

ESB 5236 - H COMM AMD
By Committee on Judiciary

ADOPTED AND ENGROSSED 4/12/13

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** DEFINITION. The definition in this section
4 applies throughout this chapter unless the context clearly requires
5 otherwise.

6 "Person" means an individual, corporation, business trust, estate,
7 trust, partnership, association, joint venture, or other legal or
8 commercial entity. The term does not include a government or
9 governmental subdivision, agency, or instrumentality.

10 NEW SECTION. **Sec. 2.** SCOPE. (1) This chapter applies to any
11 claim for relief, however characterized, for damages arising out of
12 harm caused by the false content of a publication that is published on
13 or after the effective date of this section.

14 (2) This chapter applies to all publications, including writings,
15 broadcasts, oral communications, electronic transmissions, or other
16 forms of transmitting information.

17 NEW SECTION. **Sec. 3.** REQUEST FOR CORRECTION OR CLARIFICATION.

18 (1) A person may maintain an action for defamation only if:

19 (a) The person has made a timely and adequate request for
20 correction or clarification from the defendant; or

21 (b) The defendant has made a correction or clarification.

22 (2) A request for correction or clarification is timely if made
23 within the period of limitation for commencement of an action for
24 defamation. However, a person who, within ninety days after knowledge
25 of the publication, fails to make a good-faith attempt to request a
26 correction or clarification may not recover damages for injury to
27 reputation or presumed damages; however, the person may recover all
28 other damages permitted by law.

1 (3) A request for correction or clarification is adequate if it:
2 (a) Is made in writing and reasonably identifies the person making
3 the request;
4 (b) Specifies with particularity the statement alleged to be false
5 and defamatory and, to the extent known, the time and place of
6 publication;
7 (c) Alleges the defamatory meaning of the statement;
8 (d) Specifies the circumstances giving rise to any defamatory
9 meaning of the statement which arises from other than the express
10 language of the publication; and
11 (e) States that the alleged defamatory meaning of the statement is
12 false.
13 (4) In the absence of a previous adequate request, service of a
14 summons and complaint stating a claim for relief for defamation and
15 containing the information required in subsection (3) of this section
16 constitutes an adequate request for correction or clarification.

17 NEW SECTION. **Sec. 4.** DISCLOSURE OF EVIDENCE OF FALSITY. (1) A
18 person who has been requested to make a correction or clarification may
19 ask the requester to disclose reasonably available information material
20 to the falsity of the allegedly defamatory statement.

21 (2) If a correction or clarification is not made, a person who
22 unreasonably fails to disclose the information after a request to do so
23 may not recover damages for injury to reputation or presumed damages;
24 however, the person may recover all other damages permitted by law.

25 NEW SECTION. **Sec. 5.** EFFECT OF CORRECTION OR CLARIFICATION. If
26 a timely and sufficient correction or clarification is made, a person
27 may not recover damages for injury to reputation or presumed damages;
28 however, the person may recover all other damages permitted by law as
29 well as reasonable expenses of litigation, including attorneys' fees
30 incurred before the publication of the correction or clarification.

31 NEW SECTION. **Sec. 6.** TIMELY AND SUFFICIENT CORRECTION OR
32 CLARIFICATION. (1) A correction or clarification is timely if it is
33 published before, or within one month after, receipt of a request for
34 correction or clarification or of the information in section 4(1) of

1 this act, whichever is later, unless the period is extended by written
2 agreement of the parties.

3 (2) A correction or clarification is sufficient if it:

4 (a) Is published with a prominence and in a manner and medium
5 reasonably likely to reach substantially the same audience as the
6 publication complained of;

7 (b) Refers to the statement being corrected or clarified and:

8 (i) Corrects the statement;

9 (ii) In the case of defamatory meaning arising from other than the
10 express language of the publication, disclaims an intent to communicate
11 that meaning or to assert its truth; or

12 (iii) In the case of a statement attributed to another person,
13 identifies the person and disclaims an intent to assert the truth of
14 the statement;

15 (c) Is communicated to the person who has made a request for
16 correction or clarification; and

17 (d) Accompanies and is an equally prominent part of any electronic
18 publication of the allegedly defamatory statement by the publisher.

19 (3) A correction or clarification is published in a medium
20 reasonably likely to reach substantially the same audience as the
21 publication complained of if it is published in a later issue, edition,
22 or broadcast of the original publication.

