

## HOUSE BILL NO. HB0159

Safeguarding personal expression at K-12 schools.

Sponsored by: Representative(s) Lien, Knapp, Lucas, McCann,  
Neiman and Yin and Senator(s) Hutchings and  
Steinmetz

A BILL

for

1 AN ACT relating to education; specifying protections for  
2 speech and expression by students at public schools;  
3 specifying activities in which students may engage at  
4 schools; specifying remedies; authorizing a cause of  
5 action; providing definitions; making conforming  
6 amendments; amending the Wyoming Governmental Claims Act;  
7 and providing for an effective date.

8

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

10

11 **Section 1.** W.S. 1-39-125 and 21-3-601 are created to  
12 read:

13

14 **1-39-125. Liability; student expression at schools;**

15 **waiver.**

1

2 (a) A governmental entity is liable for damages  
3 resulting from a violation of W.S. 21-3-601 in accordance  
4 with W.S. 21-3-601(g).

5

6 (b) A school as defined by W.S. 21-3-601(a)(i) waives  
7 immunity under the eleventh amendment to the United States  
8 constitution and consents to suit in a federal court for  
9 lawsuits arising under W.S. 21-3-601. A school that  
10 violates W.S. 21-3-601 shall not be immune from suit or  
11 liability for the violation.

12

13

## ARTICLE 6

14

## SAFEGUARDING FREE EXPRESSION

15

16 **21-3-601. Protections for student speech and**  
17 **expression; definitions; remedies.**

18

19 (a) As used in this section:

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21 (i) "School" means any school specified in W.S.  
22 21-3-101 and shall not include privately run schools;

23

1           (ii) "Student" means a person who is enrolled in  
2 a school on a full-time or part-time basis.

3

4           (b) No student shall be discriminated against or  
5 penalized by a school for engaging in religious, political  
6 or ideological speech or expressing a religious, political  
7 or ideological viewpoint in the same time, place and manner  
8 and to the same extent that other similarly situated  
9 students may engage in speech or express views at school.

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11           (c) A student may engage in protected speech or  
12 expression at school, including but not limited to the  
13 following:

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15           (i) Expressing a religious, political or  
16 ideological viewpoint on the topic or subject of discussion  
17 or study inside of a class or during an instruction period;

18

19           (ii) Expressing religious, political or  
20 ideological viewpoints in a homework assignment, artwork,  
21 presentation or other written or oral assignment without  
22 discrimination or academic penalty based on the religious,  
23 political or ideological content of the student's

1 submission. The student's work shall be assessed by  
2 ordinary academic standards of substance and relevance and  
3 against other legitimate pedagogical concerns identified by  
4 the school;

5

6 (iii) Organizing religious, political or  
7 ideological gatherings before school, during instructional  
8 time and after school to the same extent and with the same  
9 access to school facilities as other student-initiated  
10 gatherings are permitted;

11

12 (iv) Wearing clothing, accessories and jewelry  
13 that display religious, political or ideological messages  
14 or religious, political or ideological symbols in the same  
15 manner and to the same extent that other students are  
16 permitted to wear clothing, accessories and jewelry that  
17 display messages and symbols.

18

19 (d) One (1) or more students may organize religious,  
20 political or ideological clubs or organizations before,  
21 during and after school to the same extent and with the  
22 same access to school facilities and to all benefits and

1 privileges that are afforded to other clubs and  
2 organizations authorized by the school.

3

4 (e) Subject to subsection (f) of this section, no  
5 school shall discriminate against a student club or  
6 organization because of:

7

8 (i) The religious, political or ideological  
9 viewpoints expressed by the club, organization or the  
10 students within the club or organization;

11

12 (ii) Any requirement that the leaders or members  
13 of the club or organization affirm and adhere to the  
14 organization's sincerely held beliefs, comply with the  
15 organization's standards of conduct or further the club's  
16 or organization's mission or purpose, as defined by the  
17 student club or organization.

18

19 (f) Nothing in this section shall be construed to  
20 prevent a school from prohibiting, limiting or restricting:

21

22 (i) Expression that the first amendment to the  
23 United States constitution does not protect;

1

2 (ii) Expression that is unwelcome and so severe,  
3 pervasive and subjectively and objectively offensive that a  
4 student is effectively denied equal access to educational  
5 opportunities or benefits provided by the school;

6

7 (iii) Conduct that intentionally, materially and  
8 substantially disrupts the operations of the school or the  
9 expressive activity of another person if that activity is  
10 occurring in a campus space reserved for that activity  
11 under the exclusive use or control of a particular student,  
12 group of students, club or organization.

13

14 (g) Any person or student club or organization that  
15 is harmed by a violation of this section or whose rights  
16 under this section are violated shall have a cause of  
17 action, in accordance with all of the following:

18

19 (i) The person, club or organization may seek  
20 declaratory and injunctive relief, monetary damages,  
21 reasonable attorney fees and costs and any other  
22 appropriate relief;

23

1           (ii) A person, club or organization prevailing  
2 in an action under this subsection shall receive not less  
3 than five thousand dollars (\$5,000.00) in damages. Nothing  
4 in this paragraph shall be construed as limiting or  
5 prohibiting a court from awarding damages up to the amounts  
6 specified in or in accordance with W.S. 1-39-118(a) and  
7 (b);

8  
9           (iii) Any person, club or organization aggrieved  
10 by a violation of this section may assert the violation as  
11 a defense or counterclaim in any disciplinary action,  
12 administrative proceeding or lawsuit brought against the  
13 person, club or organization;

14  
15           (iv) Nothing in this section shall be  
16 interpreted to limit any other remedies available at law to  
17 any person, club or organization;

18  
19           (v) A person, club or organization aggrieved by  
20 a violation of this section shall commence an action not  
21 later than two (2) years after the day the violation  
22 occurs. For purposes of this paragraph, each day that a  
23 violation of this section persists or remains in effect

1 shall constitute a new day that the cause of action has  
2 accrued.

3

4 **Section 2.** W.S. 1-39-104(a) is amended to read:

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6 **1-39-104. Granting immunity from tort liability;**  
7 **liability on contracts; exceptions.**

8

9 (a) A governmental entity and its public employees  
10 while acting within the scope of duties are granted  
11 immunity from liability for any tort except as provided by  
12 W.S. 1-39-105 through 1-39-112 and 1-39-122 through  
13 ~~1-39-124~~ 1-39-125. Any immunity in actions based on a  
14 contract entered into by a governmental entity is waived  
15 except to the extent provided by the contract if the  
16 contract was within the powers granted to the entity and  
17 was properly executed and except as provided in W.S.  
18 1-39-120(b). The claims procedures of W.S. 1-39-113 apply  
19 to contractual claims against governmental entities.

20

1           **Section 3.** This act is effective immediately upon  
2 completion of all acts necessary for a bill to become law  
3 as provided by Article 4, Section 8 of the Wyoming  
4 Constitution.

5

6

(END)