

1-1 By: Hunter, et al. (Senate Sponsor - Ellis) H.B. No. 1759
 1-2 (In the Senate - Received from the House May 6, 2013;
 1-3 May 7, 2013, read first time and referred to Committee on State
 1-4 Affairs; May 14, 2013, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
 1-6 May 14, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17			X	

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1759 By: Ellis

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to a correction, clarification, or retraction of incorrect
 1-22 information published.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 73, Civil Practice and Remedies Code, is
 1-25 amended by designating Sections 73.001 through 73.006 as Subchapter
 1-26 A and adding a subchapter heading to read as follows:

1-27 SUBCHAPTER A. GENERAL PROVISIONS

1-28 SECTION 2. Chapter 73, Civil Practice and Remedies Code, is
 1-29 amended by adding Subchapter B to read as follows:

1-30 SUBCHAPTER B. CORRECTION, CLARIFICATION, OR RETRACTION BY
 1-31 PUBLISHER

1-32 Sec. 73.051. SHORT TITLE. This subchapter may be cited as
 1-33 the Defamation Mitigation Act. This subchapter shall be liberally
 1-34 construed.

1-35 Sec. 73.052. PURPOSE. The purpose of this subchapter is to
 1-36 provide a method for a person who has been defamed by a publication
 1-37 or broadcast to mitigate any perceived damage or injury.

1-38 Sec. 73.053. DEFINITION. In this subchapter, "person"
 1-39 means an individual, corporation, business trust, estate, trust,
 1-40 partnership, association, joint venture, or other legal or
 1-41 commercial entity. The term does not include a government or
 1-42 governmental subdivision, agency, or instrumentality.

1-43 Sec. 73.054. APPLICABILITY. (a) This subchapter applies
 1-44 to a claim for relief, however characterized, from damages arising
 1-45 out of harm to personal reputation caused by the false content of a
 1-46 publication.

1-47 (b) This subchapter applies to all publications, including
 1-48 writings, broadcasts, oral communications, electronic
 1-49 transmissions, or other forms of transmitting information.

1-50 Sec. 73.055. REQUEST FOR CORRECTION, CLARIFICATION, OR
 1-51 RETRACTION. (a) A person may maintain an action for defamation
 1-52 only if:

1-53 (1) the person has made a timely and sufficient
 1-54 request for a correction, clarification, or retraction from the
 1-55 defendant; or

1-56 (2) the defendant has made a correction,
 1-57 clarification, or retraction.

1-58 (b) A request for a correction, clarification, or
 1-59 retraction is timely if made during the period of limitation for
 1-60 commencement of an action for defamation.

2-1 (c) If not later than the 90th day after receiving knowledge
 2-2 of the publication, the person does not request a correction,
 2-3 clarification, or retraction, the person may not recover exemplary
 2-4 damages.

2-5 (d) A request for a correction, clarification, or
 2-6 retraction is sufficient if it:

2-7 (1) is served on the publisher;

2-8 (2) is made in writing, reasonably identifies the
 2-9 person making the request, and is signed by the individual claiming
 2-10 to have been defamed or by the person's authorized attorney or
 2-11 agent;

2-12 (3) states with particularity the statement alleged to
 2-13 be false and defamatory and, to the extent known, the time and place
 2-14 of publication;

2-15 (4) alleges the defamatory meaning of the statement;
 2-16 and

2-17 (5) specifies the circumstances causing a defamatory
 2-18 meaning of the statement if it arises from something other than the
 2-19 express language of the publication.

2-20 (e) A period of limitation for commencement of an action
 2-21 under this section is tolled during the period allowed by Sections
 2-22 73.056 and 73.057.

2-23 Sec. 73.056. DISCLOSURE OF EVIDENCE OF FALSITY. (a) A
 2-24 person who has been requested to make a correction, clarification,
 2-25 or retraction may ask the person making the request to provide
 2-26 reasonably available information regarding the falsity of the
 2-27 allegedly defamatory statement not later than the 30th day after
 2-28 the date the person receives the request. Any information
 2-29 requested under this section must be provided by the person seeking
 2-30 the correction, clarification, or retraction not later than the
 2-31 30th day after the date the person receives the request.

