

HOUSE BILL NO. HB0223

Preventing strategic lawsuits against public participation.

Sponsored by: Representative(s) Ottman, Angelos, Bear, Guggenmos, Hoeft, Lucas, McCann, Singh, Smith, S, Wasserburger, Webb and Webber and Senator(s) Pearson

A BILL

for

1 AN ACT relating to civil procedure; providing immunity from
2 lawsuits based on the constitutional rights of freedom of
3 petition, expression or speech; specifying procedures and
4 limitations for lawsuits based on public participation;
5 specifying applicability; and providing for an effective
6 date.

7

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

9

10 **Section 1.** W.S. 1-44-101 through 1-44-105 are created
11 to read:

12

13

CHAPTER 44

14

LAWSUITS AGAINST PUBLIC PARTICIPATION

1

2 **1-44-101. Short title; definitions; purposes.**

3

4 (a) This act shall be known and may be cited as the
5 "Wyoming Anti-SLAPP Act."

6

7 (b) As used in this act:

8

9 (i) "Person" includes groups of individuals,
10 associations, corporations and any other entities
11 referenced in W.S. 8-1-102(a)(vi);

12

13 (ii) "Strategic lawsuit" means a strategic
14 lawsuit against public participation;

15

16 (iii) "This act" means W.S. 1-44-101 through
17 1-44-105.

18

19 (c) The purposes of this act are to:

20

21 (i) Ensure full participation by persons in the
22 robust discussion of issues in furtherance of the
23 constitutional rights of freedom of petition, freedom of

1 speech and freedom of expression in connection with any
2 matter of public concern. The concept of public concern
3 shall be construed broadly, excluding only matters of
4 purely private concern;

5

6 (ii) Recognize that litigation that hinders
7 those constitutional rights is disfavored and should be
8 resolved quickly with minimum cost to those exercising
9 those constitutional rights that are protected by the First
10 Amendment to the United States constitution and article 1,
11 section 20 of the Wyoming constitution.

12

13 **1-44-102. Strategic lawsuits; immunity; procedure.**

14

15 (a) All laws in this state shall be construed to
16 grant qualified immunity from suit, prosecution and civil
17 liability for any person in any action, case, claim,
18 administrative proceeding, arbitration or other legal
19 process that impacts the person's constitutional rights
20 under the First Amendment to the United States
21 constitution.

22

1 (b) A person may invoke the qualified immunity
2 provided under subsection (a) of this section at any time.
3 For purposes of this section, the qualified immunity
4 provided under subsection (a) of this section may be waived
5 if a person substantially litigates the case beyond a
6 jurisdictional challenge before raising the immunity,
7 unless facts or circumstances are later discovered
8 demonstrating that the qualified immunity applies and the
9 facts were not available or reasonably discoverable by the
10 person earlier in the case.

11

12 (c) In any case or lawsuit in which a person asserts
13 that the claims, counterclaims, crossclaims or discovery
14 against a person are based, either in whole or in part, on
15 the person's exercise of the constitutional right of
16 petition, freedom of speech or freedom of expression in
17 connection with any matter of public concern under the
18 United States or Wyoming constitutions, the person may move
19 to dismiss or otherwise dispose of the case or lawsuit as
20 expeditiously as possible based on the immunity provided in
21 subsection (a) of this section. For purposes of this
22 subsection:

23

1 (i) A person may invoke the immunity by showing
2 that a claim, counterclaim or crossclaim is based on the
3 person's use of the rights afforded under the First
4 Amendment to the United States constitution or article 1,
5 section 20 of the Wyoming constitution;

6

7 (ii) The immunity may be invoked if a claim,
8 action, proceeding, counterclaim or crossclaim is based on
9 at least one (1) action in furtherance of those rights,
10 even if the claim, action, proceeding, counterclaim or
11 crossclaim is also based on actions not in furtherance of
12 those constitutional rights;

13

14 (iii) The immunity shall be afforded to a person
15 if the responding party:

16

17 (A) Fails to present evidence or
18 supportable allegations, sufficient as a matter of law to
19 establish a prima facie case regarding each element of the
20 claim to survive a motion to dismiss or a judgment on the
21 pleadings; or

22

1 (B) Has presented evidence or supportable
2 allegations establishing a prima facie case regarding each
3 element of the claim, but a moving party has established
4 that there is no genuine issue of material fact and the
5 moving party is entitled to judgment as a matter of law on
6 the claim, as if the court were evaluating a motion for
7 summary judgment. Neither this subparagraph or subparagraph
8 (A) of this paragraph shall require the court to usurp the
9 role of the jury in evaluation of evidence or credibility
10 of evidence beyond what a court would do if evaluating a
11 motion to dismiss, a motion for judgment on the pleadings,
12 a motion for summary judgment or a motion for a directed
13 verdict. In all other respects, the right to trial by jury
14 will remain sacrosanct.

