

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; or

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.

6

7 (f) The party not asserting immunity may overcome the
8 immunity asserted under this section by presenting
9 sufficient evidence that an exception under subsection (e)
10 of this section applies, provided that the court shall not
11 weigh competing evidence unless the parties have waived the
12 right to a jury trial.

13

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

17

18 (h) A person asserting the immunity from suit under
19 this section may request a stay of all or part of the
20 proceedings. The court shall consider granting a stay to
21 effectuate the purposes of this chapter. The party opposing
22 the stay bears the burden of demonstrating that denial is
23 necessary to prevent manifest injustice to that party.

1

2 (j) No governmental entity and no public employee or
3 officer acting within the course and scope of the
4 employee's or officer's official duties or no other person
5 acting on behalf of and under color of authority of a
6 governmental entity shall assert or be granted the immunity
7 from suit conferred in this section for claims related to
8 the entity's exercise of governmental power or the
9 employee's or officer's official conduct.

10

11 (k) Any action dismissed based on the immunity from
12 suit provided in this section shall be a dismissal with
13 prejudice and shall be deemed an adjudication on the
14 merits.

15

16 **1-44-104. Strategic lawsuits against public**
17 **participation immunity; attorney fees and costs; prevailing**
18 **party.**

19

20 (a) The court shall award reasonable attorney fees,
21 costs and all reasonable expenses incurred to any person
22 who successfully asserts the immunity from suit provided in
23 W.S. 1-44-103. For purposes of this subsection, fees, costs

1 and expenses shall include all reasonable costs and
2 expenses incurred in defending against the entire action,
3 including any appeals and all work undertaken to obtain,
4 enforce and collect an award under this section.

5
6 (b) For purposes of this section, a party that
7 successfully asserts the immunity from suit provided in
8 W.S. 1-44-103 against a governmental entity or employee or
9 officer of a governmental entity shall be entitled to be
10 awarded reasonable attorney fees, costs and expenses from
11 the governmental entity in accordance with this section.

12
13 **1-44-105. Discretionary fees; nonmoving party for**
14 **immunity.**

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16 If a party invokes the immunity from suit provided in W.S.
17 1-44-103 and the court finds that the assertion of immunity
18 is frivolous, made in bad faith or was brought solely for
19 the purpose of delay or harassment, the court may award
20 reasonable attorney fees and costs to the nonmoving party
21 that the party incurred in responding to the assertion of
22 immunity from suit.

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

3
4 (a) A SLAPP-back cause of action shall exist against
5 any person who brings an action or claim against another
6 person, where:

7
8 (i) The action or claim impacts or arises from
9 one (1) or more privileged activities of the person against
10 whom the action or claim is brought;

11
12 (ii) The lawsuit or claim was brought against
13 the person for conduct or speech that was in furtherance of
14 any of the rights and freedoms protected by the first
15 amendment to the United States constitution or article 1,
16 sections 19, 20 or 21 of the Wyoming constitution; and

17
18 (iii) The lawsuit or claim was:

19
20 (A) Brought to harass, intimidate or punish
21 the person for exercising first amendment rights;

22

1 (B) Brought to inhibit the exercise of
2 first amendment rights;

3

4 (C) Brought in reckless disregard of the
5 fact that the lawsuit or claim would have the effect of
6 harassment, intimidation or punishment of the exercise of
7 first amendment rights or the inhibition of the exercise of
8 those rights; or

9

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

13

14 (b) A cause of action under this section accrues upon
15 the filing of the underlying action or claim. The cause of
16 action may be asserted as a counterclaim in the underlying
17 action without awaiting resolution of any motion asserting
18 immunity from suit, or may be brought as a separate action
19 during or after the underlying action. In the event that a
20 party filed a motion invoking the immunity from suit and
21 the nonmoving party withdrew the claim before the immunity
22 was adjudicated, there shall be a presumption that the suit

1 was a SLAPP suit, and thus SLAPP-back liability is
2 established.

3

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

6

7 (i) Compensatory damages, including but not
8 limited to damages for emotional distress and damages to
9 reputation. Damages awarded under this paragraph shall be
10 proportionate to the portion of the initial lawsuit to
11 which the immunity from suit would have applied;

12

13 (ii) Statutory damages of not less than five
14 thousand dollars (\$5,000.00) and not more than one hundred
15 thousand dollars (\$100,000.00);

16

17 (iii) Reasonable attorney fees and costs,
18 including attorney fees and costs incurred defending the
19 initial lawsuit, if those attorney fees and costs were not
20 awarded under W.S. 1-44-104, and the difference between any
21 attorney fees incurred in a prior lawsuit under this
22 chapter involving the same parties and the amount of
23 attorney fees actually awarded.

1

2 (d) Any resident of this state against whom an action
3 is brought outside this state for claims that would have
4 been subject to this chapter if brought in the courts of
5 Wyoming may bring a lawsuit specified in this section
6 against the person who brought the foreign action, whether
7 in this state or in any other jurisdiction in which
8 personal jurisdiction and venue are applicable.

9

10 **1-44-107. Applicability.**

11

12 (a) This chapter shall be construed broadly to
13 effectuate the purpose of protecting the constitutional
14 rights of free speech, petition, assembly and the freedom
15 of religion.

16

17 (b) The immunity from suit available under this
18 chapter is in addition to, and not in lieu of, any other
19 immunity, privilege or defense available under the United
20 States constitution, the Wyoming constitution, state law,
21 federal law or the common law.

22

1 (c) The immunity from suit provided in this chapter
2 is substantive law of the state of Wyoming. In federal
3 courts and foreign jurisdictions, any procedural provisions
4 of this chapter are severable from the substantive immunity
5 from suit provided in this chapter.

6
7 **Section 2.**

8
9 (a) The legislature finds and declares that:

10
11 (i) The rights to speak freely on matters of
12 public concern, to assemble, to petition and of religious
13 freedom are fundamental constitutional rights protected by
14 the first amendment to the United States constitution and
15 article 1, sections 19, 20 and 21 of the Wyoming
16 constitution;

17
18 (ii) Lawsuits or other legal actions filed for
19 the purpose of chilling, punishing or retaliating against
20 the legitimate exercise of these rights are commonly known
21 as strategic lawsuits against public participation;

1 (iii) Strategic lawsuits against public
2 participation threaten the full enjoyment of constitutional
3 rights and impose undue financial and emotional burdens on
4 citizens;

5
6 (iv) It is in the public interest to grant
7 immunity from suit, similar to the qualified immunity
8 afforded to public officials acting within their official
9 duties and discretionary authority, to persons who exercise
10 these constitutional rights, unless that exercise falls
11 outside of constitutional protection;

12
13 (v) The immunity from strategic lawsuits against
14 public participation is only truly effective when it is a
15 substantive immunity from suit rather than a limited
16 procedural mechanism;

17
18 (vi) The immunity from suit established by this
19 act is substantive law of the state of Wyoming that defines
20 the scope of state-law claims and shall apply wherever
21 these claims are adjudicated;

22

1 (vii) This immunity from suit would be
2 irrevocably lost without the right to an interlocutory
3 appeal.

4
5 **Section 3.**

6
7 (a) This act shall apply to:

8
9 (i) All causes of action accruing on and after
10 the effective date of this act;

11
12 (ii) Any action pending on the effective date of
13 this act, if:

14
15 (A) The action is based on privileged
16 activities as defined by W.S. 1-44-102(a)(ii);

17
18 (B) No dispositive motion has been ruled
19 upon as of the effective date of this act; and

20
21 (C) The court, in its discretion,
22 determines that the application of this act would not cause
23 manifest injustice to any party.

