

HB 584-FN - AS INTRODUCED

2021 SESSION

21-0448

11/04

HOUSE BILL ***584-FN***

AN ACT relative to guilt by association and defamation by media outlets.

SPONSORS: Rep. Baldasaro, Rock. 5; Rep. Wallace, Rock. 12

COMMITTEE: Judiciary

ANALYSIS

This bill defines and regulates defamation-in-kind.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to guilt by association and defamation by media outlets.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Defamation-In-Kind. Amend RSA by inserting after chapter 507-G the
2 following new chapter:

3 CHAPTER 507-H

4 DEFAMATION-IN-KIND

5 507-H:1 Short Title. This chapter may be cited and referred to as the “Stop Guilt By Accusation
6 Act.”

7 507-H:2 Definitions. As used in this chapter:

8 I. “Abuse of process” means the act of bringing and following through with a civil or criminal
9 action or case and controversy for a purpose known to be different from the purpose for which the
10 action was designed. The term includes proceedings that are brought for ulterior reasons than
11 sought on the surface.

12 II. “Accused” means a person who is blamed for a wrongdoing before a civil court, ethics
13 commission, criminal court, administrative court, or a military tribunal. The term includes a person
14 who has been arrested or formally charged by an indictment, information, or presentment with a
15 crime or ethical violation. The terms means the suspect, respondent, or defendant.

16 III. “Case and controversy” means any civil, criminal, or ethical proceedings before any
17 governmental, state, federal, and administrative court, ethics commission, military tribunal, or
18 legislative body.

19 IV. “Court of public opinion” means the general community consensus or opinion.

20 V. “Defamation” means a false and unprivileged statement of fact that is harmful to
21 someone's reputation, and published with fault, meaning as a result of negligence or malice.

22 VI. “Defamation-in-kind” means the failure of a media outlet to report on the outcome of a
23 case and controversy after it reported on the initial filings of a case and controversy in which the
24 petitioner ended up receiving less relief than originally sought or could have obtained, which could
25 reasonably result in a conviction in the court of public opinion by placing the accused in a false light
26 that causes him or her to be avoided, marginalized, and shunned by the general public.

27 VII. “False light” means an untrue or misleading portrayal.

28 VIII. “Malicious prosecution” means the act of initiating a criminal prosecution, civil suit, or
29 other proceedings against another party with malice and without probable cause.

30 IX. “Media outlet” means a publication or broadcast program that provides news and feature
31 stories to the public through various distribution channels. Media outlets include newspapers,

1 magazines, radio stations, television stations, and certain websites on the Internet and are part of
2 the press. A media outlet does not involve a person who does not work in the press as a profession or
3 who does not regularly engage in the business of reporting.

4 X. "Mugshot" means an official photograph taken after an accused suspect is arrested for an
5 alleged criminal violation. The intended purpose of the mugshot is to allow law enforcement to have
6 a photographic record of the arrested individual. Mugshots are also intended to be used for
7 identification by victims and investigators. Usually, mugshots are two-part, one side-view photo,
8 and another front-view.

9 XI. "Petitioner" means a person or government body who presents a petition to a
10 government authority in a particular case. The term means plaintiffs, claimant, or complainant.

11 XII. "Press" means the people such as reporters and photographers who work for
12 newspapers, magazines, television, websites, and radio outlets.

13 507-H:3 Duty of a Media Outlet to Publish a Follow-Up Report on the Outcome of a Case and
14 Controversy Under Certain Conditions Following a Timely Demand Notice.

15 I. A media outlet is required to provide equal coverage in comparable time, place,
16 magnitude, prominence, scale and manner in the same format as the original reporting of a case and
17 controversy, if:

18 (a) The media outlet reported on the facts of a case and controversy and the final verdict
19 provided less relief against the accused than originally sought by the petitioner or less than could
20 have been obtained by the petitioner; and

21 (b) The accused or the authorized agent of the accused sends an electronic or written
22 notice demand to an authorized agent of the media outlet within 20 days after the verdict or
23 outcome, demanding that the facts surrounding the final and actual decision or outcome be reported
24 and published as a follow-up to the original reporting.

25 II. In the written notification described in paragraph I, the accused or the authorized agent
26 of the accused must include:

27 (a) The date and source of the first reporting by the media outlet.

28 (b) A short description of the original allegations, the original relief sought by the
29 petitioner, or the amount of relief that could have been obtained, and a short description of the final
30 outcome and the relief actually awarded.

31 (c) The location of the venue where the case and controversy was resolved and the docket
32 number of the case and controversy, if one was assigned.

33 (d) An acknowledgment that the positions asserted in the notice demand are declared
34 under oath under the penalty of perjury pursuant to 28 U.S.C. section 1746.

35 III. In the notice demand described in paragraph I, the accused or the authorized agent of
36 the accused may include:

37 (a) A photograph of the accused that authorizes the media outlet to use at its

1 discretion.

2 (b) Internet links to or a hard copy of the original coverage published by the media
3 outlet.

4 (c) A demand to take down any unflattering pictures or mugshots of the accused that
5 were used in the original publication.

