

By Senator Brodeur

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A bill to be entitled
An act relating to defamation and related actions;
amending s. 90.5015, F.S.; specifying that the
professional journalist's privilege does not apply to
defamation or related actions; creating s. 770.001,
F.S.; specifying that an action for defamation
includes other specified actions; creating s. 770.045,
F.S.; specifying that the publication of an altered or
unaltered photograph, video, or audio recording may
form the basis of a defamation action; amending s.
770.05, F.S.; specifying proper venue for a defamation
cause of action; creating s. 770.09, F.S.; specifying
that certain actions are insufficient to make a person
a public figure for purposes of a defamation action;
creating s. 770.11, F.S.; specifying that a defamatory
allegation is made with actual malice for purposes of
a defamation action under certain circumstances;
creating s. 770.12, F.S.; providing that the
negligence standard applies in a defamation action in
which the defendant does not identify the source for a
defamatory statement; creating s. 770.13, F.S.;
providing that the negligence standard applies to a
defamation action by a public figure if the defamatory
statement does not relate to the reasons for the
plaintiff's public figure status; amending ss. 768.295
and 720.304, F.S.; specifying that defendants in
certain actions are only entitled to attorney fees and
costs under certain circumstances; providing
construction; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 90.5015, Florida Statutes, is amended to read:

90.5015 Journalist's privilege.—

(1) DEFINITIONS.—For purposes of this section, the term:

(a) "Professional journalist" means a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine. Book authors and others who are not professional journalists, as defined in this paragraph, are not included in the provisions of this section.

(b) "News" means information of public concern relating to local, statewide, national, or worldwide issues or events.

(2) PRIVILEGE.—A professional journalist has a qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news. This privilege applies only to information or eyewitness observations obtained within the normal scope of employment and does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes. A party seeking to overcome this privilege must make a clear and specific showing that:

(a) The information is relevant and material to unresolved issues that have been raised in the proceeding for which the

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information is sought;

(b) The information cannot be obtained from alternative sources; and

(c) A compelling interest exists for requiring disclosure of the information.

(3) DISCLOSURE.—A court shall order disclosure pursuant to subsection (2) only of that portion of the information for which the showing under subsection (2) has been made and shall support such order with clear and specific findings made after a hearing.

(4) WAIVER.—A professional journalist does not waive the privilege by publishing or broadcasting information.

(5) CONSTRUCTION.—This section must not be construed to limit any privilege or right provided to a professional journalist under law.

(6) AUTHENTICATION.—Photographs, diagrams, video recordings, audio recordings, computer records, or other business records maintained, disclosed, provided, or produced by a professional journalist, or by the employer or principal of a professional journalist, may be authenticated for admission in evidence upon a showing, by affidavit of the professional journalist, or other individual with personal knowledge, that the photograph, diagram, video recording, audio recording, computer record, or other business record is a true and accurate copy of the original, and that the copy truly and accurately reflects the observations and facts contained therein.

(7) ACCURACY OF EVIDENCE.—If the affidavit of authenticity and accuracy, or other relevant factual circumstance, causes the court to have clear and convincing doubts as to the authenticity

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or accuracy of the proffered evidence, the court may decline to admit such evidence.

(8) APPLICATION TO DEFAMATION AND RELATED ACTIONS.—This section does not apply to defamation or related actions against a professional journalist.

(9) SEVERABILITY.—If any provision of this section or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.

Section 2. Section 770.001, Florida Statutes, is created to read:

770.001 Definition.—As used in this chapter, an action for defamation includes actions for libel, slander, and related causes of action recognized in this state.

Section 3. Section 770.045, Florida Statutes, is created to read:

770.045 Defamation by photograph, video, or audio recording.—The publication of an altered or unaltered photograph, video, or audio recording may form the basis of a defamation action.

Section 4. Section 770.05, Florida Statutes, is amended to read:

770.05 Venue for defamation actions ~~Limitation of choice of venue.~~—

(1) A ~~No~~ person may not ~~shall~~ 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

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magazine, any one presentation to an audience, any one broadcast over radio or television, or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

(2) Venue for a cause of action for defamation is proper in a county identified in s. 47.011, including any county where the defamatory material is accessed by a third party.

Section 5. Section 770.09, Florida Statutes, is created to read:

770.09 Public figures for purposes of defamation or related actions.—A person is not a public figure for purposes of a defamation action if the person acquires fame or notoriety from one or more of the following:

(1) Publicly defending himself or herself against accusations.

(2) Granting an interview on a specific topic.

(3) Obtaining public employment in a capacity other than as an elected officeholder or an appointee of an elected officeholder.

(4) Uploading a video, image, or statement on the Internet which has reached a broad audience.

Section 6. Section 770.11, Florida Statutes, is created to read:

770.11 Clarifying defamation standards.—A defamatory allegation is made with actual malice for purposes of a defamation action if any of the following apply:

(1) The defamatory allegation is fabricated by the defendant, is the product of his or her imagination, or is based wholly on an unverified, anonymous report.

