

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Public health emergencies-immunity amendments.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to public health and safety; providing
2 legislative findings; amending provisions related to
3 immunity from civil liability for actions and omissions
4 during public health emergencies; specifying applicability;
5 and providing for an effective date.

6

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

8

9 **Section 1.**

10

11 (a) The legislature finds that:

12

1 (i) The conditions and circumstances recognized
2 in the legislative findings in 2020 Wyoming Special Session
3 Laws, Chapter 1, Section 1 continue to exist and continue
4 to impose extraordinary financial pressure on Wyoming
5 residents, families, homeowners, hospitals, healthcare
6 facilities, businesses, educational providers, state
7 agencies and local governments;

8
9 (ii) Most persons who contract novel coronavirus
10 disease 2019 (COVID-19) do not become seriously ill, and
11 people who have COVID-19 who are asymptomatic or who have
12 mild symptoms may place other vulnerable members of the
13 public at significant risk;

14
15 (iii) The state of Wyoming currently does not
16 have the testing capacity to ensure that all residents are
17 tested for COVID-19;

18
19 (iv) The people of Wyoming need to return to work
20 and other essential activities for the good of their
21 families, communities and the state;

22

1 (v) Wyoming businesses, nonprofit entities,
2 hospitals, healthcare facilities and governmental entities
3 face a growing concern regarding litigation arising from
4 allegations of exposure to COVID-19 and the costs
5 associated with defending those lawsuits and paying any
6 resulting settlement costs or liability;

7
8 (vi) These costs and the threat of potential
9 liability will only worsen the economic devastation of
10 Wyoming residents and businesses already caused by the
11 COVID-19 public health emergency;

12
13 (vii) Wyoming citizens who have been exposed to
14 or contracted COVID-19 as a result of the gross negligence
15 or willful and wanton misconduct of another should have
16 access to the courts to pursue a remedy for any resulting
17 damage;

18
19 (viii) Claims alleging COVID-19 exposure or
20 infection that do not sufficiently allege facts supporting
21 the liability of a defendant should be dismissed at the
22 earliest possible time, sparing Wyoming entities the cost

1 and disruption of defending claims based on conjecture or
2 bare allegations.

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4 *****
5 *****
6 STAFF COMMENT

7
8 The findings included above are based on the language
9 provided to the Committee at its last meeting. Generally,
10 findings are not included in bills. The Committee may wish
11 to consider whether the findings are necessary to include
12 in this bill draft.

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15 *****
16

17 Section 2. W.S. 35-4-114(a) and by creating a new
18 subsection (d) is amended to read:

19
20 35-4-114. Immunity from liability.

21
22 (a) During a public health emergency as defined by
23 W.S. 35-4-115(a)(i), any ~~health care provider or other~~
24 ~~person, including a business or~~ entity, who in good faith
25 follows the instructions of ~~a the~~ state, health officer or
26 a Wyoming city, town or county health officer or who acts
27 in good faith in responding to the public health emergency
28 is immune from any ~~liability arising from complying with~~
29 ~~those instructions or acting in good faith~~ civil action

1 alleging that acts or omissions of the person or entity
2 caused another to be exposed to or contract the disease,
3 agent or toxin for which the public health emergency is
4 declared. ~~This immunity shall apply to health care~~
5 ~~providers who are retired, who have an inactive license or~~
6 ~~who are licensed in another state without a valid Wyoming~~
7 ~~license and while performing as a volunteer during a~~
8 ~~declared public health emergency as defined by W.S. 35-4-~~
9 ~~115(a)(i).~~ This immunity shall not apply to civil actions
10 alleging acts or omissions constituting gross negligence or
11 willful or wanton misconduct. As used in this subsection,
12 "any person or entity" includes any individual person,
13 business entity, sole proprietorship, nonprofit entity,
14 charitable entity, faith-based entity, church, associations
15 and service clubs, healthcare providers, hospitals,
16 clinics, long-term care facilities, county and municipal
17 political subdivisions, special districts and healthcare
18 providers who are retired, who have an inactive license or
19 who are licensed in another state without a valid Wyoming
20 license and while performing as a volunteer during a
21 declared public health emergency as defined by W.S. 35-4-
22 115(a)(i).

