

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 Judiciary

BILL: CS/SB 1780

INTRODUCER: Judiciary Committee and Senator Brodeur

SUBJECT: Defamation, False Light, and Unauthorized Publication of Name or Likenesses

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	Fav/CS
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1780 amends and creates several statutes relating to defamation. Specifically, the bill:

- Requires newspapers and broadcast stations to permanently remove articles and broadcasts published on the Internet within 10 days after receiving notice in order to limit plaintiff recoveries to actual damages.
- Subjects newspapers to liability for failing to exercise due care to prevent the publication of defamatory statements, which is the same statutory liability standard that currently applies to radio and television stations.
- Provides that, under certain conditions, the continued appearance of a defamatory statement on the Internet is deemed a new publication for statute of limitations purposes and the owner, licensee, or operator is not entitled to a fair reporting privilege for the new publication.
- Consolidates several defamation-related terms (libel, slander, false light, invasion of privacy, and other torts) into a single term, “defamation or privacy tort.”
- Provides that, in connection with damages for defamation based on material published on the radio or television, venue is proper in any county where the material is accessed; and in connection with material published on the Internet, venue is proper in any county in the state.
- Provides that, upon motion by any party to a cause of action against a newspaper, periodical, or broadcast station under chapter 770, F.S., the court must conduct an evidentiary hearing known as a “veracity hearing” to determine whether the statement is a statement of fact or opinion, and its veracity.

- Provides that if a plaintiff can show that a published statement is false, and that the publisher relied on an anonymous source for the statement, the publisher is presumed to have acted with actual malice in publishing the statement.
- Provides that a person who uses artificial intelligence to create or edit any form of media so that it attributes something false or leads a reasonable viewer to believe something false about another is subject to liability under certain conditions.

The bill takes effect on July 1, 2024.

II. Present Situation:

Defamation at Common Law

Generally

Defamation is the unprivileged publication of false statements that naturally and proximately result in an injury to another.¹ It has also been described as a statement that tends to harm the reputation of another by lowering him or her in the estimation of the community or, more broadly stated, one that exposes a plaintiff to hatred, ridicule, or contempt, or injures his business, reputation, or occupation.²

The Florida Constitution provides that every person may speak, write, and publish sentiments on all subjects, but will be responsible for the abuse of that right.³ The law of defamation embodies the public policy that individuals should be free to enjoy their reputations unimpaired by false and defamatory attacks. An action for defamation is based upon a violation of this right.⁴

Different states vary in their anti-defamation statutes; as such, courts in different states will interpret defamation laws differently, and defamation statutes will vary somewhat from state to state.⁵ But generally, defamation may take one of three forms:

- Spoken words, commonly known as “slander.”⁶
- A written statement, commonly known as “libel.”⁷
- An implication, commonly known as “false light” invasion of privacy.⁸

Before 2008, Florida courts recognized separate causes of action for slander and libel premised upon spoken or written defamatory statements, but did not recognize a separate cause of action

¹ *Hoch v. Loren*, 273 So. 3d 56, 57 (Fla. 4th DCA 2019) (internal citation omitted).

² *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1108-09 (Fla. 2008) (internal citation omitted).

³ FLA. CONST. art. I, s. 4.

⁴ 19 FLA. JUR. 2D s. 1 *Defamation and Privacy*.

⁵ Cornell Law School Legal Information Institute, *Defamation*, <https://www.law.cornell.edu/wex/defamation> (last visited Jan. 26, 2024).

⁶ See *Spears v. Albertson's, Inc.*, 848 So. 2d 1176, 1179 (Fla. 1st DCA 2003) (providing that “[s]lander may be defined as the speaking of base and defamatory words”).

⁷ See *Dunn v. Air Line Pilots Association*, 193 F.3d 1185, 1191 (11th Cir. 1999) (noting that under Florida law, libel is defined as the unprivileged written publication of false statements).

⁸ See RESTATEMENT (SECOND) OF TORTS s. 652E.

for defamation itself.⁹ However, in 2008, the Florida Supreme Court recognized a standalone tort of defamation,¹⁰ and in doing so effectively subsumed all claims for slander and libel into that tort. Therefore, defamation now encompasses both libel and slander.¹¹ False light is not recognized as a separate cause of action in Florida, but like slander and libel, it is nearly identical to a form of defamation, known as “defamation by implication.”¹²

Although libel is generally perpetrated by written communication, it also includes defamation through the publication of pictures or photographs.¹³ Alteration of a photograph may support a defamation action.¹⁴

Cause of Action

In Florida, the five required elements of a claim for defamation are:

- Publication.
- Falsity.
- Knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person.
- Actual damages.
- A defamatory statement.¹⁵