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146 (2) The defamatory allegation is so inherently improbable
147 that only a reckless person would have put it into circulation.

148 (3) If the defamatory allegation was based on an informant
149 or an informant's report, there are obvious reasons to doubt the
150 veracity of the informant or his or her report. Obvious reasons
151 exist to doubt the veracity of a report if:

152 (a) There is sufficient contrary evidence that was known or
153 should have been known to the defendant after a reasonable
154 investigation; or

155 (b) The report is inherently improbable or implausible on
156 its face.

157 Section 7. Section 770.12, Florida Statutes, is created to
158 read:

159 770.12 Unidentified source for a defamatory statement;
160 negligence standard applicable.—If the actual malice standard
161 otherwise applies to a defamation action in which the defendant
162 does not identify the source for a defamatory statement, the
163 plaintiff need only prove that the defendant acted negligently
164 in making the defamatory statement.

165 Section 8. Section 770.13, Florida Statutes, is created to
166 read:

167 770.13 Defamatory statements unrelated to public figure
168 status; negligence standard applicable.—In a defamation action
169 based on an alleged defamatory statement that does not relate to
170 the reasons for the plaintiff's status as a public figure, the
171 plaintiff need only prove that the defendant acted negligently
172 in making or repeating the defamatory statement.

173 Section 9. Subsection (4) of section 768.295, Florida
174 Statutes, is amended to read:

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175 768.295 Strategic Lawsuits Against Public Participation
176 (SLAPP) prohibited.—

177 (4) A person or entity sued by a governmental entity or
178 another person in violation of this section has a right to an
179 expeditious resolution of a claim that the suit is in violation
180 of this section. A person or entity may move the court for an
181 order dismissing the action or granting final judgment in favor
182 of that person or entity. The person or entity may file a motion
183 for summary judgment, together with supplemental affidavits,
184 seeking a determination that the claimant's or governmental
185 entity's lawsuit has been brought in violation of this section.
186 The claimant or governmental entity shall thereafter file a
187 response and any supplemental affidavits. As soon as
188 practicable, the court shall set a hearing on the motion, which
189 shall be held at the earliest possible time after the filing of
190 the claimant's or governmental entity's response. The court may
191 award, subject to the limitations in s. 768.28, the party sued
192 by a governmental entity actual damages arising from a
193 governmental entity's violation of this section. The court shall
194 award the prevailing party reasonable attorney fees and costs
195 incurred in connection with a claim that an action was filed in
196 violation of this section. A defendant in an action for
197 defamation or similar action who files a motion to dismiss or
198 motion for summary judgment under this section is entitled to
199 attorney fees and costs only if the statement was not
200 negligently made. This subsection does not shift a party's
201 burden of proof.

202 Section 10. Paragraph (c) of subsection (4) of section
203 720.304, Florida Statutes, is amended to read:

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204 720.304 Right of owners to peaceably assemble; display of
205 flag; SLAPP suits prohibited.—

206 (4) It is the intent of the Legislature to protect the
207 right of parcel owners to exercise their rights to instruct
208 their representatives and petition for redress of grievances
209 before the various governmental entities of this state as
210 protected by the First Amendment to the United States
211 Constitution and s. 5, Art. I of the State Constitution. The
212 Legislature recognizes that "Strategic Lawsuits Against Public
213 Participation" or "SLAPP" suits, as they are typically called,
214 have occurred when members are sued by individuals, business
215 entities, or governmental entities arising out of a parcel
216 owner's appearance and presentation before a governmental entity
217 on matters related to the homeowners' association. However, it
218 is the public policy of this state that government entities,
219 business organizations, and individuals not engage in SLAPP
220 suits because such actions are inconsistent with the right of
221 parcel owners to participate in the state's institutions of
222 government. Therefore, the Legislature finds and declares that
223 prohibiting such lawsuits by governmental entities, business
224 entities, and individuals against parcel owners who address
225 matters concerning their homeowners' association will preserve
226 this fundamental state policy, preserve the constitutional
227 rights of parcel owners, and assure the continuation of
228 representative government in this state. It is the intent of the
229 Legislature that such lawsuits be expeditiously disposed of by
230 the courts.

231 (c) A parcel owner sued by a governmental entity, business
232 organization, or individual in violation of this section has a

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right to an expeditious resolution of a claim that the suit is in violation of this section. A parcel owner may petition the court for an order dismissing the action or granting final judgment in favor of that parcel owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the governmental entity's, business organization's or individual's response. The court may award the parcel owner sued by the governmental entity, business organization, or individual actual damages arising from the governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing parcel owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney ~~attorney's~~ fees and costs incurred in connection with a claim that an action was filed in violation of this section. A defendant in an action for defamation or similar action who files a motion to dismiss or motion for summary judgment under this paragraph is entitled to attorney fees and costs only if the statement was not negligently made. This paragraph does not shift a party's burden of proof.

Section 11. This act shall take effect July 1, 2023.