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PUBLIC EXPRESSION PROTECTION ACT

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: A. Cory Maloy

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

Legislative Vote: 14 voting for 1 voting against 6 absent

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:



28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

- 31 **78B-25-101**, Utah Code Annotated 1953
- 32 **78B-25-102**, Utah Code Annotated 1953
- 33 **78B-25-103**, Utah Code Annotated 1953
- 34 **78B-25-104**, Utah Code Annotated 1953
- 35 **78B-25-105**, Utah Code Annotated 1953
- 36 **78B-25-106**, Utah Code Annotated 1953
- 37 **78B-25-107**, Utah Code Annotated 1953
- 38 **78B-25-108**, Utah Code Annotated 1953
- 39 **78B-25-109**, Utah Code Annotated 1953
- 40 **78B-25-110**, Utah Code Annotated 1953
- 41 **78B-25-111**, Utah Code Annotated 1953
- 42 **78B-25-112**, Utah Code Annotated 1953
- 43 **78B-25-113**, Utah Code Annotated 1953
- 44 **78B-25-114**, Utah Code Annotated 1953
- 45 **78B-25-115**, Utah Code Annotated 1953

46 REPEALS:

- 47 **78B-6-1401**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 48 **78B-6-1402**, as last amended by Laws of Utah 2010, Chapter 254
- 49 **78B-6-1403**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 50 **78B-6-1404**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 51 **78B-6-1405**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

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

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

56 **78B-25-101. Title.**

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

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

59 **78B-25-102. Scope.**

60 (1) As used in this section:

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

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

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

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

70 (a) communication in a legislative, executive, judicial, administrative, or other
71 governmental proceeding;

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

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

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

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

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

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

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

87 **78B-25-103. Special motion for expedited relief.**

88 Not later than 60 days after the day on which a party is served with a complaint,
89 crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to

90 which this chapter applies, or at a later time on a showing of good cause, the party may file a
91 special motion for expedited relief to dismiss the cause of action or part of the cause of action.

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

93 **78B-25-104. Stay.**

94 (1) Except as provided in Subsections (4) through (7), on the filing of a motion under
95 Section [78B-25-103](#):

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

98 (b) on motion by the moving party, the court may stay a hearing or motion involving
99 another party, or discovery by another party, if the hearing or ruling on the motion would
100 adjudicate, or the discovery would relate to, an issue material to the motion under Section
101 [78B-25-103](#).

102 (2) A stay under Subsection (1) remains in effect until the day on which an order ruling
103 on the motion under Section [78B-25-103](#) is entered and expiration of the time under ~~§~~→ [Section
104 ~~78B-25-109]~~ Utah Rules of Appellate Procedure, Rule 4, ←~~§~~ for the moving party to appeal the
104a order.

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

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

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

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

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

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

119 (a) a motion unrelated to the motion under Section [78B-25-103](#); and

120 (b) a motion seeking a special or preliminary injunction to protect against an imminent

121 threat to public health or safety.

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

123 **78B-25-105. Hearing.**

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

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

127 (b) for other good cause.

128 (2) If the court orders a later hearing under Subsection (1)(a), the court shall hear the

129 motion under Section [78B-25-103](#) not later than 60 days after the day on which the court issues
130 an order allowing the discovery, unless the court orders a later hearing under Subsection (1)(b).

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

132 **78B-25-106. Proof.**

133 In ruling on a motion under Section [78B-25-103](#), the court shall consider the pleadings,
134 the motion, any reply or response to the motion, and any evidence that could be considered in
135 ruling on a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.

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

137 **78B-25-107. Dismissal of cause of action in whole or part.**

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

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

142 (b) the responding party fails to establish under Subsection [78B-25-102](#)(3) that this
143 chapter does not apply; and

144 (c) either:

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

147 (ii) the moving party establishes that:

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

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

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

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

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

160 **78B-25-108. Ruling.**

161 The court shall rule on a motion under Section 78B-25-103 not later than 60 days after
162 the day on which a hearing is held under Section 78B-25-105.

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

164 **78B-25-109. Appeal.**

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

167 (2) The appeal shall be filed ~~Ĥ~~→ **[not later than 21 days after the day on which the order is**
168 **entered.] in accordance with Utah Rules of Appellate Procedure, Rule 4. ←Ĥ**

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

170 **78B-25-110. Costs, attorney fees, and expenses.**

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

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

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

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

177 **78B-25-111. Construction.**

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

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

182 **78B-25-112. Uniformity of application and construction.**

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

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

187 **78B-25-113. Transitional provision.**

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

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

191 **78B-25-114. Savings clause.**

192 This chapter does not affect a cause of action asserted before May 3, 2023, in a civil
193 action or a motion under $\hat{H} \rightarrow$ [~~Title 78B,~~] $\leftarrow \hat{H}$ Chapter 6, Part 14, Citizen Participation in
193a Government
194 Act, regarding the cause of action.

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

196 **78B-25-115. Severability.**

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

201 Section 16. **Repealer.**

202 This bill repeals:

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

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

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

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

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