

PUBLIC EXPRESSION PROTECTION ACT

2023 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill enacts the Uniform Public Expression Protection Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a process for a claim asserted against a person for:
 - communication in, or on an issue under consideration in, certain governmental proceedings; or
 - exercising certain rights under the United States Constitution or Utah Constitution;
- ▶ requires a court to award costs, attorney fees, and other litigation expenses under certain circumstances;
- ▶ includes a severability clause; and
- ▶ repeals the Citizenship Participation in Government Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

- 78B-25-101**, Utah Code Annotated 1953
- 78B-25-102**, Utah Code Annotated 1953
- 78B-25-103**, Utah Code Annotated 1953
- 78B-25-104**, Utah Code Annotated 1953
- 78B-25-105**, Utah Code Annotated 1953
- 78B-25-106**, Utah Code Annotated 1953
- 78B-25-107**, Utah Code Annotated 1953

- 33 **78B-25-108**, Utah Code Annotated 1953
- 34 **78B-25-109**, Utah Code Annotated 1953
- 35 **78B-25-110**, Utah Code Annotated 1953
- 36 **78B-25-111**, Utah Code Annotated 1953
- 37 **78B-25-112**, Utah Code Annotated 1953
- 38 **78B-25-113**, Utah Code Annotated 1953
- 39 **78B-25-114**, Utah Code Annotated 1953
- 40 **78B-25-115**, Utah Code Annotated 1953

41 REPEALS:

- 42 **78B-6-1401**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 43 **78B-6-1402**, as last amended by Laws of Utah 2010, Chapter 254
- 44 **78B-6-1403**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 45 **78B-6-1404**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 46 **78B-6-1405**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **78B-25-101** is enacted to read:

50 **CHAPTER 25. UNIFORM PUBLIC EXPRESSION PROTECTION ACT**

51 **78B-25-101. Title.**

52 This chapter may be cited as the Uniform Public Expression Protection Act.

53 Section 2. Section **78B-25-102** is enacted to read:

54 **78B-25-102. Scope.**

55 (1) As used in this section:

56 (a) "Goods or services" does not include the creation, dissemination, exhibition, or
57 advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or
58 artistic work.

59 (b) "Governmental unit" means a public corporation or government or governmental
60 subdivision, agency, or instrumentality.

61 (c) "Person" means an individual, estate, trust, partnership, business or nonprofit entity,
62 governmental unit, or other legal entity.

63 (2) Except as provided in Subsection (3), this chapter applies to a cause of action

64 asserted in a civil action against a person based on the person's:

65 (a) communication in a legislative, executive, judicial, administrative, or other
66 governmental proceeding;

67 (b) communication on an issue under consideration or review in a legislative,
68 executive, judicial, administrative, or other governmental proceeding; or

69 (c) exercise of the right of freedom of speech or of the press, the right to assemble or
70 petition, or the right of association, guaranteed by the United States Constitution or Utah
71 Constitution, on a matter of public concern.

72 (3) This chapter does not apply to a cause of action asserted:

73 (a) against a governmental unit or an employee or agent of a governmental unit acting
74 or purporting to act in an official capacity;

75 (b) by a governmental unit or an employee or agent of a governmental unit acting in an
76 official capacity to enforce a law to protect against an imminent threat to public health or
77 safety; or

78 (c) against a person primarily engaged in the business of selling or leasing goods or
79 services if the cause of action arises out of a communication related to the person's sale or lease
80 of the goods or services.

81 Section 3. Section **78B-25-103** is enacted to read:

82 **78B-25-103. Special motion for expedited relief.**

83 Not later than 60 days after the day on which a party is served with a complaint,
84 crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to
85 which this chapter applies, or at a later time on a showing of good cause, the party may file a
86 special motion for expedited relief to dismiss the cause of action or part of the cause of action.

87 Section 4. Section **78B-25-104** is enacted to read:

88 **78B-25-104. Stay.**

89 (1) Except as provided in Subsections (4) through (7), on the filing of a motion under
90 Section 78B-25-103:

91 (a) all other proceedings between the moving party and responding party, including
92 discovery and a pending hearing or motion, are stayed; and

93 (b) on motion by the moving party, the court may stay a hearing or motion involving
94 another party, or discovery by another party, if the hearing or ruling on the motion would

95 adjudicate, or the discovery would relate to, an issue material to the motion under Section
96 78B-25-103.

97 (2) A stay under Subsection (1) remains in effect until the day on which an order ruling
98 on the motion under Section 78B-25-103 is entered and expiration of the time under Section
99 78B-25-109 for the moving party to appeal the order.

100 (3) (a) Except as provided in Subsections (5), (6), and (7), if a party appeals from an
101 order ruling on a motion under Section 78B-25-103, all proceedings between all parties in the
102 action are stayed.

103 (b) A stay under Subsection (3)(a) remains in effect until the day on which the appeal
104 concludes.

105 (4) During a stay under Subsection (1), the court may allow limited discovery if a party
106 shows that specific information is necessary to establish whether a party has satisfied or failed
107 to satisfy a burden under Subsection 78B-25-107(1) and the information is not reasonably
108 available unless discovery is allowed.

109 (5) A motion under Section 78B-25-110 for costs, attorney fees, and expenses is not
110 subject to a stay under this section.

111 (6) A stay under this section does not affect a party's ability to voluntarily dismiss a
112 cause of action or part of a cause of action or move to sever a cause of action.

