

By: Hunter

H.B. No. 1759

A BILL TO BE ENTITLED

AN ACT

relating to a correction, clarification, or retraction of incorrect information published.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 73, Civil Practice and Remedies Code, is amended by designating Sections 73.001 through 73.006 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Chapter 73, Civil Practice and Remedies Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. CORRECTION, CLARIFICATION, OR RETRACTION BY

PUBLISHER

Sec. 73.051. SHORT TITLE. This subchapter may be cited as the Defamation Mitigation Act. This subchapter shall be liberally construed.

Sec. 73.052. PURPOSE. The purpose of this subchapter is to provide a method for a person who has been defamed by a publication or broadcast to mitigate any perceived damage or injury.

Sec. 73.053. DEFINITIONS. In this subchapter:

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

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

1 instrumentality.

2 Sec. 73.054. APPLICABILITY. (a) This subchapter applies  
3 to a claim for relief from damages arising out of harm to a personal  
4 reputation caused by the false content of a publication.

5 (b) This subchapter applies to all publications, including  
6 writings, broadcasts, oral communications, electronic  
7 transmissions, or other forms of transmitting information.

8 Sec. 73.055. REQUEST FOR CORRECTION, CLARIFICATION, OR  
9 RETRACTION. (a) A person may maintain an action for defamation  
10 only if:

11 (1) the person has made a timely and sufficient  
12 request for a correction, clarification, or retraction from the  
13 defendant; or

14 (2) the defendant has made a correction,  
15 clarification, or retraction.

16 (b) A request for a correction, clarification, or  
17 retraction is timely if made during the period of limitation for  
18 commencement of an action for defamation.

19 (c) A person may recover exemplary damages only if not later  
20 than the 90th day after receiving knowledge of the publication, the  
21 person requests a correction, clarification, or retraction.

22 (d) A request for a correction, clarification, or  
23 retraction is sufficient if it:

24 (1) is served on the publisher;

25 (2) is made in writing, reasonably identifies the  
26 person making the request, and is signed by the individual claiming  
27 to have been defamed or by the person's authorized attorney or

1 agent;

2 (3) states with particularity the statement alleged to  
3 be false and defamatory and, to the extent known, the time and place  
4 of publication;

5 (4) alleges the defamatory meaning of the statement;  
6 and

7 (5) specifies the circumstances causing a defamatory  
8 meaning of the statement if it arises from something other than the  
9 express language of the publication.

10 Sec. 73.056. DISCLOSURE OF EVIDENCE OF FALSITY. (a) A  
11 person who has been requested to make a correction, clarification,  
12 or retraction may ask the person making the request to provide  
13 reasonably available information regarding the falsity of the  
14 allegedly defamatory statement. Any information requested under  
15 this section must be provided by the person seeking the correction,  
16 clarification, or retraction not later than the 30th day after the  
17 date the person receives the request. A period of limitation for  
18 commencement of a claim under this subsection is tolled during the  
19 period allowed in this section.

20 (b) If a correction, clarification, or retraction is not  
21 made, a person who, without good cause, fails to disclose the  
22 information requested under Subsection (a) may not recover  
23 exemplary damages.

24 Sec. 73.057. TIMELY AND SUFFICIENT CORRECTION,  
25 CLARIFICATION, OR RETRACTION. (a) A correction, clarification, or  
26 retraction is timely if it is made not later than the 30th day after  
27 receipt of:

1           (1) the request for the correction, clarification, or  
2 retraction; or

3           (2) the information requested under Section  
4 73.056(a).

5           (b) A correction, clarification, or retraction is  
6 sufficient if it is published with a prominence and in a manner and  
7 medium reasonably likely to reach substantially the same audience  
8 as the publication complained of and:

9           (1) is publication of an acknowledgment that the  
10 statement specified as false and defamatory is erroneous;

11           (2) is an allegation that the defamatory meaning  
12 arises from other than the express language of the publication and  
13 the publisher disclaims an intent to communicate that meaning or to  
14 assert its truth;

15           (3) is a statement attributed to another person whom  
16 the publisher identifies and the publisher disclaims an intent to  
17 assert the truth of the statement; or

18           (4) is publication of the requestor's statement of the  
19 facts, as set forth in a request for correction, clarification, or  
20 retraction, or a fair summary of the statement, exclusive of any  
21 portion that is defamatory of another, obscene, or otherwise  
22 improper for publication.

23           (c) If a request for correction, clarification, or  
24 retraction has specified two or more statements as false and  
25 defamatory, the correction, clarification, or retraction may deal  
26 with the statements individually in any manner provided by  
27 Subsection (b).

