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**SENATE BILL 5009**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Padden and Pedersen; by request of Uniform Law Commission  
Prefiled 12/09/20.

1 AN ACT Relating to the uniform public expression protection act;  
2 adding a new chapter to Title 4 RCW; and repealing RCW 4.24.525.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be known and  
5 cited as the uniform public expression protection act.

6 NEW SECTION. **Sec. 2.** SCOPE. (1) In this section:

7 (a) "Goods or services" does not include the creation,  
8 dissemination, exhibition, or advertisement or similar promotion of a  
9 dramatic, literary, musical, political, journalistic, or artistic  
10 work.

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

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

16 (2) Except as otherwise provided in subsection (3) of this  
17 section, this chapter applies to a cause of action asserted in a  
18 civil action against a person based on the person's:

19 (a) Communication in a legislative, executive, judicial,  
20 administrative, or other governmental proceeding;

1 (b) Communication on an issue under consideration or review in a  
2 legislative, executive, judicial, administrative, or other  
3 governmental proceeding; or

4 (c) Exercise of the right of freedom of speech or of the press,  
5 the right to assemble or petition, or the right of association,  
6 guaranteed by the United States Constitution or Washington state  
7 Constitution, on a matter of public concern.

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

9 (a) Against a governmental unit or an employee or agent of a  
10 governmental unit acting or purporting to act in an official  
11 capacity;

12 (b) By a governmental unit or an employee or agent of a  
13 governmental unit acting in an official capacity to enforce a law to  
14 protect against an imminent threat to public health or safety; or

15 (c) Against a person primarily engaged in the business of selling  
16 or leasing goods or services if the cause of action arises out of a  
17 communication related to the person's sale or lease of the goods or  
18 services.

19 NEW SECTION. **Sec. 3.** SPECIAL MOTION FOR EXPEDITED RELIEF. Not  
20 later than sixty days after a party is served with a complaint,  
21 cross-claim, counterclaim, third-party claim, or other pleading that  
22 asserts a cause of action to which this chapter applies, or at a  
23 later time on a showing of good cause, the party may file a special  
24 motion for expedited relief to dismiss the cause of action or part of  
25 the cause of action.

26 NEW SECTION. **Sec. 4.** STAY. (1) Except as otherwise provided in  
27 subsections (4) through (7) of this section, on the filing of a  
28 motion under section 3 of this act:

29 (a) All other proceedings between the moving party and responding  
30 party, including discovery and a pending hearing or motion, are  
31 stayed; and

32 (b) On motion by the moving party, the court may stay a hearing  
33 or motion involving another party, or discovery by another party, if  
34 the hearing or ruling on the motion would adjudicate, or the  
35 discovery would relate to, an issue material to the motion under  
36 section 3 of this act.

37 (2) A stay under subsection (1) of this section remains in effect  
38 until entry of an order ruling on the motion under section 3 of this

1 act and expiration of the time under section 9 of this act for the  
2 moving party to appeal the order.

3 (3) Except as otherwise provided in subsections (5), (6), and (7)  
4 of this section, if a party appeals from an order ruling on a motion  
5 under section 3 of this act, all proceedings between all parties in  
6 the action are stayed. The stay remains in effect until the  
7 conclusion of the appeal.

8 (4) During a stay under subsection (1) of this section, the court  
9 may allow limited discovery if a party shows that specific  
10 information is necessary to establish whether a party has satisfied  
11 or failed to satisfy a burden under section 7(1) of this act and the  
12 information is not reasonably available unless discovery is allowed.

13 (5) A motion under section 10 of this act for costs, attorneys'  
14 fees, and expenses is not subject to a stay under this section.

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

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

20 (a) A motion unrelated to the motion under section 3 of this act;  
21 and

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

24 NEW SECTION. **Sec. 5.** HEARING. (1) The court shall hear a motion  
25 under section 3 of this act not later than sixty days after filing of  
26 the motion, unless the court orders a later hearing:

27 (a) To allow discovery under section 4(4) of this act; or

28 (b) For other good cause.

29 (2) If the court orders a later hearing under subsection (1)(a)  
30 of this section, the court shall hear the motion under section 3 of  
31 this act not later than sixty days after the court order allowing the  
32 discovery, unless the court orders a later hearing under subsection  
33 (1)(b) of this section.

34 NEW SECTION. **Sec. 6.** PROOF. In ruling on a motion under section  
35 3 of this act, the court shall consider the pleadings, the motion,  
36 any reply or response to the motion, and any evidence that could be  
37 considered in ruling on a motion for summary judgment under superior  
38 court civil rule 56.

1        NEW SECTION.    **Sec. 7.**    DISMISSAL OF CAUSE OF ACTION IN WHOLE OR  
2 PART. (1) In ruling on a motion under section 3 of this act, the  
3 court shall dismiss with prejudice a cause of action, or part of a  
4 cause of action, if:

5            (a) The moving party establishes under section 2(2) of this act  
6 that this chapter applies;

7            (b) The responding party fails to establish under section 2(3) of  
8 this act that this chapter does not apply; and

9            (c) Either:

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

12           (ii) The moving party establishes that:

13           (A) The responding party failed to state a cause of action upon  
14 which relief can be granted; or

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

18           (2) A voluntary dismissal without prejudice of a responding  
19 party's cause of action, or part of a cause of action, that is the  
20 subject of a motion under section 3 of this act does not affect a  
21 moving party's right to obtain a ruling on the motion and seek costs,  
22 attorneys' fees, and expenses under section 10 of this act.

23           (3) A voluntary dismissal with prejudice of a responding party's  
24 cause of action, or part of a cause of action, that is the subject of  
25 a motion under section 3 of this act establishes for the purpose of  
26 section 10 of this act that the moving party prevailed on the motion.

27        NEW SECTION.    **Sec. 8.**    RULING. The court shall rule on a motion  
28 under section 3 of this act not later than sixty days after a hearing  
29 under section 5 of this act.

30        NEW SECTION.    **Sec. 9.**    APPEAL. A moving party may appeal as a  
31 matter of right from an order denying, in whole or in part, a motion  
32 under section 3 of this act. The appeal must be filed not later than  
33 twenty-one days after entry of the order.

34        NEW SECTION.    **Sec. 10.**    COSTS, ATTORNEYS' FEES, AND EXPENSES. On  
35 a motion under section 3 of this act, the court shall award court  
36 costs, reasonable attorneys' fees, and reasonable litigation expenses  
37 related to the motion:

1 (1) To the moving party if the moving party prevails on the  
2 motion; or

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

6 NEW SECTION. **Sec. 11.** CONSTRUCTION. This chapter must be  
7 broadly construed and applied to protect the exercise of the right of  
8 freedom of speech and of the press, the right to assemble and  
9 petition, and the right of association, guaranteed by the United  
10 States Constitution or the Washington state Constitution.

11 NEW SECTION. **Sec. 12.** UNIFORMITY OF APPLICATION AND  
12 CONSTRUCTION. In applying and construing this uniform act,  
13 consideration must be given to the need to promote uniformity of the  
14 law with respect to its subject matter among states that enact it.

15 NEW SECTION. **Sec. 13.** TRANSITIONAL PROVISION. This chapter  
16 applies to a civil action filed or cause of action asserted in a  
17 civil action on or after the effective date of this section.

18 NEW SECTION. **Sec. 14.** SEVERABILITY. If any provision of this  
19 act or its application to any person or circumstance is held invalid,  
20 the remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 15.** RCW 4.24.525 (Public participation  
23 lawsuits—Special motion to strike claim—Damages, costs, attorneys'  
24 fees, other relief—Definitions) and 2010 c 118 s 2 are each repealed.

25 NEW SECTION. **Sec. 16.** Sections 1 through 13 of this act  
26 constitute a new chapter in Title 4 RCW.

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