“Publication” is a required element because a defamatory statement does not become actionable until it is published or communicated to a third person.¹⁶ Publication requires proof that the statement is exposed to the public so it may be read or heard by a third person, but not necessarily that it has in fact been read or heard by a third person.¹⁷

The element of “falsity” requires that the defamation be “of and concerning” the plaintiff,¹⁸ and that the allegation or representation about the plaintiff be false.¹⁹ The falsity may be premised upon untruthfulness, such as in the case of slander or libel, or from truthful statements that imply falsely, such as in the case of defamation by implication.²⁰

⁹ See *Delacruz v. Peninsula State Bank*, 221 So. 2d 772, 775 (Fla. 2d DCA 1969) (explaining that there is no such legal cause of action as ‘defamation’ and “[l]ibel and slander may be Founded [sic] on defamation, but the right of action itself is libel or slander, depending upon whether it is written or oral”).

¹⁰ See *Jews for Jesus, Inc.*, 997 So. 2d at 1105-08 (comparing the false light cause of action to the defamation by implication cause of action, and recognizing the existence of only the latter in Florida).

¹¹ *Norkin v. The Florida Bar*, 311 F. Supp. 3d 1299, 1303-04 (S.D. Fla. 2018) (internal citations omitted); *Klayman v. Judicial Watch, Inc.*, 22 F. Supp. 3d 1240, 1247 fn. 2 (S.D. Fla. 2014).

¹² See *Jews for Jesus, Inc.*, 997 So. 2d at 1108 (comparing the false light cause of action to the defamation by implication cause of action, and recognizing the existence of only the latter in Florida); *but see* RESTATEMENT (SECOND) OF TORTS s. 652E (recognizing a separate tort of false light).

¹³ 19 FLA. JUR. 2D *Defamation and Privacy* s. 15 (citing 50 AM. JUR. 2D *Libel and Slander* s. 153).

¹⁴ 50 AM. JUR. 2D *Libel and Slander* s. 153 (internal citations omitted).

¹⁵ *Jews for Jesus, Inc.*, 997 So. 2d at 1106.

¹⁶ *American Airlines, Inc. v. Geddes*, 960 So. 2d 830, 833 (Fla. 3d DCA 2007).

¹⁷ *Axiom Worldwide, Inc. v. Becerra*, 2009 WL 1347398, *7 (M.D. Fla. 2009) (citing *Rives v. Atlanta Newspapers, Inc.*, 220 Ga. 485, 139 S.E.2d 395, 398 (1964) (noting, in applying single publication rule to newspaper, that “whether or not it is read is immaterial once it is shown that it was exposed to public view”).

¹⁸ *Thomas v. Jacksonville Television, Inc.*, 699 So. 2d 800, 805 (Fla. 1st DCA 1997).

¹⁹ See generally *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 23 (1990) (Brennan, J., dissenting) (noting that “only defamatory statements that are capable of being proved false are subject to liability under state libel law”).

²⁰ *Jews for Jesus, Inc.*, 997 So. 2d at 1106-08.

An actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person.²¹ With respect to this element, case law has developed which purports to balance the interests of the First Amendment while also protecting people from being unjustly defamed.²² Accordingly, courts apply an actual malice standard, which is addressed separately and in more detail below, to public figures, and a simple negligence standard to private individuals.²³ A private individual may recover actual damages from a media defendant that publishes false and defamatory statements and that fails to use reasonable care to determine their falsity.²⁴

With respect to the element of actual damages, the recovery of actual damages depends upon whether the defamation was “per se” or “per quod.” Defamation per se generally relieves plaintiffs of having to prove damages, because such statements are so inherently damaging that damages are typically presumed.²⁵ On the other hand, defamation per quod generally requires plaintiffs to provide supporting and extrinsic evidence in order to prove that the statement or publication was actually defamatory.²⁶

Finally, the statements must actually be defamatory. To make this determination, courts consider allegedly defamatory statements in their totality. For example, they consider all the words, pictures, and illustrations as used and presented together, not just a particular phrase or sentence in isolation.²⁷ An allegedly defamatory statement should be considered in its natural sense without a forced or strained construction.²⁸ Courts also make threshold determinations regarding whether a claim should even be considered by a jury,²⁹ and whether a privilege applies.³⁰

Defenses

In addition to general procedural and other defenses that may be available (*e.g.* a failure to allege and prove any of the elements of defamation), the following specific defenses are available in response to a claim of libel, slander, or defamation by implication:

- Statutory protections:
 - For radio and television broadcasters.³¹
 - For good faith reports of potential child abuse, abandonment, or neglect.³²
- Privilege:

²¹ *Id.* at 1106.

