

By: Corte

H.B. No. 2395

A BILL TO BE ENTITLED

AN ACT

relating to the Uniform Correction or Clarification of Defamation Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 98 to read as follows:

CHAPTER 98. UNIFORM CORRECTION OR CLARIFICATION OF  
DEFAMATION ACT

Sec. 98.001. DEFINITIONS. In this chapter:

(1) "Defamatory" means tending to harm reputation.

(2) "Economic loss" means special, pecuniary loss caused by a false and defamatory publication.

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

Sec. 98.002. SCOPE. (a) This chapter applies to any claim for relief, however characterized, for damages arising out of harm to personal reputation caused by the false content of a publication.

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

Sec. 98.003. REQUEST FOR CORRECTION OR CLARIFICATION. (a)

A person may maintain an action for defamation only if:

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

(2) the defendant has made a correction or clarification.

(b) A request for correction or clarification is timely if made within the period of limitation for commencement of an action for defamation. However, a person who, within 90 days after knowledge of the publication, fails to make a good faith attempt to request a correction or clarification may recover only provable economic loss.

(c) A request for correction or clarification is adequate if it:

(1) is made in writing and reasonably identifies the person making the request;

(2) specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;

(3) alleges the defamatory meaning of the statement;

(4) specifies the circumstances giving rise to any defamatory meaning of the statement that arises from other than the express language of the publication; and

(5) states that the alleged defamatory meaning of the statement is false.

(d) In the absence of a previous adequate request, service of citation stating a claim for relief for defamation and

1 containing the information required in Subsection (c) constitutes  
2 an adequate request for correction or clarification.

3 (e) The period of limitation for commencement of a  
4 defamation action is tolled during the period allowed in Section  
5 98.006(a) for responding to a request for correction or  
6 clarification.

7 Sec. 98.004. DISCLOSURE OF EVIDENCE OF FALSITY. (a) A  
8 person who has been requested to make a correction or clarification  
9 may ask the requestor to disclose reasonably available information  
10 material to the falsity of the allegedly defamatory statement.

11 (b) If a correction or clarification is not made, a person  
12 who unreasonably fails to disclose the information after a request  
13 to do so may recover only provable economic loss.

14 (c) A correction or clarification is timely if published  
15 within 25 days after receipt of information disclosed as provided  
16 by Subsection (a) or 45 days after receipt of a request for  
17 correction or clarification, whichever is later.

18 Sec. 98.005. EFFECT OF CORRECTION OR CLARIFICATION. If a  
19 timely and sufficient correction or clarification is made, a person  
20 may recover only provable economic loss, as mitigated by the  
21 correction or clarification.

22 Sec. 98.006. TIMELY AND SUFFICIENT CORRECTION OR  
23 CLARIFICATION. (a) A correction or clarification is timely if it is  
24 published before, or within 45 days after, receipt of a request for  
25 correction or clarification, unless the period is extended under  
26 Section 98.004(c).

27 (b) A correction or clarification is sufficient if it:

1           (1) is published with a prominence and in a manner and  
2 medium reasonably likely to reach substantially the same audience  
3 as the publication complained of;

4           (2) refers to the statement being corrected or  
5 clarified and:

6                   (A) corrects the statement;

7                   (B) in the case of defamatory meaning arising  
8 from other than the express language of the publication, disclaims  
9 an intent to communicate that meaning or to assert its truth; or

10                   (C) in the case of a statement attributed to  
11 another person, identifies the person and disclaims an intent to  
12 assert the truth of the statement; and

13           (3) is communicated to the person who has made a  
14 request for correction or clarification.

15           (c) A correction or clarification is published in a medium  
16 reasonably likely to reach substantially the same audience as the  
17 publication complained of if it is published in a later issue,  
18 edition, or broadcast of the original publication.

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

25                   (1) it is timely published in a reasonably prominent  
26 manner:

27                   (A) in another medium likely to reach an audience

1 reasonably equivalent to the original publication; or

2 (B) if the parties cannot agree on another  
3 medium, in the newspaper with the largest general circulation in  
4 the region in which the original publication was distributed;

5 (2) reasonable steps are taken to correct any  
6 undistributed copies of the original publication; and

7 (3) it is published in the next practicable issue,  
8 edition, or broadcast, if any, of the original publication.

9 (e) A correction or clarification is timely and sufficient  
10 if the parties agree in writing that it is timely and sufficient.

