

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 Commerce and Tourism

BILL: CS/SB 752

INTRODUCER: Judiciary Committee and Senator Simon

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

DATE: March 24, 2025 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Dike</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 752 amends two statutes relating to defamation, which is the unprivileged publication of false statements that naturally and proximately result in an injury to another. Generally, the bill imposes requirements on newspapers, broadcasters, and periodicals to remove false and defamatory articles and broadcasts from websites they control after receiving notice of their falsity.

Under existing law, newspapers and broadcast stations have a duty to issue a full and fair correction, apology, or retraction of a false and defamatory news article or broadcast after receiving notice of its falsity. A newspaper or broadcast that fails to timely fulfill this duty is not entitled to limit its damages for defamation to the plaintiff's actual damages. Under the bill, if the article or broadcast is published on a website it controls, the newspaper, broadcaster, or periodical must also permanently remove the article or broadcast from the website within 10 days after receiving notice of the falsity of the article or broadcast to be entitled to the limitation on liability.

The bill also subjects newspapers to the same statutory liability standards that currently apply to radio and television stations, by requiring them to exercise due care to prevent the publication of defamatory statements. Under the bill, failing to permanently remove statements that a reasonable person would conclude to be defamatory from a website the newspaper, broadcaster, or periodical controls will extend the statute of limitations, giving plaintiffs more time to bring suit.

The bill takes effect July 1, 2025.

II. Present Situation:

Defamation at Common Law

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 for defamation itself.⁹ However, in 2008, the Florida Supreme Court recognized a standalone tort of defamation,¹⁰ and in doing so, it effectively subsumed all claims for slander and libel into that tort. Therefore, defamation now encompasses both libel and slander.¹¹ False light is not

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 Mar. 24, 2025).

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.

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).

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

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

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 to public figures, and a simple negligence standard to private individuals.²³ A private individual may recover actual damages from a media defendant that

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.

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.

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 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 jury²⁹ 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:
 - 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

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.

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).

- 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 that 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

Florida's Defamation Statute

Florida's defamation statute³⁹ consists of the following 8 sections.

Notice Condition Precedent to Action or Prosecution for Libel or Slander

Before any civil action may be brought for the publication or broadcast of a libel or slander in a newspaper, periodical, or other medium, the plaintiff must, at least 5 days before bringing suit, serve notice in writing on the defendant, specifying the article, broadcast, and statements which he or she alleges to be false and defamatory.⁴⁰

Correction, Apology, or Retraction by Newspaper or Broadcast Station

A 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 the article or broadcast were true.
- 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 a 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.⁴¹

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 Chapter 770, F.S.

⁴⁰ Section 770.01, F.S.

⁴¹ Section 770.02(1), F.S.

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.⁴²

Civil Liability of Broadcasting Stations

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 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.⁴³

When the owner, lessee, licensee, or operator elects to require the submission of a written copy, it may not be held responsible for any damages caused by any libelous or slanderous statement which is not contained in the written copy, made by or for the person or party submitting the copy of the proposed broadcast. 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 statement from liability.⁴⁴

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

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 stated 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 he or she failed to exercise due care to prevent the publication or statement in the 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.⁴⁵

Limitation of Choice of Venue

A person may not 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 statement, 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.

⁴² Section 770.02(2), F.S.

⁴³ Section 770.03, F.S.

⁴⁴ *Id.*

⁴⁵ Section 770.04, F.S.

Recovery in any action must include all damages for any such tort suffered by the plaintiff in all jurisdictions.⁴⁶

Adverse Judgement in Any Jurisdiction a Bar to Additional Action

A judgment in any jurisdiction for or against a plaintiff upon the substantive merits of any action for damages, founded upon a single publication, exhibition, or statement, bars any other action for damages by the same plaintiff against the same defendant founded upon the same publication, exhibition, or statement.⁴⁷

Cause of Action, Time of Accrual

A cause of action for damages founded upon a single publication, exhibition, or statement, is deemed to have accrued at the time of its first publication, exhibition, or statement in this state.⁴⁸

Limitation on Recovery of Damages

A person may not sue in more than one jurisdiction for damages for libel founded upon a single publication, exhibition, or statement. Once an appropriate jurisdiction is chosen, the person will recover in that jurisdiction all damages allowed to him or her for libel in all jurisdictions.⁴⁹

III. Effect of Proposed Changes:

The bill amends two statutes relating to defamation. Generally, the bill imposes requirements on newspapers and broadcast stations which, if not observed, prevent them from being entitled to limit their liability for damages to the plaintiff's actual damages.

Section 1 of the bill amends s. 770.02, F.S., regarding the correction, apology, or retraction by a newspaper or broadcast station. As amended, the section requires a newspaper, broadcaster, or periodical that publishes a false and defamatory article on any website over which it has control to permanently remove it within 10 days after receiving notice of its falsity. A newspaper, broadcaster, or periodical that fails to timely remove the article is not entitled to limit its liability for defamation to the plaintiff's actual damages. This requirement is in addition to the existing requirements for the newspaper or broadcast station to timely issue a correction, apology, or retraction.

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.

⁴⁶ Section 770.05, F.S.

⁴⁷ Section 770.06, F.S.

⁴⁸ Section 770.07, F.S.

⁴⁹ Section 770.08, F.S.

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 any website over which the newspaper, broadcaster, or periodical has control;

Then the continued appearance of the statement or report on such website 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 provides that the act takes effect July 1, 2025.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill may make it easier for private plaintiffs to sue newspapers, broadcasters, and periodicals for defamation in several ways, including for their publications on websites over which they have control, 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.

The duties imposed by the bill on newspapers, broadcasters, and periodicals to remove defamatory publications from websites over which they have control may also limit the damages and harm caused to persons who are defamed.

C. Government Sector Impact:

Because the bill may make it easier for private plaintiffs to sue for defamation, it is anticipated that such suits will increase court caseloads to some degree and the costs associated with an increased caseload.

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.

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 March 12, 2025:

The committee substitute revises the underlying bill to provide that newspapers, broadcasters, or periodicals must only permanently remove defamatory articles and statements from websites over which they have control to limit plaintiff recoveries to actual damages, or to avoid a new publication of the defamatory statement for statute of limitations purposes.

B. Amendments:

None.