

HOUSE BILL NO. HB0103

Wyoming First Amendment Protection Act.

Sponsored by: Representative(s) Ottman and Heiner

A BILL

for

1 AN ACT relating to civil procedure; creating the Wyoming
2 First Amendment Protection Act; providing immunity from
3 lawsuits based on the constitutional rights of freedom of
4 petition, freedom of assembly, religious freedom and
5 expression of speech; specifying procedures and limitations
6 for lawsuits based on public participation; providing
7 legislative findings; specifying applicability; and
8 providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 1-44-101 through 1-44-107 are created
13 to read:

14

15

CHAPTER 44

16

LAWSUITS AGAINST PUBLIC PARTICIPATION

1

2 **1-44-101. Short title.**

3

4 This act shall be known and may be cited as the "Wyoming
5 First Amendment Protection Act."

6

7 **1-44-102. Definitions.**

8

9 (a) As used in this chapter:

10

11 (i) "Court" means any state or federal judicial
12 forum, any agency of the state or its political
13 subdivisions while conducting a contested case hearing and
14 any arbitration proceeding. For the purposes of the
15 immunity established in W.S. 1-44-103, "court" includes any
16 forum adjudicating a claim arising under Wyoming law;

17

18 (ii) "Person" includes an individual,
19 partnership, corporation, joint stock company or any other
20 association or entity, public or private;

21

22 (iii) "Privileged activities" means the exercise
23 of the right to petition, the right of freedom of speech,

1 the right to assemble and the right of religious freedom
2 under the laws of Wyoming and the United States;

3

4 (iv) "SLAPP" means a strategic lawsuit against
5 public participation.

6

7 **1-44-103. Strategic lawsuits against public**
8 **participation; immunity from suit.**

9

10 (a) If an action of any kind is brought against a
11 person in any court and the action impacts or arises from
12 one (1) or more privileged activities, the person against
13 whom the action is brought shall be entitled to immunity
14 from suit on account of the person's privileged activity,
15 except as otherwise provided in this section. This immunity
16 protects against the burdens of litigation itself, not
17 merely against ultimate liability.

18

19 (b) The immunity from suit conferred in subsection
20 (a) of this section shall include but is not limited to the
21 following privileged activities:

22

1 (i) Any written or oral statement made in
2 connection with or reporting on an issue under
3 consideration or review by a legislative, executive,
4 judicial, quasi-judicial, administrative or other
5 governmental entity or in any official proceeding
6 authorized by law, including pre-litigation communications
7 and demand letters;

8

9 (ii) Any written or oral statement made in a
10 place open to the public or a public forum in connection
11 with an issue of public interest or concern;

12

13 (iii) Any other conduct or communication that
14 seeks to influence, inform, facilitate or comment on a
15 matter of public interest or concern and that seeks to
16 procure governmental or public involvement or action.

17

18 (c) The immunity from suit conferred in subsection
19 (a) of this section may be raised in any dispositive motion
20 during a lawsuit or in any other pretrial motion that is
21 available under the rules of the court and where the
22 immunity may be raised. Upon the filing of a motion
23 asserting the immunity from suit conferred in subsection

1 (a) of this section, the court shall determine the
2 immunity. If the party against whom an immunity motion is
3 filed moves to dismiss that party's own claims or amend the
4 party's complaint after a motion asserting immunity is
5 filed under this section, the motion to dismiss or amend
6 shall not moot the immunity motion, and the court may deem
7 the motion to dismiss or amend as evidence that the
8 immunity motion is meritorious.

9

10 (d) A person who asserts the immunity from suit
11 conferred in this section and for whom the immunity is
12 denied may file an interlocutory appeal for review of the
13 immunity separate from the merits of the underlying action.
14 Nothing in this subsection shall be construed to limit the
15 authority of the Wyoming supreme court to adopt rules to
16 govern these appeals.

17

18 (e) The immunity from suit granted in this section
19 may be overcome if the person's conduct:

20

21 (i) Was knowingly false and defamatory or was
22 made in reckless disregard of the truth, including willful
23 ignorance or a refusal to investigate;

1

2 (ii) Constituted a true threat, incitement to
3 imminent lawless action, obscenity, child pornography or
4 any other established category of expression that falls
5 entirely outside constitutional protection; or

6

7 (iii) Was defamatory against a private figure,
8 whether per quod defamation, per se defamation or
9 defamation by implication that does not involve a matter of
10 public concern, was at least negligent and the statements
11 at issue were factually false.

