

By Senator Bronson

18-846-01

See HB

1                                   A bill to be entitled  
2           An act relating to civil actions for libel;  
3           creating s. 770.011, F.S.; creating the  
4           "Uniform Correction or Clarification of  
5           Defamation Act"; providing definitions;  
6           providing scope of the act; providing  
7           circumstances under which a person may maintain  
8           a civil action for defamation; specifying time  
9           limit for timely request of a correction or  
10          clarification; providing criteria for adequacy  
11          of correction or clarification; tolling the  
12          period of limitation for commencement of a  
13          defamation action; providing procedure with  
14          respect to disclosure of evidence or falsity  
15          with respect to an alleged defamatory  
16          statement; providing requirements for timely  
17          and sufficient correction or clarification;  
18          providing requirements and procedure with  
19          respect to challenges to correction or  
20          clarification or to a request for correction or  
21          clarification; requiring specified notice;  
22          providing requirements and procedure with  
23          respect to an offer to correct or clarify prior  
24          to trial; specifying recoverable costs and  
25          damages in actions when an offer to correct or  
26          clarify is not accepted; providing for scope of  
27          protection with respect to correction or  
28          clarification; providing for admissibility of  
29          evidence with respect to corrections or  
30          clarifications; providing construction;  
31          repealing s. 770.01, F.S., relating to the

1 serving of specified written notice as a  
2 condition precedent to action or prosecution  
3 for libel or slander; repealing s. 770.02,  
4 F.S., relating to correction, apology, or  
5 retraction by a newspaper or broadcast station  
6 for statements in an article or broadcast  
7 alleged to be false and defamatory; providing  
8 severability; providing an effective date.

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10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. Section 770.011, Florida Statutes, is  
13 created to read:

14 770.011 Correction or clarification of defamation.--

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

17 (2) DEFINITIONS.--

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

19 (b) "Economic loss" means special, pecuniary loss  
20 caused by a false and defamatory publication.

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

26 (3) SCOPE.--

27 (a) This act applies to any claim for relief, however  
28 characterized, for damages arising out of harm to personal  
29 reputation caused by the false content of a publication that  
30 is published on or after the effective date of this act.

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1           (b) This act applies to all publications, including  
2 writings, broadcasts, oral communications, electronic  
3 transmissions, or other forms of transmitting information.

4           (4) REQUESTS FOR CORRECTION OR CLARIFICATION.--

5           (a) A person may maintain an action for defamation  
6 only if:

7           1. The person has made a timely and adequate request  
8 for correction or clarification from the defendant; or

9           2. The defendant has made a correction or  
10 clarification.

11           (b) A request for correction or clarification is  
12 timely if made within the period of limitation for  
13 commencement of an action for defamation. However, a person  
14 who, within 90 days after knowledge of the publication, fails  
15 to make a good-faith attempt to request a correction or  
16 clarification may recover only provable economic loss.

17           (c) A request for correction or clarification is  
18 adequate if it:

19           1. Is made in writing and reasonably identifies the  
20 person making the request;

21           2. Specifies with particularity the statement alleged  
22 to be false and defamatory and, to the extent known, the time  
23 and place of publication;

24           3. Alleges the defamatory meaning of the statement;

25           4. Specifies the circumstances giving rise to any  
26 defamatory meaning of the statement which arises from other  
27 than the express language of the publication; and

28           5. States that the alleged defamatory meaning of the  
29 statement is false.

30           (d) In the absence of a previous adequate request,  
31 service of a summons and complaint stating a claim for relief

1 for defamation and containing the information required in  
2 paragraph (c) constitutes an adequate request for correction  
3 or clarification.

4 (e) The period of limitation for commencement of a  
5 defamation action is tolled during the period allowed in  
6 paragraph (7)(a) for responding to a request for correction or  
7 clarification.