6 (d) Any other facts or pertinent information that the accused deems relevant.

7 IV. If a media outlet reports on the facts of a case and controversy and displays the mugshot
8 of the accused, and the accused is acquitted, enters into a plea of no contest, or receives an outcome
9 more favorable than originally sought by the petitioner or available to the petitioner:

10 (a) The media outlet shall take down or remove the mugshot from any digital publication
11 if possible.

12 (b) The media outlet shall not display the mugshot in the follow-up publication that
13 reports on the actual outcome of the case and controversy and shall only display images that it has
14 the authorization to use.

15 V. If the result of a civil trial is settled under the terms of a private settlement agreement,
16 the accused is not required to provide the terms of the private settlement agreement but can alert
17 the media outlet that the case and controversy was settled.

18 507-H:4 Civil Liability; Penalties; Statute of Limitations.

19 I. After receiving the notice demand by the accused described in RSA 507-H:3, I, a media
20 outlet that reported on the facts of the case and controversy prior to its resolution has 10 days to
21 comply with RSA 507-H:3, I, by publishing the follow-up story that reports on the actual outcome.
22 The accused will have the burden of proof at a civil trial to show that the notice was timely served on
23 the media outlet and met the requirements of RSA 507-H:3, II.

24 II. If the media outlet fails to comply with the notice demand within 10 days, the accused
25 has one year to file suit from the day of non-compliance and can seek the following relief in a court of
26 competent jurisdiction against the media outlet:

27 (a) Statutory damages of \$10,000.

28 (b) Attorneys fees and costs.

29 (c) Actual damages.

30 (d) Other forms of equitable and injunctive relief.

31 III. If multiple media outlets fail to comply with the notice demand subjected to the
32 jurisdiction of the court, such media outlets can be added as co-defendants in a consolidated case to
33 preserve judicial economy.

34 IV. If the media outlet, displayed the mugshot of the accused in the original publication as
35 described in RSA 507-H:3, IV, in a digital format, the accused can seek injunctive relief to have the
36 media outlet remove the image.

37 507-H:5 Immunity, Exceptions, And Exemptions.

1 I. A media outlet shall be immune and exempt from liability under this chapter if it:

2 (a) Is known to publish satire or parody or admits that it is a fake news outlet that is
3 purposed to traffic in fiction peddling for comedic or entertainment purposes.

4 (b) Reports on the facts of the outcome in comparable time, place, magnitude,
5 prominence, scale and manner of the original publication prior to receiving the notice demand from
6 the accused.

7 (c) Receives an untimely notice demand 20 days after the day of the verdict by the
8 accused.

9 (d) Never reported on the case and controversy prior to the decision being reached.

10 II. The petitioner has no standing under this statute to make a media outlet report on the
11 outcome of a case and controversy regardless of the outcome. Neither the petitioner nor the accused
12 have standing to compel a media outlet to report on the case and controversy after it is filed.

13 III. If a media outlet reported on a case a controversy involving one or more felony charges
14 and the accused was convicted or pled guilty to one felony count, the accused lacks standing to
15 enforce this chapter.

16 IV. This chapter does not apply to a media outlet that publishes a documentary, film, or an
17 extensive investigative report regarding a case and controversy.

18 507-H:6 Waiver of Rights.

19 I. An accused has the right to waive his rights under this chapter as a part of a negotiated
20 settlement.

21 II. A court of competent jurisdiction may refuse to acknowledge any waiver of rights
22 described in paragraph I if there is any evidence that the waiver was coerced.

23 507-H:7 Construction and Purpose. The purpose of this chapter is to:

24 I. Prevent unchecked media outlets from acting as slander machines by engaging in
25 defamation-in-kind, abusing the general public, and degrading the integrity of our institutions of
26 justice through selective reporting on cases and controversies that cultivates false narratives to the
27 point that it unduly injures the accused by eroding their civil liberties causing them to be shunned
28 and avoided by the general public due to a cloud of suspicion of wrongdoing that does not exactly
29 align with the original allegations or the relief provided in a case and controversy lodged before a
30 government body.

31 II. Protect the integrity of the press and encourage good character of the members of the
32 press core.

33 III. Deter malicious prosecution, abuse of process in general, prosecutors from overcharging
34 defendants, and plaintiffs from seeking excessive reliefs in the original cause complaint.

35 IV. Promote a mercy-centric justice system because no human is perfect.

36 V. Deter convictions in the court of public opinion that do not necessarily align with
37 convictions by institutions of justice.

HB 584-FN - AS INTRODUCED

- Page 5 -

1 3 Effective Date. This act shall take effect upon its passage.

**HB 584-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to guilt by association and defamation by media outlets.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

The Judicial Branch indicates this bill would regulate certain activities by media outlets and creates certain new civil liabilities for media outlets that fail to comply with a timely notice of demand issued against it. The Branch assumes the bill would generate civil litigation, which would result in a fiscal impact. It is not possible to determine how many cases, or the nature of the cases, at this time, and is therefore unable to determine the fiscal impact.

It is assumed that any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch