CHAPTER 32-43
UNIFORM CORRECTION OR CLARIFICATION OF DEFAMATION ACT

32-43-01. Definitions.

In this chapter:

1. "Defamatory" means tending to harm reputation.
2. "Economic loss" means special, pecuniary loss caused by a false and defamatory publication.
3. "Person" includes any legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

32-43-02. Scope.

This chapter applies to any claim for relief, however characterized, for damages arising out of defamation caused by the false content of a publication that is published on or after August 1, 1995. This chapter applies to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information.

32-43-03. Request for correction or clarification.

1. A person may maintain an action for defamation only if the person has made a timely and adequate request for correction or clarification from the defendant or the defendant has made a correction or clarification.
2. 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 ninety 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.
3. A request for correction or clarification is adequate if the request:
   a. Is made in writing and reasonably identifies the person making the request;
   b. Specifies with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;
   c. Alleges the defamatory meaning of the statement;
   d. Specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than the express language of the publication; and
   e. States that the alleged defamatory meaning of the statement is false.
4. 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 3 constitutes an adequate request for correction or clarification.
5. The period of limitation for commencement of a defamation action is tolled during the period allowed in section 32-43-06 for responding to a request for correction or clarification.

32-43-04. Disclosure of evidence of falsity.

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. 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. A correction or clarification is timely if published within twenty-five days after receipt of information disclosed under this section or forty-five days after receipt of a request for correction or clarification, whichever is later.

32-43-05. 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.

32-43-06. Timely and sufficient correction or clarification.

1. A correction or clarification is timely if it is published before, or within forty-five days after, receipt of a request for correction or clarification, unless the period is extended under section 32-43-04.
2. A correction or clarification is sufficient if it:
   a. Is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;
   b. Refers to the statement being corrected or clarified and:
      (1) Corrects the statement;
      (2) 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
      (3) In the case of a statement attributed to another person, disclaims an intent to assert the truth of the statement; and
   c. Is communicated to the person who has made a request for correction or clarification.
3. 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.
4. 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:
   a. It is timely published in a reasonably prominent manner in another medium likely to reach an audience reasonably equivalent to the original publication or, 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;
   b. Reasonable steps are taken to correct undistributed copies of the original publication, if any; and
   c. It is published in the next practicable issue, edition, or broadcast, if any, of the original publication.
5. A correction or clarification is timely and sufficient if the parties agree in writing that it is timely and sufficient.

32-43-07. Challenges to correction or clarification or to request for correction or clarification.

1. If a defendant in an action governed by this chapter 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 sixty days after service of the summons and complaint or ten 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 twenty days after the notice is served.
2. If a defendant in an action governed by this chapter 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 sixty days after service of the summons and complaint. The court shall rule on the motion at the earliest appropriate time before trial.

32-43-08. Offer to correct or clarify.

1. 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:
   a. Contain the publisher's offer to publish, at the person's request, a sufficient correction or clarification and to pay the person's reasonable expenses of

litigation, including attorney's fees, incurred before publication of the correction or clarification; and

b. Be accompanied by a copy of the proposed correction or clarification and the plan for its publication.

2. If the person accepts in writing an offer to correct or clarify made pursuant to subsection 1, the person is barred from commencing an action against the publisher based on the statement or, 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.
3. A person who does not accept an offer made in conformance with subsection 1 may recover in an action based on the statement only damages for provable economic loss and 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 subsection 2 of section 32-43-03 or failed to disclose information in accordance with section 32-43-04.
4. On request of either party, a court shall promptly determine the sufficiency of the offered correction or clarification.
5. The court shall determine the amount of reasonable expenses of litigation, including attorney's fees, specified in subsections 1 and 3.

32-43-09. 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 under paragraph 3 of subdivision b of subsection 2 of section 32-43-06 does not constitute a correction or clarification made by the person to whom the statement is attributed.

32-43-10. Admissibility of evidence of correction or clarification.

1. The fact of a request for correction or clarification under this chapter, the contents of the request, and its acceptance or refusal are not admissible in evidence at trial.
2. The fact that a correction or clarification under this chapter 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 32-43-05. 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.
3. 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.