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SENATE BILL 328

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 200**

INTRODUCED BY

William H. Payne

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 instrumentality.

Section 3. SCOPE.--

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

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

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

11           A. A person may maintain an action for defamation  
12 only if:

13                       (1) the person has made a timely and  
14 adequate request for correction or clarification from the  
15 defendant; or

16                       (2) the defendant has made a correction or  
17 clarification.

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

24           C. A request for correction or clarification is  
25 adequate if it:

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

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

(3) alleges the defamatory meaning of the statement;

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

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

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

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

Section 5. DISCLOSURE OF EVIDENCE OF FALSITY.--

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

B. If a correction or clarification is not made, a person who unreasonably fails to disclose the information

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1 after a request to do so may recover only provable economic  
2 loss.

3 C. A correction or clarification is timely if  
4 published within twenty-five days after receipt of  
5 information disclosed pursuant to Subsection A of this  
6 section or forty-five days after receipt of a request for  
7 correction or clarification, whichever is later.

8 Section 6. EFFECT OF CORRECTION OR CLARIFICATION.--If a  
9 timely and sufficient correction or clarification is made, a  
10 person may recover only provable economic loss, as mitigated  
11 by the correction or clarification.

12 Section 7. TIMELY AND SUFFICIENT CORRECTION OR  
13 CLARIFICATION.--

14 A. A correction or clarification is timely if it  
15 is published before, or within forty-five days after, receipt  
16 of a request for correction or clarification, unless the  
17 period is extended under Subsection C of Section 5 of the  
18 Uniform Correction or Clarification of Defamation Act.

19 B. A correction or clarification is sufficient if  
20 it:

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

24 (2) refers to the statement being corrected  
25 or clarified and:

(a) corrects the statement;

(b) in the case of defamatory meaning

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1 arising from other than the express language of the  
2 publication, disclaims an intent to communicate that meaning  
3 or to assert its truth; or

4 (c) in the case of a statement  
5 attributed to another person, identifies the person and  
6 disclaims an intent to assure the truth of the statement; and

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

9 C. A correction or clarification is published in a  
10 medium reasonably likely to reach substantially the same  
11 audience as the publication complained of if it is published  
12 in a later issue, edition or broadcast of the original  
13 publication.

14 D. If a later issue, edition or broadcast of the  
15 original publication will not be published within the time  
16 limits established for a timely correction or clarification,  
17 a correction or clarification is published in a manner and  
18 medium reasonably likely to reach substantially the same  
19 audience as the publication complained of if:

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

22 (a) in another medium likely to reach  
23 an audience reasonably equivalent to the original  
24 publication; or

25 (b) if the parties cannot agree on  
another medium, in the newspaper with the largest general  
circulation in the region in which the original publication

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1 was distributed;

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

4 (3) it is published in the next practicable  
5 issue, edition or broadcast, if any, of the original  
6 publication.

7 E. A correction or clarification is timely and  
8 sufficient if the parties agree in writing that it is timely  
9 and sufficient.

10 Section 8. CHALLENGES TO CORRECTION OR CLARIFICATION OR  
11 TO A REQUEST FOR CORRECTION OR CLARIFICATION.--

12 A. If a defendant in an action governed by the  
13 Uniform Correction or Clarification of Defamation Act intends  
14 to rely on a timely and sufficient correction or  
15 clarification, the defendant's intention to do so, and the  
16 correction or clarification relied upon, must be set forth in  
17 a notice served on the plaintiff within sixty days after  
18 service of the complaint or ten days after the correction or  
19 clarification is made, whichever is later. A correction or  
20 clarification is deemed to be timely and sufficient unless  
21 the plaintiff challenges its timeliness or sufficiency within  
22 twenty days after the notice is served.

23 B. If a defendant in an action governed by the  
24 Uniform Correction or Clarification of Defamation Act intends  
25 to challenge the adequacy or timeliness of a request for  
correction or clarification, the defendant shall set forth  
the challenge in a motion to declare the request inadequate

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1 or untimely served within sixty days after the service of the  
2 complaint. The court shall rule on the motion at the  
3 earliest appropriate time before trial.

4 Section 9. OFFER TO CORRECT OR CLARIFY.--

5 A. If a timely correction or clarification is no  
6 longer possible, the publisher of an alleged defamatory  
7 statement may offer, at any time before trial, to make a  
8 correction or clarification. The offer must be made in  
9 writing to the person allegedly defamed by the publication  
10 and:

- 11 (1) contain the publisher's offer to:
  - 12 (a) publish, at the person's request, a
  - 13 sufficient correction or clarification; and
  - 14 (b) pay the person's reasonable
  - 15 expenses of litigation, including attorney fees, incurred
  - 16 before publication of the correction or clarification; and
- 17 (2) be accompanied by a copy of the proposed
- 18 correction or clarification and the plan for its publication.

19 B. If the person accepts in writing an offer to  
20 correct or clarify made pursuant to Subsection A of this  
21 section:

- 22 (1) the person is barred from commencing an
- 23 action against the publisher based on the statement; or
- 24 (2) if an action has been commenced, the
- 25 court shall dismiss the action against the defendant with  
prejudice after the defendant complies with the terms of the  
offer.

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

- 4 (1) damages for provable economic loss; and  
5 (2) reasonable expenses of litigation,  
6 including attorney fees, incurred before the offer, unless  
7 the person failed to make a good faith attempt to request a  
8 correction or clarification in accordance with Subsection B  
9 of Section 4 of the Uniform Correction or Clarification of  
10 Defamation Act or failed to disclose information in  
11 accordance with Section 5 of that act.

12 D. On request of either party, a court shall  
13 promptly determine the sufficiency of the offered correction  
14 or clarification.

15 E. The court shall determine the amount of  
16 reasonable expenses of litigation, including attorney fees,  
17 specified in this section.

18 Section 10. SCOPE OF PROTECTION.--A timely and  
19 sufficient correction or clarification made by a person  
20 responsible for a publication constitutes a correction or  
21 clarification made by all persons responsible for that  
22 publication other than a republisher. However, a correction  
23 or clarification that is sufficient only because of the  
24 operation of Subparagraph (c) of Paragraph (2) of Subsection  
25 B of Section 7 of the Uniform Correction or Clarification of  
Defamation Act does not constitute a correction or  
clarification made by the person to whom the statement is

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attributed.

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

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

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

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

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1 situations or persons shall not be affected.

2 Section 14. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2000.

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