

By the Committee on Judiciary and Senator Bronson

308-1941-01

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

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

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

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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 "Media
16 Accuracy and Fairness Act."

17 (2) DEFINITIONS.--As used in this section, the term:

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. In the application of this section,
26 persons deemed to be "public figures" and "public figures for
27 limited purposes" under existing provisions of common law
28 shall be afforded the same protections from defamation as
29 persons not so deemed.

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

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

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

9 (a) A person may maintain an action for defamation
10 only if:

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

13 2. The defendant has made a correction or
14 clarification.

15 (b) A request for correction or clarification is
16 timely if made within the period of limitation for
17 commencement of an action for defamation. However, a person
18 who, within 90 days after knowledge of the publication, fails
19 to make a good-faith attempt to request a correction or
20 clarification may recover only provable economic loss and
21 reasonable compensation for injury to reputation.

22 (c) A request for correction or clarification is
23 adequate if it:

24 1. Is made in writing and reasonably identifies the
25 person making the request;

26 2. Specifies with particularity the statement alleged
27 to be false and defamatory and, to the extent known, the time
28 and place of publication;

29 3. Alleges the defamatory meaning of the statement;
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1 4. Specifies the circumstances giving rise to any
2 defamatory meaning of the statement which arises from other
3 than the express language of the publication; and

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

6 (d) In the absence of a previous adequate request,
7 service of a summons and complaint stating a claim for relief
8 for defamation and containing the information required in
9 paragraph (c) constitutes an adequate request for correction
10 or clarification.

11 (e) The period of limitation for commencement of a
12 defamation action is tolled during the period allowed in
13 paragraph (7)(a) for responding to a request for correction or
14 clarification.

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

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

20 (b) If a correction or clarification is not made, a
21 person who unreasonably fails to disclose the information
22 after a request to do so may recover only provable economic
23 loss.

24 (c) A correction or clarification is timely if
25 published within 25 days after receipt of information
26 disclosed pursuant to paragraph (a) or 45 days after receipt
27 of a request for correction or clarification, whichever is
28 later.

29 (6) EFFECT OF CORRECTION OR CLARIFICATION.--Except in
30 cases of a publication made with malice, in bad faith, or with
31 gross negligence, if a timely and sufficient correction or

1 clarification is made, a person may recover only provable
2 economic loss and reasonable compensation for injury to
3 reputation, as mitigated by the correction or clarification.

4 (7) TIMELY AND SUFFICIENT CORRECTION OR
5 CLARIFICATION.--

6 (a) A correction or clarification is timely if it is
7 published before, or within 45 days after, receipt of a
8 request for correction or clarification, unless the period is
9 extended under paragraph (5)(c).

10 (b) A request for a correction or clarification of a
11 communication concerning a candidate for a local, state, or
12 federal office made for purposes of influencing the outcome of
13 an election must be made within 96 hours after knowledge of
14 the publication of the statement. If a correction or
15 clarification designed to reach substantially the same
16 audience as referred to in paragraph (d) is made in a timely
17 manner before the day of the election, the plaintiff's damages
18 shall be limited to the economic loss.

19 (c) A correction or clarification is sufficient if it
20 is published with a prominence and in a manner and medium
21 reasonably likely to reach substantially the same audience as
22 the publication complained of, refers to the statement being
23 corrected or clarified, and:

24 1. Corrects the statement;

25 2. In the case of defamatory meaning arising from
26 other than the express language of the publication, disclaims
27 an intent to communicate that meaning or to assert its truth;
28 or

29 3. In the case of a statement attributed to another
30 person, identifies the person, and disclaims an intent to
31 assert the truth of the statement; and

1 4. Is communicated to the person who has made a
2 request for correction or clarification.

3 (d) A correction or clarification is published in a
4 medium reasonably likely to reach substantially the same
5 audience as the publication complained of if it is published
6 in a later issue, edition, or broadcast of the original
7 publication.

