

Florida Libel Bills One-Page Summary

This is a brief summary of the Florida libel bills, HB 757 and SB 1780. While there are some differences between these bills, the substance is the same:

Section 1 would impose an overly broad takedown requirement if a single word in an article is false. Articles and broadcasts would have to be taken down in their entirety anywhere the article appears on the Internet before a libel defendant could take advantage of the actual damages limitation in Florida statutes. Of course, it's impossible to remove an entire article from every platform (including third parties') and unnecessary if a correction will suffice. Plus, how do you also correct an article that, in theory, no longer exists?

Section 2 basically creates a right to be forgotten. It encourages people who are acquitted to sue over articles about their arrests, takes away the fair report privilege protecting such reporting, and restarts (and never ends) the statute of limitations if the article remains available after notice.

Section 3 codifies statewide venue for anything that appears on the Internet, with all the burdens that imposes. For example, a Key West radio station could be sued in Pensacola. Or a Conservative politician who resides in Palm Beach County and could be sued in heavily blue Broward County over a post about an out-of-state plaintiff. Quintessential forum shopping!

Section 4 creates a "veracity hearing." The purpose is to permit plaintiffs to request a hearing within two months: (1) on whether a statement is fact or opinion and (2), if fact, then a full-blown evidentiary hearing simultaneously occurs where a judge decides whether any fact statement is true. This process would involve a short discovery period (making third-party and deposition discovery virtually impossible to take) and deny the right to a jury trial on truth or falsity for all broadcasters, newspapers and others who routinely publish news or information of a public character, interest or value. So that would include sports talk radio and religious broadcasters. It also forces more fees and expenses to be frontloaded early in the litigation, likely before any motion to dismiss or anti-SLAPP motion is able to be heard.

Section 5 presumes actual malice in a public figure case if falsity is shown and the publisher relied on an anonymous source at any step in the reporting process – even if corroborated by multiple record sources. This is overbroad and unconstitutional.

Section 6 would revive the false light tort if artificial intelligence is used. This new law is not needed (because Florida already has libel by implication) and problematic because elements of false light are so vague, as Florida Supreme Court found 15 years ago.

2023's legislative priority was tort reform. These bills facilitate litigation and impose deep financial burdens on speakers to defend lawsuits at a distance and incur extensive early costs.

These bills inflict unintended consequences on speakers of all political persuasions, including Conservative and religious programming. It will also hurt politicians and campaign speech. Podcasters, start-ups, and independent stations are particularly vulnerable.