



## 1995 ASSEMBLY BILL 852

February 5, 1996 - Introduced by Representatives F. LASEE, URBAN, GOETSCH, GREEN, FREESE, LEHMAN, AINSWORTH, WASSERMAN, SERATTI, BRANDEMUEHL, LADWIG and JENSEN, cosponsored by Senators RUDE and BUETTNER. Referred to Committee on Judiciary.

1     **AN ACT to create** 895.05 (3) of the statutes; **relating to:** libelous electronic  
2             material.

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### *Analysis by the Legislative Reference Bureau*

Under current law, before a person may commence an action for damages related to a libelous publication in a newspaper or periodical, the person must give the person alleged to have committed the libel the chance to correct the libelous material. The person libeled must specify the article and the alleged statements that are false and defamatory and a statement of what are the true facts. If the person alleged to have committed the libel publishes a correction in the first issue of the newspaper or periodical published within one week after the receipt of the notice from the person libeled, the person libeled may only recover his or her actual damages.

This bill creates a parallel procedure for dealing with libelous material published in electronic media, such as an electronic bulletin board on the internet, a computer network or an electronic online service. Under the bill, a person libeled in an electronic medium may not commence a civil action for damages until he or she gives the person alleged to be responsible for the libelous material the opportunity to correct the libelous material. The correction must be placed in the same locations in the electronic media as the libelous material was placed within one week after receipt of the request for the correction from the libeled person. If the correction meets the requirements under the bill, the person libeled is only eligible for his or her actual damages.

The bill also provides that the person that administers or provides facilities for the electronic medium involved in the alleged libel may not be held liable for the alleged libel unless that person knew that the material was false and defamatory and still allowed it to be added to the electronic medium or did not remove the material

from the electronic medium after becoming aware that the material was false and defamatory.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 895.05 (3) of the statutes is created to read:

2           895.05 (3) (a) In this subsection, “electronic medium” means a computerized  
3 or electronic information service, including a bulletin board, a network, an online  
4 service, electronic mail, a forum, or a news group.

5           (b) Before any civil action is commenced for damages related to the inclusion  
6 of any libelous material in any electronic medium, the libeled person shall first give  
7 the person alleged to be responsible for the libelous material a reasonable  
8 opportunity to correct the libelous material. The libeled person shall request that  
9 the person alleged to be responsible for the libelous material correct the material.  
10 A request may be made only by doing all of the following:

11           1. Mailing or delivering a written request to the person alleged to be responsible  
12 for the libelous material or placing the request at one of the locations in the electronic  
13 medium known to the libeled person where the libelous material was placed.

14           2. Specifying in the request the locations in the electronic media known to the  
15 libeled person where the libelous material was placed, the material in the electronic  
16 medium that is claimed to be false and defamatory and a statement of what are  
17 claimed to be the true facts.

18           3. Stating the sources, if any, from which the true facts may be ascertained with  
19 definiteness and certainty.

20           (c) To correct the libelous material, the person alleged to be responsible for the  
21 libelous material shall, within one week after receiving the request under par. (b),

1 place a correction under par. (d) in the same location in the electronic medium as the  
2 libelous material was placed. The person alleged to be responsible for the libelous  
3 material shall maintain the correction at that location for a period similar to the time  
4 that the libelous material was at that location, to the extent that the person can  
5 control the location and period of that placement.

6 (d) If the true facts are, with reasonable diligence, ascertainable with  
7 definiteness and certainty, only a retraction shall constitute a correction. If the true  
8 facts are not, with reasonable diligence, ascertainable with definiteness and  
9 certainty, the placement of the libeled person's statement of the true facts identified  
10 as the libeled person's statement at the same electronic medium location as the  
11 libelous material was placed shall constitute a correction within the meaning of this  
12 subsection.

13 (e) A correction under par. (d), timely added to the proper location in the  
14 electronic medium, without comment, in a position and type as prominent as the  
15 alleged libel, shall constitute a defense against the recovery of any damages except  
16 actual damages, as well as being competent and material in the mitigation of actual  
17 damages to the extent that the correction mitigates the actual damages.

18 (f) The person who administers or provides facilities for the electronic medium  
19 involved in the alleged libel may not be held liable for the alleged libel unless the  
20 person did one of the following:

21 1. Knowingly and wilfully allowed material that the person knew was false and  
22 defamatory to be placed in the electronic medium.

23 2. Allowed material to remain in the electronic medium after the person  
24 became aware that the material was false and defamatory.

25 **SECTION 2. Initial applicability.**

