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## Judiciary Committee

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### ESB 5236

**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.

<p style="text-align: center;"><b>Brief Summary of Engrossed Bill</b></p> <ul style="list-style-type: none"><li>• Adopts the Uniform Correction or Clarification of Defamation Act.</li></ul>
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**Hearing Date:** 3/28/13

**Staff:** Cece Clynych (786-7195).

**Background:**

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Defamation.

Defamation is the communication of damaging, false information about a person or entity to one or more persons. To prevail in a defamation action, the plaintiff must prove all of the following:

1. A false *and* defamatory communication to one or more third persons.
2. Lack of privilege.
3. Fault.
4. Damages.

A plaintiff in a defamation action is under no duty to request a retraction or correction of allegedly defamatory material. Furthermore, an offer by the defendant to publish any reasonable or truthful correction does not constitute a correction nor does it deprive the plaintiff of recovery if the plaintiff does not accept the offer. In the event that a defamation defendant does publish a correction, the defendant may plead and prove it for purposes of mitigating damages.

Defamation Statutes.

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*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.*

Although defamation is essentially a common law tort, there are some Washington statutes pertaining to defamation actions generally:

- It is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application of the defamatory statement to the plaintiff, however, if the defendant denies that the statement was published or spoken concerning the plaintiff, it is up to the plaintiff to so prove. (RCW 4.36.120)
- In an action for libel or slander, if the plaintiff recovers less than \$10, he or she is entitled to no more costs or disbursements than the damage recovered. (RCW 4.84.040)
- The statute of limitations for a defamation action is two years. (RCW 4.16.100)
- Election law provisions. (Title 29A. and Chapter 42.17A RCW)

Washington had criminal libel statutes until recently. In 2009 following a court decision finding these statutes unconstitutionally vague and overbroad, they were repealed by the Legislature.

#### Uniform Correction or Clarification of Defamation Act (UCCDA).

The UCCDA pertains to the correction or clarification of defamation. The Uniform Law Commission completed drafting the UCCDA in 1993. To date, the state of North Dakota has enacted the UCCDA.

#### **Summary of Bill:**

The Uniform Correction or Clarification of Defamation Act (UCCDA) is adopted and applies to all claims for relief for damages arising out of harm to personal reputation caused by the false content of a publication, whether made orally, in writing, via broadcast, or electronically.

#### Request for Correction.

A person may maintain an action for defamation *only* if the person has made a timely and adequate request for correction or clarification (collectively referred to as "correction") *or* the publisher has made a correction. "Timely" means that the request is made within the statute of limitations for defamation, which is two years in this state. To be considered "adequate," the request must:

- be made in writing;
- reasonably identify the requester;
- specify, with particularity, the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
- allege the defamatory meaning of the statement;
- specify circumstances giving rise to any defamatory meaning which arise from other than the express language of the publication; and
- state that the defamatory meaning is false.

In the absence of a previous "adequate" request for correction, service of the summons and complaint stating a claim for relief for defamation and containing these elements satisfies this prong.

#### Correction.

A correction satisfies the "timely" and "sufficient" criteria if the parties so agree in writing. Otherwise, a correction is "timely" if published within the later of:

- 25 days after receipt of information disclosed by the person to the publisher in response to a publisher's request; or
- before or within 45 days after receipt of a request for correction from the person.

A correction is "sufficient" if it:

- is published with a prominence and in a manner and medium "reasonably likely to reach substantially the same audience" as the original publication;
- refers to the statement being corrected and
  - corrects the statement;
  - in the case of a defamatory meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or assert its truth; *or*
  - in the case of a statement attributed to someone else, identifies that person and disclaims an intent to assert the truth of the statement;
- is communicated to the person requesting the correction; and
- accompanies and is an equally prominent part of any electronic publication of the allegedly defamatory statement by the publisher.

If a timely correction is no longer possible, the publisher may make a written offer, at any time before trial, to make a correction. The offer must include an offer to pay the person's reasonable expenses of litigation, including attorneys' fees, incurred before publication of the correction. If the person accepts such an offer, the person is barred from commencing an action based on the alleged defamatory statement. In the event of acceptance after a suit has already been commenced, the court must dismiss the action after compliance with the terms of the offer.

#### Challenges to Timeliness/Adequacy/Sufficiency.

A publisher intending to challenge the adequacy or timeliness of a request for correction must do so within 60 days after service of the complaint. A publisher must also notify the person of its intent to rely upon a timely and sufficient correction within the later of 60 days after service of the complaint or 10 days after the correction is made. A correction is deemed to be timely and sufficient unless, within 20 days after the publisher's notice is served, the person asserts a challenge on these grounds.

#### Damages.

Under the UCCDA, certain occurrences operate to limit a person's recovery as follows:

1. If a person, within 90 days after knowledge of the publication, fails to request a correction or clarification, damages are limited to "provable economic loss."
2. If, after a request for correction is made, the publisher asks the person to disclose additional, reasonably available information material to falsity and the person unreasonably fails to so disclose, damages are limited to "provable economic loss."
3. If a timely and sufficient correction is made, damages are limited to "provable economic loss" as mitigated by the correction.
4. If a person does not accept a publisher's offer, made after timely correction was no longer possible, to publish a correction and pay reasonable expenses of litigation, damages are limited to "provable economic loss" and reasonable expenses of litigation incurred before the publisher's offer, unless the person failed to make a good faith attempt to request a correction or failed to disclose reasonably available information material to falsity after being requested to do so.

Admissibility of Evidence.

The fact of a request for correction, the contents of the request, and its acceptance or refusal are not admissible at trial. The following are also not admissible: the fact of an offer of correction; the contents of the offer; the fact of an offer's refusal.

In the event a correction was made, that fact and the content of the correction are only admissible with respect to the mitigation required under the second occurrence set forth above with respect to damages. If the fact that the correction, or its contents, are received in evidence, then the fact of the request may also be received.

Uniformity.

The UCCDA is to be applied and construed to effectuate its general purpose to make uniform the law on this subject among the states enacting it.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.