

BILL ANALYSIS

C.S.H.B. 1759
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Restoring one's reputation is at the heart of any defamation dispute. Interested parties observe that the idea of mitigating the impact of publication errors through a retraction has been the subject of legislation in many other states, and these parties contend that establishing a framework for how and when a retraction is warranted has led to less litigation. C.S.H.B. 1759 enacts the Defamation Mitigation Act, which is based on uniform legislation adopted by the Uniform Law Commission, in an effort to encourage the prompt and thorough correction, clarification, or retraction of published information that is alleged to be defamatory and to provide for the early resolution of disputes arising from such a publication.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1759 amends the Civil Practice and Remedies Code to set out provisions relating to the correction, clarification, or retraction of false content by a publisher as such an action relates to a claim for relief, however characterized, from damages arising out of harm to personal reputation caused by the false content of the publication. The bill's provisions apply to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information.

C.S.H.B. 1759 makes a person's authority to maintain an action for defamation contingent on the person making a timely and sufficient request for a correction, clarification, or retraction from the defendant or on the defendant making a correction, clarification, or retraction. The bill establishes the circumstances under which a request for a correction, clarification, or retraction is considered timely and the circumstances under which such a request is considered sufficient. The bill prohibits a person from recovering exemplary damages if, not later than the 90th day after receiving knowledge of the publication, the person does not request a correction, clarification, or retraction. The bill tolls the period of limitation for commencement of such an action during certain periods described by the bill.

C.S.H.B. 1759 authorizes a person who has been requested to make a correction, clarification, or retraction to ask the person making the request to provide reasonably available information regarding the falsity of the allegedly defamatory statement not later than the 30th day after the date the person receives the request. The bill requires the person seeking the correction, clarification, or retraction to provide any requested information not later than the 30th day after the date the person receives the request. The bill prohibits a person from recovering exemplary damages if the person fails to disclose the requested information without good cause and a correction, clarification, or retraction is not made, unless the publication was made with actual malice.

C.S.H.B. 1759 establishes that if a defendant in an action under the bill's provisions intends to rely on a timely and sufficient correction, clarification, or retraction, the defendant's intention to do so, and the correction, clarification, or retraction relied on, must be stated in a notice served on the plaintiff on the later of the 60th day after service of the citation or the 10th day after the date the correction, clarification, or retraction is made. The bill establishes the circumstances under which a correction, clarification, or retraction is considered timely and the circumstances under which a correction, clarification, or retraction is considered sufficient. The bill specifies that a correction, clarification, or retraction is timely and sufficient unless the plaintiff challenges the timeliness or sufficiency not later than the 20th day after the date notice of the defendant's intention to rely on a timely and sufficient correction, clarification, or retraction is served. The bill requires a plaintiff who challenges the timeliness or sufficiency to state the challenge in a motion to declare the correction, clarification, or retraction untimely or insufficient served not later than the 30th day after the date the notice of the defendant's intent is served on the plaintiff or the 30th day after the date the correction, clarification, or retraction is made, whichever is later.

C.S.H.B. 1759 requires a defendant who intends to challenge the sufficiency or timeliness of a request for a correction, clarification, or retraction to state the challenge in a motion to declare the request insufficient or untimely served not later than the 60th day after the date of service of the citation. The bill establishes that the sufficiency and timeliness of a request for correction, clarification, or retraction is a question of law unless there is a reasonable dispute regarding the actual contents of the request. The bill requires the court, at the earliest appropriate time before trial, to rule, as a matter of law, whether the request for correction, clarification, or retraction meets the requirements of the bill's provisions.

C.S.H.B. 1759 prohibits a person from recovering exemplary damages if a correction, clarification, or retraction is made in accordance with the bill's provisions, regardless of whether the person claiming harm made a request, unless the publication was made with actual malice.

C.S.H.B. 1759 establishes that a timely and sufficient correction, clarification, or retraction made by a person responsible for a publication constitutes a correction, clarification, or retraction made by all persons responsible for that publication but does not extend to an entity that republished the information.

C.S.H.B. 1759 establishes that a request for a correction, clarification, or retraction, the contents of the request, and the acceptance or refusal of the request are not admissible evidence at a trial. The bill establishes that the fact that a correction, clarification, or retraction was made and the contents of the correction, clarification, or retraction are not admissible in evidence at trial except in mitigation of damages. The bill authorizes a request for a correction, clarification, or retraction to be received into evidence if the correction, clarification, or retraction is received into evidence. The bill establishes that the fact that an offer of a correction, clarification, or retraction was made, the contents of the offer, and the fact that the correction, clarification, or retraction was refused are not admissible in evidence at trial.

