

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

1999-00

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on  
Campaigns &  
Elections  
(AC-CE)

File Naming Example:

Record of Comm. Proceedings ... RCP  
➤ 05hr\_AC-Ed\_RCP\_pt01a  
➤ 05hr\_AC-Ed\_RCP\_pt01b  
➤ 05hr\_AC-Ed\_RCP\_pt02

*Published Documents*

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

*Information Collected For Or  
Against Proposal*

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

\*\*

➤ Hearing Records ... HR (bills and resolutions)

➤ **99hr\_ab0208\_AC-CE\_pt01**

➤ Miscellaneous ... Misc

➤ \*\*

Vote Record

AB 208

Assembly Committee on Campaigns and Elections

Date: 3/23/99  
 Moved by: Ladwig Seconded by: Sherman  
 AB: \_\_\_\_\_ Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: 0211  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

- Rep. Stephen Freese, Chair
- Rep. Scott Suder
- Rep. Scott Walker
- Rep. Phil Montgomery
- Rep. Bonnie Ladwig
- Rep. David Travis
- Rep. David Cullen
- Rep. Mark Miller
- Rep. Gary Sherman

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Stephen Freese, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Phil Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bonnie Ladwig	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Cullen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Miller	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 1 1 1 \_\_\_\_\_

Motion Carried       Motion Failed

# Vote Record

## Assembly Committee on Campaigns and Elections

Date: 3/27/99  
 Moved by: Mont Seconded by: Suder  
 AB: \_\_\_\_\_ Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
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 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- Passage
- Introduction
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- Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

- Rep. Stephen Freese, Chair
- Rep. Scott Suder
- Rep. Scott Walker
- Rep. Phil Montgomery
- Rep. Bonnie Ladwig
- Rep. David Travis
- Rep. David Cullen
- Rep. Mark Miller
- Rep. Gary Sherman

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Totals: 4 4 1 \_\_\_\_\_

*Walker  
yes as  
amended*

*file*

Motion Carried

Motion Failed

# Vote Record

209

## Assembly Committee on Campaigns and Elections

Date: 3/23/99  
 Moved by: Ladwig Seconded by: \_\_\_\_\_  
 AB: \_\_\_\_\_ Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_ Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_ Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: 0212  
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 A/S Sub Amdt: \_\_\_\_\_  
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 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

- Passage
- Introduction
- Adoption
- Rejection

- indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

### Committee Member

Rep. Stephen Freese, Chair  
 Rep. Scott Suder  
 Rep. Scott Walker  
 Rep. Phil Montgomery  
 Rep. Bonnie Ladwig  
 Rep. David Travis  
 Rep. David Cullen  
 Rep. Mark Miller  
 Rep. Gary Sherman

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Stephen Freese, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Phil Montgomery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bonnie Ladwig	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Cullen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Miller	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

Motion Carried

Motion Failed

Vote Record

208

Assembly Committee on Campaigns and Elections

Date: 3/29/99  
 Moved by: \_\_\_\_\_  
 AB: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

Seconded by: \_\_\_\_\_  
 Clearinghouse Rule: \_\_\_\_\_  
 Appointment: \_\_\_\_\_  
 Other: \_\_\_\_\_

A/S Amdt: 0213  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

Be recommended for:

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- Concurrence
- Nonconcurrence
- Confirmation

Committee Member

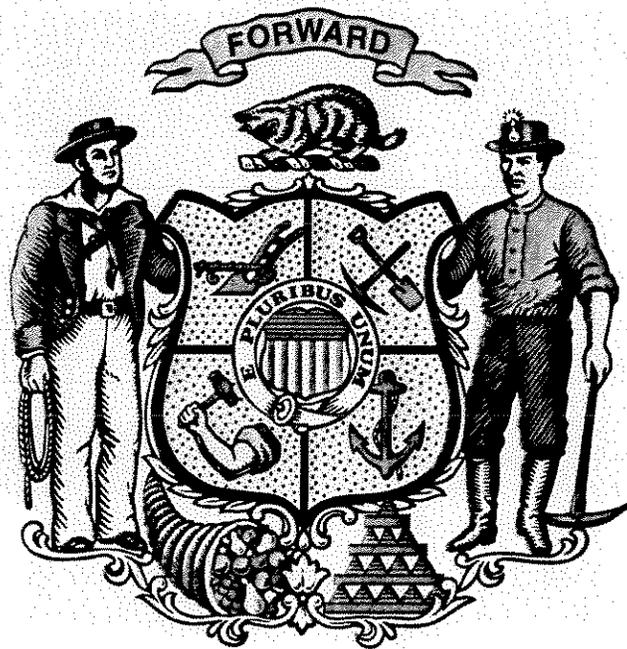
- Rep. Stephen Freese, Chair
- Rep. Scott Suder
- Rep. Scott Walker
- Rep. Phil Montgomery
- Rep. Bonnie Ladwig
- Rep. David Travis
- Rep. David Cullen
- Rep. Mark Miller
- Rep. Gary Sherman

