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FISCAL IMPACT REPORT



SPONSOR: Foley DATE TYPED: 02/07/02 HB 368

SHORT TITLE: Uniform Clarification of Defamation Act SB _____

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
			\$ 0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

This bill would enact a new statute: *the Uniform Correction or Clarification of Defamation Act (Act)*. A legal action for defamation seeks remedy for loss of personal reputation based upon publication of false information.

The Act sets forth procedures to be followed in defamation cases, which allow potential plaintiffs to request and potential defendants to provide correction or clarification of alleged defamatory statements. Corrections must be published to essentially the same audience to whom the original defamatory statements were published.

According to the Act, plaintiffs must show that they made timely requests for corrections. If plaintiffs request such corrections within 90 days of publication, they preserve their rights to all forms of damages (economic, exemplary and punitive). If requests arise after ninety 90 days, plaintiffs' may only seek economic damages.

If defendants provide timely and sufficient corrections, generally within 45 days of the request for correction, plaintiffs' damages are reduced to provable economic loss. Once the possibility of

timely and sufficient corrections has passed without defendants taking action, defendants retain a second chance to do so as part of pre-trial case settlements. Offers to make corrections must include a specific offer to publish sufficient corrections and pay reasonable expenses of litigation. If offers are made but not accepted, plaintiffs may only recover damages for provable economic losses and reasonable expenses of litigation prior to the offer.

This Act includes a severability clause and has an effective date of July 1, 2002.

Significant Issues

This Act is intended to promote an early and possibly effective remedy to defamation actions. Parties subjected to defamatory statements may be more satisfied with the results of a retraction or correction than with the traditional remedy of monetary damages, that are often difficult to prove.

The Uniform Clarification of Defamation Act is based on a uniform law adopted by the Uniform Law Commissioners in 1993. Only one other state has adopted the uniform law.

FISCAL IMPLICATIONS

According to the AOC, the Act created by HB 368 may promote early and effective solutions to defamation cases. This could eliminate many defamation actions entirely or simplify litigation in cases that do go to trial.

A reduction of litigation will have a positive fiscal impact on the judiciary. However, new laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

ADMINISTRATIVE IMPLICATIONS

The AOC specified that this bill would result in minimal administrative impact for the statewide update, distribution, and documentation of statutory changes.

TECHNICAL ISSUES

According to the AGO, the time limits and procedures mandated in Section 8 of this Act, if in conflict with procedural rules already in place or adopted by the New Mexico Supreme Court, may violate the separation of powers clause of the New Mexico Constitution. According to this clause, the courts are recognized as having inherent power to regulate procedures (including time limits) affecting the judicial branch. See state *v. Doe*, 97 NM 189 (Ct.App. 1981) procedural rule adopted by Supreme Court controls over statutory procedure provision.

RLG/njw