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**HOUSE BILL 368**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Daniel Foley**

**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**

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1 or 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  
6 caused by the false content of a publication that is published  
7 on or after the effective date of that act.

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

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

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

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

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

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

25 C. A request for correction or clarification is

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1 adequate if it:

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

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

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

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

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

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

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

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

25 A. A person who has been requested to make a

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1 correction or clarification may ask the requester to disclose  
2 reasonably available information material to the falsity of  
3 the allegedly defamatory statement.

4 B. If a correction or clarification is not made, a  
5 person who unreasonably fails to disclose the information  
6 after a request to do so may recover only provable economic  
7 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-  
11 five days after receipt of a request for correction or  
12 clarification, 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  
16 by the correction or clarification.

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

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

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

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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  
5 or 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  
9 publication, disclaims an intent to communicate that meaning  
10 or to assert its truth; or

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

14 (3) is communicated to the person who has  
15 made 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  
19 in a later issue, edition or broadcast of the original  
20 publication.

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

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1 audience as the publication complained of if:

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

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

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

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

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

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

19 Section 8. CHALLENGES TO CORRECTION OR CLARIFICATION OR  
20 TO A REQUEST FOR CORRECTION OR CLARIFICATION. --

21 A. If a defendant in an action governed by the  
22 Uniform Correction or Clarification of Defamation Act intends  
23 to rely on a timely and sufficient correction or  
24 clarification, the defendant's intention to do so, and the  
25 correction or clarification relied upon, must be set forth in

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1 a notice served on the plaintiff within sixty days after  
2 service of the complaint or ten days after the correction or  
3 clarification is made, whichever is later. A correction or  
4 clarification is deemed to be timely and sufficient unless the  
5 plaintiff challenges its timeliness or sufficiency within  
6 twenty days after the notice is served.

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

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

16 A. If a timely correction or clarification is no  
17 longer possible, the publisher of an alleged defamatory  
18 statement may offer, at any time before trial, to make a  
19 correction or clarification. The offer must be made in  
20 writing to the person allegedly defamed by the publication  
21 and:

22 (1) contain the publisher's offer to:

23 (a) publish, at the person's request, a  
24 sufficient correction or clarification; and

25 (b) pay the person's reasonable

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1 expenses of litigation, including attorney fees, incurred  
2 before publication of the correction or clarification; and

3 (2) be accompanied by a copy of the proposed  
4 correction or clarification and the plan for its publication.

5 B. If the person accepts in writing an offer to  
6 correct or clarify made pursuant to Subsection A of this  
7 section:

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

10 (2) if an action has been commenced, the  
11 court shall dismiss the action against the defendant with  
12 prejudice after the defendant complies with the terms of the  
13 offer.

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

17 (1) damages for provable economic loss; and

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

25 D. On request of either party, a court shall



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1 promptly determine the sufficiency of the offered correction  
2 or clarification.

3 E. The court shall determine the amount of  
4 reasonable expenses of litigation, including attorney fees,  
5 specified in this section.

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

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

19 A. The fact of a request for correction or  
20 clarification made pursuant to the Uniform Correction or  
21 Clarification of Defamation Act, the contents of the request  
22 and its acceptance or refusal are not admissible in evidence  
23 at trial.

24 B. The fact that a correction or clarification  
25 pursuant to the Uniform Correction or Clarification of

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1 Defamation Act was made and the contents of the correction or  
2 clarification are not admissible in evidence at trial except  
3 in mitigation of damages pursuant to Section 6 of that act.

4 If the fact that a correction or clarification was made or the  
5 contents of the correction or clarification are received in  
6 evidence, the fact of the request may also be received.

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

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

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

19 Section 14. EFFECTIVE DATE. --The effective date of the  
20 provisions of this act is July 1, 2002.