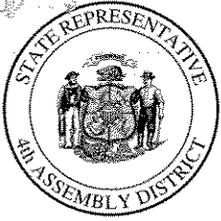
	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Stephen Freese, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Walker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Phil Montgomery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bonnie Ladwig	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Cullen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Miller	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

Motion Carried

Motion Failed





# Phil Montgomery

Serving the Communities of Allouez, Ashwaubenon, De Pere and Green Bay

FOR IMMEDIATE RELEASE  
For further information contact:  
Rep. Phil Montgomery  
(608) 266-5840

March 23, 1999

## MONTGOMERY FIGHTS FOR TRUTH IN CAMPAIGNS

MADISON – In an executive session of the Assembly Committee on Campaigns and elections today, State Representative Phil Montgomery (R-Green Bay) led the fight for bringing a little truth to political campaigns with AB 208 (the 'Questionnaire Bill'), but was met with stiff opposition from democrats on the committee.

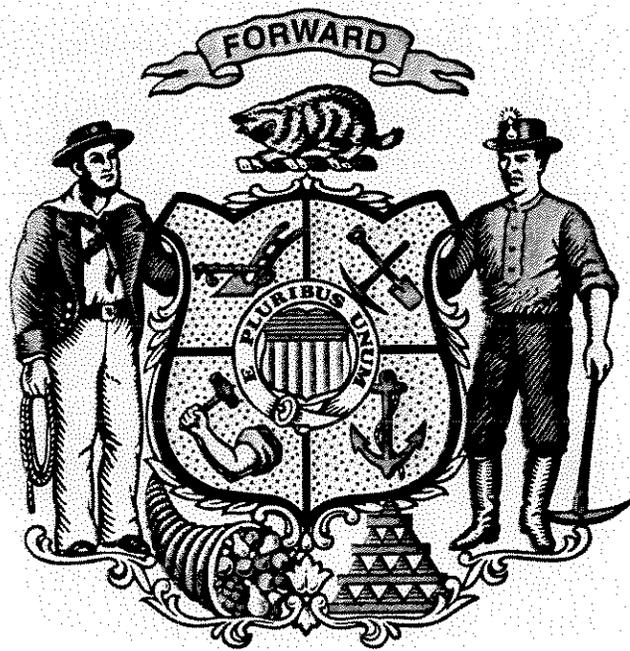
Candidates for office receive questionnaires from a variety of interest groups requesting that the candidate respond in an indicated way (i.e. yes or no; true or false; how would you vote on Bill XYZ?) to questions on issues in which the group has an interest. Under AB 208, if a candidate skips a question or does not return a questionnaire, no person could publish or disseminate information indicating a candidate answered in a particular manner (i.e. opposes or supports issue XYZ) if the indicated response has not been made or no response has been made.

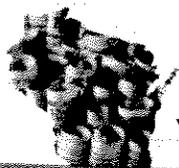
-MORE-

AB 208 (Questionnaire Bill)  
ADD ONE

“It appears democrats want special interests to be able to manufacture answers, without regard to their truth, in response to candidate questionnaires--they’re fighting for the special interests’ right to lie,” said Montgomery of the party-line vote on the bill [4 Dems. voted no and 4 Reps. Voted aye with Rep. Walker (R) absent].

“This is a bill that would protect all candidates, Democrat and Republican alike, from special interests who want to misrepresent the candidates’ views to the general public. If we can’t have agreement on a simple bill like this, then more meaningful campaign reform seems a long way off,” said Montgomery.





**Sandra George**  
*Executive Director*



... the world's oldest Press Association. Established in 1852

**Wisconsin Newspaper Association**

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608/238-7171 Ext. 11, 800/261-4242 (in state), Fax: 608/238-4771  
Cellular Phone: 608-770-1095, FOI: 800/362-2664  
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1998-1228-1-F

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## FREQUENTLY-ASKED QUESTIONS ABOUT THE UNIFORM CORRECTION OR CLARIFICATION OF DEFAMATION ACT

### What is the UCCDA?

It is a proposal by the National Conference of Commissioners on Uniform State Laws that would encourage corrections and clarifications of false statements that would tend to injure a person's reputation. It applies in all circumstances in which written or broadcast communications may have an effect upon reputation. It would enable an injured person to recover damages for actual economic loss as a result of the false statements, but would protect the speaker or publisher of the statement from punitive damages or presumed loss of reputation damages when a correction is published in a way that is likely to reach the audience that saw or heard the original error. Unlike other kinds of injury, lost reputation can be repaired by correction or clarification of the information that is defamatory.

### How, exactly, does it work?

A person who felt an inaccurate, damaging defamatory statement had been made would contact the publisher (including broadcasters, e-mail authors or anyone else who creates business or media communications) to request a correction or clarification. If an error has occurred, a timely correction or clarification must be published in a manner that has the same impact on an audience as the original defamatory statement in order for the publisher to take advantage of UCCDA. If the correction or clarification is properly published and the wronged party chooses to sue, only actual economic losses can be recovered — for example, compensation for the loss of a job. No punitive damages are allowed. And no damages for "presumed" loss of reputation are allowed, as in many states now. If no correction or clarification is offered as a result of the plaintiff's first contact, a correction or clarification may be offered during a lawsuit. If the offer is accepted, the lawsuit will end and the publisher (or other defendant) will pay the plaintiff's costs for bringing the lawsuit. If the offer is rejected, the trial would continue, as under existing law.

