

**Senate File 2178 - Introduced**

SENATE FILE 2178

BY PETERSEN

**A BILL FOR**

1 An Act establishing certain privileges for communications  
2 made regarding incidents of sexual assault, harassment, or  
3 discrimination and creating a special motion for expedited  
4 relief in such actions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 659B.1 Definitions.

2 For the purposes of this chapter, unless the context  
3 otherwise requires:

4 1. "*Communication*" means factual information related to  
5 an incident of sexual assault, harassment, or discrimination  
6 experienced by the individual making the communication,  
7 including any of the following:

8 a. An act of sexual harassment, as described in section  
9 708.7, subsection 1, paragraph "a", subparagraph (5).

10 b. An act of workplace harassment or discrimination, failure  
11 to prevent an act of workplace harassment or discrimination,  
12 aiding, abetting, inciting, compelling, or coercing an  
13 act of workplace harassment or discrimination, or an act  
14 of retaliation against a person for reporting or opposing  
15 workplace harassment or discrimination.

16 c. An act of sexual harassment.

17 d. An act of harassment or discrimination, or an act of  
18 retaliation against a person for reporting harassment or  
19 discrimination.

20 e. An act of cyber sexual bullying.

21 2. "*Cyber sexual bullying*" means the dissemination of, or  
22 the solicitation or incitement to disseminate, a sexual image  
23 by a student to another student or to school personnel by means  
24 of an electronic act that has or can be reasonably predicted to  
25 have one or more of the following effects:

26 a. Placing a reasonable student in fear of harm to that  
27 student's person or property.

28 b. Causing a reasonable student to experience a  
29 substantially detrimental effect on the student's physical or  
30 mental health.

31 c. Causing a reasonable student to experience substantial  
32 interference with the student's academic performance.

33 d. Causing a reasonable student to experience substantial  
34 interference with the student's ability to participate in or  
35 benefit from the services, activities, or privileges provided

1 by a school.

2 3. "*Sexual harassment*" means unwelcome sexual advances,  
3 requests for sexual favors, and other verbal, visual, or  
4 physical conduct of a sexual nature, made by someone from or  
5 in the work or educational setting, under any of the following  
6 conditions:

7 a. Submission to the conduct is explicitly or implicitly  
8 made a term or a condition of an individual's employment,  
9 academic status, or progress.

10 b. Submission to, or rejection of, the conduct by the  
11 individual is used as the basis of employment or academic  
12 decisions affecting the individual.

13 c. The conduct has the purpose or effect of having a  
14 negative impact upon the individual's work or academic  
15 performance, or of creating an intimidating, hostile, or  
16 offensive work or educational environment.

17 d. Submission to, or rejection of, the conduct by the  
18 individual is used as the basis for any decision affecting  
19 the individual regarding benefits and services, honors,  
20 programs, or activities available at or through the educational  
21 institution.

22 Sec. 2. NEW SECTION. 659B.2 Incidents of sexual assault,  
23 harassment, or discrimination — privileged communications.

24 1. A communication made by a person who has or had a  
25 reasonable basis to file a complaint of sexual assault,  
26 harassment, or discrimination regarding the communication,  
27 whether or not the complaint was filed, shall not be liable for  
28 libel or slander if the communication was made without malice.

29 2. If a defamation action is brought against a person who  
30 made such a privileged communication, the defendant may apply  
31 for expedited review pursuant to section 659B.3.

32 3. A prevailing defendant in any civil action brought  
33 pursuant to chapter 659 for making a communication that  
34 is privileged under this section is entitled to all of the  
35 following:

1     *a.* Reasonable attorney fees and costs.

2     *b.* Noneconomic damages for any harm caused to the defendant  
3 by the libel or slander action.

4     *c.* Punitive damages.

5     *d.* Any other relief otherwise permitted by law.

6     Sec. 3. NEW SECTION. **659B.3 Special motion for expedited**  
7 **relief.**

8     Not later than sixty days after a party is served with a  
9 petition, crossclaim, counterclaim, third-party claim, or other  
10 pleading that asserts a cause of action to which this chapter  
11 applies, or at a later time on a showing of good cause, the  
12 party may file a special motion for expedited relief to dismiss  
13 the cause of action or part of the cause of action.

