

PUBLIC EXPRESSION PROTECTION ACT

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: A. Cory Maloy

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

- 30 **78B-25-103**, Utah Code Annotated 1953
- 31 **78B-25-104**, Utah Code Annotated 1953
- 32 **78B-25-105**, Utah Code Annotated 1953
- 33 **78B-25-106**, Utah Code Annotated 1953
- 34 **78B-25-107**, Utah Code Annotated 1953
- 35 **78B-25-108**, Utah Code Annotated 1953
- 36 **78B-25-109**, Utah Code Annotated 1953
- 37 **78B-25-110**, Utah Code Annotated 1953
- 38 **78B-25-111**, Utah Code Annotated 1953
- 39 **78B-25-112**, Utah Code Annotated 1953
- 40 **78B-25-113**, Utah Code Annotated 1953
- 41 **78B-25-114**, Utah Code Annotated 1953
- 42 **78B-25-115**, Utah Code Annotated 1953

43 REPEALS:

- 44 **78B-6-1401**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 45 **78B-6-1402**, as last amended by Laws of Utah 2010, Chapter 254
- 46 **78B-6-1403**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 47 **78B-6-1404**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 48 **78B-6-1405**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

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

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

53 **78B-25-101. Title.**

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

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

56 **78B-25-102. Scope.**

57 (1) As used in this section:

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

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

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

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

67 (a) communication in a legislative, executive, judicial, administrative, or other
68 governmental proceeding;

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

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

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

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

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

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

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

84 **78B-25-103. Special motion for expedited relief.**

85 Not later than 60 days after the day on which a party is served with a complaint,

86 crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action to
87 which this chapter applies, or at a later time on a showing of good cause, the party may file a
88 special motion for expedited relief to dismiss the cause of action or part of the cause of action.

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

90 **78B-25-104. Stay.**

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

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

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

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

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

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

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

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

113 (6) A stay under this section does not affect a party's ability to voluntarily dismiss a

114 cause of action or part of a cause of action or move to sever a cause of action.

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

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

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

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

120 **78B-25-105. Hearing.**

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

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

124 (b) for other good cause.

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

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

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

129 **78B-25-106. Proof.**

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

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

134 **78B-25-107. Dismissal of cause of action in whole or part.**

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

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

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

141 (c) either:

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

144 (ii) the moving party establishes that:

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

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

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

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

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

157 **78B-25-108. Ruling.**

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

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

161 **78B-25-109. Appeal.**

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

164 (2) The appeal shall be filed in accordance with Utah Rules of Appellate Procedure,
165 Rule 4.

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

167 **78B-25-110. Costs, attorney fees, and expenses.**

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

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

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

174 **78B-25-111. Construction.**

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

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

179 **78B-25-112. Uniformity of application and construction.**

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

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

184 **78B-25-113. Transitional provision.**

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

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

188 **78B-25-114. Savings clause.**

189 This chapter does not affect a cause of action asserted before May 3, 2023, in a civil
190 action or a motion under Chapter 6, Part 14, Citizen Participation in Government Act,
191 regarding the cause of action.

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

193 **78B-25-115. Severability.**

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

- 198 Section 16. **Repealer.**
- 199 This bill repeals:
- 200 Section **78B-6-1401**, **Title.**
- 201 Section **78B-6-1402**, **Definitions.**
- 202 Section **78B-6-1403**, **Applicability.**
- 203 Section **78B-6-1404**, **Procedures.**
- 204 Section **78B-6-1405**, **Counter actions -- Attorney fees -- Damages.**