11 Sec. 98.007. CHALLENGES TO CORRECTION OR CLARIFICATION OR  
12 TO REQUEST FOR CORRECTION OR CLARIFICATION. (a) If a defendant in  
13 an action governed by this chapter intends to rely on a timely and  
14 sufficient correction or clarification, the defendant's intention  
15 to do so, and the correction or clarification relied on, must be set  
16 forth in a notice served on the plaintiff within 60 days after  
17 service of the citation or 10 days after the correction or  
18 clarification is made, whichever is later. A correction or  
19 clarification is timely and sufficient unless the plaintiff  
20 challenges its timeliness or sufficiency within 20 days after the  
21 notice is served.

22 (b) If a defendant in an action governed by this chapter  
23 intends to challenge the adequacy or timeliness of a request for  
24 correction or clarification, the defendant must set forth the  
25 challenge in a motion to declare the request inadequate or untimely  
26 served within 60 days after service of the citation. The court  
27 shall rule on the motion at the earliest appropriate time before

1 trial.

2 Sec. 98.008. OFFER TO CORRECT OR CLARIFY. (a) If a timely  
3 correction or clarification is no longer possible, the publisher of  
4 an alleged defamatory statement may offer, at any time before  
5 trial, to make a correction or clarification. The offer must be  
6 made in writing to the person allegedly defamed by the publication  
7 and:

8 (1) contain the publisher's offer to:

9 (A) publish, at the person's request, a  
10 sufficient correction or clarification; and

11 (B) pay the person's reasonable expenses of  
12 litigation, including attorney's fees, incurred before publication  
13 of the correction or clarification; and

14 (2) be accompanied by a copy of the proposed  
15 correction or clarification and the plan for its publication.

16 (b) If the person accepts in writing an offer to correct or  
17 clarify made under Subsection (a):

18 (1) the person is barred from commencing an action  
19 against the publisher based on the statement; or

20 (2) if an action has been commenced, the court shall  
21 dismiss the action against the defendant with prejudice after the  
22 defendant complies with the terms of the offer.

23 (c) A person who does not accept an offer made in  
24 conformance with Subsection (a) may recover in an action based on  
25 the statement only:

26 (1) damages for provable economic loss; and

27 (2) reasonable expenses of litigation, including

1 attorney's fees, incurred before the offer, unless the person  
2 failed to make a good faith attempt to request a correction or  
3 clarification in accordance with Section 98.003(b) or failed to  
4 disclose information in accordance with Section 98.004.

5 (d) On request of either party, a court shall promptly  
6 determine the sufficiency of the offered correction or  
7 clarification.

8 (e) The court shall determine the amount of reasonable  
9 expenses of litigation, including attorney's fees, specified in  
10 Subsections (a)(1)(B) and (c)(2).

11 Sec. 98.009. SCOPE OF PROTECTION. A timely and sufficient  
12 correction or clarification made by a person responsible for a  
13 publication constitutes a correction or clarification made by all  
14 persons responsible for that publication other than a republisher.  
15 However, a correction or clarification that is sufficient only  
16 because of the operation of Section 98.006(b)(2)(C) does not  
17 constitute a correction or clarification made by the person to whom  
18 the statement is attributed.

19 Sec. 98.010. ADMISSIBILITY OF EVIDENCE OF CORRECTION OR  
20 CLARIFICATION. (a) The fact of a request for correction or  
21 clarification under this chapter, the contents of the request, and  
22 its acceptance or refusal are not admissible in evidence at trial.

23 (b) The fact that a correction or clarification under this  
24 chapter was made and the contents of the correction or  
25 clarification are not admissible in evidence at trial except in  
26 mitigation of damages under Section 98.005. If the fact that a  
27 correction or clarification was made or the contents of the

1 correction or clarification are received in evidence, the fact of  
2 the request may also be received.

3 (c) The fact of an offer of correction or clarification, or  
4 the fact of its refusal, and the contents of the offer are not  
5 admissible in evidence at trial.

6 Sec. 98.011. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
7 This chapter shall be applied and construed to effect its general  
8 purpose to make uniform the law with respect to the subject of this  
9 chapter among states enacting it.

10 Sec. 98.012. SHORT TITLE. This chapter may be cited as the  
11 Uniform Correction or Clarification of Defamation Act.

12 SECTION 2. This Act takes effect September 1, 2003, and  
13 applies only to a cause of action that accrues on or after that  
14 date. An action that accrued before the effective date of this Act  
15 is governed by the law applicable to the action immediately before  
16 the effective date of this Act, and that law is continued in effect  
17 for that purpose.