2-32 (b) If a correction, clarification, or retraction is not
 2-33 made, a person who, without good cause, fails to disclose the
 2-34 information requested under Subsection (a) may not recover
 2-35 exemplary damages, unless the publication was made with actual
 2-36 malice.

2-37 Sec. 73.057. TIMELY AND SUFFICIENT CORRECTION,
 2-38 CLARIFICATION, OR RETRACTION. (a) A correction, clarification, or
 2-39 retraction is timely if it is made not later than the 30th day after
 2-40 receipt of:

2-41 (1) the request for the correction, clarification, or
 2-42 retraction; or

2-43 (2) the information requested under Section
 2-44 73.056(a).

2-45 (b) A correction, clarification, or retraction is
 2-46 sufficient if it is published in the same manner and medium as the
 2-47 original publication or, if that is not possible, with a prominence
 2-48 and in a manner and medium reasonably likely to reach substantially
 2-49 the same audience as the publication complained of and:

2-50 (1) is publication of an acknowledgment that the
 2-51 statement specified as false and defamatory is erroneous;

2-52 (2) is an allegation that the defamatory meaning
 2-53 arises from other than the express language of the publication and
 2-54 the publisher disclaims an intent to communicate that meaning or to
 2-55 assert its truth;

2-56 (3) is a statement attributed to another person whom
 2-57 the publisher identifies and the publisher disclaims an intent to
 2-58 assert the truth of the statement; or

2-59 (4) is publication of the requestor's statement of the
 2-60 facts, as set forth in a request for correction, clarification, or
 2-61 retraction, or a fair summary of the statement, exclusive of any
 2-62 portion that is defamatory of another, obscene, or otherwise
 2-63 improper for publication.

2-64 (c) If a request for correction, clarification, or
 2-65 retraction has specified two or more statements as false and
 2-66 defamatory, the correction, clarification, or retraction may deal
 2-67 with the statements individually in any manner provided by
 2-68 Subsection (b).

2-69 (d) Except as provided by Subsection (e), a correction,

3-1 clarification, or retraction is published with a prominence and in
 3-2 a manner and medium reasonably likely to reach substantially the
 3-3 same audience as the publication complained of if:

3-4 (1) it is published in a later issue, edition, or
 3-5 broadcast of the original publication;

3-6 (2) publication is in the next practicable issue,
 3-7 edition, or broadcast of the original publication because the
 3-8 publication will not be published within the time limits
 3-9 established for a timely correction, clarification, or retraction;
 3-10 or

3-11 (3) the original publication no longer exists and if
 3-12 the correction, clarification, or retraction is published in the
 3-13 newspaper with the largest general circulation in the region in
 3-14 which the original publication was distributed.

3-15 (e) If the original publication was on the Internet, a
 3-16 correction, clarification, or retraction is published with a
 3-17 prominence and in a manner and medium reasonably likely to reach
 3-18 substantially the same audience as the publication complained of if
 3-19 the publisher appends to the original publication the correction,
 3-20 clarification, or retraction.

3-21 Sec. 73.058. CHALLENGES TO CORRECTION, CLARIFICATION, OR
 3-22 RETRACTION OR TO REQUEST FOR CORRECTION, CLARIFICATION, OR
 3-23 RETRACTION. (a) If a defendant in an action under this subchapter
 3-24 intends to rely on a timely and sufficient correction,
 3-25 clarification, or retraction, the defendant's intention to do so,
 3-26 and the correction, clarification, or retraction relied on, must be
 3-27 stated in a notice served on the plaintiff on the later of:

3-28 (1) the 60th day after service of the citation; or

3-29 (2) the 10th day after the date the correction,
 3-30 clarification, or retraction is made.

3-31 (b) A correction, clarification, or retraction is timely
 3-32 and sufficient unless the plaintiff challenges the timeliness or
 3-33 sufficiency not later than the 20th day after the date notice under
 3-34 Subsection (a) is served. If a plaintiff challenges the timeliness
 3-35 or sufficiency, the plaintiff must state the challenge in a motion
 3-36 to declare the correction, clarification, or retraction untimely or
 3-37 insufficient served not later than the 30th day after the date
 3-38 notice under Subsection (a) is served on the plaintiff or the 30th
 3-39 day after the date the correction, clarification, or retraction is
 3-40 made, whichever is later.