### Is it an act of Congress?

No. It is intended for passage by state legislature, because defamation lawsuits usually take place in state courts. The uniform law is designed to establish the process by which these suits are handled. While no federal law presently governs this area, a uniform state law often will help a state maintain jurisdiction when Congress decides inconsistency among states has affected the flow of commerce.

### Where is it presently the law?

North Dakota passed the law in 1995 with one technical revision. Other jurisdictions are debating it.

## **Is it important for every state legislature to pass the law in order for uniformity to be maintained?**

Uniformity in state laws, among other things, improves commerce by creating consistency. For national media, defamation is rarely confined to a single state. Differences among states invites forum shopping, which leads to inconsistent results. In such areas as Internet speech, where a patchwork of laws may interfere with free speech and confuse consumers, uniformity is a benefit. However, even if every state does not pass the UCCDA, it is likely to improve the law of defamation in your state. Each state will examine it to determine the fit with its current public policy. Technical amendments are permitted to make UCCDA work in conjunction with other laws. But changes in its substance will undermine the value of a uniform law.

## **What is the benefit of UCCDA to the public?**

A restored reputation — which this law makes possible without major risk to the publisher of the original inaccuracy — is the best remedy that can be provided to a person who has been defamed. Current law often stands in the way of this repair. It will reduce the litigation burden of courts and the cost of litigation to the parties. This proposal reduces the tension between defamation and free expression. The balancing of these values affects not only widely disseminated information, such as print or broadcast journalism, but publications directed to smaller audiences, such as personnel performance reviews, e-mail messages, Web site communications, small business advertising brochures and a wide range of business correspondence.

## **How was this proposal created?**

The National Conference of Commissioners on Uniform State Laws proposes uniform laws for state government. The Conference is both an organization of the legal profession and a state governmental organization, funded primarily by state governments. Its drafting processes have been created and refined over its 106 year history. In the case of UCCDA, a committee was selected from among the commissioners. It invited representatives from all affected interests, including defamation law experts, to participate. The drafters took into account the need for accuracy, freedom of expression and protecting individual reputations. They concluded that the existing law in most states produces costly legal battles and protracted disputes among lawyers, but not enough protection of reputation nor of freedom of the press. The outside experts worked directly with the committee for three years to create this proposal. The final reading was accepted by the National Conference in 1993 and was ratified by the American Bar Association.

## **Who is likely to support this law?**

- People who, by one circumstance or another, become the focus of news stories
- People who believe protracted legal battles are wasteful and do little to encourage truth
- People who believe litigious battles mostly generate big legal fees, but do not always redress an injury
- People who believe in a free press that actively attempts to publish accurate information
- Businesses, including non-media businesses, who are at risk every day from suit for comments in internal publications, employee evaluations and references or retaliatory lawsuits in employee practice areas.

## **Who is likely to oppose it?**

- Some plaintiffs' lawyers
- Those who aim to restrict, intimidate or punish people for their views or statements.

### **What about states with existing retraction statutes?**

Only two states — Nevada and California — have statutes that work a lot like UCCDA. Some other states have a form of a retraction statute. But in many cases, they don't work as well as they might because the incentives on both sides of the dispute are not strong enough to encourage an agreement on the corrections. One glaring deficiency is that most of these statutes are clearly aimed at the press (and often only the traditional newspaper and broadcast media), when recent history has shown that other businesses are also at risk in their day-to-day business communications. Many statutes don't require the injured person to explain to the publisher of the statement why a statement was false, so that the publisher can properly assess the need for correction. Instead, courts are often involved prematurely, when a further dialogue between the publisher and the injured person could have resolved the problem. Finally, most statutes do not address the new perils in cyberspace. The UCCDA explicitly says a timely correction addressed to the original audience will be sufficient to avoid all damages except for the economic damage suffered by a victim, which must still be paid. While the court is the final arbiter of a sufficient correction, the law encourages publishers and aggrieved subjects to engage in a healthy dialogue to try to find agreement on correcting the record.

### **Why doesn't the press just run a correction when it is wrong? Why all the discussion?**

Corrections in news media have become commonplace. However, most current laws require the media and others to accept major risk in engaging in correction, because the correction is likely to be used against them in court to show that they admitted an inaccuracy. Most media-run corrections anyway, because they desire an accurate story. But the law should not put them at risk for doing so.

### **Don't most defamation suits end in favor of the press?**

The overwhelming majority of defamation claims never go to trial, because of strong First Amendment guarantees, but in all cases the defense costs are significant, often climbing into the hundreds of thousands of dollars. And while some spectacular judgments have been entered against media organizations, most are reduced or reversed on appeal. The UCCDA wouldn't change the First Amendment, but it would offer an avenue of recourse to people who are concerned about false statements but are likely to lose in a lawsuit.