²² Gleisy Sopena, *Attorney-Fee Shifting is the Solution to Slapping Meritless Claims Out of Federal Courts*, 16 FIU L. REV. 833, 842 (Spring 2022).

²³ *Jews for Jesus, Inc.*, 997 So. 2d at 1111.

²⁴ *Thomas*, 699 So. 2d at 804.

²⁵ *Wolfson v. Kirk*, 273 So. 2d 774, 776 (Fla. 4th DCA 1973); *Bass v. Rivera*, 826 So. 2d 534, 535 (Fla. 2d DCA 2002); *Delacruz*, 221 So. 2d at 775.

²⁶ *Boyles v. Mid-Florida Television Corp.*, 431 So. 2d 627, 633 (Fla. 5th DCA 1983) (quoting *Piplack v. Mueller*, 97 Fla. 440, 121 So. 459 (Fla. 1929)).

²⁷ *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983).

²⁸ *Id.*

²⁹ *Id.*; *Wolfson*, 273 So. 2d at 778.

³⁰ See *Jews for Jesus, Inc.*, 997 So. 2d at 1111-12 (providing a list of cases that applied various privileges to defamatory statements); see also s. 770.04, F.S. (regarding liability of radio or television broadcasters); see also *Wright v. Yurko*, 446 So. 2d 1162, 1164 (Fla. 5th DCA 1984) (holding privilege extends to communications made within lawsuits).

³¹ See generally s. 770.04, F.S.

³² See generally s. 39.203, F.S.

- Absolute immunity, for any act occurring during the course of a legislative, judicial, or quasi-judicial proceeding, so long as the act has some relation to the proceeding.³³
- Absolute immunity, for state executive officers³⁴ and public officials,³⁵ as long as their statements are made in connection with their duties and responsibilities.
- Qualified immunity, when made in good faith and certain other conditions are met.³⁶
- Immunity as an expression of pure opinion, which occurs when one makes a comment or opinion based on facts in an article or are otherwise known or available to the reader or listener as a member of the public.³⁷

Actions for libel and slander must be brought within 2 years after the cause of action accrues.³⁸

Actual Malice Standard

Private individuals only need to allege and prove simple negligence to recover in defamation actions, but public figures who sue for defamation actions are subject to a different standard known as the “actual malice” standard.³⁹

As required by the landmark federal case *New York Times v. Sullivan*⁴⁰ and its progeny,⁴¹ people who qualify as public figures must show actual malice by a publisher in order to maintain an action in defamation. The existence of actual malice must be proved by clear and convincing evidence.⁴² Under the actual malice test, a public figure claimant must show that the disseminator of the information “either knew the alleged defamatory statements were false, or published them with reckless disregard despite awareness of their probable falsity.”⁴³

Because direct evidence of actual malice is rare, courts have permitted actual malice to be proved through inference and circumstantial evidence alone.⁴⁴ For example, actual malice may be found where a publisher fabricates an account, makes inherently improbable allegations, relies on a

³³ See *Kidwell v. General Motors Corp.*, 975 So. 2d 503, 505 (Fla. 2d DCA 2007) (regarding judicial and quasi-judicial immunity); see also *Tucker v. Resha*, 634 So. 2d 756, 758 (Fla. 1st DCA 1994), *apprv'd*, 670 So. 2d 56 (Fla. 1996) (noting, with emphasis added, that “[t]he public interest requires that *statements made by officials of all branches of government in connection with their official duties* be absolutely privileged”) (internal citations omitted).

³⁴ *Tucker*, 634 So. 2d at 758.

³⁵ *Hope v. National Alliance of Postal and Federal Employees, Jacksonville Local No. 320*, 649 So. 2d 897, 901 fn. 5 (Fla. 1st DCA 1995).

³⁶ See *Lundquist v. Alewine*, 397 So. 2d 1148, 1149 (Fla. 5th DCA 1981) (providing that the elements essential to the finding of a conditionally privileged publication are good faith; an interest to be upheld; a statement limited in its scope to this purpose; a proper occasion; and publication in a proper manner) (internal citations omitted).

³⁷ *Sepmeier v. Tallahassee Democrat, Inc.*, 461 So. 2d 193, 195 (Fla. 1st DCA 1984) (internal citation omitted); *Smith v. Taylor County Pub. Co., Inc.*, 443 So. 2d 1042, 1046-47 (Fla. 1st DCA 1983).

³⁸ See s. 95.11(4)(g), F.S. (providing a 2-year statute of limitations for libel or slander); see also s. 95.031(1), F.S. (providing that unless otherwise specified, the statute of limitations runs from the time the cause of action accrues).

³⁹ *Jews for Jesus, Inc.*, 997 So. 2d at 1105-06; *Mile Marker, Inc. v. Petersen Publishing, L.L.C.*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002) (citing *New York Times*).

