

SSB 5009 - H COMM AMD

By Committee on Civil Rights & Judiciary

ADOPTED 04/09/2021

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

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

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

20 (b) Communication on an issue under consideration or review in a
21 legislative, executive, judicial, administrative, or other
22 governmental proceeding;

23 (c) Exercise of the right of freedom of speech or of the press,
24 the right to assemble or petition, or the right of association,
25 guaranteed by the United States Constitution or Washington state
26 Constitution, on a matter of public concern.

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

1 (i) Against a governmental unit or an employee or agent of a
2 governmental unit acting or purporting to act in an official
3 capacity;

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

7 (iii) Against a person primarily engaged in the business of
8 selling or leasing goods or services if the cause of action arises
9 out of a communication related to the person's sale or lease of the
10 goods or services;

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

13 (v) Against a person named in a civil suit brought to establish
14 or declare real property possessory rights, use of real property,
15 recovery of real property, quiet title to real property, or related
16 claims relating to real property;

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

20 (vii) Brought under the insurance code or arising out of an
21 insurance contract;

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

23 (ix) Brought under Title 26 RCW, or counterclaims based on a
24 criminal no-contact order pursuant to chapter 10.99 RCW, for or based
25 on an antiharassment order under chapter 10.14 RCW or RCW 9A.46.050,
26 for or based on a sexual assault protection order under chapter 7.90
27 RCW, or for or based on a vulnerable adult protection order under
28 chapter 74.34 RCW;

29 (x) Brought under Title 49 RCW; negligent supervision, retention,
30 or infliction of emotional distress unless the claims involve damage
31 to reputation; wrongful discharge in violation of public policy;
32 whistleblowing, including chapters 42.40 and 42.41 RCW; or
33 enforcement of employee rights under civil service, collective
34 bargaining, or handbooks and policies;

35 (xi) Brought under the consumer protection act, chapter 19.86
36 RCW; or

37 (xii) Any claim brought under federal law.

38 (b) This chapter applies to a cause of action asserted under
39 (a)(iii), (viii), or (xi) of this subsection when the cause of action
40 is:

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

12 (ii) A legal action against a person related to the
13 communication, gathering, receiving, posting, or processing of
14 consumer opinions or commentary, evaluations of consumer complaints,
15 or reviews or ratings of businesses.

16 NEW SECTION. **Sec. 3.** SPECIAL MOTION FOR EXPEDITED RELIEF. (1)
17 Prior to filing a special motion for expedited relief under
18 subsection (2) of this section, the moving party shall provide
19 written notice to the responding party of its intent to file the
20 motion at least 14 days prior to filing the motion. During that time,
21 the responding party may withdraw or amend the pleading in accordance
22 with applicable court rules, but shall otherwise comply with the stay
23 obligations listed in section 4 of this act. If the moving party
24 fails to provide the notice required under this subsection, such
25 failure shall not affect the moving party's right to relief under
26 this act, but the moving party shall not be entitled to recover
27 reasonable attorneys' fees under section 10 of this act.

28 (2) Not later than sixty days after a party is served with a
29 complaint, cross-claim, counterclaim, third-party claim, or other
30 pleading that asserts a cause of action to which this chapter
31 applies, or at a later time on a showing of good cause, the party may
32 file a special motion for expedited relief to dismiss the cause of
33 action or part of the cause of action.

34 NEW SECTION. **Sec. 4.** STAY. (1) Except as otherwise provided in
35 subsections (4) through (7) of this section, on the earlier of the
36 giving of notice of intent to file a motion under section 3(1) of
37 this act or the filing of a motion under section 3(2) of this act:

1 (a) All other proceedings between the moving party and responding
2 party, including discovery and a pending hearing or motion, are
3 stayed; and

4 (b) On motion by the moving party, the court may stay a hearing
5 or motion involving another party, or discovery by another party, if
6 the hearing or ruling on the motion would adjudicate, or the
7 discovery would relate to, an issue material to the motion under
8 section 3 of this act.

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

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

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

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

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

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

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

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

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

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

38 (b) For other good cause.

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

6 NEW SECTION. **Sec. 6.** PROOF. In ruling on a motion under section
7 3 of this act, the court shall consider the pleadings, the motion,
8 any reply or response to the motion, and any evidence that could be
9 considered in ruling on a motion for summary judgment under superior
10 court civil rule 56.

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

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

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

19 (c) Either:

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

22 (ii) The moving party establishes that:

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

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

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

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

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

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

6 Correct the title.

EFFECT: Retains the underlying bill with the following modifications:

(1) Adds an exception in section 2(3)(a) for claims brought under federal law;

(2) Limits the scope of section 2(3)(b) carve-ins for gathering, receiving, posting, or processing information for communication to the public; and consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses;

(3) Requires the moving party to provide 14 days advance notice of intent to file a special motion;

(4) Modifies the stay of all proceedings to start upon notice or filing of a special motion;

(5) Modifies fee-shifting in favor of the responding party, changing the requirement that the motion be found frivolous to a requirement that the motion be found not substantially justified.

--- END ---