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SENATE BILL 875

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

PATRICK H. LYONS

AN ACT

RELATING TO DEFAMATION; ENACTING THE UNIFORM CORRECTION OR
CLARIFICATION OF DEFAMATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Uniform Correction or Clarification of Defamation Act".

Section 2. DEFINITIONS. -- As used in the Uniform Correction
or Clarification of Defamation Act:

- A. "defamatory" means tending to harm reputation;
- B. "economic loss" means special, pecuniary loss
caused by a false and defamatory publication; and
- C. "person" means an individual, corporation,
business trust, estate, trust, partnership, association, joint
venture or other legal or commercial entity. "Person" does not
include a government or governmental subdivision, agency or

1 instrumentality.

2 Section 3. SCOPE. --

3 A. The Uniform Correction or Clarification of
4 Defamation Act applies to any claim for damages, however
5 characterized, arising out of harm to personal reputation caused
6 by the false content of a publication that is published on or
7 after the effective date of the Uniform Correction or
8 Clarification of Defamation Act.

9 B. The Uniform Correction or Clarification of
10 Defamation Act applies to all publications, including writings,
11 broadcasts, oral communications, electronic transmissions or
12 other forms of transmitting information.

13 Section 4. REQUEST FOR CORRECTION OR CLARIFICATION. --

14 A. A person may maintain an action for defamation
15 only if:

16 (1) the person has made a timely and adequate
17 request for correction or clarification from the defendant; or

18 (2) the defendant has made a correction or
19 clarification.

20 B. A request for correction or clarification is
21 timely if made within the period of limitation for commencement
22 of an action for defamation. However, a person who, within
23 ninety days after knowledge of the publication, fails to make a
24 good-faith attempt to request a correction or clarification may
25 recover only provable economic loss.

1 C. A request for correction or clarification is
2 adequate if it:

3 (1) is made in writing and reasonably
4 identifies the person making the request;

5 (2) specifies with particularity the statement
6 alleged to be false and defamatory and, to the extent known, the
7 time and place of publication;

8 (3) alleges the defamatory meaning of the
9 statement;

10 (4) specifies the circumstances giving rise to
11 any defamatory meaning of the statement that arises from other
12 than the express language of the publication; and

13 (5) states that the alleged defamatory meaning
14 of the statement is false.

15 D. In the absence of a previous adequate request,
16 service of a summons and complaint stating a claim for relief
17 for defamation and containing the information required in
18 Subsection C of this section constitutes an adequate request
19 for correction or clarification.

20 E. The period of limitation for commencement of a
21 defamation action is tolled during the period allowed in
22 Subsection A of Section 7 of the Uniform Correction or
23 Clarification of Defamation Act for responding to a request for
24 correction or clarification.

25 Section 5. DISCLOSURE OF EVIDENCE OF FALSITY. --

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1 A. A person who has been requested to make a
2 correction or clarification may ask the requester to disclose
3 reasonably available information material to the falsity of the
4 allegedly defamatory statement.

5 B. If a correction or clarification is not made, a
6 person who unreasonably fails to disclose the information after
7 a request to do so may recover only provable economic loss.

8 C. A correction or clarification is timely if
9 published within twenty-five days after receipt of information
10 disclosed pursuant to Subsection A of this section or forty-five
11 days after receipt of a request for correction or clarification,
12 whichever is later.

13 Section 6. EFFECT OF CORRECTION OR CLARIFICATION. --If a
14 timely and sufficient correction or clarification is made, a
15 person may recover only provable economic loss, as mitigated by
16 the correction or clarification.

17 Section 7. TIMELY AND SUFFICIENT CORRECTION OR
18 CLARIFICATION. --

19 A. A correction or clarification is timely if it is
20 published before, or within forty-five days after, receipt of a
21 request for correction or clarification, unless the period is
22 extended under Subsection C of Section 5 of the Uniform
23 Correction or Clarification of Defamation Act.

24 B. A correction or clarification is sufficient if
25 it:

1 (1) is published with a prominence and in a
2 manner and medium reasonably likely to reach substantially the
3 same audience as the publication complained of;

4 (2) refers to the statement being corrected or
5 clarified and:

6 (a) corrects the statement;

7 (b) in the case of defamatory meaning
8 arising from other than the express language of the publication,
9 disclaims an intent to communicate that meaning or to assert its
10 truth; or

11 (c) in the case of a statement attributed
12 to another person, identifies the person and disclaims an intent
13 to assure the truth of the statement; and

14 (3) is communicated to the person who has made
15 a request for correction or clarification.

16 C. A correction or clarification is published in a
17 medium reasonably likely to reach substantially the same
18 audience as the publication complained of if it is published in
19 a later issue, edition or broadcast of the original publication.

