

ESB 5236 - H AMD

By Representative Goodman

NOT CONSIDERED

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "NEW SECTION. **Sec. 1.** INTENT. Since the United States Supreme
5 Court recognized the First Amendment limitations on the common law
6 tort of defamation and defamation-like torts, courts have struggled to
7 achieve a balance between constitutionally protected guarantees of
8 free expression and the need to protect citizens from reputational
9 harm. Unlike personal injuries, harm to reputation can often be
10 cured by means other than money damages. The correction or
11 clarification of a published statement may restore a person's
12 reputation more quickly and more thoroughly than a victorious lawsuit.
13 The salutary effect of a correction or clarification is enhanced if it
14 is published reasonably soon after a statement is made.

15 This act seeks to provide strong incentives for individuals to
16 promptly correct or clarify an alleged false statement as an
17 alternative to costly litigation. The options created by this act
18 provide an opportunity for a plaintiff who believes he or she has been
19 harmed by a false statement to secure quick and complete vindication
20 of his or her reputation. This act provides publishers with a quick
21 and cost-effective means of correcting or clarifying alleged mistakes
22 and avoiding costly litigation.

23
24 NEW SECTION. **Sec. 2.** DEFINITION. The definition in this section
25 applies throughout this chapter unless the context clearly requires
26 otherwise.

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1 "Person" means an individual, corporation, business trust, estate,
2 trust, partnership, association, joint venture, or other legal or
3 commercial entity. The term does not include a government or
4 governmental subdivision, agency, or instrumentality.

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6 NEW SECTION. **Sec. 3.** SCOPE. (1) This chapter applies to any
7 claim for relief, however characterized, for damages arising out of
8 harm caused by the false content of a publication that is published on
9 or after the effective date of this section.

10 (2) This chapter applies to all publications, including writings,
11 broadcasts, oral communications, electronic transmissions, or other
12 forms of transmitting information.

13
14 NEW SECTION. **Sec. 4.** REQUEST FOR CORRECTION OR CLARIFICATION.

15 (1) A person may maintain an action for defamation or another claim
16 covered by this chapter only if:

17 (a) The person has made a timely and adequate request for
18 correction or clarification from the defendant; or

19 (b) The defendant has made a correction or clarification.

20 (2) A request for correction or clarification is timely if made
21 within the period of limitation for commencement of an action for
22 defamation.

23 (3) A request for correction or clarification is adequate if it:

24 (a) Is made in writing and reasonably identifies the person making
25 the request;

26 (b) Specifies with particularity the statement alleged to be false
27 and defamatory or otherwise actionable and, to the extent known, the
28 time and place of publication;

29 (c) Alleges the defamatory meaning of the statement;

30 (d) Specifies the circumstances giving rise to any defamatory
31 meaning of the statement which arises from other than the express
32 language of the publication; and

33 (e) States that the alleged defamatory meaning of the statement is
34 false.

1 (4) In the absence of a previous adequate request, service of a
2 summons and complaint stating a claim for defamation or another claim
3 covered by this chapter and containing the information required in
4 subsection (3) of this section constitutes an adequate request for
5 correction or clarification.

6 (5) The period of limitation for commencement of a defamation
7 action or another claim covered by this chapter is tolled during the
8 period allowed in section 7(1) of this act for responding to a request
9 for correction or clarification.

10
11 NEW SECTION. **Sec. 5.** DISCLOSURE OF EVIDENCE OF FALSITY. (1) A
12 person who has been requested to make a correction or clarification
13 may ask the requester to disclose reasonably available information
14 material to the falsity of the allegedly defamatory or otherwise
15 actionable statement.

16 (2) If a correction or clarification is not made, a person who
17 unreasonably fails to disclose the information after a request to do
18 so may not recover damages for injury to reputation or presumed
19 damages; however, the person may recover all other damages permitted
20 by law.

21
22 NEW SECTION. **Sec. 6.** EFFECT OF CORRECTION OR CLARIFICATION. If
23 a timely and sufficient correction or clarification is made, a person
24 may not recover damages for injury to reputation or presumed damages;
25 however, the person may recover all other damages permitted by law.

26
27 NEW SECTION. **Sec. 7.** TIMELY AND SUFFICIENT CORRECTION OR
28 CLARIFICATION. (1) A correction or clarification is timely if it is
29 published before, or within thirty days after, receipt of a request
30 for correction or clarification or of the information in section 5(1)
31 of this act, whichever is later, unless the period is extended by
32 written agreement of the parties.

33 (2) A correction or clarification is sufficient if it:
34

1 (a) Is published with a prominence and in a manner and medium
2 reasonably likely to reach substantially the same audience as the
3 publication complained of;

4 (b) Refers to the statement being corrected or clarified and:

5 (i) Corrects the statement;

6 (ii) In the case of defamatory or false meaning arising from other
7 than the express language of the publication, disclaims an intent to
8 communicate that meaning or to assert its truth; or

9 (iii) In the case of a statement attributed to another person,
10 identifies the person and disclaims an intent to assert the truth of
11 the statement;

12 (c) In advance of the publication, is provided to the person who
13 has made a request for correction or clarification; and

14 (d) Accompanies and is an equally prominent part of any electronic
15 publication of the allegedly defamatory or otherwise actionable
16 statement by the publisher.