C.S.H.B. 1759 authorizes a person against whom a suit is pending who does not receive the required written request for a correction, clarification, or retraction to file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending. The bill establishes that a suit is automatically abated in its entirety, without the order of the court, beginning on the 11th day after the date such a plea of abatement is filed if the plea in abatement is verified and alleges that the person against whom the suit is pending did not receive the required written request and if the plea in abatement is not controverted in an affidavit filed by the person bringing the claim before the 11th day after the date on which the plea in abatement is filed. The bill specifies that such an abatement continues until the 60th day after the date that the required written request is served, the requested information regarding the falsity of the allegedly defamatory statement is provided, or the period for providing such information has expired, whichever is later. The bill establishes that a hearing on the plea of

abatement will take place as soon as practical considering the court's docket if a controverting affidavit is filed by the person bringing the claim. The bill establishes that all statutory and judicial guidelines under the Texas Rules of Civil Procedure relating to a suit abated in such a manner, other than those provided in the bill's provisions relating to suit abatement, will be stayed during the pendency of the abatement period.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1759 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 73, Civil Practice and Remedies Code, is amended.

SECTION 2. Chapter 73, Civil Practice and Remedies Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. CORRECTION, CLARIFICATION, OR RETRACTION BY PUBLISHER

Sec. 73.051. SHORT TITLE.

Sec. 73.052. PURPOSE.

Sec. 73.053. DEFINITIONS. In this subchapter:

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

(2) "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. 73.054. APPLICABILITY. (a) This subchapter applies to a claim for relief from damages arising out of harm to a personal reputation caused by the false content of a publication.

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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Chapter 73, Civil Practice and Remedies Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. CORRECTION, CLARIFICATION, OR RETRACTION BY PUBLISHER

Sec. 73.051. SHORT TITLE.

Sec. 73.052. PURPOSE.

Sec. 73.053. DEFINITION. In this subchapter,

"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. 73.054. APPLICABILITY. (a) This subchapter applies to a claim for relief, however characterized, from damages arising out of harm to personal reputation caused by the false content of a publication.

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

Sec. 73.055. REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION. (a) A person may maintain an action for defamation only if:

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

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

(b) A request for a correction, clarification, or retraction is timely if made during the period of limitation for commencement of an action for defamation.

(c) A person may recover exemplary damages only if not later than the 90th day after receiving knowledge of the publication, the person requests a correction, clarification, or retraction.

(d) A request for a correction, clarification, or retraction is sufficient if it:

(1) is served on the publisher;

(2) is made in writing, reasonably identifies the person making the request, and is signed by the individual claiming to have been defamed or by the person's authorized attorney or agent;

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

(4) alleges the defamatory meaning of the statement; and

(5) specifies the circumstances causing a defamatory meaning of the statement if it arises from something other than the express language of the publication.

Sec. 73.056. DISCLOSURE OF EVIDENCE OF FALSITY. (a) A person who has been requested to make a correction, clarification, or retraction may ask the person making the request to provide reasonably available information regarding the falsity of the allegedly defamatory statement. Any information requested under this section must be provided by the person seeking the correction, clarification, or retraction not later than the 30th day after the date the person receives the request. A period of limitation for commencement of a

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

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

(b) A request for a correction, clarification, or retraction is timely if made during the period of limitation for commencement of an action for defamation.

(c) If not later than the 90th day after receiving knowledge of the publication, the person does not request a correction, clarification, or retraction, the person may not recover exemplary damages.

(d) A request for a correction, clarification, or retraction is sufficient if it:

(1) is served on the publisher;

(2) is made in writing, reasonably identifies the person making the request, and is signed by the individual claiming to have been defamed or by the person's authorized attorney or agent;

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

(4) alleges the defamatory meaning of the statement; and

(5) specifies the circumstances causing a defamatory meaning of the statement if it arises from something other than the express language of the publication.

(e) A period of limitation for commencement of an action under this section is tolled during the period allowed by Sections 73.056 and 73.057.

Sec. 73.056. DISCLOSURE OF EVIDENCE OF FALSITY. (a) A person who has been requested to make a correction, clarification, or retraction may ask the person making the request to provide reasonably available information regarding the falsity of the allegedly defamatory statement not later than the 30th day after the date the person receives the request. Any information requested under this section must be provided by the person seeking the correction, clarification, or retraction not later than the 30th day after

claim under this subsection is tolled during the period allowed in this section.

(b) If a correction, clarification, or retraction is not made, a person who, without good cause, fails to disclose the information requested under Subsection (a) may not recover exemplary damages.

Sec. 73.057. TIMELY AND SUFFICIENT CORRECTION, CLARIFICATION, OR RETRACTION. (a) A correction, clarification, or retraction is timely if it is made not later than the 30th day after receipt of:

(1) the request for the correction, clarification, or retraction; or

(2) the information requested under Section 73.056(a).

(b) A correction, clarification, or retraction is sufficient if it is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of and:

(1) is publication of an acknowledgment that the statement specified as false and defamatory is erroneous;

(2) is an allegation that the defamatory meaning arises from other than the express language of the publication and the publisher disclaims an intent to communicate that meaning or to assert its truth;

(3) is a statement attributed to another person whom the publisher identifies and the publisher disclaims an intent to assert the truth of the statement; or

(4) is publication of the requestor's statement of the facts, as set forth in a request for correction, clarification, or retraction, or a fair summary of the statement, exclusive of any portion that is defamatory of another, obscene, or otherwise improper for publication.