12

13 (f) The party not asserting immunity may overcome the
14 immunity asserted under this section by presenting
15 sufficient evidence that an exception under subsection (e)
16 of this section applies. In determining whether an
17 immunity asserted under this section may be overcome, the
18 court shall only consider the pleadings, the motion, any
19 response or reply to the motion and any supporting or
20 opposing affidavits or declarations stating the facts upon
21 which the asserted immunity or exception to the immunity is
22 based. The court shall construe any disputed material facts
23 in the light most favorable to the nonmoving party.

1

2 (g) The immunity from suit under this section shall
3 apply regardless of any cause of action, claim or
4 counterclaim asserted under the laws of this state.

5

6 (h) A person asserting the immunity from suit under
7 this section may request a stay of all or part of the
8 proceedings. The court shall consider granting a stay to
9 effectuate the purposes of this chapter. The party opposing
10 the stay bears the burden of demonstrating that denial is
11 necessary to prevent manifest injustice to that party.

12

13 (j) No governmental entity and no public employee or
14 officer acting within the course and scope of the
15 employee's or officer's official duties or no other person
16 acting on behalf of and under color of authority of a
17 governmental entity shall assert or be granted the immunity
18 from suit conferred in this section for claims related to
19 the entity's exercise of governmental power or the
20 employee's or officer's official conduct.

21

22 (k) Any action dismissed based on the immunity from
23 suit provided in this section shall be a dismissal with

1 prejudice and shall be deemed an adjudication on the
2 merits.

3

4 **1-44-104. Strategic lawsuits against public**
5 **participation immunity; attorney fees and costs; prevailing**
6 **party.**

7

8 (a) The court shall award reasonable attorney fees,
9 costs and all reasonable expenses incurred to any person
10 who successfully asserts the immunity from suit provided in
11 W.S. 1-44-103. For purposes of this subsection, fees, costs
12 and expenses shall include all reasonable costs and
13 expenses incurred in defending against the entire action,
14 including any appeals and all work undertaken to obtain,
15 enforce and collect an award under this section.

16

17 (b) For purposes of this section, a party that
18 successfully asserts the immunity from suit provided in
19 W.S. 1-44-103 against a governmental entity or employee or
20 officer of a governmental entity shall be entitled to be
21 awarded reasonable attorney fees, costs and expenses from
22 the governmental entity in accordance with this section.

23

1 **1-44-105. Discretionary fees; nonmoving party for**
2 **immunity.**

3

4 If a party invokes the immunity from suit provided in W.S.
5 1-44-103 and the court finds that the assertion of immunity
6 is frivolous, made in bad faith or was brought solely for
7 the purpose of delay or harassment, the court may award
8 reasonable attorney fees and costs to the nonmoving party
9 that the party incurred in responding to the assertion of
10 immunity from suit.

11

12 **1-44-106. Strategic lawsuits; countersuit and**
13 **counterclaims.**

14

15 (a) A SLAPP-back cause of action shall exist against
16 any person who brings an action or claim against another
17 person, where:

18

19 (i) The action or claim impacts or arises from
20 one (1) or more privileged activities of the person against
21 whom the action or claim is brought;

22

1 (ii) The lawsuit or claim was brought against
2 the person for conduct or speech that was in furtherance of
3 any of the rights and freedoms protected by the first
4 amendment to the United States constitution or article 1,
5 sections 19, 20 or 21 of the Wyoming constitution; and

6

7 (iii) The lawsuit or claim was:

8

9 (A) Brought to harass, intimidate or punish
10 the person for exercising first amendment rights;

11

12 (B) Brought to inhibit the exercise of
13 first amendment rights;

14

15 (C) Brought in reckless disregard of the
16 fact that the lawsuit or claim would have the effect of
17 harassment, intimidation or punishment of the exercise of
18 first amendment rights or the inhibition of the exercise of
19 those rights; or

20

21 (D) Continued for any of the reasons
22 specified in this paragraph after factual or legal
23 development made the lawsuit or claim no longer viable.

