

## The Special Session Saga of Immunity Legislation

As an update, the Management Council and Joint Minerals Committee worked for several weeks on four bills focusing on distributing the \$1.25 billion Wyoming received through the CARES Act and establishing programs to help, businesses, employees, those behind in rent and expanding workers' compensation and unemployment services. The Mineral Committee drafted legislation to provide business relief programs. There were opportunities to provide input on all four bills. These four bills were to be the focus of the special session. On Thursday afternoon, the day before the special session began, [SF 1005 Coronavirus immunity provisions](#) was filed. Later that evening, HB 1005, Coronavirus immunity provisions-2 was also filed. We immediately began calling and emailing legislators with our concerns, especially with the process.

The House and Senate each had to vote on whether to consider 1005 requiring a 2/3 vote for introduction. The Senate voted to introduce and consider equally with the other four bills. Speaker of the House Harshman initially referred HB 1005 to the Rules Committee where it would have failed. A motion was made to move the bill directly to the Committee of the Whole which failed 40-20. Many of you wrote to your House Members urging a no vote. Thank you.

With the failure to consider HB 1005, there was an effort to amend immunity language into [SF 1002](#) and [HB 1002](#), Emergency Government Action – Covid-19. Senator Liisa Anselmi-Dalton sponsored the amendment in the Senate and Representative Stith sponsored in the House. Both amendments were challenged as not being germane to the legislation. The Senate Rules Committee ruled the amendment could move forward and it passed. The House Rules Committee ruled that the amendment was not germane to the House bill and it was withdrawn. The House and Senate both passed 1002.

Because of differences in the House and Senate versions of 1002 a Conference Committee was appointed to come to a compromise. The House remained solid that it would not consider the language of the Anselmi-Dalton amendment. Representative Connolly brought 35-4-114 (a) to the committee's attention. The current statute protects health care providers and businesses (including the definition of person) who act in good faith during a public health emergency. During a second meeting, the conference committee agreed to amendments to that statute. The language below is what was added to HB 1002 and SF 1002.

### **35-4-114. Immunity from liability.**

(a) During a public health emergency as defined by W.S. 35-4-115(a)(i), any health care provider or other person, including a business entity, who in good faith follows the instructions of ~~the~~ a state, city, town or county health officer ~~in responding~~ or who acts in good faith in responding to the public health emergency is immune from any liability arising from complying with those instructions or acting in good faith. This immunity shall apply to health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer

during a declared public health emergency as defined by W.S. 35-4-115(a)(i). This immunity shall not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.

Many in the House were still upset about the process and the possibility of any increase in immunity and taking away rights without public comment. Twenty voted against the bill because of immunity concerns and the addition of protection for mortgagees as well as renters. SF 1002 did pass the House 38-20. The debate was great to listen to with so many legislators voicing their concerns and support of the rights of Wyoming citizens.

### **Joint Committee Updates:**

#### **The Joint Travel, Recreation, Wildlife & Cultural Resources Committee:**

**July 16 & 17** – Beth Lance testified on July 17 during the discussion of Civil immunity and liability issues. The committee considered two bills on immunity. One was a committee bill, but was basically a bill drafted by Senator Anselmi-Dalton and the other was Senator Driskill's bill. Senator Driskill's bill was voted out of committee. The committee did not seem interested in WTLA's comments which included that the immunity provision already passed is sufficient to protect businesses. Our main concerns regarding Senator Driskill's bill are that it attempts to write rules of civil procedure into legislation, it changes the burden of proof to clear and convincing evidence and it removes incentive to follow public health orders thereby potentially creating another lockdown and hurting businesses etc. The Committee voted to sponsor Senator Driskill's bill.

#### **The Joint Judiciary Committee:**

**June 4:** The Business Alliance and Hospital Association provided testimony and proposed amendments to 35-4-114 which included changing the burden of proof to clear and convincing evidence and writing the rules of civil procedure into legislation along with including a long list entities that would be protected. I testified in opposition to the proposal as did Professor Michael Duff. The committee voted to have an amended version of 35-4-114 drafted to include some of the proposed changes but did not support changing the burden of proof or including changes to the rules of civil procedure.

#### **August 20 & 21:**

1. The Committee considered DUI statutes on August 20 including [21LSO-0080 – Driving under the influence-zero tolerance](#). The bill would have restricted driving with any measurable controlled substance or metabolite of a controlled substance. Mike Vang testified to the committee and provided excellent information. The bill failed and will not be sponsored by the joint committee.
2. Continued discussion of immunity for businesses took place on August 21. As you know 35-14-114 was amended during the May special session providing immunity for

businesses, health care providers and other entities acting in good faith or following the instructions of a health officer in good faith. The business community including the Wyoming Business Alliance, the Outfitters, the Retail, Restaurant and Lodging Associations and Hospital Association do not think what was passed goes far enough.

3. Those organizations support the Joint Travel, Wildlife, Recreation and Cultural Resources Committee legislation which expands immunity for business and a long list of other entities.
4. Mark Aronowitz testified for WTLA on the 21<sup>st</sup>. He emphasized that no additional legislation is needed. Businesses wanted immunity and they have it. He also discussed the difficulty in bringing cases involving contracting Covid-19 because of causation and damages.
5. The Committee voted to move forward with the bill they have been working, including several amendments to provide an option to the TRW legislation.
6. Here are links to the [TRW bill](#) and the [bill the Judiciary Committee](#) worked on the 21<sup>st</sup>. The amended version is not available yet.