

SENATE BILL No. 81

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5-2; IC 34-6-2; IC 34-15-3; IC 34-15-4; IC 34-15-6.

Synopsis: Correction or clarification of defamation. Adopts the Uniform Correction or Clarification of Defamation Act drafted by the National Conference of Commissioners on Uniform State Laws. Repeals defamation clarification statutes specifically applicable to newspaper publishers, radio broadcasters, and television broadcasters.

Effective: July 1, 2000.

Simpson

November 18, 1999, read first time and referred to Committee on Judiciary.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

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SENATE BILL No. 81



A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-1.5-2 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. For the purposes of
- 3 this chapter:
- 4 (a) "Public agency" means the following:
- 5 (1) Any board, commission, department, agency, authority, or
- 6 other entity, by whatever name designated, exercising a portion of
- 7 the executive, administrative, or legislative power of the state.
- 8 (2) Any county, township, school corporation, city, town, political
- 9 subdivision, or other entity, by whatever name designated,
- 10 exercising in a limited geographical area the executive,
- 11 administrative, or legislative power of the state or a delegated
- 12 local governmental power.
- 13 (3) Any entity which is subject to either:
- 14 (A) budget review by either the state board of tax
- 15 commissioners or the governing body of a county, city, town,
- 16 township, or school corporation; or
- 17 (B) audit by the state board of accounts.



- 1 (4) Any building corporation of a political subdivision of the state
 2 of Indiana that issues bonds for the purpose of constructing public
 3 facilities.
- 4 (5) Any advisory commission, committee, or body created by
 5 statute, ordinance, or executive order to advise the governing
 6 body of a public agency, except medical staffs or the committees
 7 of any such staff.
- 8 (6) The Indiana gaming commission established by IC 4-33,
 9 including any department, division, or office of the commission.
- 10 (7) The Indiana horse racing commission established by IC 4-31,
 11 including any department, division, or office of the commission.
- 12 (b) "Governing body" means two (2) or more individuals who are:
 13 (1) a public agency that:
 14 (A) is a board, a commission, an authority, a council, a
 15 committee, a body, or other entity; and
 16 (B) takes official action on public business;
 17 (2) the board, commission, council, or other body of a public
 18 agency which takes official action upon public business; or
 19 (3) any committee appointed directly by the governing body or its
 20 presiding officer to which authority to take official action upon
 21 public business has been delegated. An agent or agents appointed
 22 by a school corporation to conduct collective bargaining on behalf
 23 of that school corporation does not constitute a governing body
 24 for purposes of this chapter.
- 25 (c) "Meeting" means a gathering of a majority of the governing body
 26 of a public agency for the purpose of taking official action upon public
 27 business. It does not include:
 28 (1) any social or chance gathering not intended to avoid this
 29 chapter;
 30 (2) any on-site inspection of any project or program;
 31 (3) traveling to and attending meetings of organizations devoted
 32 to betterment of government; or
 33 (4) a caucus.
- 34 (d) "Official action" means to:
 35 (1) receive information;
 36 (2) deliberate;
 37 (3) make recommendations;
 38 (4) establish policy;
 39 (5) make decisions; or
 40 (6) take final action.
- 41 (e) "Public business" means any function upon which the public
 42 agency is empowered or authorized to take official action.

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1 (f) "Executive session" means a meeting from which the public is
 2 excluded, except the governing body may admit those persons
 3 necessary to carry out its purpose.

4 (g) "Final action" means a vote by the governing body on any
 5 motion, proposal, resolution, rule, regulation, ordinance, or order.

6 (h) "Caucus" means a gathering of members of a political party or
 7 coalition which is held for purposes of planning political strategy and
 8 holding discussions designed to prepare the members for taking official
 9 action.

10 (i) "Deliberate" means a discussion which may reasonably be
 11 expected to result in official action (defined under subsection (d)(3),
 12 (d)(4), (d)(5), or (d)(6)).

13 (j) "News media" means all newspapers qualified to receive legal
 14 advertisements under IC 5-3-1, all news services (as defined in
 15 IC 34-6-2-87 **before its repeal July 1, 2000**), and all licensed
 16 commercial or public radio or television stations.

17 (k) "Person" means an individual, a corporation, a limited liability
 18 company, a partnership, an unincorporated association, or a
 19 governmental entity.

20 SECTION 2. IC 34-6-2-33.2 IS ADDED TO THE INDIANA CODE
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2000]: **Sec. 33.2. "Defamatory", for purposes of IC 34-15-6, has**
 23 **the meaning set forth in IC 34-15-6-1.**

24 SECTION 3. IC 34-6-2-35.2 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2000]: **Sec. 35.2. "Economic loss", for purposes of IC 34-15-6,**
 27 **has the meaning set forth in IC 34-15-6-1.**

28 SECTION 4. IC 34-6-2-103 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 103. (a) "Person", for
 30 purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

31 (b) **"Person", for purposes of IC 34-15-6, has the meaning set**
 32 **forth in IC 34-15-6-1.**

33 (c) "Person", for purposes of IC 34-19-2, has the meaning set forth
 34 in IC 35-41-1.

