

**House Bill 1759**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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 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

SENATE VERSION (CS)

SECTION 1. Same as House version.

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Sec. 73.055. REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION. (a) A person may

CONFERENCE

**House Bill 1759**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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) 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

SENATE VERSION (CS)

maintain an action for defamation only if:

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(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.

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CONFERENCE

**House Bill 1759**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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 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

SENATE VERSION (CS)

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 the date the person receives the request.

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

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

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CONFERENCE

**House Bill 1759**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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.

SENATE VERSION (CS)

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.

CONFERENCE

**House Bill 1759**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

Sec. 73.058. CHALLENGES TO CORRECTION, CLARIFICATION, OR RETRACTION OR TO REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION. (a) 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, must be stated in a notice served on the plaintiff on the later of:

- (1) the 60th day after service of the citation; or
- (2) the 10th day after the date the correction, clarification, or retraction is made.

(b) 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. If a plaintiff challenges the timeliness or sufficiency, the plaintiff must 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) If a defendant intends to challenge the sufficiency or timeliness of a request for a correction, clarification, or retraction, the defendant must 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) 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. At the earliest appropriate time before trial, the court shall rule,

SENATE VERSION (CS)

Sec. 73.058. CHALLENGES TO CORRECTION, CLARIFICATION, OR RETRACTION OR TO REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION. (a) 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, must be stated in a notice served on the plaintiff on the later of:

- (1) the 60th day after service of the citation; or
- (2) the 10th day after the date the correction, clarification, or retraction is made.

(b) 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. If a plaintiff challenges the timeliness or sufficiency, the plaintiff must 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) If a defendant intends to challenge the sufficiency or timeliness of a request for a correction, clarification, or retraction, the defendant must 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) 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. At the earliest appropriate time before trial, the court shall rule,

CONFERENCE

**House Bill 1759**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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. If a correction, clarification, or retraction is made in accordance with this subchapter, regardless of whether the person claiming harm made a request, a person may not recover exemplary damages unless the publication was made with actual malice.

Sec. 73.060. SCOPE OF PROTECTION. 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) 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) 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). If a correction, clarification, or retraction is received into evidence, the request for the correction, clarification, or retraction may also be received into evidence.

(c) 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) A person against whom a

SENATE VERSION (CS)

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. If a correction, clarification, or retraction is made in accordance with this subchapter, regardless of whether the person claiming harm made a request, a person may not recover exemplary damages unless the publication was made with actual malice.

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(b) 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). If a correction, clarification, or retraction is received into evidence, the request for the correction, clarification, or retraction may also be received into evidence.

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Sec. 73.062. ABATEMENT. (a) A person against whom a

CONFERENCE

**House Bill 1759**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

SENATE VERSION (CS)

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:

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SECTION 3. Same as House version.

CONFERENCE

**House Bill 1759**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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 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.

SENATE VERSION (CS)

SECTION 4. Same as House version.

CONFERENCE