### **Even public figures?**

Even public figures.

### **So is this a press bill?**

No. It sets out the rules for correction in any publication (including broadcasts and electronic transmissions) where false content creates harm to reputation. The UCCDA would cover employers who are exposed to risk from employee practices litigation, nonprofits that publish newsletters, public relations people who disseminate information about their companies, and even private individuals who send e-mail all around the country.

**Journalists may be concerned that UCCDA will force publishers to back away from the truth. Is that a reasonable concern?**

The editorial process is under tremendous pressure today because of multi- million dollar libel judgments. Responsible editors and reporters are managing to engage in discussions, despite today's laws, that either lead to corrections or determine that the best possible information has been published and that the published story must be supported. The UCCDA will do nothing to diminish the importance of those discussions. If it encourages reader response that leads to improved accuracy, journalists will welcome it.

**Should journalists also be concerned that UCCDA may require disclosure of confidential sources?**

Protection of confidentiality is important in all communications--to journalists and to other professionals who engage in privileged conversations. UCCDA strives to protect injured persons who wish to understand the background of erroneous statements without invading confidentiality. In North Dakota, concern about striking the proper balance led to technical amendments of the UCCDA to achieve that purpose.

**What will UCCDA mean in the age of cyberspace?**

It will set the tone for accuracy and create a smoother ride for those who send their communications across many jurisdictions. Present laws, including retraction statutes, are often silent about electronic transmissions, such as email. The UCCDA requires a truthful statement to be published in a way designed to reach the same audience as the false and injurious statement. Web publishers, email writers, fax broadcasts and others were never contemplated by judges and legislators who have written most of the defamation decisions and statutes in existence today. Those cyber-age writers will be covered and protected by UCCDA, as will those about whom they write.

**FOR FURTHER INFORMATION CONTACT:**

Tonda Rush, American Press Works, P.O. Box 50301, Arlington 22205 Phone: 703-534-5750; Fax: 703-534-575; E-mail: teeef@aol.com

**UNIFORM CORRECTION OR CLARIFICATION  
OF DEFAMATION ACT**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-SECOND YEAR  
IN CHARLESTON, SOUTH CAROLINA  
JULY 30 - AUGUST 6, 1993

*WITH PREFATORY NOTE AND COMMENTS*

Approved by the American Bar Association  
Kansas City, Missouri, February 7, 1994

## UNIFORM CORRECTION OR CLARIFICATION OF DEFAMATION ACT

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Correction or Clarification of Defamation Act was as follows:

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# UNIFORM CORRECTION OR CLARIFICATION OF DEFAMATION ACT

## PREFATORY NOTE

Since the United States Supreme Court recognized the First Amendment limitations on the common law tort of defamation, courts have struggled to achieve the proper balance between the constitutionally protected guarantees of free expression and the need to protect citizens from reputational harm. Defamation actions were always complex and expensive and the overlay of first amendment issues has made them more so. On the other hand, unlike personal injuries, harm to reputation can often be cured by other than money damages. The correction or clarification of a published defamation may restore the person's reputation more quickly and more thoroughly than a victorious conclusion to a lawsuit. The salutary effect of a correction or clarification is enhanced if it is published reasonably soon after the defamation, but because of the complexity of defamation litigation, any ultimate vindication in the courts comes long after the initial injury.

To address these concerns, many states have adopted retraction statutes. These statutes often require as a condition to litigation that the plaintiff request the publisher to retract the alleged defamation. These statutes have been largely ineffective because they most often apply to a narrow range of cases and they do not create sufficient incentives on both parties, the plaintiff and the defendant, to come to an agreement regarding retraction. Even the term retraction carries with it an implication of admission of wrongdoing, although in many instances the reputational harm arises from an interpretation not intended by the publisher or the publication of reasonably believable information that subsequently turns out to be false.

The Uniform Correction or Clarification of Defamation Act seeks to remedy these flaws in current law by providing strong incentives for individuals promptly to correct or clarify an alleged defamation as an alternative to costly litigation. The Act applies to all defamations, whether public or private, media or non-media, thus establishing a simplified structure for the resolution of all disputes. Moreover, the Act will provide a uniform set of requirements that will assure the national media a consistent and meaningful opportunity to correct or clarify.

The options created by the Act provide an opportunity for the plaintiff who believes he or she is defamed to secure quick and complete vindication of his

or her reputation. The Act provides publishers with a quick and cost-effective means of correcting or clarifying alleged mistakes and avoiding costly litigation. In this way, both reputational interests and rights of free expression are advanced.

## UNIFORM CORRECTION OR CLARIFICATION OF DEFAMATION ACT

### SECTION 1. DEFINITIONS. In this [Act]:

(1) "Defamatory" means tending to harm reputation.

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

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

The term does not include a government or governmental subdivision, agency, or instrumentality.

#### Comment

The scope of the Act is defined in a number of its provisions beginning with the definitions of "defamatory" and "person," and including as well Section 2, which addresses the types of claims to which the Act's requirements apply. In general, the correction or clarification procedures of the Act apply to all defamation and defamation-like claims involving reputational harm to persons arising out of published falsity. The Act applies to all forms of publication, including written and oral publications, and to all publishers, including national and local media, and private individuals.