1

2 (b) A cause of action under this section accrues upon
3 the filing of the underlying action or claim. The cause of
4 action may be asserted as a counterclaim in the underlying
5 action without awaiting resolution of any motion asserting
6 immunity from suit, or may be brought as a separate action
7 during or after the underlying action. In the event that a
8 party filed a motion invoking the immunity from suit and
9 the nonmoving party withdrew the claim before the immunity
10 was adjudicated, there shall be a presumption that the suit
11 was a SLAPP suit, and thus SLAPP-back liability is
12 established.

13

14 (c) Remedies available to a person prevailing in a
15 lawsuit under this section shall include:

16

17 (i) Compensatory damages, including but not
18 limited to damages for emotional distress and damages to
19 reputation. Damages awarded under this paragraph shall be
20 proportionate to the portion of the initial lawsuit to
21 which the immunity from suit would have applied;

22

1 (ii) Statutory damages of not less than five
2 thousand dollars (\$5,000.00) and not more than one hundred
3 thousand dollars (\$100,000.00);

4
5 (iii) Reasonable attorney fees and costs,
6 including attorney fees and costs incurred defending the
7 initial lawsuit, if those attorney fees and costs were not
8 awarded under W.S. 1-44-104, and the difference between any
9 attorney fees incurred in a prior lawsuit under this
10 chapter involving the same parties and the amount of
11 attorney fees actually awarded.

12
13 (d) Any resident of this state against whom an action
14 is brought outside this state for claims that would have
15 been subject to this chapter if brought in the courts of
16 Wyoming may bring a lawsuit specified in this section
17 against the person who brought the foreign action, whether
18 in this state or in any other jurisdiction in which
19 personal jurisdiction and venue are applicable.

20
21 **1-44-107. Applicability.**

22

1 (a) This chapter shall be construed broadly to
2 effectuate the purpose of protecting the constitutional
3 rights of free speech, petition, assembly and the freedom
4 of religion.

5

6 (b) The immunity from suit available under this
7 chapter is in addition to, and not in lieu of, any other
8 immunity, privilege or defense available under the United
9 States constitution, the Wyoming constitution, state law,
10 federal law or the common law.

11

12 (c) The immunity from suit provided in this chapter
13 is substantive law of the state of Wyoming. In federal
14 courts and foreign jurisdictions, any procedural provisions
15 of this chapter are severable from the substantive immunity
16 from suit provided in this chapter.

17

18 **Section 2.**

19

20 (a) The legislature finds and declares that:

21

22 (i) The rights to speak freely on matters of
23 public concern, to assemble, to petition and of religious

1 freedom are fundamental constitutional rights protected by
2 the first amendment to the United States constitution and
3 article 1, sections 19, 20 and 21 of the Wyoming
4 constitution;

5

6 (ii) Lawsuits or other legal actions filed for
7 the purpose of chilling, punishing or retaliating against
8 the legitimate exercise of these rights are commonly known
9 as strategic lawsuits against public participation;

10

11 (iii) Strategic lawsuits against public
12 participation threaten the full enjoyment of constitutional
13 rights and impose undue financial and emotional burdens on
14 citizens;

15

16 (iv) It is in the public interest to grant
17 immunity from suit, similar to the qualified immunity
18 afforded to public officials acting within their official
19 duties and discretionary authority, to persons who exercise
20 these constitutional rights, unless that exercise falls
21 outside of constitutional protection;

22

1 (v) The immunity from strategic lawsuits against
2 public participation is only truly effective when it is a
3 substantive immunity from suit rather than a limited
4 procedural mechanism;

5

6 (vi) The immunity from suit established by this
7 act is substantive law of the state of Wyoming that defines
8 the scope of state-law claims and shall apply wherever
9 these claims are adjudicated;

10

11 (vii) This immunity from suit would be
12 irrevocably lost without the right to an interlocutory
13 appeal.

14

15 **Section 3.**

16

17 (a) This act shall apply to:

18

19 (i) All causes of action accruing on and after
20 the effective date of this act;

21

22 (ii) Any action pending on the effective date of
23 this act, if:

