

5-01289A-22

1 A bill to be entitled
2 An act relating to free speech and defamation actions;
3 providing legislative findings; amending s. 770.05,
4 F.S.; specifying that venue for certain defamation
5 causes of action is proper in any county where
6 specified material was accessed; amending s. 770.08,
7 F.S.; conforming provisions to changes made by the
8 act; creating s. 770.09, F.S.; specifying that certain
9 provisions relating to attorney fees and costs do not
10 apply to defamation claims; entitling prevailing
11 plaintiffs in defamation claims to reasonable attorney
12 fees and costs; creating s. 770.11, F.S.; prohibiting
13 certain persons from being considered public figures
14 for purposes of establishing a claim for defamation;
15 creating s. 770.12, F.S.; providing that failing to
16 validate or corroborate an alleged defamatory
17 statement is evidence of actual malice; creating s.
18 770.13, F.S.; creating a presumption that statements
19 by anonymous sources are false for purposes of
20 defamation claims; amending ss. 720.304 and 768.295,
21 F.S.; requiring courts to award attorney fees and
22 costs to certain parties to Strategic Lawsuits Against
23 Public Participation; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. The Legislature finds that:

28 (1) Defamation is and should be purely a matter of state
29 law.

5-01289A-22

30 (2) *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964),
31 and its progeny federalized major aspects of defamation law,
32 notwithstanding the United States Supreme Court's pre-1964
33 precedents and historical understanding to the contrary, and
34 foreclosed many meritorious defamation claims to the detriment
35 of citizens from all walks of life.

36 (3) The federalization of defamation law, including the
37 judicially created actual malice standard, bears no relation to
38 the text, structure, or history of the First Amendment to the
39 United States Constitution.

40 (4) The federalization of defamation law fails to
41 acknowledge that defamatory falsehoods are equally injurious to
42 plaintiffs regardless of whether they are public officials,
43 public figures, or private figures, and regardless of whether
44 the alleged defamatory falsehoods relate to matters of official
45 conduct or of public or private concern.

46 (5) The federalization of defamation law interferes with
47 the ability of the states to update their defamation laws in
48 response to societal changes, including the widespread
49 proliferation of defamatory falsehoods through new technologies
50 and the ever-diminishing investigation and reporting standards
51 of publishers.

52 (6) The federalization of defamation law has further
53 fostered an environment in which defamatory falsehoods are
54 routinely published without fear of consequence, but truthful
55 speech is often self-censored for fear of being tarnished
56 without an adequate remedy at law.

57 (7) The United States Supreme Court should therefore
58 reassess its post-1964 understanding of defamation law and,

5-01289A-22

59 consistent with our nation's system of federalism, return to the
60 states the authority to protect their citizens from defamatory
61 falsehoods and the ability to make their own policy judgments
62 regarding the prevention of defamation.

63 (8) Under current United States Supreme Court precedent,
64 this state retains a measure of flexibility to continue to
65 formulate its own defamation laws in response to societal
66 changes.

67 (9) Defamatory statements are regularly published to
68 widespread audiences through the Internet and social media
69 platforms.

70 (10) Defamatory statements are regularly published without
71 investigation, fact-checking, or editing.

72 (11) Publishers of defamatory statements regularly rely on
73 anonymous sources, which they know or should know are inherently
74 untrustworthy.

75 (12) The state has an important interest in protecting its
76 citizens from injurious defamatory statements.

77 Section 2. Section 770.05, Florida Statutes, is amended to
78 read:

79 770.05 Limitation of choice of venue.—

80 (1) No person shall have more than one choice of venue for
81 damages for libel or slander, invasion of privacy, or any other
82 tort founded upon any single publication, exhibition, or
83 utterance, such as any one edition of a newspaper, book, or
84 magazine, any one presentation to an audience, any one broadcast
85 over radio or television, or any one exhibition of a motion
86 picture. Recovery in any action shall include all damages for
87 any such tort suffered by the plaintiff in all jurisdictions.

5-01289A-22

88 (2) Notwithstanding any other provision of law, for a
89 defamation cause of action, including, but not limited to,
90 causes of action for libel or slander, if damages for such cause
91 of action are based on material published on the radio,
92 television, or Internet, venue is proper in any county where the
93 material was accessed.

94 Section 3. Section 770.08, Florida Statutes, is amended to
95 read:

96 770.08 Limitation on recovery of damages.—Except as
97 provided in s. 770.05(2), no person shall have more than one
98 choice of venue for damages for libel founded upon a single
99 publication or exhibition or utterance, as described in s.
100 770.05. ~~and~~ Upon his or her election in any one of his or her
101 choices of venue, ~~then~~ the person shall be bound to recover
102 there all damages allowed him or her.

103 Section 4. Section 770.09, Florida Statutes, is created to
104 read:

105 770.09 Applicability of attorney fees and costs for
106 defamation claims.—Section 768.79 does not apply to defamation
107 claims, including, but not limited to, claims for libel or
108 slander. Notwithstanding any other law, a prevailing plaintiff
109 in a defamation claim, including, but not limited to, a claim
110 for libel or slander, is entitled to reasonable attorney fees
111 and costs.

