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AB-998 Civil law: libel: damages. (2015-2016)

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Assembly Bill No. 998

CHAPTER 343

An act to amend Section 48a of the Civil Code, relating to libel.

[Approved by Governor September 28, 2015. Filed with Secretary of State September 28, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 998, Wagner. Civil law: libel: damages.

Under existing law, in any action for damages for the publication of a libel in a newspaper or of a slander by a radio broadcast, the plaintiff is required to recover no more than special damages unless a correction is demanded and the correction is not published or broadcast. If a correction is demanded and the correction is not published or broadcast in a specified manner in the newspaper or on the broadcasting station, existing law authorizes the plaintiff to recover general, special, and exemplary damages provided certain requirements are met.

The bill would revise these provisions relating to libel to provide that the publication of a libel be in a daily or weekly news publication, as defined. This bill would also make legislative findings regarding libel.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature to ensure that weekly and online publications are afforded the same protection under Section 48a of the Civil Code as is afforded to a daily newspaper to the extent that the weekly and online publications perform the same news-disseminating function as a daily newspaper. The Legislature finds and declares that the rulings in *Burnett v. National Enquirer, Inc.* (1983) 144 Cal.App.3d 991 and *Condit v. National Enquirer, Inc.* (2002) 248 F.Supp.2d 945 do not fully recognize that the policy of Section 48a of the Civil Code to protect enterprises engaged in the immediate dissemination of news on matters of public concern, insofar as time constraints do not reasonably permit such enterprises to check sources for accuracy and stories for inadvertent errors, should extend to online publications and weekly newspapers, which publish breaking news on deadlines indistinguishable from daily newspapers. It is not the intent of the Legislature that Section 48a of the Civil Code should apply to periodicals that publish at longer than weekly intervals, nor is it the intent of the Legislature that Section 48a of the Civil Code should apply to casual postings on a social networking Internet Web site, chat room, electronic bulletin board, discussion group, online forum, or other related Internet Web site.

SEC. 2. Section 48a of the Civil Code is amended to read:

48a. 1. In any action for damages for the publication of a libel in a daily or weekly news publication, or of a slander by radio broadcast, plaintiff shall recover no more than special damages unless a correction be demanded and be not published or broadcast, as hereinafter provided. Plaintiff shall serve upon the publisher, at the place of publication or broadcaster at the place

of broadcast, a written notice specifying the statements claimed to be libelous and demanding that the same be corrected. Said notice and demand must be served within 20 days after knowledge of the publication or broadcast of the statements claimed to be libelous.

2. If a correction be demanded within said period and be not published or broadcast in substantially as conspicuous a manner in said daily or weekly news publication, or on said broadcasting station as were the statements claimed to be libelous, in a regular issue thereof published or broadcast within three weeks after such service, plaintiff, if he pleads and proves such notice, demand and failure to correct, and if his cause of action be maintained, may recover general, special and exemplary damages; provided that no exemplary damages may be recovered unless the plaintiff shall prove that defendant made the publication or broadcast with actual malice and then only in the discretion of the court or jury, and actual malice shall not be inferred or presumed from the publication or broadcast.

3. A correction published or broadcast in substantially as conspicuous a manner in said daily or weekly news publication, or on said broadcasting station as the statements claimed in the complaint to be libelous, prior to receipt of a demand therefor, shall be of the same force and effect as though such correction had been published or broadcast within three weeks after a demand therefor.

4. As used herein, the terms "general damages," "special damages," "exemplary damages" and "actual malice," are defined as follows:

(a) "General damages" are damages for loss of reputation, shame, mortification and hurt feelings.

(b) "Special damages" are all damages which plaintiff alleges and proves that he has suffered in respect to his property, business, trade, profession or occupation, including such amounts of money as the plaintiff alleges and proves he has expended as a result of the alleged libel, and no other.

(c) "Exemplary damages" are damages which may in the discretion of the court or jury be recovered in addition to general and special damages for the sake of example and by way of punishing a defendant who has made the publication or broadcast with actual malice.

(d) "Actual malice" is that state of mind arising from hatred or ill will toward the plaintiff; provided, however, that such a state of mind occasioned by a good faith belief on the part of the defendant in the truth of the libelous publication or broadcast at the time it is published or broadcast shall not constitute actual malice.

5. For purposes of this section, a "daily or weekly news publication" means a publication, either in print or electronic form, that contains news on matters of public concern and that publishes at least once a week.