17 (3) A correction or clarification is published in a medium
18 reasonably likely to reach substantially the same audience as the
19 publication complained of if it is published in a later issue,
20 edition, or broadcast of the original publication.

21 (4) If a later issue, edition, or broadcast of the original
22 publication will not be published within the time limits established
23 for a timely correction or clarification, a correction or
24 clarification is published in a manner and medium reasonably likely to
25 reach substantially the same audience as the publication complained of
26 if:

27 (a) It is timely published in a reasonably prominent manner:

28 (i) In another medium likely to reach an audience reasonably
29 equivalent to the original publication; or

30 (ii) If the parties cannot agree on another medium, in the
31 newspaper with the largest general circulation in the region in which
32 the original publication was distributed;

33 (b) Reasonable steps are taken to correct undistributed copies of
34 the original publication, if any; and

1 (c) It is published in the next practicable issue, edition, or
2 broadcast, if any, of the original publication.

3 (5) A correction or clarification is timely and sufficient if the
4 parties agree in writing that it is timely and sufficient.

5
6 NEW SECTION. **Sec. 8.** CHALLENGES TO CORRECTION OR CLARIFICATION
7 OR TO REQUEST FOR CORRECTION OR CLARIFICATION. (1) If a defendant in
8 an action governed by this chapter intends to rely on a timely and
9 sufficient correction or clarification, the defendant's intention to
10 do so, and the correction or clarification relied upon, must be set
11 forth in a notice served on the plaintiff within sixty days after
12 service of the summons and complaint or ten days after the correction
13 or clarification is made, whichever is later.

14 (2) If a defendant in an action governed by this chapter intends
15 to challenge the adequacy or timeliness of a request for correction or
16 clarification, the defendant must set forth the challenge in a motion
17 to declare the request inadequate or untimely served within sixty days
18 after service of the summons and complaint. The court shall rule on
19 the motion at the earliest appropriate time before trial.

20
21 NEW SECTION. **Sec. 9.** OFFER TO CORRECT OR CLARIFY. (1) If a
22 timely correction or clarification is no longer possible, the
23 publisher of an alleged defamatory or otherwise actionable statement
24 may offer, at any time before trial, to make a correction or
25 clarification. The offer must be made in writing to the person
26 allegedly harmed by the publication and:

27 (a) Contain the publisher's offer to:
28 (i) Publish, at the person's request, a sufficient correction or
29 clarification; and

30 (ii) Pay the person's reasonable expenses of litigation, including
31 attorneys' fees, incurred before publication of the correction or
32 clarification; and

33 (b) Be accompanied by a copy of the proposed correction or
34 clarification and the plan for its publication.

1 (2) If the person accepts in writing an offer to correct or
2 clarify made pursuant to subsection (1) of this section:

3 (a) The person is barred from commencing an action against the
4 publisher based on the statement; or

5 (b) If an action has been commenced, the court shall dismiss the
6 action against the defendant with prejudice after the defendant
7 complies with the terms of the offer.

8 (3) A person who does not accept an offer made in conformance with
9 subsection (1) of this section may not recover damages for injury to
10 reputation or presumed damages in an action based on the statement;
11 however, the person may recover all other damages permitted by law,
12 together with reasonable expenses of litigation, including attorneys'
13 fees, incurred before the offer, unless the person failed to make a
14 good- faith attempt to request a correction or clarification in
15 accordance with section 4 of this act or failed to disclose
16 information in accordance with section 5 of this act.

17 (4) On request of either party, a court shall promptly determine
18 the sufficiency of the offered correction or clarification.

19
20 NEW SECTION. **Sec. 10.** SCOPE OF PROTECTION. A timely and
21 sufficient correction or clarification made by a person responsible
22 for a publication constitutes a correction or clarification made by
23 all persons responsible for that publication other than a republisher.
24 However, a correction or clarification that is sufficient only because
25 of the operation of section 7(2)(b)(iii) of this act does not
26 constitute a correction or clarification made by the person to whom
27 the statement is attributed.

28
29 NEW SECTION. **Sec. 11.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.
30 This chapter shall be applied and construed to effectuate its general
31 purpose to make uniform the law with respect to the subject of this
32 chapter among states enacting it.

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1 NEW SECTION. **Sec. 12.** SHORT TITLE. This chapter may be known and
2 cited as the uniform correction or clarification of defamation act.

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4 NEW SECTION. **Sec. 13.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8
9 NEW SECTION. **Sec. 14.** Sections 2 through 12 of this act
10 constitute a new chapter in Title 7 RCW."

11
12 Correct the title.

13

EFFECT: Makes the following changes to the engrossed bill
passed by the Senate:

- Adds an intent section.
- Deletes the following: some definitions; 90-day requirement within which a plaintiff must request a correction or lose the ability to recover for certain damages; provision that deemed a correction to be timely unless challenged by plaintiff within 20 days after notice from defendant; and section regarding admissibility.
- Allows, in certain specified circumstances, the recovery of all damages permitted by law, other than injury to reputation or presumed damages, rather than only allowing recovery for provable economic loss in those circumstances.
- Provides for a 30-day, rather than a 45-day, period between a request and a correction for purposes of determining timeliness.
- Adds a factor with respect to determining whether a correction is sufficient, requiring that in advance of its publication, the correction be provided to the person requesting the correction.

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