The Act applies to individual and "corporate" defamation claims but not to claims such as product disparagement, which do not rest on harm to a person's reputation or other parasitic emotional harm, nor to claims such as unfair competition, false advertising, and the like where the relief sought is not personal or reputational in character.

The Act is intended to apply to common law defamation (libel and slander) torts in all states. The Act makes no change in the elements of the tort. The defined term, "defamatory," is given its traditional and universal common law meaning, which is a statement tending to harm reputation, but the additional requirements of proof of actual harm to reputation, falsity, negligence or malice,

and the like, are left undisturbed as they exist in the law of each enacting jurisdiction.

The term "person" does not extend to governments or governmental subdivisions, agencies, or instrumentalities, thus making the Act consistent with the universally recognized exclusion of such bodies as defamation plaintiffs, both as a matter of common law and constitutional mandate.

The definition of "person" does not specify whether, at the time an action is commenced, the individual is alive or was alive at the time of the defamation. This is not intended to imply any change in a jurisdiction's underlying law about defamation of deceased persons or survival of defamation claims. Dead individuals cannot be defamed and, as a general (though not universal) rule, defamation claims do not survive the death of the defamed individual.

By the term "economic loss" the Act is intended to embrace those forms of provable loss described, variously, as pecuniary, special, or out-of-pocket, and to exclude all other forms of damage, including presumed, general, reputational, and punitive damages.

## SECTION 2. SCOPE.

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

(b) This [Act] applies to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information.

### Comment

Section 2 outlines the substantive reach of the Act; that is, the types of actions, however styled or pleaded, to which the correction or clarification procedures apply. The Act applies to defamation-like claims "arising out of harm to personal reputation caused by the false content of a publication."

Section 2 does not displace, preempt, or modify any underlying causes of action recognized in the various jurisdictions. Instead, it simply identifies the actions to which the correction or clarification requirements apply.

Section 2 is intended to preclude plaintiffs escaping the Act by the device of artful or creative pleading or characterization of remedies and damages. If the action is for damages arising out of harm to personal (including corporate) reputation caused by publication of a false statement -- i.e., by the consequences of the statement's falsity -- the Act applies, no matter how the action is named or the damages are described. The Act does not apply to actions in which falsity may be at issue but in which the damages sought are neither for reputational injury nor for emotional distress linked to the reputational consequences of a false publication. For example, the Act would not generally apply to product disparagement or unfair trade torts because such claims do not generally seek damages for injury to personal or corporate reputation. On the other hand, claims such as those for "false light" invasion of privacy, or for intentional or negligent infliction of emotional distress, might or might not be subject to the Act. The question in each case is not the title of the action, but its true substance. If the relief sought is linked to reputational harm, the Act will apply.

Thus, for example, a false light privacy claim will be subject to the Act if any aspect of the claim rests on reputational harm to the subject of the publication, even if the damages claimed may also be for invasion of privacy. Similarly, an infliction of emotional distress claim will be subject to the Act if the claimed emotional distress arises out of the publication of a false statement that has caused reputational harm and the reputational consequences of the publication are linked to the emotional distress suffered. Only where the damages can reasonably be construed as separate and distinct from any damage to reputational harm arising out of a false publication, would an emotional distress claim be considered not subject to the Act.

For example, if the plaintiff is rejected by friends and neighbors because they believe a false defamatory statement about the plaintiff, a claim for the emotional distress suffered because of this rejection would be covered by this Act, even if the plaintiff specifically disclaimed interest in harm to reputation generally. On the other hand, where a defendant engages in a systematic harassment of the plaintiff by parading in front of the plaintiff's house, constantly contacting plaintiff's neighbors, and phoning plaintiff in the middle of the night, a claim for emotional distress for outrageous conduct outside the scope of the Act could be framed even though one of the mechanisms for harassment was the use of defamatory statements. As a general approach, the issue should be whether a proper correction or clarification can reasonably cure the underlying cause of the emotional distress.

### SECTION 3. REQUEST FOR CORRECTION OR CLARIFICATION.

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

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

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

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

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

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

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

(3) alleges the defamatory meaning of the statement;

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

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

(d) In the absence of a previous adequate request, service of a [summons and complaint] stating a [claim for relief] for defamation and containing the information required in subsection (c) constitutes an adequate request for correction or clarification.

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

#### Comment

Section 3 provides that an action may not be maintained unless a timely and adequate request for correction or clarification has first been made. However, unlike many existing retraction statutes, the Act also attempts to avoid technical requirements that can often serve as traps for unwary plaintiffs. Thus under Sections 3(b) and 3(d) a complaint filed within the applicable period of limitations and containing the information set forth in Section 3(c) will always serve as a timely and adequate request. This avoids the preclusive effect of an inadequate earlier request or a failure to seek a correction or clarification for any other reason.