3-41 (c) If a defendant intends to challenge the sufficiency or
 3-42 timeliness of a request for a correction, clarification, or
 3-43 retraction, the defendant must state the challenge in a motion to
 3-44 declare the request insufficient or untimely served not later than
 3-45 the 60th day after the date of service of the citation.

3-46 (d) Unless there is a reasonable dispute regarding the
 3-47 actual contents of the request for correction, clarification, or
 3-48 retraction, the sufficiency and timeliness of a request for
 3-49 correction, clarification, or retraction is a question of law. At
 3-50 the earliest appropriate time before trial, the court shall rule,
 3-51 as a matter of law, whether the request for correction,
 3-52 clarification, or retraction meets the requirements of this
 3-53 subchapter.

3-54 Sec. 73.059. EFFECT OF CORRECTION, CLARIFICATION, OR
 3-55 RETRACTION. If a correction, clarification, or retraction is made
 3-56 in accordance with this subchapter, regardless of whether the
 3-57 person claiming harm made a request, a person may not recover
 3-58 exemplary damages unless the publication was made with actual
 3-59 malice.

3-60 Sec. 73.060. SCOPE OF PROTECTION. A timely and sufficient
 3-61 correction, clarification, or retraction made by a person
 3-62 responsible for a publication constitutes a correction,
 3-63 clarification, or retraction made by all persons responsible for
 3-64 that publication but does not extend to an entity that republished
 3-65 the information.

3-66 Sec. 73.061. ADMISSIBILITY OF EVIDENCE OF CORRECTION,
 3-67 CLARIFICATION, OR RETRACTION. (a) A request for a correction,
 3-68 clarification, or retraction, the contents of the request, and the
 3-69 acceptance or refusal of the request are not admissible evidence at

4-1 a trial.
4-2 (b) The fact that a correction, clarification, or
4-3 retraction was made and the contents of the correction,
4-4 clarification, or retraction are not admissible in evidence at
4-5 trial except in mitigation of damages under Section 73.003(a)(3).
4-6 If a correction, clarification, or retraction is received into
4-7 evidence, the request for the correction, clarification, or
4-8 retraction may also be received into evidence.

4-9 (c) The fact that an offer of a correction, clarification,
4-10 or retraction was made and the contents of the offer, and the fact
4-11 that the correction, clarification, or retraction was refused, are
4-12 not admissible in evidence at trial.

4-13 Sec. 73.062. ABATEMENT. (a) A person against whom a suit
4-14 is pending who does not receive a written request for a correction,
4-15 clarification, or retraction, as required by Section 73.055, may
4-16 file a plea in abatement not later than the 30th day after the date
4-17 the person files an original answer in the court in which the suit
4-18 is pending.

4-19 (b) A suit is automatically abated, in its entirety, without
4-20 the order of the court, beginning on the 11th day after the date a
4-21 plea in abatement is filed under Subsection (a) if the plea in
4-22 abatement:

4-23 (1) is verified and alleges that the person against
4-24 whom the suit is pending did not receive the written request as
4-25 required by Section 73.055; and

4-26 (2) is not controverted in an affidavit filed by the
4-27 person bringing the claim before the 11th day after the date on
4-28 which the plea in abatement is filed.

4-29 (c) An abatement under Subsection (b) continues until the
4-30 60th day after the date that the written request is served or a
4-31 later date agreed to by the parties. If a controverting affidavit
4-32 is filed under Subsection (b)(2), a hearing on the plea in abatement
4-33 will take place as soon as practical considering the court's
4-34 docket.

4-35 (d) All statutory and judicial deadlines under the Texas
4-36 Rules of Civil Procedure relating to a suit abated under Subsection
4-37 (b), other than those provided in this section, will be stayed
4-38 during the pendency of the abatement period under this section.

4-39 SECTION 3. This Act applies only to information published
4-40 on or after the effective date of this Act. Information published
4-41 before the effective date of this Act is governed by the law in
4-42 effect when the information was published, and the former law is
4-43 continued in effect for that purpose.

4-44 SECTION 4. This Act takes effect immediately if it receives
4-45 a vote of two-thirds of all the members elected to each house, as
4-46 provided by Section 39, Article III, Texas Constitution. If this
4-47 Act does not receive the vote necessary for immediate effect, this
4-48 Act takes effect September 1, 2013.

4-49 * * * * *