23

STAFF COMMENT

The Committee may wish to consider whether the new sentence/definition at the end of subsection (a) is necessary given the broad reference to "any person or entity" as amended in this subsection, and whether the definition would impact other uses of "person" or "entity" in Wyoming statutes.

The Wyoming Supreme Court has stated that, where "a statute enumerates the subjects or things on which it is to operate, or the persons affected, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned under the rule of *expressio unius est exclusion alterius*." Cheyenne v. Huit, 844 P.2d 1102, 1104 (Wyo. 1993).

The Committee may also wish to consider the specific inclusion of "county and municipal subdivisions" and "special districts" in light of the Wyoming Governmental Claims Act. Relevant provisions of that Act are included here:

1-39-103. Definitions.

(a) As used in this act:

(i) "Governmental entity" means the state, University of Wyoming or any local government;

(ii) "Local government" means cities and towns, counties, school districts, joint powers boards, airport boards, public corporations, community college districts, special districts and their governing bodies, all political subdivisions of the state, and their agencies, instrumentalities and institutions, and governmental entities of another state but only while physically present in the state of Wyoming and while in the course of operating a cooperative public transportation program as defined by W.S. 16-1-104(f);

1-39-104. Granting immunity from tort liability; liability on contracts; exceptions.

1
2 (a) A governmental entity and its public employees
3 while acting within the scope of duties are granted
4 immunity from liability for any tort except as provided by
5 W.S. 1-39-105 through 1-39-112. Any immunity in actions
6 based on a contract entered into by a governmental entity
7 is waived except to the extent provided by the contract if
8 the contract was within the powers granted to the entity
9 and was properly executed and except as provided in W.S. 1-
10 39-120(b). The claims procedures of W.S. 1-39-113 apply to
11 contractual claims against governmental entities.
12

13 **1-39-109. Liability; medical facilities.**
14

15 (a) Except as provided in subsection (b) of this
16 section, a governmental entity is liable for damages
17 resulting from bodily injury, wrongful death or property
18 damage caused by the negligence of public employees while
19 acting within the scope of their duties in the operation of
20 any public hospital or in providing public outpatient
21 health care.
22

23 (b) The state of Wyoming is solely liable for damages
24 resulting from, and the sole responsible party for, bodily
25 injury or wrongful death to a patient treated under the
26 provisions of W.S. 35-31-101 through 35-31-103 caused by
27 the negligence of a health care provider or a medical
28 facility while performing health care services pursuant to
29 a contract to deliver volunteer health services under W.S.
30 35-31-101 through 35-31-103.
31

32 **1-39-110. Liability; health care providers.**
33

34 (a) A governmental entity is liable for damages
35 resulting from bodily injury, wrongful death or property
36 damage caused by the negligence of health care providers
37 who are employees of the governmental entity, including
38 contract physicians, physician assistants, nurses,
39 optometrists and dentists who are providing a service for
40 state institutions or county jails, while acting within the
41 scope of their duties.
42

43 (b) Notwithstanding W.S. 1-39-118(a), for claims
44 under this section against a physician, physician
45 assistant, nurse, optometrist or dentist who is employed by

1 a governmental entity or who is deemed to be a public
2 employee of the state by virtue of a contract pursuant to
3 W.S. 35-31-101 through 35-31-103, based upon an act, error
4 or omission occurring on or after May 1, 1988, the
5 liability of a governmental entity shall not exceed the sum
6 of one million dollars (\$1,000,000.00) to any claimant for
7 any number of claims arising out of a single transaction or
8 occurrence nor exceed the sum of one million dollars
9 (\$1,000,000.00) for all claims of all claimants arising out
10 of a single transaction or occurrence.

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12 *****
13 *****
14

15 (d) The immunity provided in subsection (a) of this
16 section shall apply only to claims alleging actions or
17 omissions causing exposure to or the contraction of the
18 disease, agent or toxin for which a public health emergency
19 is declared under W.S. 35-4-115(a)(i) and arising from
20 actions or omissions occurring during the declared public
21 health emergency.

22
23 **Section 3.** Notwithstanding W.S. 35-4-114(d), as
24 created by Section 2 of this act, this act shall apply to
25 all actions and omissions that cause injury occurring on
26 and after the effective date of this act.

27
28 **Section 4.** This act is effective immediately upon
29 completion of all acts necessary for a bill to become law

1 as provided by Article 4, Section 8 of the Wyoming
2 Constitution.

3

4 (END)