8 (5) DISCLOSURE OF EVIDENCE OF FALSITY.--

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

13 (b) If a correction or clarification is not made, a  
14 person who unreasonably fails to disclose the information  
15 after a request to do so may recover only provable economic  
16 loss.

17 (c) A correction or clarification is timely if  
18 published within 25 days after receipt of information  
19 disclosed pursuant to paragraph (a) or 45 days after receipt  
20 of a request for correction or clarification, whichever is  
21 later.

22 (6) EFFECT OF CORRECTION OR CLARIFICATION.--If a  
23 timely and sufficient correction or clarification is made, a  
24 person may recover only provable economic loss, as mitigated  
25 by the correction or clarification.

26 (7) TIMELY AND SUFFICIENT CORRECTION OR  
27 CLARIFICATION.--

28 (a) A correction or clarification is timely if it is  
29 published before, or within 45 days after, receipt of a  
30 request for correction or clarification, unless the period is  
31 extended under paragraph (5)(c).

1           (b) A correction or clarification is sufficient if it  
2 is published with a prominence and in a manner and medium  
3 reasonably likely to reach substantially the same audience as  
4 the publication complained of, refers to the statement being  
5 corrected or clarified, and:

6           1. Corrects the statement;

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

11           3. In the case of a statement attributed to another  
12 person, identifies the person, and disclaims an intent to  
13 assert the truth of the statement; and

14           4. Is communicated to the person who has made a  
15 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  
26 audience as the publication complained of if:

27           1. It is timely published in a reasonably prominent  
28 manner:

29           a. In another medium likely to reach an audience  
30 reasonably equivalent to that of the original publication; or  
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1           b. If the parties cannot agree on another medium, in  
2 the newspaper with the largest general circulation in the  
3 region in which the original publication was distributed;

4           2. Reasonable steps are taken to correct undistributed  
5 copies of the original publication, if any; and

6           3. It is published in the next practicable issue,  
7 edition, or broadcast, if any, of the original publication or  
8 broadcast.

9           (e) A correction or clarification is timely and  
10 sufficient if the parties agree in writing that it is timely  
11 and sufficient.

12           (8) CHALLENGES TO CORRECTION OR CLARIFICATION OR TO  
13 REQUEST FOR CORRECTION OR CLARIFICATION.--

14           (a) If a defendant in an action governed by this act  
15 intends to rely on a timely and sufficient correction or  
16 clarification, the defendant's intention to do so, and the  
17 correction or clarification relied upon, must be set forth in  
18 a notice served on the plaintiff within 60 days after service  
19 of the summons and complaint or 10 days after the correction  
20 or clarification is made, whichever is later. A correction or  
21 clarification is deemed to be timely and sufficient unless the  
22 plaintiff challenges its timeliness or sufficiency within 20  
23 days after the notice is served.

24           (b) If a defendant in an action governed by this act  
25 intends to challenge the adequacy or timeliness of a request  
26 for correction or clarification, the defendant must set forth  
27 the challenge in a motion to declare the request inadequate or  
28 untimely served within 60 days after service of the summons  
29 and complaint. The court shall rule on the motion at the  
30 earliest appropriate time before trial.

31           (9) OFFER TO CORRECT OR CLARIFY.--

1           (a) If a timely correction or clarification is no  
2 longer possible, the publisher of an alleged defamatory  
3 statement may offer, at any time before trial, to make a  
4 correction or clarification. The offer must be made in writing  
5 to the person allegedly defamed by the publication and:

6           1. Contain the publisher's offer to:

7           a. Publish, at the person's request, a sufficient  
8 correction or clarification; and

9           b. Pay the person's reasonable expenses of litigation,  
10 including attorney's fees, incurred before publication of the  
11 correction or clarification; and

12           2. Be accompanied by a copy of the proposed correction  
13 and clarification and the plan for its publication.