112 Section 5. Section 770.11, Florida Statutes, is created to
113 read:

114 770.11 Limitations on judicial determinations of public
115 figures.—A person may not be considered a public figure for
116 purposes of establishing a claim for defamation, including, but

5-01289A-22

117 not limited to, a claim for libel or slander, if his or her fame
118 or notoriety arises solely from any of the following:

119 (1) Defending himself or herself publicly against
120 accusations.

121 (2) Granting an interview on a specific topic.

122 (3) Public employment other than elected office or
123 appointment by an elected official.

124 (4) A video, image, or statement uploaded on the Internet
125 which has reached a broad audience.

126 Section 6. Section 770.12, Florida Statutes, is created to
127 read:

128 770.12 Use of defamatory statements.—Failing to validate or
129 corroborate an alleged defamatory statement is evidence of
130 actual malice.

131 Section 7. Section 770.13, Florida Statutes, is created to
132 read:

133 770.13 Presumption regarding anonymous sources.—Statements
134 by anonymous sources are presumed to be false for purposes of
135 defamation claims.

136 Section 8. Paragraph (c) of subsection (4) of section
137 720.304, Florida Statutes, is amended to read:

138 720.304 Right of owners to peaceably assemble; display of
139 flag; SLAPP suits prohibited.—

140 (4) It is the intent of the Legislature to protect the
141 right of parcel owners to exercise their rights to instruct
142 their representatives and petition for redress of grievances
143 before the various governmental entities of this state as
144 protected by the First Amendment to the United States
145 Constitution and s. 5, Art. I of the State Constitution. The

5-01289A-22

146 Legislature recognizes that "Strategic Lawsuits Against Public
147 Participation" or "SLAPP" suits, as they are typically called,
148 have occurred when members are sued by individuals, business
149 entities, or governmental entities arising out of a parcel
150 owner's appearance and presentation before a governmental entity
151 on matters related to the homeowners' association. However, it
152 is the public policy of this state that government entities,
153 business organizations, and individuals not engage in SLAPP
154 suits because such actions are inconsistent with the right of
155 parcel owners to participate in the state's institutions of
156 government. Therefore, the Legislature finds and declares that
157 prohibiting such lawsuits by governmental entities, business
158 entities, and individuals against parcel owners who address
159 matters concerning their homeowners' association will preserve
160 this fundamental state policy, preserve the constitutional
161 rights of parcel owners, and assure the continuation of
162 representative government in this state. It is the intent of the
163 Legislature that such lawsuits be expeditiously disposed of by
164 the courts.

165 (c) A parcel owner sued by a governmental entity, business
166 organization, or individual in violation of this section has a
167 right to an expeditious resolution of a claim that the suit is
168 in violation of this section. A parcel owner may petition the
169 court for an order dismissing the action or granting final
170 judgment in favor of that parcel owner. The petitioner may file
171 a motion for summary judgment, together with supplemental
172 affidavits, seeking a determination that the governmental
173 entity's, business organization's, or individual's lawsuit has
174 been brought in violation of this section. The governmental

5-01289A-22

175 entity, business organization, or individual shall thereafter
176 file its response and any supplemental affidavits. As soon as
177 practicable, the court shall set a hearing on the petitioner's
178 motion, which shall be held at the earliest possible time after
179 the filing of the governmental entity's, business organization's
180 or individual's response. The court may award the parcel owner
181 sued by the governmental entity, business organization, or
182 individual actual damages arising from the governmental
183 entity's, individual's, or business organization's violation of
184 this section. A court may treble the damages awarded to a
185 prevailing parcel owner and shall state the basis for the treble
186 damages award in its judgment. If a non-moving party prevails on
187 a motion filed under this paragraph, the court shall award the
188 non-moving ~~prevailing~~ party reasonable attorney ~~attorney's~~ fees
189 and costs incurred in connection with a claim that an action was
190 filed in violation of this section.

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

193 768.295 Strategic Lawsuits Against Public Participation
194 (SLAPP) prohibited.—

195 (4) A person or entity sued by a governmental entity or
196 another person in violation of this section has a right to an
197 expeditious resolution of a claim that the suit is in violation
198 of this section. A person or entity may move the court for an
199 order dismissing the action or granting final judgment in favor
200 of that person or entity. The person or entity may file a motion
201 for summary judgment, together with supplemental affidavits,
202 seeking a determination that the claimant's or governmental
203 entity's lawsuit has been brought in violation of this section.

5-01289A-22

204 The claimant or governmental entity shall thereafter file a
205 response and any supplemental affidavits. As soon as
206 practicable, the court shall set a hearing on the motion, which
207 shall be held at the earliest possible time after the filing of
208 the claimant's or governmental entity's response. The court may
209 award, subject to the limitations in s. 768.28, the party sued
210 by a governmental entity actual damages arising from a
211 governmental entity's violation of this section. If a non-moving
212 party prevails on a motion filed under this subsection, the
213 court shall award the non-moving ~~prevailing~~ party reasonable
214 attorney fees and costs incurred in connection with a claim that
215 an action was filed in violation of this section.

216 Section 10. This act shall take effect July 1, 2022.