

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Public health emergencies-immunity amendments 2.

Sponsored by: Joint Travel, Recreation, Wildlife & Cultural
Resources 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
20 work 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.

3

4 *****
5 STAFF COMMENT

6
7 Generally, findings are not included in bills. The
8 Committee may wish to consider whether the findings are
9 necessary to include in this bill draft.

10
11 *****
12

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

15

16 35-4-114. Immunity from liability.

17

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

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

21

22 *****

23 **STAFF COMMENT**

24

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

7
8 The Wyoming Supreme Court has stated that, where "a statute
9 enumerates the subjects or things on which it is to
10 operate, or the persons affected, or forbids certain
11 things, it is to be construed as excluding from its effect
12 all those not expressly mentioned under the rule of
13 *expressio unius est exclusion alterius*." *Cheyenne v. Huit*,
14 844 P.2d 1102, 1104 (Wyo. 1993).

15
16 The Committee may also wish to consider the specific
17 inclusion of "county and municipal political subdivisions"
18 and "special districts" in light of the Wyoming
19 Governmental Claims Act. Relevant provisions of that Act
20 are included here:

21
22 **1-39-103. Definitions.**

23
24 (a) As used in this act:

25
26 (i) "Governmental entity" means the state,
27 University of Wyoming or any local government;

28
29 (ii) "Local government" means cities and towns,
30 counties, school districts, joint powers boards, airport
31 boards, public corporations, community college districts,
32 special districts and their governing bodies, all political
33 subdivisions of the state, and their agencies,
34 instrumentalities and institutions, and governmental
35 entities of another state but only while physically present
36 in the state of Wyoming and while in the course of
37 operating a cooperative public transportation program as
38 defined by W.S. 16-1-104(f);

39
40 **1-39-104. Granting immunity from tort liability;
41 liability on contracts; exceptions.**

42
43 (a) A governmental entity and its public employees
44 while acting within the scope of duties are granted
45 immunity from liability for any tort except as provided by

1 W.S. 1-39-105 through 1-39-112. Any immunity in actions
2 based on a contract entered into by a governmental entity
3 is waived except to the extent provided by the contract if
4 the contract was within the powers granted to the entity
5 and was properly executed and except as provided in W.S. 1-
6 39-120(b). The claims procedures of W.S. 1-39-113 apply to
7 contractual claims against governmental entities.

8
9 **1-39-109. Liability; medical facilities.**

10
11 (a) Except as provided in subsection (b) of this
12 section, a governmental entity is liable for damages
13 resulting from bodily injury, wrongful death or property
14 damage caused by the negligence of public employees while
15 acting within the scope of their duties in the operation of
16 any public hospital or in providing public outpatient
17 health care.

18
19 (b) The state of Wyoming is solely liable for damages
20 resulting from, and the sole responsible party for, bodily
21 injury or wrongful death to a patient treated under the
22 provisions of W.S. 35-31-101 through 35-31-103 caused by
23 the negligence of a health care provider or a medical
24 facility while performing health care services pursuant to
25 a contract to deliver volunteer health services under W.S.
26 35-31-101 through 35-31-103.

27
28 **1-39-110. Liability; health care providers.**

29
30 (a) A governmental entity is liable for damages
31 resulting from bodily injury, wrongful death or property
32 damage caused by the negligence of health care providers
33 who are employees of the governmental entity, including
34 contract physicians, physician assistants, nurses,
35 optometrists and dentists who are providing a service for
36 state institutions or county jails, while acting within the
37 scope of their duties.

38
39 (b) Notwithstanding W.S. 1-39-118(a), for claims
40 under this section against a physician, physician
41 assistant, nurse, optometrist or dentist who is employed by
42 a governmental entity or who is deemed to be a public
43 employee of the state by virtue of a contract pursuant to
44 W.S. 35-31-101 through 35-31-103, based upon an act, error
45 or omission occurring on or after May 1, 1988, the

1 liability of a governmental entity shall not exceed the sum
2 of one million dollars (\$1,000,000.00) to any claimant for
3 any number of claims arising out of a single transaction or
4 occurrence nor exceed the sum of one million dollars
5 (\$1,000,000.00) for all claims of all claimants arising out
6 of a single transaction or occurrence.

7
8 *****
9

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

17
18 **Section 3.** Notwithstanding W.S. 35-4-114(d), as
19 created by Section 2 of this act, this act shall apply to
20 all actions and omissions that cause injury occurring on
21 and after the effective date of this act.

22
23 **Section 4.** This act is effective immediately upon
24 completion of all acts necessary for a bill to become law
25 as provided by Article 4, Section 8 of the Wyoming
26 Constitution.

27

1

(END)