

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5009

67th Legislature
2021 Regular Session

Passed by the Senate April 14, 2021
Yeas 48 Nays 0

President of the Senate

Passed by the House April 9, 2021
Yeas 97 Nays 1

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5009** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5009

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

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)

READ FIRST TIME 02/05/21.

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;

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

6 (xii) Any claim brought under federal law.

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

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

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

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

37 (2) Not later than sixty days after a party is served with a
38 complaint, cross-claim, counterclaim, third-party claim, or other
39 pleading that asserts a cause of action to which this chapter

1 applies, or at a later time on a showing of good cause, the party may
2 file a special motion for expedited relief to dismiss the cause of
3 action or part of the cause of action.

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

8 (a) All other proceedings between the moving party and responding
9 party, including discovery and a pending hearing or motion, are
10 stayed; and

11 (b) On motion by the moving party, the court may stay a hearing
12 or motion involving another party, or discovery by another party, if
13 the hearing or ruling on the motion would adjudicate, or the
14 discovery would relate to, an issue material to the motion under
15 section 3 of this act.

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

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

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

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

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

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

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

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

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

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

7 (b) For other good cause.

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

13 NEW SECTION. **Sec. 6.** PROOF. In ruling on a motion under section
14 3 of this act, the court shall consider the pleadings, the motion,
15 any reply or response to the motion, and any evidence that could be
16 considered in ruling on a motion for summary judgment under superior
17 court civil rule 56.

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

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

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

26 (c) Either:

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

29 (ii) The moving party establishes that:

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

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

35 (2) A voluntary dismissal without prejudice of a responding
36 party's cause of action, or part of a cause of action, that is the
37 subject of a motion under section 3 of this act does not affect a

1 moving party's right to obtain a ruling on the motion and seek costs,
2 attorneys' fees, and expenses under section 10 of this act.

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

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

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

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

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

20 (2) To the responding party if the responding party prevails on
21 the motion and the court finds that the motion was not substantially
22 justified or filed solely with intent to delay the proceeding.

23 NEW SECTION. **Sec. 11.** CONSTRUCTION. This chapter must be
24 broadly construed and applied to protect the exercise of the right of
25 freedom of speech and of the press, the right to assemble and
26 petition, and the right of association, guaranteed by the United
27 States Constitution or the Washington state Constitution.

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

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

1 NEW SECTION. **Sec. 14.** SEVERABILITY. If any provision of this
2 act or its application to any person or circumstance is held invalid,
3 the remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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

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

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