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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 1035
RELATING TO: Civil Actions for Libel
SPONSOR(S): Representative Allen
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
 - (2) RULES, ETHICS, AND ELECTIONS
 - (3) SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

HB 1035 repeals sections 770.01 and 770.02, Florida Statutes, and creates the "Media Accuracy and Fairness Act." The bill provides that a person may maintain an action for defamation only if (1) the person has made a timely and adequate request for correction or clarification or (2) the defendant has made a correction or clarification. The bill defines a timely and adequate request for correction or clarification and permits the person requested to make a correction to obtain information material to the falsity of the statement.

The bill provides that if a timely and sufficient correction or clarification is made, only provable economic loss may be recovered as mitigated by the correction or clarification. The bill defines a timely and sufficient correction or clarification. Under the bill, a correction or clarification is sufficient if it is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of, refers to the statement being corrected or clarified.

The bill provides a method for a defendant to challenge a request for correction or clarification.

The bill provides that the fact of a request for correction or clarification, the contents of the request, and its acceptance or refusal are not admissible in evidence at trial. The bill further provides that the fact that a correction or clarification was made and the contents of the correction or clarification are not admissible in evidence at trial except in mitigation of damages.

The bill takes effect upon becoming law

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

To maintain an action for defamation in Florida, the plaintiff must allege that (1) the defendant published a false statement (2) about the plaintiff (3) to a third party and (4) that the falsity of the statement caused injury to the plaintiff. See Valencia v. Citibank International, 728 So. 2d 330 (Fla. 3d DCA 1998).

Section 770.01, F.S., requires the plaintiff, prior to filing suit for publication or broadcast of a libel or slander, to give notice to the defendant specifying the article or broadcast that is alleged to be defamatory. The statute requires that such notice be given at least five days prior to filing the lawsuit. Failure to comply with this statute is grounds for dismissal of the action. See Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So. 2d 1376 (Fla. 4th DCA 1997).

Section 770.02, F.S., provides a method for newspapers and broadcasters to ensure a plaintiff can recover only actual damages. If the article or broadcast was published in good faith, its falsity was due to an honest mistake of the facts, there were reasonable grounds for believing that the statements in the article or broadcast were true, and that a full and fair correction, apology, or retraction was published or broadcast in a comparable place or time, then the plaintiff can recover only actual damages. The apology, correction, or retraction must be published or made within time periods specified by statute in order for the statute to limit damages. The apology, correction, or retraction must be made within 10 days after service of notice in the case of a broadcast or a daily or weekly newspaper or periodical, within 20 days after service of a newspaper or periodical published semimonthly, within 45 days after service on a newspaper or periodical published monthly, and in the next issue of a newspaper or periodically published less frequently than monthly if notice is served at least 45 days prior to publication. See s. 770.02(2), F.S.

In 1993, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Correction or Clarification of Defamation Act. According to the NCCUSL, North Dakota has adopted the Act and the Act has been endorsed by the American Bar Association.

C. EFFECT OF PROPOSED CHANGES:

The bill repeals sections 770.01 and 770.02, Florida Statutes, and creates the "Media Accuracy and Fairness Act." It applies to all publications, including writings, broadcasts, oral communications, electronic transmissions, and other forms of transmitting information. It is modeled after the

Uniform Correction or Clarification of Defamation Act created by the National Conference of Commissioners on Uniform State Laws and has been adopted in North Dakota.

The bill provides that a person¹ may maintain an action for defamation only if (1) the person has made a timely and adequate request for correction or clarification or (2) the defendant has made a correction or clarification.

Request for Correction or Clarification

A request for correction or clarification is timely if made within the period of limitation for commencement of an action for defamation. However, a person who, within 90 days after knowledge of the publication, fails to make a good-faith attempt to request a correction or clarification may recover only provable economic loss.²

The bill provides that a request for correction or clarification is adequate if it:

- (1) is made in writing and reasonably identifies the person making the request;
- (2) specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
- (3) alleges the defamatory meaning of the statement;
- (4) specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than the express language of the publication; and
- (5) states that the alleged defamatory meaning of the statement is false.

