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**SUBSTITUTE SENATE BILL 5009**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Padden, Pedersen, Brown, McCune, and Mullet; by request of Uniform Law Commission)

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;

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) (a) Except when (b) of this subsection applies, this chapter  
9 does not apply to a cause of action asserted:

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

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

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

20 (iv) Against a person named in a civil suit brought by a victim  
21 of a crime against a perpetrator;

22 (v) Against a person named in a civil suit brought to establish  
23 or declare real property possessory rights, use of real property,  
24 recovery of real property, quiet title to real property, or related  
25 claims relating to real property;

26 (vi) Seeking recovery for bodily injury, wrongful death, or  
27 survival or to statements made regarding that legal action, unless  
28 the claims involve damage to reputation;

29 (vii) Brought under the insurance code or arising out of an  
30 insurance contract;

31 (viii) Based on a common law fraud claim;

32 (ix) Brought under Title 26 RCW, or counterclaims based on a  
33 criminal no-contact order pursuant to chapter 10.99 RCW, for or based  
34 on an antiharassment order under chapter 10.14 RCW or RCW 9A.46.050,  
35 for or based on a sexual assault protection order under chapter 7.90  
36 RCW, or for or based on a vulnerable adult protection order under  
37 chapter 74.34 RCW;

38 (x) Brought under Title 49 RCW; negligent supervision, retention,  
39 or infliction of emotional distress unless the claims involve damage  
40 to reputation; wrongful discharge in violation of public policy;

1 whistleblowing, including chapters 42.40 and 42.41 RCW; or  
2 enforcement of employee rights under civil service, collective  
3 bargaining, or handbooks and policies; or

4 (xi) Brought under the consumer protection act, chapter 19.86  
5 RCW.

6 (b) This chapter applies to a cause of action asserted under  
7 (a)(iii) through (xi) of this subsection when the cause of action is:

8 (i) A legal action against a person arising from any act of that  
9 person, whether public or private, related to the gathering,  
10 receiving, posting, or processing of information for communication to  
11 the public, whether or not the information is actually communicated  
12 to the public, for the creation, dissemination, exhibition, or  
13 advertisement or other similar promotion of a dramatic, literary,  
14 musical, political, journalistic, or otherwise artistic work,  
15 including audio-visual work regardless of the means of distribution,  
16 a motion picture, a television or radio program, or an article  
17 published in a newspaper, website, magazine, or other platform, no  
18 matter the method or extent of distribution; or

19 (ii) A legal action against a person related to the  
20 communication, gathering, receiving, posting, or processing of  
21 consumer opinions or commentary, evaluations of consumer complaints,  
22 or reviews or ratings of businesses.

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

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

33 (a) All other proceedings between the moving party and responding  
34 party, including discovery and a pending hearing or motion, are  
35 stayed; and

36 (b) On motion by the moving party, the court may stay a hearing  
37 or motion involving another party, or discovery by another party, if  
38 the hearing or ruling on the motion would adjudicate, or the

1 discovery would relate to, an issue material to the motion under  
2 section 3 of this act.

3 (2) A stay under subsection (1) of this section remains in effect  
4 until entry of an order ruling on the motion under section 3 of this  
5 act and expiration of the time under section 9 of this act for the  
6 moving party to appeal the order.

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

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

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

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

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

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

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

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

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

32 (b) For other good cause.

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

1        NEW SECTION.    **Sec. 6.**    PROOF. In ruling on a motion under section  
2 3 of this act, the court shall consider the pleadings, the motion,  
3 any reply or response to the motion, and any evidence that could be  
4 considered in ruling on a motion for summary judgment under superior  
5 court civil rule 56.

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

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

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

14        (c) Either:

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

17            (ii) The moving party establishes that:

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

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

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

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

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

35        NEW SECTION.    **Sec. 9.**    APPEAL. A moving party may appeal as a  
36 matter of right from an order denying, in whole or in part, a motion

1 under section 3 of this act. The appeal must be filed not later than  
2 twenty-one days after entry of the order.

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

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

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

12 NEW SECTION. **Sec. 11.** CONSTRUCTION. This chapter must be  
13 broadly construed and applied to protect the exercise of the right of  
14 freedom of speech and of the press, the right to assemble and  
15 petition, and the right of association, guaranteed by the United  
16 States Constitution or the Washington state Constitution.

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

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

24 NEW SECTION. **Sec. 14.** SEVERABILITY. If any provision of this  
25 act or its application to any person or circumstance is held invalid,  
26 the remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

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

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

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