

Strategic Lawsuit Against Public Participation Protections

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor:

LONG TITLE**General Description:**

This bill modifies the Uniform Public Expression Protection Act.

Highlighted Provisions:

This bill:

- modifies the scope of the Uniform Public Expression Protection Act (act) to apply only to causes of action for defamation or slander in relation to a claim involving exercise of a constitutional right;
- permits a party to issue a subpoena for testimony at a hearing conducted pursuant to the act, with some limitations;
- requires that a cause of action be dismissed without prejudice instead of with prejudice in some circumstances;
- removes the ability to seek costs, attorney fees, and expenses in some circumstances;
- modifies provisions addressing attorney fees and the precedential effects of a voluntary dismissal of a cause of action;
- provides that trial proceedings on discovery and certain causes of action are not stayed while an appeal is pending;
- modifies standards required to obtain a reward of costs, attorney fees, and expenses in some circumstances; and
- modifies language related to broadly construing the purpose of the act.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

78B-25-102, as enacted by Laws of Utah 2023, Chapter 488

78B-25-105, as enacted by Laws of Utah 2023, Chapter 488

31 **78B-25-106**, as enacted by Laws of Utah 2023, Chapter 488

32 **78B-25-107**, as enacted by Laws of Utah 2023, Chapter 488

33 **78B-25-109**, as enacted by Laws of Utah 2023, Chapter 488

34 **78B-25-110**, as enacted by Laws of Utah 2023, Chapter 488

35 **78B-25-111**, as enacted by Laws of Utah 2023, Chapter 488

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

38 Section 1. Section **78B-25-102** is amended to read:

39 **78B-25-102 . Scope.**

40 (1) As used in this section:

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

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

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

48 (2) Except as provided in Subsection (3), this chapter applies to a cause of action asserted in
49 a civil action against a person based on the person's:

50 (a) communication in a legislative, executive, judicial, administrative, or other
51 governmental proceeding;

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

54 (c) exercise of the right of freedom of speech or of the press, the right to assemble or
55 petition, or the right of association, guaranteed by the United States Constitution or
56 Utah Constitution, on a matter of public concern that gives rise to a defamation or
57 slander cause of action.

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

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

61 (b) by a governmental unit or an employee or agent of a governmental unit acting in an
62 official capacity to enforce a law to protect against an imminent threat to public
63 health or safety;[-or]

64 (c) against a person primarily engaged in the business of selling or leasing goods or

services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services[-] ; or

(d) against a person where:

(i) no defamation or slander is alleged; and

(ii) the exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Utah Constitution, is used only as evidence for a cause of action that is not subject to the application of this chapter.

Section 2. Section **78B-25-105** is amended to read:

78B-25-105 . Hearing.

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

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

(b) for other good cause.

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

(3) A party to the action may issue a subpoena to require a person to attend the hearing and to provide testimony, provided that the testimony is for the purpose of establishing a prima facie case as to each essential element of the cause of action.

Section 3. Section **78B-25-106** is amended to read:

78B-25-106 . Proof.

In ruling on a motion under Section 78B-25-103, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56, while providing the responding party all of the inferences provided under Utah Rules of Civil Procedure, Rule 12(b)(6).

Section 4. Section **78B-25-107** is amended to read:

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

(1) In ruling on a motion under Section 78B-25-103, the court shall dismiss [~~with~~] without prejudice a cause of action, or part of a cause of action, if:

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

- (b) the responding party fails to establish under Subsection 78B-25-102(3) that this chapter does not apply; and
- (c) either:
- (i) the responding party fails to establish a prima facie case as to each essential element of the cause of action; or
 - (ii) the moving party establishes that:
 - (A) the responding party failed to state a cause of action upon which relief can be granted; or
 - (B) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

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

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

Section 5. Section **78B-25-109** is amended to read:

78B-25-109 . Appeal.

- (1) A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under Section 78B-25-103.
- (2) The appeal shall be filed in accordance with Utah Rules of Appellate Procedure, Rule 4.
- (3) Notwithstanding any other provision of this section, a pending appeal shall not stay:
- (a) discovery; or
 - (b) trial proceedings on a cause of action that is not subject to the application of this chapter.

Section 6. Section **78B-25-110** is amended to read:

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

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

- (1) to the moving party if the moving party [~~prevails on the motion~~] shows that the filing of the complaint was frivolous; or
- (2) to the responding party if the responding party prevails on the motion and the court

133 finds that the motion was frivolous or filed solely with intent to delay the proceeding.

134 Section 7. Section **78B-25-111** is amended to read:

135 **78B-25-111 . Construction.**

136 This chapter shall be broadly construed and applied to protect the exercise of the right of
137 freedom of speech and of the press, the right to assemble and petition, and the right of
138 association, guaranteed by the United States Constitution or the Utah Constitution, without
139 impacting Utah Constitution, Article I, Section 11.

140 Section 8. **Effective Date.**

141 This bill takes effect on May 7, 2025.

142 Section 9. **Retrospective operation.**

143 This bill has retrospective operation to May 3, 2023.