⁴⁰ 376 U.S. 254 (1964).

⁴¹ In *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-84 (1964), the U.S. Supreme Court applied the actual malice standard to public *officials*. Three years after *New York Times*, the Court applied the same standard to public *figures* in *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 164-65 (1967) (Warren, C.J., concurring in plurality opinion).

⁴² *Lampkin-Asam v. Miami Daily News, Inc.*, 408 So. 2d 666, 668-69 (Fla. 3d DCA 1981).

⁴³ *Mile Marker, Inc.*, 811 So. 2d at 845 (citing *New York Times*).

⁴⁴ *Sindi v. El-Moslimany*, 896 F.3d 1, 16 (1st Cir. 2018).

source where there is an obvious reason to doubt its veracity, or deliberately ignores evidence that calls into question published statements.⁴⁵ Although motive alone cannot suffice to prove actual malice, it is a highly relevant consideration.⁴⁶ Reliance on an anonymous source for a defamatory statement constitutes actual malice only if the defendant had an obvious reason to doubt that source.⁴⁷

Whether a person qualifies as a public figure is a question of law for courts to decide.⁴⁸ State and federal common law recognize two classes of public figures: “general public figures,” who by reason of fame or notoriety in a community will in all cases be required to prove actual malice, and “limited public figures,” who are individuals who have thrust themselves forward in a particular public controversy and are therefore required to prove actual malice only in regard to certain issues.⁴⁹

Courts employ a three-part test to determine whether a claimant is a limited public figure.⁵⁰ First, the court must determine whether there is a public controversy. In determining whether a matter is a public controversy, the court determines whether a reasonable person would have expected persons beyond the immediate participants in the dispute to feel the impact of its resolution. Second, the court must determine whether the claimant played a sufficiently central role in the controversy. And third, the court must find that the alleged defamation was germane to the claimant’s involvement in the controversy.⁵¹

Courts have found individuals to be public figures for purposes of a defamation action in many factual situations, including the following:

- A person defending himself against accusations.⁵²
- A person granting an interview on a specific topic.⁵³
- A person obtaining public employment in a capacity other than as an elected officeholder or appointee of an elected officeholder.⁵⁴

⁴⁵ *Id.*; see also *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) (remarking that publications are likely not made in good faith where “a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call[.]” or when the allegations “are so inherently improbable that only a reckless man would have put them into circulation[.]” or where there are “obvious reasons to doubt the veracity of the informant or the accuracy of his reports”).

⁴⁶ *Sindi*, 896 F.3d at 16.

⁴⁷ See *Lorenz v. Donnelly*, 350 F.3d 1272, 1283-84 (D.C. Cir. 2003) (providing that a plaintiff must show that when the defendants published the alleged defamations they were subjectively aware that it was highly probable that the story was fabricated, so inherently improbable that only a reckless person would have put it in circulation, or based wholly on an unverified anonymous telephone call or some other source that appellees had obvious reasons to doubt).

⁴⁸ *Saro Corporation v. Waterman Broadcasting Corporation*, 595 So. 2d 87, 89 (Fla. 2d DCA 1992) (internal citation omitted).

⁴⁹ *Id.* (internal citation omitted); see also *Mile Marker, Inc.*, 811 So. 2d at 845 (recognizing same at the state level); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974) (recognizing same at the federal level).

⁵⁰ *Della-Donna v. Gore Newspapers Company*, 489 So. 2d 72, 77 (Fla. 4th DCA 1986) (internal citations omitted).

⁵¹ *Id.*

⁵² See *Berisha v. Lawson*, 973 F.3d 1304, 1311 (11th Cir. 2020) (finding a person a public figure because he defended himself against accusations that he was involved in an arms-dealing scandal).

⁵³ See *Mile Marker, Inc.*, 811 So. 2d at 846 (finding a person a limited public figure because, among other things, he gave an interview).

⁵⁴ See *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) (finding that the “‘public official’ designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs”).

- A person who has uploaded a video, image, or statement on the Internet which has reached a broad audience.⁵⁵

Criticisms

In 1993, when U.S. Supreme Court Justice Elena Kagan was still a law professor at the University of Chicago, she wrote a book review wherein she noted that extending the actual malice standard to public figures was “questionable” and the Court has “increasingly lost contact with the case’s premises and principles[.]”⁵⁶ She observed that “to the extent [*New York Times*] decreases the threat of libel litigation, it promotes not only true but also false statements of fact – statements that may themselves distort public debate[.]” and in this way “the legal standard adopted in [*New York Times*] may cut against the very values underlying the decision.”⁵⁷

In 2021, U.S. Supreme Court Justices Clarence Thomas and Neil Gorsuch issued dissenting opinions in *Berisha v. Lawson* which heavily criticized the Court’s extension of the *New York Times*’ actual malice standard to public figures.