Current law requires notice before the action is filed but does not require such a formal request. Under the bill, service of a complaint stating a claim for relief for defamation and containing the information discussed above constitutes an adequate request for correction or clarification. This would remove the requirement that notice be served before suit is filed that exists under current law. The period of limitation for commencement of a defamation action is tolled during the period for responding to a request for correction or clarification.

The bill permits a person who has been requested to make a correction or clarification to ask the requester to disclose reasonably available information material to the falsity of the allegedly defamatory statement. If a correction or clarification is not made, a person who unreasonably fails to disclose the information material to the falsity after a request to do so may recover only provable economic loss.

Effect of a Correction or Clarification

The bill provides that if a timely and sufficient correction or clarification is made, only provable economic loss may be recovered as mitigated by the correction or clarification.

The bill provides that a correction or clarification is timely if published within 25 days after receipt of information material to the falsity of the statement or 45 days after receipt of a request for correction or clarification, whichever is later.

¹ The bill defines "person" as an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

² The bill defines "economic loss" as "special, pecuniary loss caused by a false and defamatory publication."

Under the bill, a correction or clarification is sufficient if it is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of, refers to the statement being corrected or clarified and:

- (1) corrects the statement;
- (2) in the case of defamatory meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or to assert its truth; or
- (3) in the case of a statement attributed to another person, identifies the person and disclaims an intent to assert the truth of the statement; and
- (4) is communicated to the person who has made a request for correction or clarification.

The bill defines publication in a medium reasonably likely to reach substantially the same audience as the publication complained of if it is published in a later issue, edition, or broadcast of the original publication. If a later issue, edition, or broadcast of the original publication will not be published within the time limits established for a timely correction or clarification, a correction or clarification is published in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if it is timely published in a reasonably prominent manner in another medium likely to reach an audience reasonably equivalent to the original publication. If the parties cannot agree on another medium, in the newspaper with the largest general circulation in the region in which the original publication was distributed. Reasonable steps must be taken to correct undistributed copies of the original publication. A correction or clarification is timely and sufficient if the parties agree in writing that it is timely and sufficient.

The bill requires a defendant that intends to rely on a timely and sufficient correction to serve notice on the plaintiff within 60 days after service of the complaint or 10 days after the correction is made, whichever is later. A correction or clarification is deemed to be timely and sufficient unless the plaintiff challenges its timeliness or sufficiency within 20 days after the notice is served.

Challenge to a Request for Correction or Clarification

If a defendant intends to challenge the adequacy or timeliness of a request for correction or clarification, the defendant must set forth the challenge in a motion to declare the request inadequate or untimely served within 60 days after service of the summons and complaint. The court shall rule on the motion at the earliest appropriate time before trial.

Offer to Correct or Clarify

If a timely correction or clarification is no longer possible, the publisher of an alleged defamatory statement may offer, at any time before trial, to make a correction or clarification. The offer must be made in writing to the person allegedly defamed by the publication and contain the publisher's offer to publish, at the person's request, a sufficient correction or clarification and pay the person's reasonable expenses of litigation, including attorney's fees, incurred before publication of the correction or clarification. The offer must be accompanied by a copy of the proposed correction or clarification and the plan for its publication.

If the person accepts in writing an offer to correct or clarify, the person is barred from commencing an action against the publisher based on the statement. If an action has been commenced, the court shall dismiss the action against the defendant with prejudice after the defendant complies with the terms of the offer.

A person who does not accept an offer may recover in an action based on the statement only damages for provable economic loss and reasonable expenses of litigation, including attorney's

fees, incurred before the offer, unless the person failed to make a good-faith attempt to request a correction or clarification or failed to disclose information material to the falsity of the statement. The court shall determine the amount of reasonable expenses of litigation, including attorney's fees.

Scope of Protection

The bill provides that a timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a republisher.

Evidentiary Issues

The bill provides that the fact of a request for correction or clarification, the contents of the request, and its acceptance or refusal are not admissible in evidence at trial. The bill further provides that the fact that a correction or clarification was made and the contents of the correction or clarification are not admissible in evidence at trial except in mitigation of damages.

The bill contains a severability provision.

The bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. It is unclear how this bill will alter, if at all, the frequency of defamation lawsuits.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

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