23 (4) If a later issue, edition, or broadcast of the original
24 publication will not be published within the time limits established
25 for a timely correction or clarification, a correction or clarification
26 is published in a manner and medium reasonably likely to reach
27 substantially the same audience as the publication complained of if:

28 (a) It is timely published in a reasonably prominent manner:

29 (i) In another medium likely to reach an audience reasonably
30 equivalent to the original publication; or

31 (ii) If the parties cannot agree on another medium, in the
32 newspaper with the largest general circulation in the region in which
33 the original publication was distributed;

34 (b) Reasonable steps are taken to correct undistributed copies of
35 the original publication, if any; and

36 (c) It is published in the next practicable issue, edition, or
37 broadcast, if any, of the original publication.

1 (5) A correction or clarification is timely and sufficient if the
2 parties agree in writing that it is timely and sufficient.

3 NEW SECTION. **Sec. 7.** CHALLENGES TO CORRECTION OR CLARIFICATION OR
4 TO REQUEST FOR CORRECTION OR CLARIFICATION. (1) If a defendant in an
5 action governed by this chapter intends to rely on a timely and
6 sufficient correction or clarification, the defendant's intention to do
7 so, and the correction or clarification relied upon, must be set forth
8 in a notice served on the plaintiff within sixty days after service of
9 the summons and complaint or ten days after the correction or
10 clarification is made, whichever is later. A correction or
11 clarification is deemed to be timely and sufficient unless the
12 plaintiff challenges its timeliness or sufficiency within twenty days
13 after the notice is served.

14 (2) If a defendant in an action governed by this chapter intends to
15 challenge the adequacy or timeliness of a request for correction or
16 clarification, the defendant must set forth the challenge in a motion
17 to declare the request inadequate or untimely served within sixty days
18 after service of the summons and complaint. The court shall rule on
19 the motion at the earliest appropriate time before trial.

20 NEW SECTION. **Sec. 8.** OFFER TO CORRECT OR CLARIFY. (1) If a
21 timely correction or clarification is no longer possible, the publisher
22 of an alleged defamatory statement may offer, at any time before trial,
23 to make a correction or clarification. The offer must be made in
24 writing to the person allegedly defamed by the publication and:

25 (a) Contain the publisher's offer to:

26 (i) Publish, at the person's request, a sufficient correction or
27 clarification; and

28 (ii) Pay the person's reasonable expenses of litigation, including
29 attorneys' fees, incurred before publication of the correction or
30 clarification; and

31 (b) Be accompanied by a copy of the proposed correction or
32 clarification and the plan for its publication.

33 (2) If the person accepts in writing an offer to correct or clarify
34 made pursuant to subsection (1) of this section:

35 (a) The person is barred from commencing an action against the
36 publisher based on the statement; or

1 (b) If an action has been commenced, the court shall dismiss the
2 action against the defendant with prejudice after the defendant
3 complies with the terms of the offer.

4 (3) A person who does not accept an offer made in conformance with
5 subsection (1) of this section may not recover damages for injury to
6 reputation or presumed damages in an action based on the statement;
7 however, the person may recover all other damages permitted by law, as
8 well as reasonable expenses of litigation, including attorneys' fees,
9 incurred before the offer, unless the person failed to make a good-
10 faith attempt to request a correction or clarification in accordance
11 with section 3(2) of this act or failed to disclose information in
12 accordance with section 4 of this act.

13 (4) On request of either party, a court shall promptly determine
14 the sufficiency of the offered correction or clarification.

15 NEW SECTION. **Sec. 9.** SCOPE OF PROTECTION. A timely and
16 sufficient correction or clarification made by a person responsible for
17 a publication constitutes a correction or clarification made by all
18 persons responsible for that publication other than a republisher.
19 However, a correction or clarification that is sufficient only because
20 of the operation of section 6(2)(b)(iii) of this act does not
21 constitute a correction or clarification made by the person to whom the
22 statement is attributed.

23 NEW SECTION. **Sec. 10.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.
24 This chapter shall be applied and construed to effectuate its general
25 purpose to make uniform the law with respect to the subject of this
26 chapter among states enacting it.

27 NEW SECTION. **Sec. 11.** SHORT TITLE. This chapter may be known and
28 cited as the uniform correction or clarification of defamation act.

29 NEW SECTION. **Sec. 12.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 13.** Sections 1 through 11 of this act
2 constitute a new chapter in Title 7 RCW."

3 Correct the title.

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