(c) If a request for correction, clarification, or retraction has specified two or more statements as false and defamatory, the correction, clarification, or retraction may deal with the statements individually in any manner provided by Subsection (b).

(d) Except as provided by Subsection (e), a

the date the person receives the request.

(b) If a correction, clarification, or retraction is not made, a person who, without good cause, fails to disclose the information requested under Subsection (a) may not recover exemplary damages, unless the publication was made with actual malice.

Sec. 73.057. TIMELY AND SUFFICIENT CORRECTION, CLARIFICATION, OR RETRACTION. (a) A correction, clarification, or retraction is timely if it is made not later than the 30th day after receipt of:

(1) the request for the correction, clarification, or retraction; or

(2) the information requested under Section 73.056(a).

(b) A correction, clarification, or retraction is sufficient if it is published in the same manner and medium as the original publication or, if that is not possible, with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of and:

(1) is publication of an acknowledgment that the statement specified as false and defamatory is erroneous;

(2) is an allegation that the defamatory meaning arises from other than the express language of the publication and the publisher disclaims an intent to communicate that meaning or to assert its truth;

(3) is a statement attributed to another person whom the publisher identifies and the publisher disclaims an intent to assert the truth of the statement; or

(4) is publication of the requestor's statement of the facts, as set forth in a request for correction, clarification, or retraction, or a fair summary of the statement, exclusive of any portion that is defamatory of another, obscene, or otherwise improper for publication.

(c) If a request for correction, clarification, or retraction has specified two or more statements as false and defamatory, the correction, clarification, or retraction may deal with the statements individually in any manner provided by Subsection (b).

(d) Except as provided by Subsection (e), a

correction, clarification, or retraction is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:

(1) it is published in a later issue, edition, or broadcast of the original publication;

(2) publication is in the next practicable issue, edition, or broadcast of the original publication because the publication will not be published within the time limits established for a timely correction, clarification, or retraction; or

(3) the original publication no longer exists and if the correction, clarification, or retraction is published in the newspaper with the largest general circulation in the region in which the original publication was distributed.

(e) If the original publication was on the Internet, a correction, clarification, or retraction is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if the publisher appends to the original publication the correction, clarification, or retraction.

Sec. 73.058. CHALLENGES TO CORRECTION, CLARIFICATION, OR RETRACTION OR TO REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION.

Sec. 73.059. EFFECT OF CORRECTION, CLARIFICATION, OR RETRACTION.

Sec. 73.060. SCOPE OF PROTECTION.

Sec. 73.061. ADMISSIBILITY OF EVIDENCE OF CORRECTION, CLARIFICATION, OR RETRACTION.

No equivalent provision.

correction, clarification, or retraction is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:

(1) it is published in a later issue, edition, or broadcast of the original publication;

(2) publication is in the next practicable issue, edition, or broadcast of the original publication because the publication will not be published within the time limits established for a timely correction, clarification, or retraction; or

(3) the original publication no longer exists and if the correction, clarification, or retraction is published in the newspaper with the largest general circulation in the region in which the original publication was distributed.

(e) If the original publication was on the Internet, a correction, clarification, or retraction is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if the publisher appends to the original publication the correction, clarification, or retraction.

Sec. 73.058. CHALLENGES TO CORRECTION, CLARIFICATION, OR RETRACTION OR TO REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION.

Sec. 73.059. EFFECT OF CORRECTION, CLARIFICATION, OR RETRACTION.

Sec. 73.060. SCOPE OF PROTECTION.

Sec. 73.061. ADMISSIBILITY OF EVIDENCE OF CORRECTION, CLARIFICATION, OR RETRACTION.

Sec. 73.062. ABATEMENT. (a) A person against whom a suit is pending who does not receive a written request for a correction, clarification, or retraction, as required by Section 73.055, may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending.

(b) A suit is automatically abated, in its entirety, without the order of the court,

beginning on the 11th day after the date a plea in abatement is filed under Subsection (a) if the plea in abatement:
(1) is verified and alleges that the person against whom the suit is pending did not receive the written request as required by Section 73.055; and
(2) is not controverted in an affidavit filed by the person bringing the claim before the 11th day after the date on which the plea in abatement is filed.
(c) An abatement under Subsection (b) continues until the 60th day after the date that the written request is served in compliance with Section 73.055, the information requested under Section 73.056(a) is provided, or the time period under Section 73.056(a) has expired, whichever is later. If a controverting affidavit is filed under Subsection (b)(2), a hearing on the plea in abatement will take place as soon as practical considering the court's docket.
(d) All statutory and judicial deadlines under the Texas Rules of Civil Procedure relating to a suit abated under Subsection (b), other than those provided in this section, will be stayed during the pendency of the abatement period under this section.

SECTION 3. This Act applies only to information published on or after the effective date of this Act. Information published before the effective date of this Act is governed by the law in effect when the information was published, and the former law is continued in effect for that purpose.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.