



1997 ASSEMBLY BILL 328

April 28, 1997 - Introduced by Representatives F. LASEE, GREEN, PORTER, DUFF, URBAN, GOETSCH, FREESE, M. LEHMAN, AINSWORTH, WASSERMAN, SERATTI, BRANDEMUEHL, LADWIG, JENSEN, HANDRICK, DOBYNS, BOYLE, HARSDFORF, NASS, KELSO and HAHN, cosponsored by Senators ADELMAN, HUELSMAN, RUDE, BUETTNER, PANZER, ZIEN, COWLES and DRZEWIECKI. Referred to Committee on Judiciary.

1 **AN ACT** *to renumber and amend* 895.052; and *to create* 895.05 (3) and 895.052
2 (1) of the statutes; **relating to:** libelous electronic material and radio or
3 television defamation.

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 radio, television and 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 radio, television or 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 broadcast at approximately the same time of day or times of day as the alleged defamatory broadcasts, and within 4 days after receiving a request for the correction. If electronic media are used, the correction must be placed in the same

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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 an electronic medium involved in an 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.

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.

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

3 (c) To correct the libelous material, the person alleged to be responsible for the
4 libelous material shall, within one week after receiving the request under par. (b),
5 place a correction under par. (d) in the same location in the electronic medium as the
6 libelous material was placed. The person alleged to be responsible for the libelous
7 material shall maintain the correction at that location for a period similar to the time
8 that the libelous material was at that location, to the extent that the person can
9 control the location and period of that placement.

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

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

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

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

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

5 **SECTION 2.** 895.052 of the statutes is renumbered 895.052 (2) and amended to
6 read:

7 895.052 (2) The Notwithstanding sub. (1), the owner, licensee or operator of a
8 visual or sound radio broadcasting station or network of stations, and the agents or
9 employes of any such owner, licensee or operator, shall not be liable in damages for
10 any defamatory statement published or uttered in, or as a part of, a visual or sound
11 broadcast by a candidate for political office in those instances in which, under the
12 acts of congress or the rules and regulations of the federal communications
13 commission, the broadcasting station or network is prohibited from censoring the
14 script of the broadcast.

15 **SECTION 3.** 895.052 (1) of the statutes is created to read:

16 895.052 (1) (a) Before any civil action is commenced for damages related to
17 defamation in any radio or television broadcast or cable television transmission, the
18 defamed person shall first give the person alleged to be responsible for the
19 defamatory statement or material broadcast or transmitted a reasonable
20 opportunity to correct the defamatory statement or material. A request to correct the
21 defamatory statement or material may be made only by doing all of the following:

22 1. Mailing or delivering a written request to the person alleged to be responsible
23 for the defamatory broadcast or transmission.

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1 2. Specifying in the request the program and the statement or material that
2 is claimed to be false and defamatory and a statement of what are claimed to be the
3 true facts.

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

6 (b) To correct the defamatory statement or material, the person alleged to be
7 responsible for the defamatory statement or material shall, within 4 days after
8 receiving the request under par. (a), broadcast or transmit a correction, as described
9 under par. (c). The person alleged to be responsible for the defamatory statement or
10 material shall broadcast or transmit at least 2 corrections for each alleged
11 defamatory broadcast or transmission, one of which shall be at approximately the
12 same time or times of day and of approximately the same length as the alleged
13 defamatory broadcast or transmission.

14 (c) If the true facts are, with reasonable diligence, ascertainable with
15 definiteness and certainty, only a retraction shall constitute a correction. If the true
16 facts are not, with reasonable diligence, ascertainable with definiteness and
17 certainty, the broadcast or transmission of the defamed person's statement of the
18 true facts, or as much of the statement as is not defamatory to another, scurrilous,
19 or otherwise improper for broadcast or transmission, identified as the defamed
20 person's statement, shall constitute a correction within the meaning of this
21 paragraph.

22 (d) A correction timely broadcast or transmitted as required under par. (b),
23 without comment, shall constitute a defense against the recovery of any damages
24 except actual damages, as well as being competent and material in the mitigation of
25 actual damages to the extent that the correction mitigates the actual damages.

