libel, or slander.

§ 4602A. Applicability of Foreign Defamation Judgments

(a) A foreign defamation judgment is not conclusive if any of the following apply:

(1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(2) The foreign court did not have personal jurisdiction over the defendant.

(3) The foreign court did not have jurisdiction over the subject matter.

(b) A foreign defamation judgment shall not be recognized, granted comity, or operate as res judicata or collateral estoppel if any of the following apply:

(1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to provide a defense.

(2) The judgment was obtained by fraud.

(3) The cause of action or claim for relief on which the judgment is based is repugnant to the public policy

of this state.

(4) The judgment conflicts with another final and conclusive order.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court.

(6) In the case of jurisdiction based only on personal service, the foreign court was an inconvenient forum for the trial of the action.

(7) The foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state.

(8) The court sitting in this state before which the matter is brought determines that the defamation law applied in the adjudication by the foreign court failed to provide at least as much protection for freedom of speech and press in that case as would be provided by the constitutions of this state and the United States.

§ 4603A. Declaratory Relief

(a) Any person against whom a foreign defamation judgment is entered, whether the foreign defamation judgment is final or appealable, may bring an action in district court for a declaration with respect to the liability of a person for the judgment and determining whether the foreign defamation judgment should be deemed unenforceable pursuant to any reason enumerated in § 4602A(b) of this Chapter.

(b) For the purposes of rendering declaratory relief, the courts of this state shall have personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the United States against any of the following persons:

(1) A resident of this state.

(2) A person or entity amenable to the jurisdiction of this state.

(3) A person who has assets in this state.

(4) A person who may have to take action in this state to comply with the judgment.

§ 4604A. Injunctive Relief

(a) Any person against who a foreign defamation action has been instituted may bring an action for an injunction where the foreign defamation action would: (1) frustrate a policy of the State, the guarantee of due process, and the protection of freedom of speech; (2) be vexatious or oppressive; or (3) where the proceedings prejudice other equitable considerations.

(b) For the purposes of rendering injunctive relief, the courts of this state shall have personal jurisdiction over any person who institutes a defamation proceeding outside the United States against any of the following persons:

(1) A resident of this state.

(2) A person or entity amenable to the jurisdiction of this state.

(3) A person who has assets in this state.

(4) A person who may have to take action in this state to comply with the judgment.

§ 4605A. Court Jurisdiction.

(a) No Delaware court shall sustain a dilatory exception of "lis pendens" under asserted in a declaratory or injunctive proceeding under this Chapter that was filed in a Delaware court subsequent to the foreign defamation action.

(b) An action brought for declaratory or injunctive relief pursuant to this Chapter may be brought in:

(1) A court of proper venue or

(2) in either the county where the plaintiff resides; the county where the plaintiff has assets.

SYNOPSIS

This Act enhances the protection of free speech liberties when faced with foreign defamation judgments (meaning a judgment or decree rendered in a jurisdiction outside of any state or territory of the United States which was founded on a cause of action arising from allegations of defamation, libel, or slander).

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