

BILL ANALYSIS

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C.S.H.B. 1759
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Restoring one's reputation is at the heart of any defamation dispute. The idea of mitigating the impact of publication errors through a retraction has been the subject of legislation in 30 other states dating back as far as 1882. Establishing a framework for how and when a retraction is warranted has led to less litigation and standards by which a retraction must be published to make the subject of defamation whole. In 1993, the Uniform Law Commission adopted the Uniform Correction or Clarification of Defamation Act which this bill patterned after.

C.S.H.B. 1759 encourages individuals to come forward in a timely manner if a mistake has been made in a publication and gives the publisher the opportunity to correct false content believed to have damaged the individual's reputation. It encourages publishers to correct mistakes in a timely and prominent manner intended to reach the same audience the original publication reached. It limits damages if a retraction is run in accordance with the statute but has no impact on existing law if the publication was made with actual malice. It applies to all defamation claims, whether a public or private figure, media or non-media publisher, thus establishing a simplified structure for the prompt resolution of all disputes. The bill also requires permanent attachment of the retraction if published on the Internet. The purpose of the bill is to bring forth the early resolution of claims for harm to reputation by restoring a person's reputation more quickly and more thoroughly than our current system provides for.

C.S.H.B. 1759 amends current law relating to a correction, clarification, or retraction of incorrect information published.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 73, Civil Practice and Remedies Code, by designating Sections 73.001 through 73.006 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Amends Chapter 73, Civil Practices and Remedies Code, by adding Subchapter B, as follows:

SUBCHAPTER B. CORRECTION, CLARIFICATION, OR RETRACTION BY PUBLISHER

Sec. 73.051. **SHORT TITLE.** Authorizes this subchapter to be cited as the Defamation Mitigation Act. Requires that this subchapter be liberally construed.

Sec. 73.052. **PURPOSE.** Provides that the purpose of this subchapter is to provide a method for a person who has been defamed by a publication or broadcast to mitigate any perceived damage or injury.

Sec. 73.053. **DEFINITION.** Defines "person" in this subchapter.

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

(b) Provides that 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) Authorizes a person to maintain an action for defamation only if the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant or the defendant has made a correction, clarification, or retraction.

(b) Provides that 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) 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.

(d) Provides that 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) Provides that 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) Authorizes a person who has been requested to make a correction, clarification, or retraction, not later than the 30th day after the date the person receives the request, to ask the person making the request to provide reasonably available information regarding the falsity of the allegedly defamatory statement. Requires that any information requested under this section 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.

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

Sec. 73.057. TIMELY AND SUFFICIENT CORRECTION, CLARIFICATION, OR RETRACTION. (a) Provides that a correction, clarification, or retraction is timely if it is made not later than the 30th day after receipt of the request for the correction, clarification, or retraction or the information requested under Section 73.056(a).

(b) Provides that 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) Authorizes the correction, clarification, or retraction, if a request for correction, clarification, or retraction has specified two or more statements as false and defamatory, to deal with the statements individually in any manner provided by Subsection (b).

(d) Provides that, 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) Provides that, 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. (a) Provides that if a defendant in an action under this subchapter 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, is required to 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.

(b) Provides 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 under Subsection (a) is served. Requires the plaintiff, if a plaintiff 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 notice under Subsection (a) is served on the plaintiff or the 30th day after the date the correction, clarification, or retraction is made, whichever is later.

(c) Requires the defendant, if a defendant 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.

(d) Provides that, unless there is a reasonable dispute regarding the actual contents of the request for correction, clarification, or retraction, the sufficiency and timeliness of a request for correction, clarification, or retraction is a question of law. 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 this subchapter.

Sec. 73.059. EFFECT OF CORRECTION, CLARIFICATION, OR RETRACTION. Prohibits a person, if a correction, clarification, or retraction is made in accordance with this subchapter, regardless of whether the person claiming harm made a request, from recovering exemplary damages unless the publication was made with actual malice.

Sec. 73.060. SCOPE OF PROTECTION. Provides 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.

Sec. 73.061. ADMISSIBILITY OF EVIDENCE OF CORRECTION, CLARIFICATION, OR RETRACTION. (a) Provides 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.

(b) Provides 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 under Section 73.003(a)(3). Authorizes the request for the correction, clarification, or retraction, if a correction, clarification, or retraction is received into evidence, to also be received into evidence.

(c) Provides that the fact that an offer of a correction, clarification, or retraction was made and the contents of the offer, and the fact that the correction, clarification, or retraction was refused, are not admissible in evidence at trial.

Sec. 73.062. ABATEMENT. (a) Authorizes 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, 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.

(b) Provides that 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) Provides that an abatement under Subsection (b) continues until the 60th day after the date that the written request is served or a later date agreed to by the parties. Provides that a hearing on the plea in abatement will take place as soon as practical considering the court's docket if a controverting affidavit is filed under Subsection (b)(2).

(d) Provides that 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. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2013.