

HOUSE BILL NO. HB0033

Strategic litigation against public participation.

Sponsored by: Representative(s) Gingery

A BILL

for

1 AN ACT relating to the code of civil procedure; providing
2 protection against strategic litigation against public
3 participation; providing for a special motion to strike
4 strategic litigation against public participation;
5 providing for attorneys fees and costs; and providing for
6 an effective date.

7

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

9

10 **Section 1.** W.S. 1-1-201 through 1-1-208 are created
11 to read:

12

13 ARTICLE 2

14 UNIFORM ACT LIMITING STRATEGIC LITIGATION AGAINST PUBLIC
15 PARTICIPATION

16

17 **1-1-201. Short title.**

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2 This act may be cited as the "Uniform Act Limiting
3 Strategic Litigation Against Public Participation".

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5 **1-1-202. Definitions.**

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7 (a) As used in this act:

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9 (i) "Claim" includes any lawsuit, cause of
10 action, claim, cross-claim, counterclaim or other judicial
11 pleading or filing requesting relief;

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13 (ii) "Government" includes a branch, department,
14 agency, instrumentality, official, employee, agent or other
15 person acting under color of law of the United States, a
16 state, or subdivision of a state or other public authority;

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18 (iii) "Moving party" means a person on whose
19 behalf the motion described in W.S. 1-1-204 is filed
20 seeking dismissal of a claim;

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22 (iv) "Person" means an individual, corporation,
23 business trust, estate, trust, partnership, limited

1 liability company, association, joint venture or any other
2 legal or commercial entity;

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4 (v) "Responding party" means a person against
5 whom the motion described in W.S. 1-1-204 is filed;

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7 (vi) "This act" means W.S. 1-1-201 through
8 1-1-208.

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10 **1-1-203. Scope; exclusion.**

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12 (a) This act applies to any claim, however
13 characterized, that is based on an action involving public
14 participation and petition. As used in this act, an
15 "action involving public participation and petition"
16 includes:

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18 (i) Any oral statement made, or written
19 statement or other document submitted, in a legislative,
20 executive or judicial proceeding or other proceeding
21 authorized by law;

22

23 (ii) Any oral statement made, or written
24 statement or other document submitted, in connection with

1 an issue under consideration or review by a legislative,
2 executive or judicial proceeding or other proceeding
3 authorized by law;

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5 (iii) Any oral statement made, or written
6 statement or other document submitted, that is reasonably
7 likely to encourage, or to enlist public participation in
8 an effort to effect consideration or review of an issue in
9 a legislative, executive or judicial proceeding or other
10 proceeding authorized by law;

11
12 (iv) Any oral statement made, or written
13 statement or other document submitted, in a place open to
14 the public or a public forum in connection with an issue or
15 public concern; or

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17 (v) Any other conduct in furtherance of the
18 exercise of the constitutional right of free speech in
19 connection with an issue of public concern, or in
20 furtherance of the exercise of the constitutional right of
21 petition.

22
23 (b) This act shall not apply to any action brought by
24 the attorney general, district attorney or city attorney,

1 acting as a public prosecutor, to enforce laws aimed at
2 public protection.

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4 **1-1-204. Special motion to strike; burden of proof.**

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6 (a) A party may bring a special motion to strike any
7 claim that is based on an action involving public
8 participation and petition, as defined in W.S. 1-1-203.

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10 (b) A party bringing a special motion to strike under
11 this act has the initial burden of making a prima facie
12 showing that the claim against which the motion is made is
13 based on an action involving public participation and
14 petition. If the moving party meets this burden, the
15 burden shifts to the responding party to establish a
16 probability of prevailing on the claim by presenting
17 substantial evidence to support a prima facie case. If the
18 responding party meets this burden the court shall deny the
19 motion.

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21 (c) In making a determination under subsection (b) of
22 this section, the court shall consider pleadings and
23 supporting and opposing affidavits stating the facts upon
24 which the liability or defense is based.

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2 (d) If the court determines that the responding party
3 has established a probability of prevailing on the claim:

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5 (i) The fact that the determination has been
6 made and the substance of the determination may not be
7 admitted into evidence at any later stage of the case; and

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9 (ii) The determination does not affect the
10 burden of proof or standard of proof that is applied in the
11 proceeding.

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13 (e) The attorney general's office or any government
14 body to which the moving party's acts were directed may
15 intervene to defend or otherwise support the moving party.

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17 **1-1-205. Required procedures.**

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19 (a) The special motion to strike may be filed within
20 sixty (60) days of the service of the most recent complaint
21 or, in the court's discretion, at any later time upon terms
22 it deems proper. A hearing shall be held on the motion not
23 more than thirty (30) days after the service of the motion

1 unless the docket conditions of the court require a later
2 hearing.

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4 (b) All discovery and any pending hearings or motion
5 in the action shall be stayed upon the filing of a special
6 motion to strike under W.S. 1-1-204. The stay of discovery
7 shall remain in effect until the entry of the order ruling
8 on the motion. Notwithstanding the stay imposed by this
9 subsection, the court, on motion and for good cause shown,
10 may order that specified discovery or other hearings or
11 motions be conducted.

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13 (c) Any party shall have a right of expedited appeal
14 from a trial court order on the special motion or from a
15 trial court's failure to rule on the motion in a timely
16 fashion.

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18 **1-1-206. Attorney's fees; costs; and other relief.**

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20 (a) The court shall award a moving party who prevails
21 on a special motion to strike made under W.S. 1-1-204,
22 without regard to any limits under state law:

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1 (i) Costs of litigation and any reasonable
2 attorney's fees incurred in connection with the motion; and
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4 (ii) Such additional relief, including sanctions
5 upon the responding party and its attorneys or law firms,
6 as the court determines shall be necessary to deter
7 repetition of the conduct and comparable conduct by others
8 similarly situated.
9

10 (b) If the court finds that the special motion to
11 strike is frivolous or is solely intended to cause
12 unnecessary delay, the court shall award reasonable
13 attorney's fees and costs to the responding party.
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15 **1-1-207. Relationship to other laws.**
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17 Nothing in this act shall limit or preclude any rights the
18 moving party may have under any other constitutional,
19 statutory, case or common law, or rule provisions.
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21 **1-1-208. Uniformity of application and construction.**
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23 This act shall be applied and construed liberally to
24 effectuate its general purpose to make uniform the law with

1 respect to the subject of this act among states enacting
2 it.

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4 **Section 2.** This act is effective July 1, 2007.

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(END)