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SENATE BILL 299

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

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

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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 under Subsection C of Section 5 of the
23 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 assure 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 (b) if the parties cannot agree on
7 another medium, in the newspaper with the largest general
8 circulation in the region in which the original publication
9 was distributed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (1) damages for provable economic loss; and

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

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

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

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

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

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

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

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1 If the fact that a correction or clarification was made or the
2 contents of the correction or clarification are received in
3 evidence, the fact of the request may also be received.

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

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

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

16 Section 14. EFFECTIVE DATE. --The effective date of the
17 provisions of this act is July 1, 1999.