

SENATE BILL REPORT

ESB 5236

As Amended by House, April 26, 2013

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 and Padden.

Brief History:

Committee Activity: Law & Justice: 2/04/13, 2/21/13 [DP].

Passed Senate: 3/13/13, 49-0.

Passed House: 4/12/13, 53-42.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; Carrell, Vice Chair; Kline, Ranking Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Sharon Swanson (786-7447)

Background: Defamation is defined as an intentional false communication, either published or publicly spoken, that injures another's reputation or good name. Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill, or confidence in which a plaintiff is held; or to excite adverse derogatory or unpleasant feelings or opinions against a person.

Defamation consists of three primary parts: (1) a defamatory statement; (2) published to a third party; and (3) which the speaker or publisher knew or should have known was false. Some statements are so defamatory that they are considered defamation per se, and the plaintiff does not have to prove that the statement harmed their reputation. Classic examples of defamation per se are allegations of serious sexual misconduct, serious criminal misbehavior, or that a person is inflicted with some loathsome disease. When a plaintiff is able to prove defamation per se, damages are presumed, but the presumption is rebuttable.

Summary of Engrossed Bill: A person may maintain an action for defamation when the person has made a timely and adequate request for correction or clarification from the defendant, or the defendant has made a correction or clarification.

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 who, within 90 days after knowledge of the publication, fails to make a good-faith attempt to request a correction or clarification may recover only provable economic loss.

A request for correction or clarification is adequate when it:

- is made in writing and reasonably identifies the person making the request;
- specifies with particularity the statement alleged to be false and defamatory and, to the extent known, 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 which arises from other than express language of the publication;
- states that the alleged defamatory meaning of the statement is false.

A correction or clarification is timely if published within 25 days after receipt of information material to the falsity of the allegedly defamatory statement, or 45 days after receipt of a request for correction or clarification, whichever is later.

If a timely and sufficient correction or clarification is made, a person may recover only provable economic loss, as mitigated by the correction or clarification.

A correction or clarification is sufficient when it:

1. is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;
2. refers to the statement being corrected or clarified and;
 - a. corrects the statement;
 - b. in the case of defamatory meaning arising from other than express language, disclaims an intent to communicate that meaning or to assert its truth; or
 - c. in the case of a statement attributed to another person, identifies the person and disclaims an intent to assert the truth of the statement;
3. is communicated to the person who made a request for correction or clarification; and
4. accompanies and is an equally prominent part of any electronic publication of the allegedly defamatory statement by the publisher.

If a defendant intends to rely on a timely and sufficient correction or clarification, the defendant's intention to do so must be served on the plaintiff within 60 days after service of a summons and complaint, or ten days after the correction or clarification is made, whichever is later. Unless challenged by a plaintiff, a correction or clarification is deemed to be timely and sufficient within 20 days after the notice is served.

If a timely correction or clarification is no longer possible, the publisher may offer, at any time before trial, to make a correction or clarification. The offer must:

- be in writing;
- contain the publisher's offer to publish a sufficient correction or clarification;
- pay the person's reasonable expenses of litigation;
- be accompanied by a copy of the proposed correction or clarification and the plan for its publication.

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

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: Washington State has no correction or clarification defamation statute that pertains to defamation law. Our state provides no guidance to prospective plaintiffs who fear damage to their reputation or to defendants who want to get it right. This bill provides a guideline for trying to figure out a way to get the facts right, early, promptly, and hopefully efficiently. This bill promotes a quick and prompt resolution between plaintiffs and defendants. A law like this doesn't actually benefit lawyers – it facilitates parties talking to each other. The internet provides the perfect tool to address an issue of defamation and clarification or correction.

CON: The executive committee of the litigation section of the Washington State Bar Association (WSBA) opposes this bill. The WSBA does not see that the number of defamation claims has created a burden on the courts. This bill creates a number of procedural hurdles for defamation claimants. There are also concerns about the damage limitation provisions, which restrict damages to economic losses only in the event of a failure to make a timely request for clarification or when a determination is made that an adequate clarification has been published. It appears that only one state, North Dakota, has adopted this uniform law since it was first proposed in 1993. The WSBA believes that this bill is unnecessary, modifies existing laws in ways that our committee members do not support, and would, if adopted, increase the difficulty and expense of dealing with these types of claims.

Persons Testifying: PRO: Bruce Johnson, Davis Wright Tremaine, citizens.

CON: Kasey Huebner (telephonic), Litigation Section WSBA.

House Amendment(s):

- Adds an intent section.
- Deletes the following: some definitions; the 90-day requirement within which a plaintiff must request a correction or lose the ability to recover for certain damages; the provision that deemed a correction to be timely unless challenged by plaintiff within 20 days after notice from the defendant; and the 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.