35 (e) (d) "Person", for purposes of IC 34-24-4, means:

- 36 (1) an individual;
- 37 (2) a governmental entity;
- 38 (3) a corporation;
- 39 (4) a firm;
- 40 (5) a trust;
- 41 (6) a partnership; or
- 42 (7) an incorporated or unincorporated association that exists



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1 under or is authorized by the laws of this state, another state, or a
2 foreign country.

3 ~~(d)~~ (e) "Person", for purposes of IC 34-26-2, includes individuals at
4 least eighteen (18) years of age and emancipated minors.

5 ~~(e)~~ (f) "Person", for purposes of IC 34-26-4, has the meaning set
6 forth in IC 35-41-1-22.

7 ~~(f)~~ (g) "Person", for purposes of IC 34-30-5, means any of the
8 following:

- 9 (1) An individual.
- 10 (2) A corporation.
- 11 (3) A partnership.
- 12 (4) An unincorporated association.
- 13 (5) The state (as defined in IC 34-6-2-140).
- 14 (6) A political subdivision (as defined in IC 34-6-2-110).
- 15 (7) Any other entity recognized by law.

16 ~~(g)~~ (h) "Person", for purposes of IC 34-30-6, means an individual,
17 a corporation, a limited liability company, a partnership, an
18 unincorporated association, or a governmental entity that:

- 19 (1) has qualifications or experience in:
 - 20 (A) storing, transporting, or handling a hazardous substance or
 - 21 compressed gas;
 - 22 (B) fighting fires;
 - 23 (C) emergency rescue; or
 - 24 (D) first aid care; or
- 25 (2) is otherwise qualified to provide assistance appropriate to
- 26 remedy or contribute to the remedy of the emergency.

27 ~~(h)~~ (i) "Person", for purposes of IC 34-30-18, includes:

- 28 (1) an individual;
- 29 (2) an incorporated or unincorporated organization or association;
- 30 (3) the state of Indiana;
- 31 (4) a political subdivision (as defined in IC 36-1-2-13);
- 32 (5) an agency of the state or a political subdivision; or
- 33 (6) a group of such persons acting in concert.

34 ~~(i)~~ (j) "Person", for purposes of sections 42, 43, 69, and 95 of this
35 chapter, means an individual, an incorporated or unincorporated
36 organization or association, or a group of such persons acting in
37 concert.

38 SECTION 5. IC 34-15-6 IS ADDED TO THE INDIANA CODE AS
39 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
40 1, 2000]:

41 **Chapter 6. Uniform Correction or Clarification of Defamation**
42 **Act**



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1 **Sec. 1. The following definitions apply throughout this chapter:**

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

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

5 (3) "Person" means an individual, corporation, business trust,
6 estate, trust, partnership, association, joint venture, or other
7 legal or commercial entity. The term does not include a
8 government or governmental subdivision, agency, or
9 instrumentality.

10 **Sec. 2. (a) This chapter applies to any claim for relief, however**
11 **characterized, for damages arising out of harm to personal**
12 **reputation caused by the false content of a publication that is**
13 **published after June 30, 2000.**

14 (b) This chapter applies to all publications, including writings,
15 broadcasts, oral communications, electronic transmissions, or
16 other forms of transmitting information.

17 **Sec. 3. (a) A person may maintain an action for defamation only**
18 **if:**

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

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

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

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

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

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

34 (3) alleges the defamatory meaning of the statement;

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

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

40 (d) In the absence of a previous adequate request, service of a
41 summons and complaint stating a claim for relief for defamation
42 and containing the information required in subsection (c)

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1 constitutes an adequate request for correction or clarification.

2 (e) The period of limitation for commencement of a defamation
3 action is tolled during the period allowed in section 6(a) of this
4 chapter for responding to a request for correction or clarification.

5 Sec. 4. (a) A person who has been requested to make a
6 correction or clarification may ask the requester to disclose
7 reasonably available information material to the falsity of the
8 allegedly defamatory statement.

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

12 (c) A correction or clarification is timely if published within
13 twenty-five (25) days after receipt of information disclosed under
14 subsection (a) or forty-five (45) days after receipt of a request for
15 correction or clarification, whichever is later.

16 Sec. 5. If a timely and sufficient correction or clarification is
17 made, a person may recover only provable economic loss, as
18 mitigated by the correction or clarification.

19 Sec. 6. (a) A correction or clarification is timely if it is published
20 before or within forty-five (45) days after receipt of a request for
21 correction or clarification, unless the period is extended under
22 section 4(c) of this chapter.

