

By: Hunter

H.B. No. 1758

A BILL TO BE ENTITLED

AN ACT

relating to a correction, clarification, or retraction of incorrect information published.

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

SECTION 1. Chapter 73, Civil Practice and Remedies Code, is amended 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. 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. This subchapter may be cited as the Defamation Mitigation Act. This subchapter shall be liberally construed.

Sec. 73.052. PURPOSE. The purpose of this subchapter is to provide a method by which a person who has been defamed by a publication or broadcast may mitigate any perceived damage or injury.

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

1 include a government or governmental subdivision, agency, or  
2 instrumentality.

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

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

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

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

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

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

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

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

25 (1) is served on the publisher;

26 (2) is made in writing, reasonably identifies the  
27 person making the request, and is signed by the individual claiming

1 to have been defamed or by the person's authorized attorney or  
2 agent;

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

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

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

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

19 (b) A period of limitation for commencement of a claim is  
20 tolled during the period allowed in this section.

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

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

1 receipt of:

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

4 (2) the information requested under Section  
5 73.056(a).

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

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

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

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

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

24 (c) If a demand for correction, clarification, or  
25 retraction has specified two or more statements as false and  
26 defamatory, the correction, clarification, or retraction may deal  
27 with the statements individually as provided by Subsection (b)(1)

1 or (2).

2 (d) A correction, clarification, or retraction is published  
3 with a prominence and in a manner and medium reasonably likely to  
4 reach substantially the same audience as the publication complained  
5 of if:

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

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

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

16 (4) the original publication was on the Internet and  
17 if the publisher appends to the original publication the  
18 correction, clarification, or retraction.

19 Sec. 73.058. CHALLENGES TO CORRECTION, CLARIFICATION, OR  
20 RETRACTION OR TO REQUEST FOR CORRECTION, CLARIFICATION, OR  
21 RETRACTION. (a) If a defendant in an action under this subchapter  
22 intends to rely on a timely and sufficient correction,  
23 clarification, or retraction, the defendant's intention to do so,  
24 and the correction, clarification, or retraction relied on, must be  
25 stated in a notice served on the plaintiff on the later of:

26 (1) the 60th day after service of the citation; or

27 (2) the 10th day after the date the correction,

1 clarification, or retraction is made.

2 (b) A correction, clarification, or retraction is timely  
3 and sufficient unless the plaintiff challenges the timeliness or  
4 sufficiency not later than the 20th day after the date notice is  
5 served. If a plaintiff challenges the timeliness or sufficiency,  
6 the plaintiff must state the challenge in a motion to declare the  
7 correction, clarification, or retraction untimely or insufficient  
8 served not later than the 30th day after the date notice is served  
9 on the plaintiff or the 30th day after the date the correction,  
10 clarification, or retraction is made, whichever is later.

11 (c) If a defendant intends to challenge the sufficiency or  
12 timeliness of a request for a correction, clarification, or  
13 retraction, the defendant must state the challenge in a motion to  
14 declare the request insufficient or untimely served not later than  
15 the 60th day after the date of service of the citation.

16 (d) Unless there is a reasonable dispute regarding the  
17 actual contents of the request for correction, clarification, or  
18 retraction, the sufficiency and timeliness of a request for  
19 correction, clarification, or retraction is a question of law. At  
20 the earliest appropriate time before trial, the court shall rule,  
21 as a matter of law, whether the request for correction,  
22 clarification, or retraction meets the requirements of this  
23 subchapter.

24 Sec. 73.059. EFFECT OF CORRECTION, CLARIFICATION, OR  
25 RETRACTION. If a correction, clarification, or retraction is made  
26 in accordance with this subchapter, regardless of whether the  
27 person claiming harm made a request, a person may not recover

1 exemplary damages unless the publication was made with actual  
2 malice.

3 Sec. 73.060. SCOPE OF PROTECTION. A timely and sufficient  
4 correction, clarification, or retraction made by a person  
5 responsible for a publication constitutes a correction,  
6 clarification, or retraction made by all persons responsible for  
7 that publication but does not extend to an entity that republished  
8 the information.

9 Sec. 73.061. ADMISSIBILITY OF EVIDENCE OF CORRECTION,  
10 CLARIFICATION, OR RETRACTION. (a) A request for a correction,  
11 clarification, or retraction, the contents of the request, and the  
12 acceptance or refusal of the request are not admissible evidence at  
13 a trial.

14 (b) The fact that a correction, clarification, or  
15 retraction was made and the contents of the correction,  
16 clarification, or retraction are not admissible in evidence at  
17 trial except in mitigation of damages under Section 73.003(a)(3).  
18 If a correction, clarification, or retraction is received into  
19 evidence, the request for the correction, clarification, or  
20 retraction may also be received into evidence.

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

25 SECTION 3. This Act applies only to information published  
26 on or after the effective date of this Act. Information published  
27 before the effective date of this Act is governed by the law in

1 effect when the information was published, and the former law is  
2 continued in effect for that purpose.

3 SECTION 4. This Act takes effect September 1, 2013.