14           (b) If the person accepts in writing an offer to  
15 correct or clarify made pursuant to paragraph (a):

16           1. The person is barred from commencing an action  
17 against the publisher based on the statement; or

18           2. If an action has been commenced, the court shall  
19 dismiss the action against the defendant with prejudice after  
20 the defendant complies with the terms of the offer.

21           (c) A person who does not accept an offer made in  
22 conformance with paragraph (a) may recover in an action based  
23 on the statement only:

24           1. Damages for provable economic loss; and

25           2. Reasonable expenses of litigation, including  
26 attorney's fees, incurred before the offer, unless the person  
27 failed to make a good-faith attempt to request a correction or  
28 clarification in accordance with paragraph (4)(b) or failed to  
29 disclose information in accordance with subsection (5).

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1           (d) On request of either party, a court shall promptly  
2 determine the sufficiency of the offered correction or  
3 clarification.

4           (e) The court shall determine the amount of reasonable  
5 expenses of litigation including attorney's fees specified in  
6 sub-subparagraph (a)1.b. and subparagraph (c)2.

7           (10) SCOPE OF PROTECTION.--A timely and sufficient  
8 correction or clarification made by a person responsible for a  
9 publication constitutes a correction or clarification made by  
10 all persons responsible for that publication other than a  
11 republisher. However, a correction or clarification that is  
12 sufficient only because of the operation of subparagraph  
13 (7)(b)3. does not constitute a correction or clarification  
14 made by the person to whom the statement is attributed.

15           (11) ADMISSIBILITY OF EVIDENCE OF CORRECTION OR  
16 CLARIFICATION.--

17           (a) The fact of a request for correction or  
18 clarification under this act, the contents of the request, and  
19 its acceptance or refusal are not admissible in evidence at  
20 trial.

21           (b) The fact that a correction or clarification under  
22 this act was made and the contents of the correction or  
23 clarification are not admissible in evidence at trial except  
24 in mitigation of damages pursuant to subsection (6). If the  
25 fact that a correction or clarification was made or the  
26 contents of the correction or clarification are received in  
27 evidence, the fact of the request may also be received.

28           (c) The fact of an offer of correction or  
29 clarification, or the fact of its refusal, and the contents of  
30 the offer are not admissible in evidence at trial.

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1           (12) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--This  
2 act shall be applied and construed to effectuate its general  
3 purpose to make uniform the law with respect to the subject of  
4 this act among states enacting it.

5           Section 2. Sections 770.01 and 770.02, Florida  
6 Statutes, are repealed.

7           Section 3. If any provision of this act or the  
8 application thereof to any person or circumstance is held  
9 invalid, the invalidity shall not affect other provisions or  
10 applications of the act which can be given effect without the  
11 invalid provision or application, and to this end the  
12 provisions of this act are declared severable.

13           Section 4. This act shall take effect upon becoming a  
14 law.

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LEGISLATIVE SUMMARY

Creates the "Uniform Correction or Clarification of Defamation Act." Defines terms for purposes of the act. Provides scope of the act. Provides circumstances under which a person may maintain a civil action for defamation. Specifies a time limit for timely request of a correction or clarification and provides criteria for the adequacy of a correction or clarification. Tolls the period of limitation for commencement of a defamation action. Provides procedure with respect to disclosure of evidence or falsity with respect to an alleged defamatory statement. Provides requirements for timely and sufficient correction or clarification. Provides requirements and procedure with respect to challenges to, or a request for, correction or clarification. Requires specified notice. Provides requirements and procedure with respect to an offer to correct or clarify prior to trial. Specifies recoverable costs and damages in actions when an offer to correct or clarify is not accepted. Provides for scope of protection and admissibility of evidence with respect to correction or clarification.

Repeals s. 770.01, F.S., relating to the serving of specified written notice as a condition precedent to action or prosecution for libel or slander, and s. 770.02, F.S., relating to correction, apology, or retraction by a newspaper or broadcast station for statements in an article or broadcast alleged to be false and defamatory.