

Uniform Correction or Clarification of Defamation Act

Under this act, 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. 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. According to the legislation, 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.

Submitted as:

Washington

[SB 5236](#)

Status: Signed into law on May 20, 2013.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title*] Uniform correction or clarification of defamation act.

2

3 Section 2. [*Intent.*]

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

12

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

1 Section 3. [*Definition.*]

2 The definition in this section applies throughout this chapter unless the context clearly requires
3 otherwise.

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

7
8 Section 4. [*Scope.*]

9 (1) This chapter applies to any claim for relief, however characterized, for damages arising out
10 of harm caused by the false content of a publication that is published on or after the effective
11 date of this section.

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

14
15 Section 5. [*Request for correction or clarification.*]

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

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

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

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

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

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

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

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

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

35 (5) The period of limitation for commencement of a defamation action or another claim covered
36 by this chapter is tolled during the period allowed in [section 8](1) for responding to a
37 request for correction or clarification.

38
39 Section 6. [*Disclosure of evidence of falsity.*]

40 (1) A person who has been requested to make a correction or clarification may ask the requester
41 to disclose reasonably available information material to the falsity of the allegedly
42 defamatory or otherwise actionable statement.

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

46

1 Section 7. [*Effect of correction or clarification.*]

2 If a timely and sufficient correction or clarification is made, a person may not recover damages
3 for injury to reputation or presumed damages; however, the person may recover all other
4 damages permitted by law.

5
6 Section 8. [*Timelines and sufficiency of correction or clarification.*]

7 (1) A correction or clarification is timely if it is published before, or within thirty days after,
8 receipt of a request for correction or clarification or of the information in [section 6](1),
9 whichever is later, unless the period is extended by written agreement of the parties.

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

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

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

14 (i) Corrects the statement;

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

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

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

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

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

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

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

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

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

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

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

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

42
43 Section 9. [*Challenges to correction or clarification or to request for correction or clarification.*]

44 (1) If a defendant in an action governed by this chapter intends to rely on a timely and sufficient
45 correction or clarification, the defendant's intention to do so, and the correction or
46 clarification relied upon, must be set forth in a notice served on the plaintiff within sixty days

1 after service of the summons and complaint or ten days after the correction or clarification is
2 made, whichever is later.

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

8
9 Section 10. [*Offer to Correct or Clarify.*]

- 10 (1) If a timely correction or clarification is no longer possible, the publisher of an alleged
11 defamatory or otherwise actionable statement may offer, at any time before trial, to make a
12 correction or clarification. The offer must be made in writing to the person allegedly harmed
13 by the publication and:

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

- 15 (i) Publish, at the person's request, a sufficient correction or clarification; and
16 (ii) Pay the person's reasonable expenses of litigation, including attorneys' fees,
17 incurred before publication of the correction or clarification; and

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

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

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

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

- 26 (3) A person who does not accept an offer made in conformance with subsection (1) of this
27 section may not recover damages for injury to reputation or presumed damages in an action
28 based on the statement; however, the person may recover all other damages permitted by law,
29 together with reasonable expenses of litigation, including attorneys' fees, incurred before the
30 offer, unless the person failed to make a good faith attempt to request a correction or
31 clarification in accordance with [section 5] or failed to disclose information in accordance
32 with [section 6].

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

35
36 Section 11. [*Scope of Protection.*]

37 A timely and sufficient correction or clarification made by a person responsible for a publication
38 constitutes a correction or clarification made by all persons responsible for that publication other
39 than a republisher. However, a correction or clarification that is sufficient only because of the
40 operation of [section 8](2)(b)(iii) does not constitute a correction or clarification made by the
41 person to whom the statement is attributed.

42
43 Section 12. [*Uniformity of Application and Construction.*]

44 This chapter shall be applied and construed to effectuate its general purpose to make uniform the
45 law with respect to the subject of this chapter among states enacting it.

1 Section 13. [*Severability.*] Insert severability clause.

2

3 Section 14. [*Repealer.*] Insert repealer clause.

4

5 Section 15. [*Effective Date.*] Insert effective date.