113 (7) During a stay under this section, the court for good cause may hear and rule on:

114 (a) a motion unrelated to the motion under Section 78B-25-103; and

115 (b) a motion seeking a special or preliminary injunction to protect against an imminent
116 threat to public health or safety.

117 Section 5. Section **78B-25-105** is enacted to read:

118 **78B-25-105. Hearing.**

119 (1) The court shall hear a motion under Section 78B-25-103 not later than 60 days after
120 the day on which the motion is filed, unless the court orders a later hearing:

121 (a) to allow discovery under Section 78B-25-104(4); or

122 (b) for other good cause.

123 (2) If the court orders a later hearing under Subsection (1)(a), the court shall hear the
124 motion under Section 78B-25-103 not later than 60 days after the day on which the court issues
125 an order allowing the discovery, unless the court orders a later hearing under Subsection (1)(b).

126 Section 6. Section **78B-25-106** is enacted to read:

127 **78B-25-106. Proof.**

128 In ruling on a motion under Section 78B-25-103, the court shall consider the pleadings,
129 the motion, any reply or response to the motion, and any evidence that could be considered in
130 ruling on a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.

131 Section 7. Section **78B-25-107** is enacted to read:

132 **78B-25-107. Dismissal of cause of action in whole or part.**

133 (1) In ruling on a motion under Section 78B-25-103, the court shall dismiss with
134 prejudice a cause of action, or part of a cause of action, if:

135 (a) the moving party establishes under Subsection 78B-25-102(2) that this chapter
136 applies;

137 (b) the responding party fails to establish under Subsection 78B-25-102(3) that this
138 chapter does not apply; and

139 (c) either:

140 (i) the responding party fails to establish a prima facie case as to each essential element
141 of the cause of action; or

142 (ii) the moving party establishes that:

143 (A) the responding party failed to state a cause of action upon which relief can be
144 granted; or

145 (B) there is no genuine issue as to any material fact and the moving party is entitled to
146 judgment as a matter of law on the cause of action or part of the cause of action.

147 (2) A voluntary dismissal without prejudice of a responding party's cause of action, or
148 part of a cause of action, that is the subject of a motion under Section 78B-25-103 does not
149 affect a moving party's right to obtain a ruling on the motion and seek costs, attorney fees, and
150 expenses under Section 78B-25-110.

151 (3) A voluntary dismissal with prejudice of a responding party's cause of action, or part
152 of a cause of action, that is the subject of a motion under Section 78B-25-103 establishes for
153 the purpose of Section 78B-25-110 that the moving party prevailed on the motion.

154 Section 8. Section **78B-25-108** is enacted to read:

155 **78B-25-108. Ruling.**

156 The court shall rule on a motion under Section 78B-25-103 not later than 60 days after

157 the day on which a hearing is held under Section 78B-25-105.

158 Section 9. Section **78B-25-109** is enacted to read:

159 **78B-25-109. Appeal.**

160 (1) A moving party may appeal as a matter of right from an order denying, in whole or
161 in part, a motion under Section 78B-25-103.

162 (2) The appeal shall be filed not later than 21 days after the day on which the order is
163 entered.

164 Section 10. Section **78B-25-110** is enacted to read:

165 **78B-25-110. Costs, attorney fees, and expenses.**

166 On a motion under Section 78B-25-103, the court shall award court costs, reasonable
167 attorney fees, and reasonable litigation expenses related to the motion:

168 (1) to the moving party if the moving party prevails on the motion; or

169 (2) to the responding party if the responding party prevails on the motion and the court
170 finds that the motion was frivolous or filed solely with intent to delay the proceeding.

171 Section 11. Section **78B-25-111** is enacted to read:

172 **78B-25-111. Construction.**

173 This chapter shall be broadly construed and applied to protect the exercise of the right
174 of freedom of speech and of the press, the right to assemble and petition, and the right of
175 association, guaranteed by the United States Constitution or the Utah Constitution.

176 Section 12. Section **78B-25-112** is enacted to read:

177 **78B-25-112. Uniformity of application and construction.**

178 In applying and construing this uniform act, consideration shall be given to the need to
179 promote uniformity of the law with respect to the uniform law's subject matter among states
180 that enact the uniform law.

181 Section 13. Section **78B-25-113** is enacted to read:

182 **78B-25-113. Transitional provision.**

183 This chapter applies to a civil action filed or cause of action asserted in a civil action on
184 or after May 3, 2023.

185 Section 14. Section **78B-25-114** is enacted to read:

186 **78B-25-114. Savings clause.**

187 This chapter does not affect a cause of action asserted before May 3, 2023, in a civil

188 action or a motion under Title 78B, Chapter 6, Part 14, Citizen Participation in Government
189 Act, regarding the cause of action.

190 Section 15. Section **78B-25-115** is enacted to read:

191 **78B-25-115. Severability.**

192 If any provision of this chapter or the chapter's application to any person or
193 circumstance is held invalid, the invalidity does not affect other provisions or applications of
194 this chapter which can be given effect without the invalid provision or application, and to this
195 end the provisions of this chapter are severable.

196 Section 16. **Repealer.**

197 This bill repeals:

198 Section **78B-6-1401, Title.**

199 Section **78B-6-1402, Definitions.**

200 Section **78B-6-1403, Applicability.**

201 Section **78B-6-1404, Procedures.**

202 Section **78B-6-1405, Counter actions -- Attorney fees -- Damages.**