Section 3(a) also provides that a plaintiff need not go through the formality of requesting a correction or clarification where the publisher has already voluntarily made a correction or clarification. The Act is intended to encourage early corrections or clarifications and a voluntarily published correction or clarification, if sufficient under Section 6, would qualify for all the benefits of the Act.

Section 3(b) provides a strong incentive for an early request and a significant penalty for failure to make one. Unless a good faith attempt to obtain a correction or clarification is made within 90 days of knowledge of the publication, the plaintiff will be limited in any defamation action to recovery of provable economic loss. Three aspects of Section 3(b) should be noted. First, the standard is "good faith attempt," and therefore the requesting party may not be required to satisfy all of the specific requirements contained in Section 3(c) within the 90-day period. An attempt to obtain a correction or clarification which gives the publisher reasonable notice should be sufficient. Second, the 90-day period runs from knowledge of the publication by the requesting party, not from

the date of publication. Third, the limitation of damages also forecloses recovery of fees and expenses in a subsequent action for a plaintiff who has declined an offer under Section 8. See Section 8(c)(2).

The requirement of "good faith" in Section 3(b) also anticipates the rare situation, particularly in the context of media publications, in which the identity of the publisher, or all of the publishers, of an alleged defamation may not be known to a potential plaintiff. In such cases it is enough that good faith efforts have been made to ascertain the publishers' identity. If such efforts fail within the 90-day period and the identity of a publisher is not discovered until a later date (perhaps not until an action is commenced against another publisher), the 90-day period should not begin to run against the harmed person until that later date.

The requirement in Section 3(c)(1) that the potential plaintiff make a request in writing is not intended to foreclose the request being made for the person by an agent or attorney acting on his or her behalf.

Subsection (d) provides that a complaint will always serve as a timely request for correction or clarification if it contains the information required in subsection (c). The relevant procedures and time limits regarding the filing or amending of complaints are subject to local practice in each jurisdiction, but should be applied so as to effectuate the Act's purpose of resolving or limiting defamation disputes prior to litigation. For example, absent a showing of prejudice by the defendant, a plaintiff should be permitted to amend a complaint that fails to contain the information required by subsection (c). Similarly, extensions of time should be available to defendant publishers to consider a correction or clarification under the Act -- a process that might consume more than 45 days if a request for information is made under Section 4 -- before filing a responsive pleading or engaging in discovery, filing motions to dismiss, and the like.

Under Section 6 a defendant has 45 days to respond to a request for a correction or clarification. If the plaintiff makes the request within 45 days of the running of the statute of limitations the plaintiff might be required to file a complaint before the defendant had responded to the request. Subsection (e) tolls the statute to avoid this result.

#### **SECTION 4. DISCLOSURE OF EVIDENCE OF FALSITY.**

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

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

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

#### **Comment**

The person challenging a publication's truth will often be in possession of the information upon which its falsity can be judged. A publisher is therefore entitled to request such information in order to be in a position to evaluate the appropriateness of making a correction or clarification. In cases where the defendant does not make a correction or clarification, it is conclusively presumed that the plaintiff's unreasonable failure to disclose available information contributed to that decision. Accordingly, failure to provide the information, if reasonably available to the person requesting correction or clarification, and if material to proof of the challenged statement's falsity, limits damages recoverable in a subsequent defamation action to provable economic loss. The limitation to economic loss applies even if the publisher subsequently makes an offer to correct or clarify under Section 8 and the plaintiff refuses the offer. See Section 8(c)(2).

The requirement of materiality of the information to proof of falsity is intended to avoid turning disclosure under this section into a general discovery request seeking information about related activities of the requester which, while possibly relevant to trial of an action, are not directly material to the specific issue of falsity of a challenged statement.

**SECTION 5. EFFECT OF CORRECTION OR CLARIFICATION.** If a timely and sufficient correction or clarification is made, a person may recover only provable economic loss, as mitigated by the correction or clarification.

Comment

Section 5 is designed to encourage a publisher to grant a request for correction or clarification by providing that a requesting party may seek only damages for provable economic loss in the event of the timely publication of a sufficient correction or clarification. To be "timely" and "sufficient," the correction or clarification must meet the requirements of Section 6.

In limiting recovery of damages to provable economic loss as mitigated by the correction or clarification, the Act anticipates that any loss caused by the publication can be significantly reduced by publication of the correction or clarification. The burden of proving mitigation of economic loss, however, rests with the publisher.

**SECTION 6. TIMELY AND SUFFICIENT CORRECTION OR CLARIFICATION.**

(a) A correction or clarification is timely if it is published before, or within 45 days after, receipt of a request for correction or clarification, unless the period is extended under Section 4(c).

(b) A correction or clarification is sufficient if it:

(1) is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;

(2) refers to the statement being corrected or clarified and:

(i) corrects the statement;

(ii) in the case of defamatory meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or to assert its truth; or

(iii) in the case of a statement attributed to another person, identifies the person and disclaims an intent to assert the truth of the statement; and

(3) is communicated to the person who has made a request for correction or clarification.

