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Texas Adopts the Defamation Mitigation Act

By Laura Lee Prather¹

On June 14, 2013 Governor Perry signed into law HB 1759 adopting the Defamation Mitigation Act (also known as the Retraction Statute) demonstrating continued support of free speech for Texas citizens. The bill was passed by more than a two-thirds majority of each chamber, and, as a result, it became law on June 14, 2013.

Retraction statutes date back to 1882, and Texas now joins 31 other states that have adopted such laws. The Texas law is patterned after the Uniform Correction or Clarification of Defamation Act adopted by the Uniform Law Commission in 1993. The statute encourages one to come forward in a timely manner if a mistake has been made in a publication and give the publisher the opportunity to correct the mistake.

Here are some highlights about the retraction statute, which is codified at Texas Civil Practice & Remedies Code, § 73.051-.062:

- The statute encourages one to notify a publisher about a mistake made in a timely manner. If made within the period of limitations, it is considered timely. However, one must make the request not later than 90 days after receiving knowledge of the publication to request exemplary damages.
- There are specific parameters one must follow in requesting a retraction, including who is to be notified, how they are to be notified, the request must state with particularity what is alleged to be false, and when and where the publication was made (if known).
- The statute gives the publisher the option of correcting the mistake by publishing a correction, an apology or the requester's own statement of facts or summary thereof.
- To comply with the statute, the publisher must correct the mistake within 30 days of receiving the request and in the same manner and medium as the original publication or, if that is not possible, in a prominent manner and medium intended to reach the same audience as the original mistaken publication reached.
- One can still sue after a retraction is run; however, the damages will be mitigated by the retraction, and if the publisher complies with the statute by running a retraction, one cannot get exemplary damages without a showing of actual malice.
- If a lawsuit is filed without previously giving the publisher notice of the mistake and an opportunity to cure, a verified plea in abatement may be filed within 30 days of filing an original answer in the court in which the suit is pending. The suit is automatically abated, without court order, beginning on the 11th day after the plea in abatement is filed and will remain abated for 60 days so that the procedures for a request for a retraction can take place. All statutory and judicial deadlines are abated during this period.



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- The statute requires permanent attachment of the correction, clarification or apology to the original article if published on the internet.
- The statute applies to all defamation, whether public or private, media or non-media, thus establishing a simplified structure for the resolution of all disputes pre-lawsuit.
- The statute applies to all publications made on or after June 14, 2013.

Because defamation is a unique area of law where the harm to reputation can often be cured by measures taken other than money damages, and lawsuits can be prevented with a swift and prominent correction, Texas lawmakers decided to make a change to the current system in an effort to promote early resolution of these matters. The goal of this legislation is to provide a quick and cost-effective means of correcting or clarifying mistakes, restoring reputations, and avoiding costly and lengthy litigation by all parties. The new law is good public policy because it promotes free speech, judicial economy, and resolution of disputes in a manner the existing legal system in Texas could not provide.

The passage of the Texas Defamation Mitigation Act was supported by national, state, and local media companies, as well as the Freedom of Information Foundation of Texas, the Texas Press Association, and Texas Association of Broadcasters. Throughout the process, it also garnered support from the Texas Trial Lawyers Association and the Texans for Lawsuit Reform. This bill would never have become law were it not for the passionate sponsors, Chairman Todd Hunter (R-Corpus Christi) and Sen. Rodney Ellis (D-Houston) who have been tireless key supporters of free speech. We applaud them for protecting the First Amendment rights of all Texas citizens.