

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1060

INTRODUCER: Senator Campbell

SUBJECT: Defamation

DATE: January 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Favorable
2.			BI	
3.			RC	

I. Summary:

SB 1060 repeals two statutes that punish specific slanderous or libelous acts as first degree misdemeanor offenses.

The bill repeals:

- Section 836.04, F.S., relating to a person speaking of and concerning any woman, married or unmarried, falsely and maliciously imputing to her a want of chastity; and
- Section 836.06, F.S., making derogatory statements concerning banks or building and loan associations.

The bill is effective upon becoming a law.

II. Present Situation:

Defamation, False Statements, Slander and Libel as Criminal Offenses

In modern society, we tend to think of the offenses of slander or libel as civil causes of action litigated between private citizens.¹ However, criminal actions for slander and libel exist in criminal statutes because such offenses were viewed at the time the statutes were created as affecting the public at large.² Two such Florida criminal statutes, ss. 836.04 and 836.06, F.S., became law in 1883 and 1915 respectively.

¹ The Law Dictionary, *When to Sue for Defamation, Slander, and Libel*, available at <https://thelawdictionary.org/article/when-to-sue-for-defamation-slander-and-libel/> (last visited January 13, 2018).

² *Kennerly v. Hennessy*, 68 Fla. 138, 140 (Fla. 1914). “At common law a criminal prosecution for libel was warranted only when the alleged libel affects the public, as when it corrupts the public morals, or incites to violations of the criminal law, or when the necessary or natural effect of the alleged publication is to cause an injury to a person or persons of such a nature and extent as to render a breach of the peace imminent or probable.” *Kennerly v. Hennessy*, 68 Fla. 138, 140 (Fla. 1914).

The crime of defamation is found in s. 836.04, F.S. Section 836.04, F.S., makes it a first degree misdemeanor, for a person who speaks of and concerning any woman, married or unmarried, falsely and maliciously imputing to her a want of chastity.³

At one time 15 states had criminal statutes prohibiting imputing unchastity to women, whether in writing or orally.⁴ In addition to Florida, these states included Oklahoma,⁵ Alabama,⁶ and North Carolina.⁷

Section 836.06, F.S., makes the crime of making derogatory statements concerning banks or building and loan associations a first degree misdemeanor.

Specifically, s. 836.06, F.S., provides any person who willfully and maliciously makes, circulates or transmits to another or others any false statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any banking institution or building and loan association doing business in this state, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, is guilty of a first degree misdemeanor.

Although the policy behind the crime of making derogatory statements against banks is unclear, it would seem that the Florida statute as well as those enacted in other states may be a product of financial crises and may have been enacted to avert bank runs.⁸

III. Effect of Proposed Changes:

The bill repeals two sections of the Florida Statutes:

- Section 836.04, F.S., enacted in 1883 and criminalizing defamation related to a woman's want of chastity; and
- Section 836.06, F.S., enacted in 1915 and criminalizing making derogatory statements concerning banks or building and loan associations.

The bill is effective upon becoming a law.

³ A first degree misdemeanor is punishable by up to one year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S. Section 836.04, F.S., was amended in 1971 when the penalty was increased to the standard first degree misdemeanor penalties. Chapter 71-136, L.O.F. See *Burnham v. State*, 37 Fla. 327 (Fla. 1896) which states the penalties in 1896: "Section 2419 of the Revised Statutes provides as follows: Whoever speaks of and concerning any woman, married or unmarried, falsely and maliciously, imputing to her a want of chastity, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars."

⁴ *The Social Utility of the Criminal Law of Defamation*, Robert A. Leflar, 34 Tex. L. Rev. 984, fn. 120 (Oct. 1956).

⁵ 21 Okl.St. Ann. s. 779, repealed in 2017.

⁶ Section 13A-11-163, Code of Alabama.

⁷ N.C.G.S.A. s. 14-48, repealed by Laws 1975, c. 402.

⁸ Bank panics or "bank runs" occurred during the Great Depression in the early 1930's, when large numbers of people withdrew their deposits in cash which forced banks to liquidate loans and often led to bank failure. "Bank Run" History.com, available at <http://www.history.com/topics/bank-run> (last visited January 12, 2018).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals the following sections of the Florida Statutes: 836.04 and 836.06.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