15

16 (d) Any denial of a motion to dismiss based on the
17 immunity provided under this section shall be immediately
18 appealable in accordance with the Wyoming Rules of
19 Appellate Procedure.

20

21 (e) If a motion to dismiss is denied under this
22 section, a person may bring a counterclaim to assert the
23 immunity provided under this section. If the finder of fact

1 finds that the initial claim was without merit and had the
2 effect or intent of suppressing rights protected under the
3 First Amendment to the United States constitution or
4 article 1, section 20 of the Wyoming constitution, the
5 court shall award compensatory damages, all costs and
6 reasonable attorney fees to the counterclaimant.

7

8 (f) If a person successfully invokes the immunity
9 provided under this section, whether on a motion to dismiss
10 or at trial, the person shall be entitled to all costs and
11 reasonable attorney fees for defending the case. If an
12 immunity decision is appealed and the person invoking
13 immunity prevails on appeal, the person shall be entitled
14 to all costs and reasonable attorney fees incurred while
15 defending the appeal. For purposes of this subsection:

16

17 (i) The state of Wyoming and its political
18 subdivisions shall be responsible for all damages, costs
19 and fees specified in this subsection, if the state or a
20 political subdivision is the plaintiff in the case;

21

1 (ii) A person may only recover costs and fees
2 for claims for which immunity is granted if all claims or
3 counterclaims are not dismissed under this section.

4

5 **1-44-103. Strategic lawsuits; procedures.**

6

7 (a) In federal courts and in foreign jurisdictions,
8 these procedural rules are severable from the immunity
9 established in W.S. 1-44-102. In Wyoming state courts and
10 wherever these rules are not in conflict with those of the
11 tribunal, if an action is brought against a person in
12 violation of the immunity from litigation, the person
13 against whom the action is brought may bring a special
14 motion to dismiss or a counterclaim, or both.

15

16 (b) A motion to dismiss based on the immunity
17 provided in W.S. 1-44-102 shall be filed not less than
18 seven (7) days after a notice of intent to file a motion to
19 dismiss is served on the opposing party.

20

21 (c) Upon the filing of a motion to dismiss based on
22 the immunity provided in W.S. 1-44-102, the court shall:

23

1 (i) Determine whether the moving party has
2 established by a preponderance of the evidence that the
3 claim is entitled to immunity under W.S. 1-44-102;

4
5 (ii) If the court determines that the moving
6 party has shown its entitlement to immunity, determine
7 whether the nonmoving party has demonstrated, with
8 sufficient evidence, a probability of prevailing on the
9 claim;

10
11 (iii) If the court determines that the nonmoving
12 party has established its burden under paragraph (ii) of
13 this subsection, ensure that the determination shall not:

14
15 (A) Be admitted into evidence at any
16 subsequent stage of the proceeding;

17
18 (B) Affect the burden of proof that is
19 applied in the underlying action or proceeding.

20
21 (iv) Consider any evidence that may be material
22 in making the required determinations under this
23 subsection;

1

2 (v) Except as otherwise provided in paragraph
3 (iv) of this subsection, stay all other actions and
4 activities in the case, including discovery and motions
5 pending a ruling by the court on the immunity motion and
6 the disposition of any appeal from the ruling on the
7 immunity motion;

8

9 (vi) Rule on the immunity motion not later than
10 thirty (30) business days after the motion is filed. The
11 deadline specified in this paragraph may be extended by a
12 showing of good cause.