Justice Thomas advocated for reconsideration of the *New York Times* actual malice standard for two basic reasons. First, he argued that requiring public figures to establish actual malice lacks historical support and bears “no relation to the text, history, or structure of the Constitution.”⁵⁸ Second, setting aside the constitutional concerns, the doctrine has “real-world effects” that should also be considered, because “[p]ublic or private, lies impose real harm” and the actual malice standard, which is an “almost impossible” standard to meet, effectively “insulate[s] those who perpetrate lies from traditional remedies like libel suits[.]”⁵⁹

Justice Gorsuch echoed many of Justice Thomas’ criticisms but also expanded upon how changes in the media landscape since 1964, the year the Court formulated the actual malice standard in *New York Times*, have resulted in a proliferation of disinformation. After surveying those changes (*e.g.* the fall of traditional news outlets and professional fact-checking, the rise of cable news and social media platforms, *etc.*), he concluded that “[w]hat started in 1964 with a decision to tolerate the occasional falsehood to ensure robust reporting by a comparative handful of print and broadcast outlets has evolved into an ironclad subsidy for the publication of falsehoods by means on a scale previously unimaginable.”⁶⁰

⁵⁵ See *Berisha v. Lawson*, 141 S. Ct. 2424, 2429 (Mem) (2021) (Gorsuch, J., dissenting) (recognizing that private citizens can become public figures “on social media overnight”).

⁵⁶ Elena Kagan, “A Libel Story: *Sullivan* Then and Now (reviewing Anthony Lewis, *Make No Law: The Sullivan Case and the First Amendment* (1991)),” 18 LAW AND SOCIAL INQUIRY 197, 209 (1993).

⁵⁷ *Id.* at 206-07.

⁵⁸ *Berisha*, 141 S. Ct. at 2424-25 (Thomas, J., dissenting) (citing *McKee v. Cosby*, 139 S. Ct. 675 (Mem) (2019) and quoting *Tah v. Global Witness Publishing, Inc.*, 991 F.3d 231, 251 (D.C. Cir. 2021) (Silberman, J., dissenting)).

⁵⁹ *Berisha*, 141 S. Ct. at 2425 (Thomas, J., dissenting) (listing several examples where defamatory statements caused real world harm).

⁶⁰ *Id.* at 2428 (Gorsuch, J., dissenting).

In his dissenting opinion, Justice Gorsuch also included a significant list of former U.S. Supreme Court justices who have raised questions about various aspects of the *New York Times* case over the years.⁶¹

Florida's Defamation Statute

Florida's defamation statute⁶² consists of eight sections.

Notice Condition Precedent to Action or Prosecution for Libel or Slander

Section 770.01, F.S., provides that before any civil action is brought for publication or broadcast, in a newspaper, periodical, or other medium, of a libel or slander, the plaintiff must, at least 5 days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory.

Correction, Apology, or Retraction by Newspaper or Broadcast Station

Section 770.02, F.S., provides that the plaintiff in a civil action for libel or slander may only recover actual damages if it appears at trial that the article or broadcast:

- Was published in good faith;
- That its falsity was due to an honest mistake of the facts;
- That there were reasonable grounds for believing that the statements in said article or broadcast were true; and
- That, within certain time periods provided below, a full and fair correction, apology, or retraction was, in the case of a newspaper or periodical, published in the same editions or corresponding issues of the newspaper or periodical in which the article appeared and in as conspicuous place and type as the original article or, in the case of a broadcast, the correction, apology, or retraction was broadcast at a comparable time.

In order to limit damages to actual damages only, the full and fair correction, apology, or retraction must be made:

- In the case of a broadcast or a daily or weekly newspaper or periodical, within 10 days after service of notice.
- In the case of a newspaper or periodical published semimonthly, within 20 days after service of notice.
- In the case of a newspaper or periodical published monthly, within 45 days after service of notice.
- In the case of a newspaper or periodical published less frequently than monthly, in the next issue, provided notice is served no later than 45 days prior to such publication.

Civil Liability of Broadcasting Stations

Section 770.03, F.S., provides that the owner, lessee, licensee, or operator of a broadcasting station has the right (except when prohibited by federal law or regulation), but may not be

⁶¹ *Id.* at 2429-30 (Gorsuch, J., dissenting) (citing to several opinions and articles by past and present U.S. Supreme Court members).

⁶² Chapter 770, F.S.

compelled, to require the submission of a written copy of any statement intended to be broadcast over the station 24 hours before the time of the intended broadcast of the statement.

