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SENATE BILL 5752

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State of Washington                      62nd Legislature                      2011 Regular Session

By Senators Kline, Rockefeller, White, and Shin

Read first time 02/09/11. Referred to Committee on Judiciary.

1            AN ACT Relating to the uniform correction or clarification of  
2 defamation act; and adding a new chapter to Title 7 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.**    DEFINITIONS.    The definitions in this  
5 section apply throughout this chapter unless the context clearly  
6 requires otherwise.

7            (1) "Defamatory" means tending to harm reputation.

8            (2) "Economic loss" means special, pecuniary loss caused by a false  
9 and defamatory publication.

10           (3) "Person" means an individual, corporation, business trust,  
11 estate, trust, partnership, association, joint venture, or other legal  
12 or commercial entity. The term does not include a government or  
13 governmental subdivision, agency, or instrumentality.

14           NEW SECTION.    **Sec. 2.**    SCOPE.    (1) This chapter applies to any  
15 claim for relief, however characterized, for damages arising out of  
16 harm to personal reputation caused by the false content of a  
17 publication that is published on or after the effective date of this  
18 section.

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

4 NEW SECTION. **Sec. 3.** REQUEST FOR CORRECTION OR CLARIFICATION.

5 (1) A person may maintain an action for defamation only if:

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

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

9 (2) A request for correction or clarification is timely if made  
10 within the period of limitation for commencement of an action for  
11 defamation. However, a person who, within ninety days after knowledge  
12 of the publication, fails to make a good-faith attempt to request a  
13 correction or clarification may recover only provable economic loss.

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

15 (a) Is made in writing and reasonably identifies the person making  
16 the request;

17 (b) Specifies with particularity the statement alleged to be false  
18 and defamatory and, to the extent known, the time and place of  
19 publication;

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

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

24 (e) States that the alleged defamatory meaning of the statement is  
25 false.

26 (4) In the absence of a previous adequate request, service of a  
27 summons and complaint stating a claim for relief for defamation and  
28 containing the information required in subsection (3) of this section  
29 constitutes an adequate request for correction or clarification.

30 (5) The period of limitation for commencement of a defamation  
31 action is tolled during the period allowed in section 6(1) of this act  
32 for responding to a request for correction or clarification.

33 NEW SECTION. **Sec. 4.** DISCLOSURE OF EVIDENCE OF FALSITY. (1) A

34 person who has been requested to make a correction or clarification may  
35 ask the requester to disclose reasonably available information material  
36 to the falsity of the allegedly defamatory statement.

1 (2) If a correction or clarification is not made, a person who  
2 unreasonably fails to disclose the information after a request to do so  
3 may recover only provable economic loss.

4 (3) A correction or clarification is timely if published within  
5 twenty-five days after receipt of information disclosed pursuant to  
6 subsection (1) of this section or forty-five days after receipt of a  
7 request for correction or clarification, whichever is later.

8 NEW SECTION. **Sec. 5.** EFFECT OF CORRECTION OR CLARIFICATION. If  
9 a timely and sufficient correction or clarification is made, a person  
10 may recover only provable economic loss, as mitigated by the correction  
11 or clarification.

12 NEW SECTION. **Sec. 6.** TIMELY AND SUFFICIENT CORRECTION OR  
13 CLARIFICATION. (1) A correction or clarification is timely if it is  
14 published before, or within forty-five days after, receipt of a request  
15 for correction or clarification, unless the period is extended under  
16 section 4(3) of this act.

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

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

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

22 (i) Corrects the statement;

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

26 (iii) In the case of a statement attributed to another person,  
27 identifies the person and disclaims an intent to assert the truth of  
28 the statement; and

29 (c) Is communicated to the person who has made a request for  
30 correction or clarification.

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

35 (4) If a later issue, edition, or broadcast of the original  
36 publication will not be published within the time limits established

1 for a timely correction or clarification, a correction or clarification  
2 is published in a manner and medium reasonably likely to reach  
3 substantially the same audience as the publication complained of if:

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

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

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

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

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

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

16 NEW SECTION. **Sec. 7.** CHALLENGES TO CORRECTION OR CLARIFICATION OR  
17 TO REQUEST FOR CORRECTION OR CLARIFICATION. (1) If a defendant in an  
18 action governed by this chapter intends to rely on a timely and  
19 sufficient correction or clarification, the defendant's intention to do  
20 so, and the correction or clarification relied upon, must be set forth  
21 in a notice served on the plaintiff within sixty days after service of  
22 the summons and complaint or ten days after the correction or  
23 clarification is made, whichever is later. A correction or  
24 clarification is deemed to be timely and sufficient unless the  
25 plaintiff challenges its timeliness or sufficiency within twenty days  
26 after the notice is served.

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

33 NEW SECTION. **Sec. 8.** OFFER TO CORRECT OR CLARIFY. (1) If a  
34 timely correction or clarification is no longer possible, the publisher  
35 of an alleged defamatory statement may offer, at any time before trial,

1 to make a correction or clarification. The offer must be made in  
2 writing to the person allegedly defamed by the publication and:

3 (a) Contain the publisher's offer to:

4 (i) Publish, at the person's request, a sufficient correction or  
5 clarification; and

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

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

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

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

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

18 (3) A person who does not accept an offer made in conformance with  
19 subsection (1) of this section may recover in an action based on the  
20 statement only:

21 (a) Damages for provable economic loss; and

22 (b) Reasonable expenses of litigation, including attorneys' fees,  
23 incurred before the offer, unless the person failed to make a good-  
24 faith attempt to request a correction or clarification in accordance  
25 with section 3(2) of this act or failed to disclose information in  
26 accordance with section 4 of this act.

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

29 (5) The court shall determine the amount of reasonable expenses of  
30 litigation, including attorneys' fees, specified in subsections  
31 (1)(a)(ii) and (3)(b) of this section.

32 NEW SECTION. **Sec. 9.** SCOPE OF PROTECTION. A timely and  
33 sufficient correction or clarification made by a person responsible for  
34 a publication constitutes a correction or clarification made by all  
35 persons responsible for that publication other than a republisher.  
36 However, a correction or clarification that is sufficient only because

1 of the operation of section 6(2)(b)(iii) of this act does not  
2 constitute a correction or clarification made by the person to whom the  
3 statement is attributed.

4 NEW SECTION. **Sec. 10.** ADMISSIBILITY OF EVIDENCE OF CORRECTION OR  
5 CLARIFICATION. (1) The fact of a request for correction or  
6 clarification under this chapter, the contents of the request, and its  
7 acceptance or refusal are not admissible in evidence at trial.

8 (2) The fact that a correction or clarification under this chapter  
9 was made and the contents of the correction or clarification are not  
10 admissible in evidence at trial except in mitigation of damages  
11 pursuant to section 5 of this act. If the fact that a correction or  
12 clarification was made or the contents of the correction or  
13 clarification are received in evidence, the fact of the request may  
14 also be received.

15 (3) The fact of an offer of correction or clarification, or the  
16 fact of its refusal, and the contents of the offer are not admissible  
17 in evidence at trial.

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

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

24 NEW SECTION. **Sec. 13.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 14.** Sections 1 through 12 of this act  
29 constitute a new chapter in Title 7 RCW.

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