8 (e) If a later issue, edition, or broadcast of the
9 original publication will not be published within the time
10 limits established for a timely correction or clarification, a
11 correction or clarification is published in a manner and
12 medium reasonably likely to reach substantially the same
13 audience as the publication complained of if:

14 1. It is timely published in a reasonably prominent
15 manner:

16 a. In another medium likely to reach an audience
17 reasonably equivalent to that of the original publication; or

18 b. If the parties cannot agree on another medium, in
19 the newspaper with the largest general circulation in the
20 region in which the original publication was distributed;

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

23 3. It is published in the next practicable issue,
24 edition, or broadcast, if any, of the original publication or
25 broadcast.

26 (f) A correction or clarification is timely and
27 sufficient if the parties agree in writing that it is timely
28 and sufficient.

29 (8) CHALLENGES TO CORRECTION OR CLARIFICATION OR TO
30 REQUEST FOR CORRECTION OR CLARIFICATION.--

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1 (a) If a defendant in an action governed by this act
2 intends to rely on a timely and sufficient correction or
3 clarification, the defendant's intention to do so, and the
4 correction or clarification relied upon, must be set forth in
5 a notice served on the plaintiff within 60 days after service
6 of the summons and complaint or 10 days after the correction
7 or clarification is made, whichever is later. A correction or
8 clarification is deemed to be timely and sufficient unless the
9 plaintiff challenges its timeliness or sufficiency within 20
10 days after the notice is served.

11 (b) If a defendant in an action governed by this act
12 intends to challenge the adequacy or timeliness of a request
13 for correction or clarification, the defendant must set forth
14 the challenge in a motion to declare the request inadequate or
15 untimely served within 60 days after service of the summons
16 and complaint. The court shall rule on the motion at the
17 earliest appropriate time before trial.

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

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

24 1. Contain the publisher's offer to:

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

27 b. Pay the person's reasonable expenses of litigation,
28 including attorney's fees, incurred before publication of the
29 correction or clarification; and

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

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

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

5 2. If an action has been commenced, the court shall
6 dismiss the action against the defendant with prejudice after
7 the defendant complies with the terms of the offer, except in
8 cases of a publication made with malice, in bad faith, or with
9 gross negligence.

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

13 1. Damages for provable economic loss and reasonable
14 compensation for injury to reputation, except in cases of a
15 publication made with malice, in bad faith, or with gross
16 negligence; and

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

22 (d) On request of either party, a court shall promptly
23 determine the sufficiency of the offered correction or
24 clarification.

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

28 (10) SCOPE OF PROTECTION.--A timely and sufficient
29 correction or clarification made by a person responsible for a
30 publication constitutes a correction or clarification made by
31 all persons responsible for that publication other than a

1 republisher. However, a correction or clarification that is
2 sufficient only because of the operation of subparagraph
3 (7)(b)3. does not constitute a correction or clarification
4 made by the person to whom the statement is attributed.

5 (11) ADMISSIBILITY OF EVIDENCE OF CORRECTION OR
6 CLARIFICATION.--

7 (a) The fact of a request for correction or
8 clarification under this act, the contents of the request, and
9 its acceptance or refusal are not admissible in evidence at
10 trial.

11 (b) The fact that a correction or clarification under
12 this act was made and the contents of the correction or
13 clarification are not admissible in evidence at trial except
14 in mitigation of damages pursuant to subsection (6). If the
15 fact that a correction or clarification was made or the
16 contents of the correction or clarification are received in
17 evidence, the fact of the request may also be received.

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

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

25 Section 2. Sections 770.01 and 770.02, Florida
26 Statutes, are repealed.

27 Section 3. If any provision of this act or the
28 application thereof to any person or circumstance is held
29 invalid, the invalidity shall not affect other provisions or
30 applications of the act which can be given effect without the
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1 invalid provision or application, and to this end the
2 provisions of this act are declared severable.

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

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 SB 1628

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9 Renames the bill as the "Media Accuracy and Fairness Act".

10 Adds limited recovery for reasonable compensation for injury
11 to reputation under specified circumstances;

12 Provides exception for limit on recovery if the case involves
13 libel or slander made with malice, in bad faith, or with gross
14 negligence;

15 Provides an expedited time period for making a correction or
16 clarification when a local, state, or federal public office
17 candidate is involved;

18 Affords the protections from defamation to "public figures"
19 and "public figures" for limited purposes as are afforded to
20 private individuals.

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