14     Sec. 4. NEW SECTION. **659B.4 Stay.**

15     1. Except as otherwise provided in subsections 4 through  
16 7, on the filing of a motion under section 659B.3, all of the  
17 following apply:

18     *a.* All other proceedings between the moving party and  
19 responding party, including discovery and a pending hearing or  
20 motion, are stayed.

21     *b.* On motion by the moving party, the court may stay a  
22 hearing or motion involving another party, or discovery by  
23 another party, if the hearing or ruling on the motion would  
24 adjudicate, or the discovery would relate to, an issue material  
25 to the motion under section 659B.3.

26     2. A stay under subsection 1 remains in effect until entry  
27 of an order ruling on the motion under section 659B.3 and  
28 expiration of the time under section 659B.9 for the moving  
29 party to appeal the order.

30     3. Except as otherwise provided in subsections 5, 6, and  
31 7, if a party appeals from an order ruling on a motion under  
32 section 659B.3, all proceedings between all parties in the  
33 action are stayed. The stay remains in effect until the  
34 conclusion of the appeal.

35     4. During a stay under subsection 1, the court may allow

1 limited discovery if a party shows that specific information is  
2 necessary to establish whether a party has satisfied or failed  
3 to satisfy a burden under section 659B.7, subsection 1, and  
4 the information is not reasonably available unless discovery  
5 is allowed.

6 5. A motion under section 659B.10 for costs, attorney fees,  
7 and expenses is not subject to a stay under this section.

8 6. A stay under this section does not affect a party's  
9 ability to voluntarily dismiss a cause of action or part of a  
10 cause of action or move to sever a cause of action.

11 7. During a stay under this section, the court for good  
12 cause may hear and rule on all of the following:

13 a. A motion unrelated to the motion under section 659B.3.

14 b. A motion seeking a special or preliminary injunction to  
15 protect against an imminent threat to public health or safety.

16 Sec. 5. NEW SECTION. **659B.5 Hearing.**

17 1. The court shall hear a motion under section 659B.3 not  
18 later than sixty days after filing of the motion, unless the  
19 court orders a later hearing for any of the following:

20 a. To allow discovery under section 659B.4, subsection 4.

21 b. For other good cause.

22 2. If the court orders a later hearing under subsection 1,  
23 paragraph "a", the court shall hear the motion under section  
24 659B.3 not later than sixty days after the court order allowing  
25 the discovery, unless the court orders a later hearing under  
26 subsection 1, paragraph "b".

27 Sec. 6. NEW SECTION. **659B.6 Proof.**

28 In ruling on a motion under section 659B.3, the court shall  
29 consider the pleadings, the motion, any reply or response to  
30 the motion, and any evidence that could be considered in ruling  
31 on a motion for summary judgment under rule of civil procedure  
32 1.981.

33 Sec. 7. NEW SECTION. **659B.7 Dismissal of cause of action**  
34 **in whole or part.**

35 1. In ruling on a motion under section 659B.3, the court

1 shall dismiss with prejudice a cause of action, or part of a  
2 cause of action, if any of the following are true:

3     *a.* The responding party fails to establish a prima facie  
4 case as to each essential element of the cause of action.

5     *b.* The moving party establishes that any of the following:

6         (1) The responding party failed to state a cause of action  
7 upon which relief can be granted.

8         (2) There is no genuine issue as to any material fact and  
9 the moving party is entitled to judgment as a matter of law on  
10 the action or part of an action.

11     2. A voluntary dismissal without prejudice of a responding  
12 party's cause of action, or part of a cause of action, that is  
13 the subject of a motion under section 659B.3 does not affect a  
14 moving party's right to obtain a ruling on the motion and seek  
15 costs, attorney fees, and expenses under section 659B.10.

16     3. A voluntary dismissal with prejudice of a responding  
17 party's cause of action, or part of a cause of action, that is  
18 the subject of a motion under section 659B.3 establishes for  
19 the purpose of section 659B.10 that the moving party prevailed  
20 on the motion.