20 D. If a later issue, edition or broadcast of the
21 original publication will not be published within the time
22 limits established for a timely correction or clarification, a
23 correction or clarification is published in a manner and medium
24 reasonably likely to reach substantially the same audience as
25 the publication complained of if:

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1 (1) it is timely published in a reasonably
2 prominent manner:

3 (a) in another medium likely to reach an
4 audience reasonably equivalent to the original publication; or

5 (b) if the parties cannot agree on
6 another medium, in the newspaper with the largest general
7 circulation in the region in which the original publication was
8 distributed;

9 (2) reasonable steps are taken to correct
10 undistributed copies of the original publication, if any; and

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

14 E. A correction or clarification is timely and
15 sufficient if the parties agree in writing that it is timely and
16 sufficient.

17 Section 8. CHALLENGES TO CORRECTION OR CLARIFICATION OR TO
18 REQUEST FOR CORRECTION OR CLARIFICATION. --

19 A. If a defendant in an action governed by the
20 Uniform Correction or Clarification of Defamation Act intends to
21 rely on a timely and sufficient correction or clarification, the
22 defendant's intention to do so, and the correction or
23 clarification relied upon, must be set forth in a notice served
24 on the plaintiff within sixty days after service of the
25 complaint or ten days after the correction or clarification is

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1 made, whichever is later. A correction or clarification is
2 deemed to be timely and sufficient unless the plaintiff
3 challenges its timeliness or sufficiency within twenty days
4 after the notice is served.

5 B. If a defendant in an action governed by the
6 Uniform Correction or Clarification of Defamation Act intends to
7 challenge the adequacy or timeliness of a request for correction
8 or clarification, the defendant must set forth the challenge in
9 a motion to declare the request inadequate or untimely served
10 within sixty days after the service of the complaint. The court
11 shall rule on the motion at the earliest appropriate time before
12 trial.

13 Section 9. OFFER TO CORRECT OR CLARIFY.--If a timely
14 correction or clarification is no longer possible, the publisher
15 of an alleged defamatory statement may offer, at any time before
16 trial, to make a correction or clarification. The offer must be
17 made in writing to the person allegedly defamed by the
18 publication and:

- 19 (1) contain the publisher's offer to:
20 (a) publish, at the person's request, a
21 sufficient correction or clarification; and
22 (b) pay the person's reasonable expenses
23 of litigation, including attorneys' fees, incurred before
24 publication of the correction or clarification; and
25 (2) be accompanied by a copy of the proposed

1 correction or clarification and the plan for its publication.

2 B. If the person accepts in writing an offer to
3 correct or clarify made pursuant to Subsection A of this
4 section:

5 (1) the person is barred from commencing an
6 action against the publisher based on the statement; or

7 (2) if an action has been commenced, the court
8 shall dismiss the action against the defendant with prejudice
9 after the defendant complies with the terms of the offer.

10 C. A person who does not accept an offer made in
11 conformance with Subsection A of this section may recover in an
12 action based on the statement only:

13 (1) damages for provable economic loss; and

14 (2) reasonable expenses of litigation,
15 including attorneys' fees, incurred before the offer, unless the
16 person failed to make a good-faith attempt to request a
17 correction or clarification in accordance with Subsection B of
18 Section 4 of the Uniform Correction or Clarification of
19 Defamation Act or failed to disclose information in accordance
20 with Section 5 of that act.

21 D. On request of either party, a court shall
22 promptly determine the sufficiency of the offered correction or
23 clarification.

24 E. The court shall determine the amount of
25 reasonable expenses of litigation, including attorneys' fees,

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1 specified in this section.

2 Section 10. SCOPE OF PROTECTION. -- A timely and sufficient
3 correction or clarification made by a person responsible for a
4 publication constitutes a correction or clarification made by
5 all persons responsible for that publication other than a
6 republisher. However, a correction or clarification that is
7 sufficient only because of the operation of Subparagraph (c) of
8 Paragraph (2) of Subsection B of Section 7 of the Uniform
9 Correction or Clarification of Defamation Act does not
10 constitute a correction or clarification made by the person to
11 whom the statement is attributed.

12 Section 11. ADMISSIBILITY OF EVIDENCE OF CORRECTION OR
13 CLARIFICATION. --

14 A. The fact of a request for correction or
15 clarification under the Uniform Correction or Clarification of
16 Defamation Act, the contents of the request and its acceptance
17 or refusal are not admissible in evidence at trial.

18 B. The fact that a correction or clarification under
19 the Uniform Correction or Clarification of Defamation Act was
20 made and the contents of the correction or clarification are not
21 admissible in evidence at trial except in mitigation of damages
22 pursuant to Section 6 of that act. If the fact that a
23 correction or clarification was made or the contents of the
24 correction or clarification are received in evidence, the fact
25 of the request may also be received.

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C. The fact of an offer of correction or clarification, or the fact of its refusal, and the contents of the offer are not admissible in evidence at trial.

Section 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. --The Uniform Correction or Clarification of Defamation Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

Section 13. SEVERABILITY. --If any part or application of the Uniform Correction or Clarification of Defamation Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 14. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1997.

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
4

5 March 5, 1997
6

7 Mr. President:
8

9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
10 referred
11

12 SENATE BILL 875
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 JUDICIARY COMMITTEE.
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18 Respectfully submitted,
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22 _____
23 Shannon Robinson, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Garcia, Ingle, Vernon, Smith

Absent: None

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