13

14 (d) Upon a showing that information necessary to
15 support or oppose the motion to dismiss is in the
16 possession of another person and is not reasonably
17 available without discovery, the court shall allow limited
18 discovery for purposes of obtaining that information. For
19 purposes of this subsection:

20

21 (i) A separate motion shall be filed to seek
22 limited discovery under this subsection and must be

1 accompanied by an affidavit signed under penalty of
2 perjury;

3

4 (ii) The motion for limited discovery shall
5 include, with specificity, the discovery requested, the
6 reason the discovery is necessary and why the information
7 cannot be obtained in any other way;

8

9 (iii) If the motion lacks specificity, the
10 motion shall be denied, and the nonmoving party shall be
11 entitled to reasonable attorney fees for responding to the
12 motion;

13

14 (iv) Before bringing a motion for limited
15 discovery under this subsection, the moving party shall
16 meet and confer with the opposing party to resolve the
17 matter without a motion. If the nonmoving party has
18 unreasonably declined to agree to the discovery, the moving
19 party shall be entitled to reasonable attorney fees
20 incurred by bringing the motion.

21

22 (e) If the court dismisses an action under a motion
23 to dismiss based on the immunity provided in W.S. 1-44-102,

1 the dismissal shall be treated as an adjudication on the
2 merits.

3

4 (f) If the plaintiff in a strategic lawsuit moves to
5 dismiss the action or files notice of intent to dismiss the
6 action, or if the plaintiff seeks to amend the complaint,
7 after a motion to dismiss based on the immunity provided in
8 W.S. 1-44-102 is filed:

9

10 (i) The plaintiff's motion to dismiss or notice
11 shall function as an admission that the immunity motion is
12 meritorious, and the court shall grant the immunity motion;

13

14 (ii) The plaintiff's motion to amend shall
15 function as an admission that the immunity motion is
16 meritorious as to any claims that the motion to amend would
17 remove.

18

19 (g) The court may modify any deadlines under this
20 section if necessary to serve the interests of justice.

21

22 **1-44-104. Strategic participation lawsuits; separate**
23 **actions and counterclaims.**

1

2 (a) If any claim, action, administrative proceeding,
3 arbitration or any similar process is brought as a
4 strategic lawsuit against a person, the person may invoke
5 the immunity provided in W.S. 1-44-102 through a separate
6 action or counterclaim. For purposes of this section, a
7 person may bring a separate action after conclusion of the
8 strategic lawsuit.

9

10 (b) If a strategic lawsuit is brought against a
11 person and the person successfully invokes immunity under
12 this chapter, the person may bring a separate action to
13 recover costs and attorney fees that are not awarded by the
14 court in accordance with this chapter. For purposes of this
15 subsection:

16

17 (i) A person shall prevail in an action brought
18 under this subsection if the strategic lawsuit was without
19 merit and had the effect or intent of suppressing rights
20 provided under the First Amendment to the United States
21 constitution;

22

1 (ii) Upon prevailing in an action under this
2 subsection, a person shall be entitled to statutory damages
3 of not less than ten thousand dollars (\$10,000.00),
4 compensatory damages, reasonable attorney fees and costs.

5
6 (c) A person who is a Wyoming citizen shall have a
7 cause of action if the person is subject to a strategic
8 lawsuit in another jurisdiction, the other jurisdiction
9 declines to apply the immunity provided in this chapter and
10 the person prevails in the strategic lawsuit. To prevail in
11 a cause of action under this section:

12
13 (i) The strategic lawsuit would have been
14 subject to this chapter if brought in Wyoming;

15
16 (ii) The person attempted to invoke the immunity
17 provided in this chapter, but the other jurisdiction
18 declined to apply the immunity;

19
20 (iii) The person prevailed in that foreign
21 action, including a dismissal without prejudice or a
22 dismissal for a lack of jurisdiction;

23

1 (iv) The person gave the plaintiff in the
2 strategic lawsuit notice, in writing, that if the person
3 prevailed in the plaintiff's strategic lawsuit, the person
4 would be entitled to bring a cause of action in Wyoming
5 under this subsection.

6

7 (d) A person who prevails in a cause of action
8 brought under subsection (c) of this section shall be
9 entitled to:

10

11 (i) Statutory damages of not less than ten
12 thousand dollars (\$10,000.00) and not more than one hundred
13 thousand dollars (\$100,000.00);

14

15 (ii) Damages in an amount equal to the actual
16 costs and reasonable attorney fees incurred in the foreign
17 action incurred after providing notice specified in
18 paragraph (c)(iv) of this section;

19

20 (iii) All costs and reasonable attorney fees
21 incurred in the cause of action brought under subsection
22 (c) of this section;

23

