

By: Hunter

H.B. No. 1759

Substitute the following for H.B. No. 1759:

By: Thompson of Harris

C.S.H.B. No. 1759

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 for a person who has been defamed by a publication or broadcast to mitigate any perceived damage or injury.

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

1 to a claim for relief, however characterized, from damages arising
2 out of harm to personal reputation caused by the false content of a
3 publication.

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

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

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

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

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

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

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

24 (1) is served on the publisher;

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

1 agent;

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

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

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

10 (e) A period of limitation for commencement of an action
11 under this section is tolled during the period allowed by Sections
12 73.056 and 73.057.

13 Sec. 73.056. DISCLOSURE OF EVIDENCE OF FALSITY. (a) A
14 person who has been requested to make a correction, clarification,
15 or retraction may ask the person making the request to provide
16 reasonably available information regarding the falsity of the
17 allegedly defamatory statement not later than the 30th day after
18 the date the person receives the request. Any information
19 requested under this section must be provided by the person seeking
20 the correction, clarification, or retraction not later than the
21 30th day after the date the person receives the request.

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

27 Sec. 73.057. TIMELY AND SUFFICIENT CORRECTION,

1 CLARIFICATION, OR RETRACTION. (a) A correction, clarification, or
2 retraction is timely if it is made not later than the 30th day after
3 receipt of:

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

6 (2) the information requested under Section
7 73.056(a).

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

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

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

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

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

27 (c) If a request for correction, clarification, or

1 retraction has specified two or more statements as false and
2 defamatory, the correction, clarification, or retraction may deal
3 with the statements individually in any manner provided by
4 Subsection (b).

5 (d) Except as provided by Subsection (e), a correction,
6 clarification, or retraction is published with a prominence and in
7 a manner and medium reasonably likely to reach substantially the
8 same audience as the publication complained of if:

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

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

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

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

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

1 RETRACTION. (a) If a defendant in an action under this subchapter
2 intends to rely on a timely and sufficient correction,
3 clarification, or retraction, the defendant's intention to do so,
4 and the correction, clarification, or retraction relied on, must be
5 stated in a notice served on the plaintiff on the later of:

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

7 (2) the 10th day after the date the correction,
8 clarification, or retraction is made.

9 (b) A correction, clarification, or retraction is timely
10 and sufficient unless the plaintiff challenges the timeliness or
11 sufficiency not later than the 20th day after the date notice under
12 Subsection (a) is served. If a plaintiff challenges the timeliness
13 or sufficiency, the plaintiff must state the challenge in a motion
14 to declare the correction, clarification, or retraction untimely or
15 insufficient served not later than the 30th day after the date
16 notice under Subsection (a) is served on the plaintiff or the 30th
17 day after the date the correction, clarification, or retraction is
18 made, whichever is later.

19 (c) If a defendant intends to challenge the sufficiency or
20 timeliness of a request for a correction, clarification, or
21 retraction, the defendant must state the challenge in a motion to
22 declare the request insufficient or untimely served not later than
23 the 60th day after the date of service of the citation.

24 (d) Unless there is a reasonable dispute regarding the
25 actual contents of the request for correction, clarification, or
26 retraction, the sufficiency and timeliness of a request for
27 correction, clarification, or retraction is a question of law. At

1 the earliest appropriate time before trial, the court shall rule,
2 as a matter of law, whether the request for correction,
3 clarification, or retraction meets the requirements of this
4 subchapter.

5 Sec. 73.059. EFFECT OF CORRECTION, CLARIFICATION, OR
6 RETRACTION. If a correction, clarification, or retraction is made
7 in accordance with this subchapter, regardless of whether the
8 person claiming harm made a request, a person may not recover
9 exemplary damages unless the publication was made with actual
10 malice.

11 Sec. 73.060. SCOPE OF PROTECTION. A timely and sufficient
12 correction, clarification, or retraction made by a person
13 responsible for a publication constitutes a correction,
14 clarification, or retraction made by all persons responsible for
15 that publication but does not extend to an entity that republished
16 the information.

17 Sec. 73.061. ADMISSIBILITY OF EVIDENCE OF CORRECTION,
18 CLARIFICATION, OR RETRACTION. (a) A request for a correction,
19 clarification, or retraction, the contents of the request, and the
20 acceptance or refusal of the request are not admissible evidence at
21 a trial.

22 (b) The fact that a correction, clarification, or
23 retraction was made and the contents of the correction,
24 clarification, or retraction are not admissible in evidence at
25 trial except in mitigation of damages under Section 73.003(a)(3).
26 If a correction, clarification, or retraction is received into
27 evidence, the request for the correction, clarification, or

1 retraction may also be received into evidence.

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

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

12 (b) A suit is automatically abated, in its entirety, without
13 the order of the court, beginning on the 11th day after the date a
14 plea in abatement is filed under Subsection (a) if the plea in
15 abatement:

16 (1) is verified and alleges that the person against
17 whom the suit is pending did not receive the written request as
18 required by Section 73.055; and

19 (2) is not controverted in an affidavit filed by the
20 person bringing the claim before the 11th day after the date on
21 which the plea in abatement is filed.

22 (c) An abatement under Subsection (b) continues until the
23 60th day after the date that the written request is served in
24 compliance with Section 73.055, the information requested under
25 Section 73.056(a) is provided, or the time period under Section
26 73.056(a) has expired, whichever is later. If a controverting
27 affidavit is filed under Subsection (b)(2), a hearing on the plea in

1 abatement will take place as soon as practical considering the
2 court's docket.

3 (d) All statutory and judicial deadlines under the Texas
4 Rules of Civil Procedure relating to a suit abated under Subsection
5 (b), other than those provided in this section, will be stayed
6 during the pendency of the abatement period under this section.

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

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