

**Senate File 190 - Introduced**

SENATE FILE 190

BY PETERSEN, DONAHUE, BISIGNANO,  
TRONE GARRIOTT, TOWNSEND,  
STAED, QUIRMBACH, WINCKLER,  
WEINER, DOTZLER, BLAKE, and  
BENNETT

**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:

unofficial

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

2 For the purposes of this chapter, unless the context otherwise  
3 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, including  
7 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 act of  
13 workplace harassment or discrimination, or an act of retaliation  
14 against a person for reporting or opposing workplace harassment  
15 or discrimination.

16 c. An act of sexual harassment.

17 d. An act of harassment or discrimination, or an act  
18 of 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 the  
22 solicitation or incitement to disseminate, a sexual image by a  
23 student to another student or to school personnel by means of an  
24 electronic act that has or can be reasonably predicted to have  
25 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 substantially  
29 detrimental effect on the student's physical or mental health.

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

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

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

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

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

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

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

19 **Sec. 2. NEW SECTION. 659B.2 Incidents of sexual assault,**  
20 **harassment, or discrimination — privileged communications.**

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

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

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

33 a. Reasonable attorney fees and costs.

34 b. Noneconomic damages for any harm caused to the defendant  
35 by the libel or slander action.

1 c. Punitive damages.

2 d. Any other relief otherwise permitted by law.

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

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

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

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

15 a. All other proceedings between the moving party and  
16 responding party, including discovery and a pending hearing or  
17 motion, are stayed.

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

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

27 3. Except as otherwise provided in subsections 5, 6, and 7,  
28 if a party appeals from an order ruling on a motion under section  
29 659B.3, all proceedings between all parties in the action are  
30 stayed. The stay remains in effect until the conclusion of the  
31 appeal.

32 4. During a stay under subsection 1, the court may allow  
33 limited discovery if a party shows that specific information is  
34 necessary to establish whether a party has satisfied or failed  
35 to satisfy a burden under section 659B.7, subsection 1, and

1 the information is not reasonably available unless discovery is  
2 allowed.

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

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

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

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

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

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

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

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

18 b. For other good cause.

19 2. If the court orders a later hearing under subsection 1,  
20 paragraph "a", the court shall hear the motion under section  
21 659B.3 not later than sixty days after the court order allowing  
22 the discovery, unless the court orders a later hearing under  
23 subsection 1, paragraph "b".

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

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

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

31 1. In ruling on a motion under section 659B.3, the court  
32 shall dismiss with prejudice a cause of action, or part of a  
33 cause of action, if any of the following are true:

34 a. The responding party fails to establish a prima facie case  
35 as to each essential element of the cause of action.

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

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

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

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

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

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

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

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

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

25 Sec. 10. NEW SECTION. **659B.10 Costs, attorney fees, and  
26 expenses.**

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

30 1. To the moving party if the moving party prevails on the  
31 motion.

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

35 EXPLANATION

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

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

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

15       The bill provides for attorney fees and damages available to  
16 a prevailing defendant in any action brought under Code chapter  
17 659 (libel and slander) against that defendant for making that  
18 communication. The bill allows a defendant in an action of such  
19 privileged communication to request an expedited review. The  
20 bill further provides for a prevailing defendant in any libel or  
21 slander action to recover (1) reasonable attorney fees and costs,  
22 (2) noneconomic damages, (3) punitive damages, and (4) any other  
23 relief otherwise permitted by law.

24       The bill provides that no later than 60 days after being  
25 served with a cause of action to which the bill applies, or  
26 at a later time upon showing of good cause, a party may file  
27 a special motion for expedited relief to dismiss the cause of  
28 action or part of the cause of action. The filing of the  
29 special motion stays all other proceedings between the parties,  
30 and the court has discretion to stay a proceeding involving  
31 another party if the hearing or ruling on motion would adjudicate  
32 an issue material to the motion. A hearing shall be held no  
33 later than 60 days after filing the motion, unless the court  
34 orders a later hearing to allow discovery or for good cause.  
35 A stay remains in effect until an order ruling on the motion

1 is entered and the 30-day appeal period following the order has  
2 concluded. During a stay, the court may allow limited discovery  
3 if a party shows the information is not reasonably available and  
4 that specific information is necessary to establish whether a  
5 party has satisfied the party's burden under the bill. The court  
6 may also, for good cause, hear and rule on motions unrelated to  
7 the special motion and a motion seeking an injunction. The bill  
8 provides that a motion for costs, attorney fees, and expenses is  
9 not subject to the special motion for expedited relief stay. The  
10 parties' ability to voluntarily dismiss or move to sever is not  
11 affected by the special motion for expedited relief stay.

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

22 The bill provides that the court may award court costs,  
23 reasonable attorney fees, and reasonable litigation fees relating  
24 to the special motion to the prevailing party.