1       (d) Except as provided by Subsection (e), a correction,  
2 clarification, or retraction is published with a prominence and in  
3 a manner and medium reasonably likely to reach substantially the  
4 same audience as the publication complained of if:

5           (1) it is published in a later issue, edition, or  
6 broadcast of the original publication;

7           (2) publication is in the next practicable issue,  
8 edition, or broadcast of the original publication because the  
9 publication will not be published within the time limits  
10 established for a timely correction, clarification, or retraction;

11 or

12           (3) the original publication no longer exists and if  
13 the correction, clarification, or retraction is published in the  
14 newspaper with the largest general circulation in the region in  
15 which the original publication was distributed.

16       (e) If the original publication was on the Internet, a  
17 correction, clarification, or retraction is published with a  
18 prominence and in a manner and medium reasonably likely to reach  
19 substantially the same audience as the publication complained of if  
20 the publisher appends to the original publication the correction,  
21 clarification, or retraction.

22       Sec. 73.058. CHALLENGES TO CORRECTION, CLARIFICATION, OR  
23 RETRACTION OR TO REQUEST FOR CORRECTION, CLARIFICATION, OR  
24 RETRACTION. (a) If a defendant in an action under this subchapter  
25 intends to rely on a timely and sufficient correction,  
26 clarification, or retraction, the defendant's intention to do so,  
27 and the correction, clarification, or retraction relied on, must be

1 stated in a notice served on the plaintiff on the later of:

2 (1) the 60th day after service of the citation; or

3 (2) the 10th day after the date the correction,  
4 clarification, or retraction is made.

5 (b) A correction, clarification, or retraction is timely  
6 and sufficient unless the plaintiff challenges the timeliness or  
7 sufficiency not later than the 20th day after the date notice under  
8 Subsection (a) is served. If a plaintiff challenges the timeliness  
9 or sufficiency, the plaintiff must state the challenge in a motion  
10 to declare the correction, clarification, or retraction untimely or  
11 insufficient served not later than the 30th day after the date  
12 notice under Subsection (a) is served on the plaintiff or the 30th  
13 day after the date the correction, clarification, or retraction is  
14 made, whichever is later.

15 (c) If a defendant intends to challenge the sufficiency or  
16 timeliness of a request for a correction, clarification, or  
17 retraction, the defendant must state the challenge in a motion to  
18 declare the request insufficient or untimely served not later than  
19 the 60th day after the date of service of the citation.

20 (d) Unless there is a reasonable dispute regarding the  
21 actual contents of the request for correction, clarification, or  
22 retraction, the sufficiency and timeliness of a request for  
23 correction, clarification, or retraction is a question of law. At  
24 the earliest appropriate time before trial, the court shall rule,  
25 as a matter of law, whether the request for correction,  
26 clarification, or retraction meets the requirements of this  
27 subchapter.

1       Sec. 73.059. EFFECT OF CORRECTION, CLARIFICATION, OR  
2 RETRACTION. If a correction, clarification, or retraction is made  
3 in accordance with this subchapter, regardless of whether the  
4 person claiming harm made a request, a person may not recover  
5 exemplary damages unless the publication was made with actual  
6 malice.

7       Sec. 73.060. SCOPE OF PROTECTION. A timely and sufficient  
8 correction, clarification, or retraction made by a person  
9 responsible for a publication constitutes a correction,  
10 clarification, or retraction made by all persons responsible for  
11 that publication but does not extend to an entity that republished  
12 the information.

13       Sec. 73.061. ADMISSIBILITY OF EVIDENCE OF CORRECTION,  
14 CLARIFICATION, OR RETRACTION. (a) A request for a correction,  
15 clarification, or retraction, the contents of the request, and the  
16 acceptance or refusal of the request are not admissible evidence at  
17 a trial.

18       (b) The fact that a correction, clarification, or  
19 retraction was made and the contents of the correction,  
20 clarification, or retraction are not admissible in evidence at  
21 trial except in mitigation of damages under Section 73.003(a)(3).  
22 If a correction, clarification, or retraction is received into  
23 evidence, the request for the correction, clarification, or  
24 retraction may also be received into evidence.

25       (c) The fact that an offer of a correction, clarification,  
26 or retraction was made and the contents of the offer, and the fact  
27 that the correction, clarification, or retraction was refused, are

1 not admissible in evidence at trial.

2           SECTION 3. This Act applies only to information published  
3 on or after the effective date of this Act. Information published  
4 before the effective date of this Act is governed by the law in  
5 effect when the information was published, and the former law is  
6 continued in effect for that purpose.

7           SECTION 4. This Act takes effect immediately if it receives  
8 a vote of two-thirds of all the members elected to each house, as  
9 provided by Section 39, Article III, Texas Constitution. If this  
10 Act does not receive the vote necessary for immediate effect, this  
11 Act takes effect September 1, 2013.