

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5236

63rd Legislature
2013 Regular Session

Passed by the Senate April 28, 2013
YEAS 43 NAYS 4

President of the Senate

Passed by the House April 26, 2013
YEAS 70 NAYS 26

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5236** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5236

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senators Kline and Padden

Read first time 01/24/13. Referred to Committee on Law & Justice.

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

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

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

16 This act seeks to provide strong incentives for individuals to
17 promptly correct or clarify an alleged false statement as an
18 alternative to costly litigation. The options created by this act
19 provide an opportunity for a plaintiff who believes he or she has been

1 harmed by a false statement to secure quick and complete vindication of
2 his or her reputation. This act provides publishers with a quick and
3 cost-effective means of correcting or clarifying alleged mistakes and
4 avoiding costly litigation.

5 NEW SECTION. **Sec. 2.** DEFINITION. The definition in this section
6 applies throughout this chapter unless the context clearly requires
7 otherwise.

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

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

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

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

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

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

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

25 (2) A request for correction or clarification is timely if made
26 within the period of limitation for commencement of an action for
27 defamation.

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

29 (a) Is made in writing and reasonably identifies the person making
30 the request;

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

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

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

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

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

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

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

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

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

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

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

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, edition,
20 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 clarification
24 is published in a manner and medium reasonably likely to reach
25 substantially the same audience as the publication complained of if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (3) A person who does not accept an offer made in conformance with
37 subsection (1) of this section may not recover damages for injury to

1 reputation or presumed damages in an action based on the statement;
2 however, the person may recover all other damages permitted by law,
3 together with reasonable expenses of litigation, including attorneys'
4 fees, incurred before the offer, unless the person failed to make a
5 good faith attempt to request a correction or clarification in
6 accordance with section 4 of this act or failed to disclose information
7 in accordance with section 5 of this act.

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

10 NEW SECTION. **Sec. 10.** SCOPE OF PROTECTION. A timely and
11 sufficient correction or clarification made by a person responsible for
12 a publication constitutes a correction or clarification made by all
13 persons responsible for that publication other than a republisher.
14 However, a correction or clarification that is sufficient only because
15 of the operation of section 7(2)(b)(iii) of this act does not
16 constitute a correction or clarification made by the person to whom the
17 statement is attributed.

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 2 through 12 of this act
29 constitute a new chapter in Title 7 RCW.

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