When the owner, lessee, licensee, or operator elects to require the submission of a written copy, it may not be held liable in damages for any libelous or slanderous utterance made by or for the person or party submitting the copy of the proposed broadcast which is not contained in the written copy. The statute may not be construed to relieve the person or party, or the agents or servants of the person or party, making any libelous or slanderous utterance from liability.

Civil Liability of Radio or Television Broadcasting Stations; Care to Prevent Publication or Utterance Required

Section 770.04, F.S., provides that the owner, licensee, or operator of a radio or television broadcasting station, and their agents or employees, may not be held liable for any damages for any defamatory statement published or uttered by a third party in or as a part of a radio or television broadcast, unless it is alleged and proven by the plaintiff that they failed to exercise due care to prevent the publication or utterance of the statement in such broadcasts. However, the exercise of due care is construed to include the bona fide compliance with any federal law or the regulation of any federal regulatory agency.

Limitation of Choice of Venue

Section 770.05, F.S., provides that no person may have more than one choice of venue for damages for libel or slander, invasion of privacy, or any other tort founded upon any single publication, exhibition, or utterance, such as:

- Any one edition of a newspaper, book, or magazine.
- Any one presentation to an audience.
- Any one broadcast over radio or television.
- Any one exhibition of a motion picture.

Recovery in any action must include all damages for any such tort suffered by the plaintiff in all jurisdictions.

Adverse Judgement in Any Jurisdiction a Bar to Additional Action

Section 770.06, F.S., provides that a judgment in any jurisdiction for or against a plaintiff upon the substantive merits of any action for damages, founded upon a single publication or exhibition or utterance as described in s. 770.05, F.S., bars any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance.

Cause of Action, Time of Accrual

Section 770.07, F.S., provides that a cause of action for damages founded upon a single publication or exhibition or utterance, as described in s. 770.05, F.S., is deemed to have accrued at the time of its first publication, exhibition, or utterance in this state.

Limitation on Recovery of Damages

Section 770.08, F.S., provides that no person may have more than one choice of venue for damages for libel founded upon a single publication, exhibition, or utterance, as described in s. 770.05, F.S., and upon his or her election in any one of his or her choices of venue, then the person is bound to recover there all damages allowed to him or her.

Artificial Intelligence

Artificial intelligence (AI) is the development of computer systems to perform tasks that normally require human intelligence, such as learning and decision-making.⁶³ It enables computer systems to receive information that is either provided to them by others or gathered by them (e.g. through camera lenses or other sensors), which they can then process and respond to in some meaningful way. To a certain extent, AI systems are capable of adapting their behavior by analyzing the effects of previous actions and working autonomously.⁶⁴

Investments in AI have led to many of the transformative advancements that U.S. consumers rely upon every day,⁶⁵ including mapping technologies, voice-assisted smartphones, handwriting recognition for mail delivery, financial trading, smart logistics, spam filtering, and language translation. AI advances have also provided significant social benefits in areas such as precision medicine, environmental sustainability, education, and public welfare.⁶⁶

Generative AI

Generative AI is a type of AI⁶⁷ that can produce high-quality content, including text, images, audio, or video, within seconds when prompted by a user.⁶⁸ Although it was first introduced in the 1960s, it was not until 2014, with the introduction of generative adversarial networks, or GANs (a type of machine learning algorithm),⁶⁹ that Generative AI could convincingly create authentic images, videos, and audio of real people.⁷⁰

⁶³ National Conference of State Legislatures (NCSL), *Artificial Intelligence 2023 Legislation*, Jan. 12, 2024, <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2023-legislation>.

⁶⁴ European Parliament, *What is artificial intelligence and how is it used?*, E.U. News, Jun. 20, 2023, <https://www.europarl.europa.eu/news/en/headlines/society/20200827STO85804/what-is-artificial-intelligence-and-how-is-it-used>.

⁶⁵ U.S. Department of State, *Artificial Intelligence (AI)*, <https://www.state.gov/artificial-intelligence/> (last visited Jan. 20, 2024).

⁶⁶ *Id.*

⁶⁷ George Lawton, *What is generative AI? Everything you need to know*, TechTarget, Jan. 2024, <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

⁶⁸ Government Accountability Office (GAO), Science, Technology Assessment, and Analytics, *Science & Tech Spotlight: Generative AI* (June 2023), available at <https://www.gao.gov/assets/gao-23-106782.pdf>; George Lawton, *What is generative AI? Everything you need to know*, TechTarget, Jan. 2024, <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

⁶⁹ “A generative adversarial network (GAN) is a deep learning architecture. It trains two neural networks to compete against each other to generate more authentic new data from a given training dataset.” Amazon Web Services (AWS), *What is a GAN?*, <https://aws.amazon.com/what-is/gan/> (last visited Jan. 20, 2024). GAN can generate images, training data for other models, complete missing information, and generate 3D models from 2D data. *Id.*