21     Sec. 8. NEW SECTION. **659B.8 Ruling.**

22     The court shall rule on a motion under section 659B.3 not  
23 later than sixty days after a hearing under section 659B.5.

24     Sec. 9. NEW SECTION. **659B.9 Appeal.**

25     A moving party may appeal as a matter of right from an order  
26 denying, in whole or in part, a motion under section 659B.3.  
27 The appeal must be filed not later than thirty days after entry  
28 of the order.

29     Sec. 10. NEW SECTION. **659B.10 Costs, attorney fees, and**  
30 **expenses.**

31     On a motion under section 659B.3, the court shall award court  
32 costs, reasonable attorney fees, and reasonable litigation  
33 expenses related to the motion in the following circumstances:

34         1. To the moving party if the moving party prevails on the  
35 motion.

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

4 EXPLANATION

5 The inclusion of this explanation does not constitute agreement with  
6 the explanation's substance by the members of the general assembly.

7 This bill establishes certain privileges for communications  
8 made regarding incidents of sexual assault, harassment, or  
9 discrimination and creates a special motion for expedited  
10 relief in those actions involving defamation, libel, and  
11 slander. The bill provides definitions.

12 The bill applies to a cause of action asserted in a civil  
13 action against a person involving communications about sexual  
14 assault, harassment, or discrimination are not actionable  
15 under Code chapter 659 unless made with malice. The bill only  
16 applies to a person that has, or at any time had, a reasonable  
17 basis to file a complaint of sexual abuse, harassment, or  
18 discrimination, whether the complaint is, or was, filed or not.

19 The bill provides for attorney fees and damages available to  
20 a prevailing defendant in any action brought under Code chapter  
21 659 (libel and slander) against that defendant for making that  
22 communication. The bill allows a defendant in an action of  
23 such privileged communication to request an expedited review.  
24 The bill further provides for a prevailing defendant in any  
25 libel or slander action to recover (1) reasonable attorney fees  
26 and costs, (2) noneconomic damages, (3) punitive damages, and  
27 (4) any other relief otherwise permitted by law.

28 The bill provides that no later than 60 days after being  
29 served with a cause of action to which the bill applies, or  
30 at a later time upon showing of good cause, a party may file  
31 a special motion for expedited relief to dismiss the cause  
32 of action or part of the cause of action. The filing of  
33 the special motion stays all other proceedings between the  
34 parties, and the court has discretion to stay a proceeding  
35 involving another party if the hearing or ruling on motion

1 would adjudicate an issue material to the motion. A hearing  
2 shall be held no later than 60 days after filing the motion,  
3 unless the court orders a later hearing to allow discovery  
4 or for good cause. A stay remains in effect until an order  
5 ruling on the motion is entered and the 30-day appeal period  
6 following the order has concluded. During a stay, the court  
7 may allow limited discovery if a party shows the information  
8 is not reasonably available and that specific information  
9 is necessary to establish whether a party has satisfied the  
10 party's burden under the bill. The court may also, for good  
11 cause, hear and rule on motions unrelated to the special motion  
12 and a motion seeking an injunction. The bill provides that a  
13 motion for costs, attorney fees, and expenses is not subject  
14 to the special motion for expedited relief stay. The parties'  
15 ability to voluntarily dismiss or move to sever is not affected  
16 by the special motion for expedited relief stay.

17 The bill provides that in ruling on a special motion for  
18 expedited relief, the court shall dismiss with prejudice a  
19 cause of action, or part of a cause of action, if the moving  
20 party establishes that either the responding party fails to  
21 establish a prima facie case as to each essential element of  
22 the cause of action or the moving party establishes that the  
23 responding party failed to state a cause of action upon which  
24 relief can be granted or there is no genuine issue as to any  
25 material fact and the moving party is entitled to judgment as  
26 a matter of law on the cause of action or part of the cause of  
27 action.

28 The bill provides that the court may award court costs,  
29 reasonable attorney fees, and reasonable litigation fees  
30 relating to the special motion to the prevailing party.