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

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

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

(i) in another medium likely to reach an audience reasonably equivalent to the original publication; or

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

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

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

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

#### Comment

This section sets out the requirements for a timely and sufficient correction or clarification. Subject to possible extension under Section 4(c), a "timely" correction or clarification must be published before or within 45 days of a request for correction or clarification.

The characteristics of a "sufficient" correction or clarification will vary depending upon the frequency and nature of the original publication and upon the timing and nature of the correcting or clarifying publication. The general focus of "sufficiency" under Section 6 is to seek to assure that the correcting or clarifying publication is "reasonably likely to reach substantially the same audience" as the challenged publication. The Act thus uses a functional standard aimed at effective vindication of reputation rather than one focusing mechanistically on particular location, identity of medium, specific size of audience, or the like. In attempting to effectuate the goal of reaching substantially the same audience as the challenged publication, the Act requires that the correction or clarification also be judged in terms of its prominence and the manner and medium of its publication. These criteria require that a judgment be made in each particular case with respect to the sufficiency of the particular publication.

Newspapers and other frequent publications have been the principal subjects of correction or clarification statutes throughout the country. At times corrections or clarifications have been required to be placed in similar if not identical locations to those in which the original story occurred, although even this rule has been dependent upon a number of factors, including the nature and scope of the original story as well as the newspaper's practices concerning reserved space for corrections. Under the Act such alternatives, as well as others presented in different types of media, must be judged in each case in terms of the requirement that the correction or clarification, in its location and prominence,

should be reasonably likely to reach substantially the same audience as the original publication. Thus, in the case of an alleged newspaper defamation occurring in a smaller story appearing on an inside page, use of a regularly published corrections column at a fixed location, e.g., at the front or back of a news section or opposite an editorial page, may often suffice. Use of such a regularly placed column may or may not suffice for a publication appearing on the front page or in a specialized section of the paper.

In the case of an alleged radio or television broadcast or cablecast defamation, publication of a correction or clarification in a subsequent broadcast or cablecast of the same program (e.g., during a succeeding daily news program, or weekly newsmagazine program, in the same time period) would ordinarily suffice. Where the original broadcast or cablecast had been on a non-recurring program, however, publication of the correction or clarification on the same station or network or cable system during the same time of day would likely constitute a reasonable alternative in most instances.

In other contexts Section 6 may yield still other results. For example, correction or clarification of a defamatory employee reference or evaluation may require no more than contacting those persons or firms to whom the defamatory statement was communicated. If the statement had made its way into permanent files or had reached broader audiences, however, reasonable efforts to have the material removed from such files or to communicate the correction or clarification to identifiable members of the broader audience might be required. In the case of an oral defamation to friends or colleagues -- a classic slander -- a letter to those persons correcting or clarifying the defamation might suffice, on the assumption that word of the correction or clarification would spread as rapidly in the channels of gossip as did the original defamation.

For a book currently being sold, where a subsequent printing or edition will not be timely published, reasonable efforts to correct or clarify are set forth in subsection (d) and involve the following measures: timely publication in an alternative medium; appropriate corrections in any future editions; and reasonable steps to correct undistributed copies (by "undistributed" is meant books not yet shipped by the publisher to its customers). Suitable alternative mediums and reasonable steps to correct undistributed copies should be left, in the first instance, to the parties, and, if necessary, to the courts to evolve over time. Where the parties cannot agree on an alternative medium and the original distribution was national in scope, use of a publication likely to reach a substantially equivalent audience should ordinarily suffice.

The requirement of making reasonable efforts to reach substantially the same audience should be equitably construed so as to achieve the overriding

purpose of the Act to give incentives for the publication of reasonably effective corrections or clarifications. To this end, the section is not intended to guarantee that in all cases a correction or clarification will reach the very same audience, nor does it require that a publisher achieve the impossible in attempting to reach a substantially equivalent audience. It is understood that once published, the person allegedly defamed can take additional steps to assure that the correction is communicated to particular individuals. The guidepost in all cases is reasonableness.

Subsection (b)(2) states the general rule that a "sufficient" correction or clarification must correct the original communication. An equivocal correction or clarification will not satisfy this requirement.

Where the alleged defamation was the result of a meaning arising from other than the express language of the publication or a statement attributed in the publication to another person, a sufficient correction or clarification need only contain a statement that the party making the communication did not intend the non-express meaning and disclaims it, or that in publishing the attributed statement of another person the publisher disclaims any intent to attest to the truth of the facts contained therein. This will allow the publisher to disavow the alleged meaning and yet stand behind the "facts" of the story.

Subsection (b)(2)(iii) provides a mechanism for a defendant who repeats a defamation from another source to "correct" or "clarify" by indicating that the defendant did not intend to assert the truth of the statement but merely reported what another had said. This form of "correction" does not, however, vindicate the plaintiff's reputation because it does not necessarily indicate that the statement is false, only that the particular defendant does not assert that it is true. A defendant relieved of liability for all but provable economic loss by such a correction should be required to identify the person asserting the truth of the statement even if the original publication did not do so. This provides the plaintiff the opportunity to seek vindication from the source. Nothing in this section, however, requires the news media or others to disclose the identity of confidential sources. If there is a confidential source, the media defendant would have three alternative courses of action: (1) limit its liability by issuing a correction under this section and identifying its source, (2) issue a correction under subsection (b)(2)(i) or (ii) without identifying the source but fully vindicating the plaintiff's reputation, or (3) defend the defamation action.