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

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

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

28 (i) corrects the statement;

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

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

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

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

42 (d) If a later issue, edition, or broadcast of the original

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1 publication will not be published within the time limits established
 2 for a timely correction or clarification, a correction or clarification
 3 is published in a manner and medium reasonably likely to reach
 4 substantially the same audience as the publication complained of
 5 if:

- 6 (1) it is timely published in a reasonably prominent manner:
 7 (i) in another medium likely to reach an audience
 8 reasonably equivalent to the original publication; or
 9 (ii) if the parties cannot agree on another medium, in the
 10 newspaper with the largest general circulation in the
 11 region in which the original publication was distributed;
 12 (2) reasonable steps are taken to correct undistributed copies
 13 of the original publication, if any; and
 14 (3) it is published in the next practicable issue, edition, or
 15 broadcast, if any, of the original publication.

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

18 Sec. 7. (a) If a defendant in an action governed by this chapter
 19 intends to rely on a timely and sufficient correction or clarification,
 20 the defendant's intention to do so, and the correction or
 21 clarification relied upon, must be set forth in a notice served on the
 22 plaintiff within sixty (60) days after service of the summons and
 23 complaint or ten (10) days after the correction or clarification is
 24 made, whichever is later. A correction or clarification is considered
 25 to be timely and sufficient unless the plaintiff challenges its
 26 timeliness or sufficiency within twenty (20) days after the notice is
 27 served.

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

35 Sec. 8. (a) If a timely correction or clarification is no longer
 36 possible, the publisher of an alleged defamatory statement may
 37 offer, at any time before trial, to make a correction or clarification.
 38 The offer must be made in writing to the person allegedly defamed
 39 by the publication and:

- 40 (1) contain the publisher's offer to:
 41 (i) publish, at the person's request, a sufficient correction
 42 or clarification; and



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- 1 (ii) pay the person's reasonable expenses of litigation,
 2 including attorney's fees, incurred before publication of
 3 the correction or clarification; and
 4 (2) be accompanied by a copy of the proposed correction or
 5 clarification and the plan for its publication.
- 6 (b) If the person accepts in writing an offer to correct or clarify
 7 made under subsection (a):
 8 (1) the person is barred from commencing an action against
 9 the publisher based on the statement; or
 10 (2) if an action has been commenced, the court shall dismiss
 11 the action against the defendant with prejudice after the
 12 defendant complies with the terms of the offer.
- 13 (c) A person who does not accept an offer made in conformance
 14 with subsection (a) may recover in an action based on the
 15 statement only:
 16 (1) damages for provable economic loss; and
 17 (2) reasonable expenses of litigation, including attorney's fees,
 18 incurred before the offer, unless the person failed to make a
 19 good faith attempt to request a correction or clarification in
 20 accordance with section 3(b) of this chapter or failed to
 21 disclose information in accordance with section 4 of this
 22 chapter.
- 23 (d) On request of either party, a court shall promptly determine
 24 the sufficiency of the offered correction or clarification.
- 25 (e) The court shall determine the amount of reasonable expenses
 26 of litigation, including attorney's fees, specified in subsections
 27 (a)(1)(ii) and (c)(2).
- 28 **Sec. 9.** A timely and sufficient correction or clarification made
 29 by a person responsible for a publication constitutes a correction
 30 or clarification made by all persons responsible for that
 31 publication other than a republisher. However, a correction or
 32 clarification that is sufficient only because of the operation of
 33 section 6(b)(2)(iii) of this chapter does not constitute a correction
 34 or clarification made by the person to whom the statement is
 35 attributed.
- 36 **Sec. 10.** (a) The fact of a request for correction or clarification
 37 under this chapter, the contents of the request, and its acceptance
 38 or refusal are not admissible in evidence at trial.
- 39 (b) The fact that a correction or clarification under this chapter
 40 was made and the contents of the correction or clarification are not
 41 admissible in evidence at trial except in mitigation of damages
 42 under section 5 of this chapter. If the fact that a correction or



1 clarification was made or the contents of the correction or
2 clarification are received in evidence, the fact of the request may
3 also be received.

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

7 Sec. 11. This chapter shall be applied and construed to
8 effectuate its general purpose to make uniform the law with respect
9 to the subject of this chapter among states enacting it.

10 Sec. 12. This chapter may be cited as the Uniform Correction or
11 Clarification of Defamation Act.

12 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
13 JULY 1, 2000]: IC 34-6-2-2; IC 34-6-2-33; IC 34-6-2-87; IC 34-15-3;
14 IC 34-15-4.

15 SECTION 7. [EFFECTIVE JULY 1, 2000] If any provision of
16 IC 34-15-6, as added by this act, or its application to any person or
17 circumstance is held invalid, the invalidity does not affect other
18 provisions or applications of IC 34-15-6, as added by this act, that
19 can be given effect without the invalid provision or application, and
20 to this end the provisions of IC 34-15-6, as added by this act, are
21 severable.

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