⁷⁰ George Lawton, *What is generative AI? Everything you need to know*, TechTarget, Jan. 2024, <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

Generative AI systems learn patterns and relationships from massive amounts of data, which enables them to process and create new content that may be similar, but not identical, to the underlying training data. Such systems rely upon sophisticated machine learning algorithms and statistical models to work.⁷¹ In order to generate new content, Generative AI users are required to submit prompts that guide the generation of new content. Many iterations may be required to produce the intended result because Generative AI is sensitive to the wording of prompts.⁷²

Because Generative AI can do so much, it has many potential applications, including in education, government, medicine, and law.⁷³ As of early 2023, emerging Generative AI systems have reached more than 100 million users and have attracted global attention to their potential applications.⁷⁴

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 770.02, F.S., regarding the correction, apology, or retraction by a newspaper or broadcast station, to provide that for purposes of the section, if a defamatory article or broadcast has been published on the Internet, the article or broadcast must be permanently removed from the Internet within 10 days after service of notice in order to limit recovery to actual damages as provided in the statute.

Section 2 of the bill amends s. 770.04, F.S., regarding civil liability of radio or television broadcasting stations, to expand the statute's scope to also include newspapers, and to require them to exercise due care to prevent the publication of defamatory statements. The due care standard is synonymous with ordinary care or reasonable care, which are standards in a tort action to determine whether a person acted negligently. Accordingly, newspapers under the statute as amended, are expressly liable for damages for defamation if they act negligently in the publication of defamatory material.

Additionally, the bill provides that when an owner, a licensee, or an operator:

- Publishes a defamatory statement on the Internet with no knowledge of falsity of the statement;
- Receives notice that such statement has been found in a judicial proceeding to be false, or receives notice of facts that would cause a reasonable person to conclude that the statement was false; and
- Fails to take reasonable steps to permanently remove the statement and any related report from the Internet;

⁷¹ Government Accountability Office (GAO), Science, Technology Assessment, and Analytics, *Science & Tech Spotlight: Generative AI* (June 2023), available at <https://www.gao.gov/assets/gao-23-106782.pdf>. Training data can include open-source information, such as text and images from the internet. *Id.*

⁷² *Id.*

⁷³ Government Accountability Office (GAO), Science, Technology Assessment, and Analytics, *Science & Tech Spotlight: Generative AI* (Jun. 2023), available at <https://www.gao.gov/assets/gao-23-106782.pdf>; George Lawton, *What is generative AI? Everything you need to know*, TechTarget, Jan. 2024, <https://www.techtarget.com/searchenterpriseai/definition/generative-AI>.

⁷⁴ Government Accountability Office (GAO), Science, Technology Assessment, and Analytics, *Science & Tech Spotlight: Generative AI* (Jun. 2023), available at <https://www.gao.gov/assets/gao-23-106782.pdf>.

Then the continued appearance of the statement or report on the Internet after the notice is a new publication for purpose of the statute of limitations, and the owner, licensee, or operator is not entitled to a fair reporting privilege for the new publication.

Section 3 of the bill amends s. 770.05, F.S., regarding limitation of the choice of venue, to provide a definition for the term “defamation or privacy tort,” and to provide for venue based upon how defamatory statements are accessed.

Under the bill, the term “defamation or privacy tort” means libel, slander, invasion of privacy, or any other tort founded upon any single publication, exhibition, or utterance, such as:

- Any one edition of a newspaper, book, or magazine.
- Any one presentation to an audience.
- Any one broadcast over radio or television.
- Any one exhibition of a motion picture.
- Any one publication, exhibition, or utterance on the Internet.

The bill provides that notwithstanding any other provision of the defamation statute,⁷⁵ or any other statute providing for venue, if damages for a defamation or privacy tort are based on material:

- Broadcast on the radio or television, venue is proper in any county in which the material was accessed.
- Published, exhibited, or uttered on the Internet, venue is proper in any county in the state.

Section 4 of the bill creates s. 770.107, F.S., entitled “Veracity hearings in defamation or privacy tort actions.”

The bill provides that upon motion by any party to a cause of action brought under the defamation statute, the court must conduct an evidentiary hearing to determine:

- Whether a statement is a statement of fact or an opinion.
- The veracity of any statement of fact that constitutes the basis for the cause of action.

Unless otherwise agreed to by the parties, the court must hear the motion within 60 days after service of the motion. The court’s review of the motion must be limited solely to determining whether a statement is a statement of fact or an opinion, and the veracity of the statement of fact at issue in the underlying cause of action.