**SECTION 7. CHALLENGES TO CORRECTION OR  
CLARIFICATION OR TO REQUEST FOR CORRECTION OR  
CLARIFICATION.**

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

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

Comment

The 20-day period for a plaintiff to challenge the timeliness or sufficiency of a correction or clarification is placed in brackets in order to accommodate variations in local practice with respect to responses to motions. It is important that the time period in this section be short and certain, as the purpose of subsection (a) is to identify and resolve disputed issues related to the correction or clarification promptly and before the litigation process has proceeded to other issues, such as motions to dismiss or extensive discovery related to privileges. Yet it was recognized that many jurisdictions have pre-existing rules pertaining to the form and timing of responses to motions. As long

as those rules provide comparably short time limits, an enacting jurisdiction may wish to replace the bracketed language with a reference to such generally applicable requirements.

#### SECTION 8. OFFER TO CORRECT OR CLARIFY.

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

(1) contain the publisher's offer to:

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

(ii) pay the person's reasonable expenses of litigation, including attorney's fees, incurred before publication of the correction or clarification; and

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

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

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

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

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

- (1) damages for provable economic loss; and
- (2) reasonable expenses of litigation, including attorney's fees, incurred before the offer, unless the person failed to make a good-faith attempt to request a correction or clarification in accordance with Section 3(b) or failed to disclose information in accordance with Section 4.

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

(e) The court shall determine the amount of reasonable expenses of litigation, including attorney's fees, specified in subsections (a)(1)(ii) and (c)(2).

#### Comment

The purpose of Section 8 is to promote settlement of disputes and to create incentives to limit costly litigation even after the initial period for correction or clarification has passed. The section thus permits a publisher to make an offer to correct or clarify at any time prior to trial and, if the offer is not accepted, to limit a plaintiff to recovery of damages for provable economic loss and reasonable expenses of litigation, including attorney's fees. If the offer is accepted, the plaintiff, barring any other terms voluntarily negotiated, receives the reasonable expenses of litigation, including attorney's fees to the date of publication of the correction or clarification.

The section does not prevent any other voluntarily negotiated settlement, nor restrict the terms thereof. It is simply one settlement alternative that the statute permits the publisher to tender. It is the plaintiff's option to accept or reject the offer, although consequences ensue from rejection, for in the subsequent trial the plaintiff's recovery is limited and is subject to proof of all the common law and constitutional elements of the tort and its privileges (including actual malice where applicable).

Like other proposed settlements, the terms of the offer, as well as its acceptance or rejection, can and ordinarily should remain confidential. The Act

does not foreclose the use of protective orders or the enforcement of confidentiality agreements, which are used under current law. The need for confidentiality is obvious, as a plaintiff who declines an offer and chooses either to commence or to continue the litigation, but who can also publish the terms of the offer (including the correction or clarification), would obviously be receiving more advantage than the Act anticipates.

**SECTION 9. SCOPE OF PROTECTION.** A timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a republisher. However, a correction or clarification that is sufficient only because of the operation of Section 6(b)(2)(iii) does not constitute a correction or clarification made by the person to whom the statement is attributed.

Comment

The purpose of this section is to make a correction or clarification by one party (e.g., a newspaper publisher, or an author) effective as to all parties to a publication with respect to the limitation on damages provided in the Act. It is not intended, however, that this protection be afforded to any republishers of the defamation (as that term is defined in applicable state law), nor to statements attributed to another person covered by Section 6(b)(2)(iii). A correction under that section represents only disavowal by the publisher (and other persons responsible for the publication apart from the quoted source) of the statement as its own, and leaves the quoted or attributed statement uncorrected. To this extent, a disavowal by the publisher will not provide sufficient vindication to the requester or plaintiff in such cases. The same is true, of course, for republication of a statement.

**SECTION 10. ADMISSIBILITY OF EVIDENCE OF CORRECTION  
OR CLARIFICATION.**

(a) The fact of a request for correction or clarification under this [Act], the contents of the request, and its acceptance or refusal are not admissible in evidence at trial.

(b) The fact that a correction or clarification under this [Act] was made and the contents of the correction or clarification are not admissible in evidence at trial except in mitigation of damages pursuant to Section 5. If the fact that a correction or clarification was made or the contents of the correction or clarification are received in evidence, the fact of the request may also be received.

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

**SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among States enacting it.

**SECTION 12. SHORT TITLE.** This [Act] may be cited as the Uniform Correction or Clarification of Defamation Act.

**SECTION 13. SEVERABILITY.** If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not

affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION 14. EFFECTIVE DATE.** This [Act] takes effect

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**Comment**

By applying only to statements published on or after the Act's effective date, Section 14 is made applicable to republications made after that date, as republications are generally, if not universally, treated as new publications. If the substantive law of a jurisdiction provides otherwise, that law will control.