

SENATE BILL REPORT

SB 5752

As of February 15, 2011

Title: An act relating to the uniform correction or clarification of defamation act.

Brief Description: Creating the uniform correction or clarification of defamation act.

Sponsors: Senators Kline, Rockefeller, White and Shin.

Brief History:

Committee Activity: Judiciary: 2/15/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: Under current law, corrections and clarifications in defamation matters are dealt with pursuant to common law. Washington State common law is sparse on this issue and, therefore, corrections and clarifications are rare. The major Washington State case that considered corrections and clarifications is from 1911. The decision suggested that a retraction could be pleaded by the defamation defendant in mitigation but provided little additional guidance. The court stated that, "When a newspaper has libeled a person, the duty is imposed upon it to make a full and complete retraction. If it does so, it may plead and show such retraction in mitigation of damages." *See, e.g., Coffman v. Spokane Chronicle Publ'g Co.*, 65 Wn. 1, 10, 117 P. 596 (1911). It also states that an offer to make a correction is not itself a correction, and that there are no "judicial decision[s], rule[s] of law, or existing statute[s]" that "impose[] upon the plaintiff in an action for libel the duty of requesting any further publication from the defendant." *Id.* at 9-10.

The proposed legislation, from the Uniform Law Commission, would facilitate such corrections and clarifications, by creating a procedure with incentives that encourage both sides to cooperate in such matters.

Summary of Bill: A new chapter is created known as the Uniform Correction or Clarification of Defamation Act that applies to any claim for relief for damages arising out of harm to personal reputation caused by the false content of a publication. All forms of publications are applicable, including writings, broadcasts, oral communications, or electronic transmissions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person can maintain an action for defamation if the person has made a timely and adequate request for correction or clarification (correction) from the defendant, or the defendant has already made the correction. A request to do so is timely if it is made within the period of limitations for a defamation action. A person who, within 90 days after knowledge of the publication, fails to make a good faith attempt to request a correction may only recover provable economic loss. A request for correction is adequate if it is in writing and reasonably identifies the requester, specifies the statement allegedly to be false and defamatory, as well as the time and place of publication, alleges the defamatory meaning of the statement, specifies the circumstances giving rise to any defamatory meaning of the statement, and states that the meaning of the statement is false. Service of a summons and complaint stating a claim for relief for defamation also constitutes an adequate request. The period of limitation for commencement of a defamation action is tolled for responding to a request for correction.

A person who has been asked to make a correction can ask the requester to disclose information material to the falsity of the alleged statement. If a correction is not made, a person who unreasonably fails to disclose the information can recover only provable economic loss. A correction is timely if published within 25 days after receipt of information disclosed or 45 days after receipt of a request for correction, whichever is later.

If a timely correction is made, a person can only recover provable economic loss, as mitigated by the correction.

A correction is timely if it is published before, or within 45 days after, receipt of a request for correction. A correction is sufficient if it is published with a prominence and in a manner and medium likely to reach the same audience, refers to the statement being corrected and corrects the statement, disclaims an intent to communicate the meaning or to assert its truth, or identifies the person and disclaims an intent to assert the truth of the statement, and is communicated to the person who made a request for correction. A correction is published in a medium likely to reach the same audience as the original publication if it is published in a later issue, edition, or broadcast of the original publication. If a later issue, edition, or broadcast will not be published within the time limits set forth, a correction can be published in another manner and medium if it is likely to reach the same audience as long as (1) it is timely published in another medium likely to reach an equivalent audience or if the parties cannot agree to another medium, in the newspaper with the largest general circulation in the region; (2) reasonable steps are taken to correct undistributed copies of the original publication; and (3) it is published in the next practicable issue, edition, or broadcast. A correction is timely and sufficient if the parties agree that it is timely, in writing.

If a defendant intends to rely on a timely correction, the defendant's intention and the correction relied upon must be included in a notice served on the plaintiff within 60 days after service of the summons and complaint or ten days after the correction is made, whichever is later. A correction is timely unless it is challenged by the plaintiff within 20 days after notice is served. If a defendant intends to challenge the adequacy or timeliness of a request for correction, the defendant must set forth the issues in a motion, and the court must rule on the motion prior to trial.

If a timely correction is not possible, the publisher can offer to make a correction any time prior to trial. The offer must be made in writing to the person allegedly defamed and (1) contain the publisher's offer to publish, at the person's request, a sufficient correction and pay the person's reasonable expenses of litigation, including attorneys' fees, incurred before publication of the correction; and (2) be accompanied by a copy of the proposed correction and a plan for its publication. If the person accepts in writing (1) the person is barred from commencing an action against the publisher; or (2) if an action has been commenced, the court must dismiss the action with prejudice after the defendant complies with the terms. A person who does not accept an offer can recover in an action based on the statement (1) damages for provable economic loss; and (2) reasonable expenses of litigation, including attorneys' fees, incurred before the offer. A court must promptly determine the sufficiency of the offered correction if requested by either party.

A timely and sufficient correction made by a person responsible for a publication constitutes a correction made by all persons responsible for that publication other than a republisher.

The fact of a request, its contents, and its acceptance or refusal are not admissible evidence at trial. The fact that a correction was made and its contents are not admissible except in mitigation of damages. The fact that a correction was offered, or the correction was refused, and its contents are also not admissible.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This legislation was developed in 1993 by the Uniform Law Commission. It has since been adopted by one state, North Dakota. Other states have adopted statutes similar to the uniform legislation. The statutes in these states encourage and facilitate potential libel claims and attempt to get parties to correct the information prior to going into litigation. This type of legislation will be useful in getting people to discuss the information deemed incorrect and create a manner in which the record can be corrected. The legislation as it stands is technologically neutral. People would have to correct to the same conspicuousness, which could mean the same size and placement as the defamatory statement was made. This bill is an improvement for both plaintiffs and defendants.

Persons Testifying: PRO: Bruce Johnson, Davis Wright Tremaine; Rowland Thompson, Allied Daily Newspapers.