The bill provides that in ruling upon a motion for determination of veracity, the court may not issue findings regarding the following matters at issue in the underlying cause of action:

- Whether the statement of fact constitutes defamation per se, defamation per quod, or a privacy tort.
- Whether the plaintiff in the cause of action qualifies as a public figure or limited public figure.
- Whether the defendant in the cause of action acted negligently, recklessly, intentionally, or with actual malice.

⁷⁵ Chapter 770, F.S.

The court must assess against the nonprevailing party the reasonable attorney fees and costs associated with the hearing. The section only applies to actions against a newspaper or a periodical; a broadcast station; or an employee, agent, or contractor of such an entity that routinely publishes news or information of a public character, interest, or value.

Section 5 of the bill creates s. 770.11, F.S., entitled “Presumption regarding anonymous sources when the statement made about a public figure is false.” The bill provides that if a public figure plaintiff can establish that a published statement is false and that the publisher relied on an anonymous source for the statement, there is a rebuttable presumption that the publisher acted with actual malice in publishing the statement.

Section 6 of the bill creates s. 770.15, F.S., entitled “Using artificial intelligence to place person in false light.”

Under the bill, “artificial intelligence” means the theory and development of computer systems that are designed to simulate human intelligence through machine learning and perform tasks that would normally require human involvement, such as visual perception, speech recognition, decisionmaking, and translation between languages.

The bill provides that a person who uses artificial intelligence to create or edit any form of media so that it attributes something false to, or leads a reasonable viewer to believe something false about, another person is subject to liability if all of the following apply:

- The media is published, distributed, or otherwise placed before the public.
- The false light in which the other person was placed would be highly offensive to a reasonable person.
- The person had knowledge of, or acted in reckless disregard as to, the false implications of the media.

The bill provides that this new statutory section incorporates the standards set forth under the defamation statute for defamation causes of action to the extent necessary.

For the purpose of incorporating the amendment made by the bill to s. 770.05, F.S., in a reference thereto, **Section 7** of the bill reenacts s. 770.06, F.S.

For the purpose of incorporating the amendment made by the bill to s. 770.05, F.S., in a reference thereto, **Section 8** of the bill reenacts s. 770.07, F.S.

For the purpose of incorporating the amendment made by the bill to s. 770.05, F.S., in a reference thereto, **Section 9** of the bill reenacts s. 770.08, F.S.

Section 10 of the bill provides that if any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

Section 11 provides that the bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill may ultimately make it easier for private plaintiffs to sue newspapers and broadcast stations for defamation in several ways, including for their publications on the Internet, it is anticipated that defendants in such cases may have to pay more in awards (to satisfy meritorious defamation claims), claim settlements, and additional legal fees and costs. On the other hand, persons held to higher standards to avoid making defamatory statements may incur additional costs for conducting investigations before making potentially defamatory statements.

C. Government Sector Impact:

Because the bill may ultimately make it easier for private plaintiffs to sue for defamation, and in some cases require veracity hearings to determine whether a statement is a statement of fact or opinion, and its veracity, it is anticipated that such suits will increase court caseloads to some degree, and the costs associated with maintaining same.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 770.02, 770.04, and 770.05.

This bill creates the following sections of the Florida Statutes: 770.107, 770.11, and 770.15.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Judiciary on February 5, 2024:

The committee substitute replaces the original bill with one that:

- Requires newspapers and broadcast stations to permanently remove articles and broadcasts published on the Internet within 10 days after receiving notice in order to limit plaintiff recoveries to actual damages.
- Subjects newspapers to liability for failing to exercise due care to prevent the publication of defamatory statements, which is the same statutory liability standard that currently applies to radio and television stations.
- Provides that, under certain conditions, the continued appearance of a defamatory statement on the Internet is deemed a new publication for statute of limitations purposes and the owner, licensee, or operator is not entitled to a fair reporting privilege for the new publication.
- Consolidates several defamation-related terms (libel, slander, false light, invasion of privacy, and other torts) into a single term, “defamation or privacy tort.”
- Provides that, in connection with damages for defamation based on material published on the radio or television, venue is proper in any county where the material is accessed; and in connection with material published on the Internet, venue is proper in any county in the state.
- Provides that, upon motion by any party to a cause of action against a newspaper, periodical, or broadcast station under chapter 770, F.S., the court must conduct an evidentiary hearing known as a “veracity hearing” to determine whether the statement is a statement of fact or opinion, and its veracity.
- Provides that if a plaintiff can show that a published statement is false, and that the publisher relied on an anonymous source for the statement, the publisher is presumed to have acted with actual malice in publishing the statement.
- Provides that a person who uses artificial intelligence to create or edit any form of media so that it attributes something false or leads a reasonable viewer to believe something false about another is subject to liability under certain conditions.

B. Amendments:

None.

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