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FISCAL IMPACT REPORT

SPONSOR: Payne DATE TYPED: 03/04/01 HB _____
 SHORT TITLE: Correction or Clarification of Defamation Act SB 36/aSCORC
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Attorney General (AG)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment exempts the following publications from the Act: television and radios broadcasts, and newspaper or magazine publications. The amendment also adds language to specify a correction or clarification concerning a candidate for public office is timely only if published within seven days prior to the candidate's election, or by election day, which is earlier.

Synopsis of Original Bill

The Uniform Correction or Clarification of Defamation Act sets forth procedures in defamation cases to allow potential plaintiffs to request, and potential defendants to provide correction or clarification (referred to as "correction" here) of defamatory statements. The correction must be made to substantially the same audience to whom the original defamatory statement was made. A legal action for defamation seeks remedy for loss of reputation based on a false publication of information. The traditional remedy in the courts is typically money. However, restoration of reputation by correcting the original publication may be the best remedy. The Act promotes this type of remedy. The Act is based on a uniform law adopted by the Uniform Law Commissioners in 1993. One other state has adopted the uniform law.

The Act applies to any claim for damages arising out of harm to personal reputation caused by the false content of a publication that is published after the Act becomes effective (section 3). The plaintiff must show that he made a timely request for correction. If the plaintiff requests a correction

within ninety (90) days of the publication, the plaintiff preserves his right to all types of damages (economic, exemplary and punitive). If the request comes after ninety (90) days, the plaintiff's damages are reduced to economic damages only (section 4).

If the defendant provides a timely and sufficient correction (generally within (forty-five) 45 days of the request for correction), the plaintiff's damages are reduced to provable economic loss (sections 6, 7 and 8). Once the possibility of a timely and sufficient correction has passed without the defendant taking action, the defendant has a second chance to do so as part of a settlement of the case any time before trial. The offer to make a correction must include an offer to publish a sufficient correction and pay reasonable expenses of litigation. If the offer is made but not accepted, the plaintiff may recover damages generally only for provable economic loss and reasonable expenses of litigation prior to the offer.

Significant Issues

The incentives provided in the act encourage a person who has suffered harm to his personal reputation to seek a correction or clarification in order to preserve his rights. The act of correction or retraction may be satisfying to the harmed individual and he may decide not to pursue litigation. The act of clarification or correction may mitigate the damage or harm suffered by the false content. However, the act's notification and time limitations may also be interpreted as an additional burden that an injured individual must carry in order to ultimately vindicate his rights.

FISCAL IMPLICATIONS

See Administrative Implications.

ADMINISTRATIVE IMPLICATIONS

The AOC reports that the fiscal implications on the judiciary will directly follow the amount of litigation that is generated, or avoided, by the Act.

FAR/njw:ar