

Amendments to Utah Citizen Participation in Government Act (78B-6-1401-1405)

(1) " Constitutionally protected communication" means a communication in furtherance of a right to petition or a right to free speech, which right is exercised in connection with an issue of public concern or social significance under the following circumstances:

(a) a written, oral, audio, visual or electronic statement or writing in connection with an issue under consideration or review by a legislative, executive, judicial, administrative or other governmental body or in another governmental or official proceeding;

(b) a written, oral, audio, visual or electronic statement or writing that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, administrative or other governmental body or in another governmental or official proceeding;

(c) a written, oral, audio, visual or electronic statement or writing reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, administrative or other governmental body or in another governmental or official proceeding; or

(d) a written, oral, audio, visual or electronic statement or writing that falls within the protection of the right to petition government or the right to free speech under the Constitution of the United States or the Constitution of Utah.

(2) "Moving party" means any person on whose behalf the motion is filed.

(3) "Responding party" means any person against whom the motion described in Section [78B-6-1403](#) is filed.

78B-6-1403. Applicability.

(1) A defendant in an legal action who believes that the action is primarily based on, relates to, or is in response to the defendant's constitutionally protected communications and is done primarily to harass the defendant, may file:

(a) an answer supported by an affidavit of the defendant detailing his belief that the action is based on a constitutionally protected communication and specifying in detail the conduct asserted to be a constitutionally protected communication believed to give rise to the complaint; and

(b) a motion for judgment on the pleadings in accordance with the Utah Rules of Civil Procedure Rule 12(c).

(2) Affidavits detailing activity not adequately detailed in the answer may be filed with the motion.

78B-6-1404. Procedures.

- (1) On the filing of a motion for judgment on the pleadings:
 - (a) all discovery shall be stayed pending resolution of the motion unless the court orders otherwise;
 - (b) the trial court shall hear and determine the motion as expeditiously as possible with the moving party providing by clear and convincing evidence that the is based on a constitutionally protected communication; and
 - (c) the moving party shall have a right to seek interlocutory appeal from a trial court order denying the motion or from a trial court failure to rule on the motion in expedited fashion.
- (2) The court shall dismiss any action arising from a constitutionally protected communication if the court initially determines that the moving party establishes by clear and convincing evidence that the claim is based upon a constitutionally protected communication and, having made that initial determination, the court determines, crediting evidence in favor of the nonmoving party, that the nonmoving party has not demonstrated a claim which is both legally sufficient and supported by a prima facie showing of facts on the parts of the claim which are not based upon, in whole or in part, or are not separable from, a constitutionally protected communication.
- (3) Any government body to which the moving party's acts were directed or the attorney general may intervene to defend or otherwise support the moving party.

78B-6-1405. Counter actions -- Attorney fees -- Damages.

- (1) A defendant in an action involving constitutionally protected communication claim, cross-claim, or counterclaim to recover:
 - (a) costs and reasonable attorney fees, upon a demonstration that the action involving public participation in the process of government was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law; and
 - (b) other compensatory damages upon an additional demonstration that the action involving a constitutionally protected communication was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S. Constitution.
- (2) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.