

2 **2SHB 1037** - S AMD TO S AMD S2536.2 - 410
3 By Senator Finkbeiner

4 ADOPTED 4/16/99

5 On page 3, after line 18, insert the following:

6 "NEW SECTION. **Sec. 5.** (1) The legislature finds that:

7 (a) The internet presents a new medium of communication through
8 which speakers can publish false or defamatory statements about
9 businesses or individuals to vast audiences at little or no cost to the
10 speaker;

11 (b) The publication of false or defamatory statements via the
12 internet has the potential to cause serious injury to the victims of
13 such statements, particularly financial injury to businesses that are
14 the victims of false or defamatory on-line rumors about their stock,
15 products or services, or executives or personnel;

16 (c) False or defamatory statements on the internet are often
17 published anonymously, making it difficult for victims to determine the
18 identity and physical location of the speakers; and

19 (d) Current legal procedures do not adequately address the
20 challenges and opportunities the internet presents as a new medium of
21 communication, both as a tool for publishing false or defamatory
22 statements and for pursuing legal recourse against the speakers of such
23 statements.

24 (2) The legislature therefore intends that:

25 (a) When the internet is used to publish false or defamatory
26 statements about individuals residing in Washington or businesses doing
27 business in Washington, a rebuttable presumption is created that the
28 statements are published in Washington; and

29 (b) When the identity or physical location of a speaker who has
30 published false or defamatory statements via the internet about an
31 individual residing in Washington or a business doing business in
32 Washington is not known, a plaintiff in an action for libel or slander
33 may serve a summons by publication via the internet.

34 **Sec. 6.** RCW 4.36.120 and Code 1881 s 99 are each amended to read
35 as follows:

1 In an action for libel or slander, it shall not be necessary to
2 state in the complaint any extrinsic facts, for the purpose of showing
3 the application to the plaintiff, of the defamatory matter out of which
4 the cause arose, but it shall be sufficient to state generally, that
5 the same was published or spoken concerning the plaintiff; and if such
6 allegation be controverted, the plaintiff shall be bound to establish
7 on trial that it was so published or spoken. Where false or defamatory
8 statements concerning a person residing in Washington or a business
9 doing business in Washington are posted or electronically transmitted
10 via the internet, a rebuttable presumption is created that the
11 statements have been published in Washington.

12 **Sec. 7.** RCW 4.28.100 and 1981 c 331 s 13 are each amended to read
13 as follows:

14 When the defendant cannot be found within the state, and upon the
15 filing of an affidavit of the plaintiff, his agent, or attorney, with
16 the clerk of the court, stating that he believes that the defendant is
17 not a resident of the state, or cannot be found therein, and that he
18 has deposited a copy of the summons (substantially in the form
19 prescribed in RCW 4.28.110) and complaint in the post office, directed
20 to the defendant at his place of residence, unless it is stated in the
21 affidavit that such residence is not known to the affiant, and stating
22 the existence of one of the cases hereinafter specified, the service
23 may be made by publication of the summons, by the plaintiff or his
24 attorney in any of the following cases:

25 (1) When the defendant is a foreign corporation, and has property
26 within the state;

27 (2) When the defendant, being a resident of this state, has
28 departed therefrom with intent to defraud his creditors, or to avoid
29 the service of a summons, or keeps himself concealed therein with like
30 intent;

31 (3) When the defendant is not a resident of the state, but has
32 property therein and the court has jurisdiction of the subject of the
33 action;

34 (4) When the action is for divorce in the cases prescribed by law;

35 (5) When the subject of the action is real or personal property in
36 this state, and the defendant has or claims a lien or interest, actual
37 or contingent, therein, or the relief demanded consists wholly, or
38 partly, in excluding the defendant from any interest or lien therein;

1 (6) When the action is to foreclose, satisfy, or redeem from a
2 mortgage, or to enforce a lien of any kind on real estate in the county
3 where the action is brought, or satisfy or redeem from the same;

4 (7) When the action is against any corporation, whether private or
5 municipal, organized under the laws of the state, and the proper
6 officers on whom to make service do not exist or cannot be found;

7 (8) When the action is brought under RCW 4.08.160 and 4.08.170 to
8 determine conflicting claims to property in this state; and

9 (9) When the action is for defamation concerning a person residing
10 in Washington or a business doing business in Washington, where the
11 false or defamatory statements were posted or electronically
12 transmitted via the internet and the identity of the defendant is not
13 known or readily ascertainable.

14 **Sec. 8.** RCW 4.28.110 and 1985 c 469 s 2 are each amended to read
15 as follows:

16 The publication shall be made in a newspaper of general circulation
17 in the county where the action is brought once a week for six
18 consecutive weeks: PROVIDED, That publication of summons shall not be
19 made until after the filing of the complaint, and the service of the
20 summons shall be deemed complete at the expiration of the time
21 prescribed for publication. The summons must be subscribed by the
22 plaintiff or his attorney or attorneys. The summons shall contain the
23 date of the first publication, and shall require the defendant or
24 defendants upon whom service by publication is desired, to appear and
25 answer the complaint within sixty days from the date of the first
26 publication of the summons; and the summons for publication shall also
27 contain a brief statement of the object of the action. The summons for
28 publication shall be substantially as follows:

29 In the superior court of the State of Washington for the county of
30
31, Plaintiff,
32 vs. No.
33, Defendant.

34 The State of Washington to the said (naming the defendant or
35 defendants to be served by publication):

36 You are hereby summoned to appear within sixty days after the date
37 of the first publication of this summons, to wit, within sixty days

1 after the day of, 1. . . ., and defend the above
2 entitled action in the above entitled court, and answer the complaint
3 of the plaintiff, and serve a copy of your answer upon the
4 undersigned attorneys for plaintiff, at his (or their)
5 office below stated; and in case of your failure so to do, judgment
6 will be rendered against you according to the demand of the complaint,
7 which has been filed with the clerk of said court. (Insert here a
8 brief statement of the object of the action.)

9 ,
10 Plaintiff's Attorneys.
11 P.O. Address
12 County
13 Washington.

14 When service of summons by publication is authorized under RCW
15 4.28.100(9), the publication specified in this section may be made via
16 the internet, provided that the summons shall be posted to the same on-
17 line location where the false or defamatory statements were posted or
18 electronically transmitted to the electronic address of the sender of
19 the false or defamatory statements, once a week for six consecutive
20 weeks.

21 NEW SECTION. **Sec. 9.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected."

25 Renumber the remaining section consecutively and correct any
26 internal references accordingly.

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30 On page 3, line 23 of the title amendment, after "19.190.020,"
31 strike "and 19.190.030" and insert "19.190.030, 4.36.120, 4.28.100, and
32 4.28.110; creating a new section;"