

SENATE FILE NO. SF0179

Anti-red flag gun seizure act.

Sponsored by: Senator(s) Laursen, D, Biteman, Bouchard,
French, Hutchings, Ide, McKeown and Salazar
and Representative(s) Allemand, Heiner,
O'Hearn, Ottman, Rodriguez-Williams, Strock
and Ward

A BILL

for

1 AN ACT relating to the protection of constitutional rights;
2 making legislative findings; declaring legislative
3 authority; prohibiting the implementation or enforcement of
4 a red flag gun seizure; preempting local law; providing
5 definitions; providing for a civil action; providing a
6 penalty; waiving sovereign immunity; authorizing attorney's
7 fees; authorizing the attorney general to initiate a civil
8 action; and providing for an effective date.

9

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

11

12 **Section 1.** W.S. 1-39-122 and 9-14-301 through
13 9-14-304 are created to read:

14

1 **1-39-122. Liability; enforcement of a red flag gun**
2 **seizure.**

3

4 A governmental entity is liable for damages resulting from
5 a violation of W.S. 9-14-303(a) or (b) pursuant to W.S.
6 9-14-304.

7

8

ARTICLE 3

9

ANTI RED FLAG GUN SEIZURE ACT

10

11 **9-14-301. Short title.**

12

13 This article shall be known and may be cited as the "Anti
14 Red Flag Gun Seizure Act."

15

16 **9-14-302. Declaration of authority.**

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18 (a) The Anti Red Flag Gun Seizure Act is enacted
19 under the authority of the second and tenth amendments to
20 the United States Constitution, article 1, section 24 of
21 the Wyoming Constitution, Wyoming's agreement with the
22 United States that the state adopted when it joined the
23 Union under the United States Constitution's system of dual

1 sovereignty, and *Printz v. United States*, 521 U.S. 898
2 (1997).

3

4 (b) The legislature further declares that the
5 authority for W.S. 9-14-301 through 9-14-303 is provided by
6 the findings in W.S. 6-8-406.

7

8 (c) The legislature finds:

9

10 (i) The second amendment to the Constitution of
11 the United States guarantees the right to keep and bear
12 arms;

13

14 (ii) The fifth and fourteenth amendments to the
15 Constitution of the United States requires due process of
16 law prior to the deprivation of life, liberty or property;

17

18 (iii) The tenth amendment to the Constitution of
19 the United States expresses that the powers not delegated
20 to the United States by the Constitution, nor prohibited
21 by it to the states, are reserved to the states
22 respectively;

23

1 (iv) Red flag gun seizures, as defined by W.S.
2 9-14-303(a), that allow for the confiscation of firearms
3 prior to a conviction for a violent felony in a judicial
4 proceeding, are unconstitutional.

5

6 **9-14-303. Prohibiting the implementation or**
7 **enforcement of a red flag gun seizure, preempting local**
8 **law, penalties.**

9

10 (a) For purposes of this act:

11

12 (i) "Red flag gun seizure" means a federal
13 statute, rule, executive order, judicial order or judicial
14 finding or any state statute, rule, executive order,
15 judicial order or judicial finding that does any of the
16 following:

17

18 (A) Prohibits a specific person from
19 owning, possessing, transporting, transferring or receiving
20 a firearm, ammunition or related accessories unless the
21 individual has been convicted of a violent felony crime; or

22

1 (B) Orders the removal or requires the
2 surrender of a firearm, ammunition or related accessories
3 from a specific person unless the individual has been
4 convicted of a violent felony crime.

5

6 (ii) "This act" means W.S. 9-14-301 through
7 9-14-304.

8

9 (b) The state of Wyoming, including any agency or any
10 political subdivision in the state shall be prohibited from
11 implementing or enforcing any federal statute, rule,
12 executive order, judicial order or judicial findings or any
13 state statute, rule, executive order, judicial order or
14 judicial findings that would enforce a red flag gun seizure
15 order against or upon a resident of Wyoming.

16

17 (c) This state and any agency or any political
18 subdivision, including any law enforcement agency, in the
19 state of Wyoming shall be prohibited from using any
20 personnel or funds appropriated by the legislature of the
21 state of Wyoming, any other source of funds that originated
22 within the state of Wyoming or accepting any federal funds
23 to implement any federal statute, rule, executive order,

1 judicial order or judicial findings or any state statute,
2 rule, executive order, judicial order or judicial findings
3 that would enforce a red flag gun seizure order against or
4 upon a resident of Wyoming. Nothing in this section shall
5 be construed to prohibit Wyoming officials from accepting
6 aid from federal officials to enforce any Wyoming law not
7 in conflict with this act.

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9 (d) This act shall preempt any local law, ordinance
10 or regulation regarding a red flag gun seizure order or any
11 other law, ordinance or regulation that may conflict with
12 any provision of this act.

13

14 **9-14-304. Civil actions permitted, remedies.**

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16 (a) Any agency of the state, political subdivision or
17 law enforcement agency that employs any public officer or
18 peace officer, as defined in W.S. 7-2-101(a)(iv), who
19 knowingly violates any provision of this act and enforces a
20 red flag gun seizure against any resident of the state of
21 Wyoming while acting in any official capacity shall be
22 liable to the injured party for damages resulting from the
23 public officer's or peace officer's in a civil action

1 before the district court in which county the red flag gun
2 seizure was enforced. The court, upon a finding of a
3 violation of this act, may impose a civil penalty against
4 the agency or political subdivision in an amount not to
5 exceed fifty thousand dollars (\$50,000.00) per violation
6 and may order any injunctive or other equitable relief as
7 permitted by law. The court shall hold a hearing on a
8 motion for injunctive or equitable relief of a red flag gun
9 seizure within thirty (30) days of service of the petition.

10

11 (b) An interested party may bring a civil action to
12 enforce the provisions of this act. The district court may
13 order injunctive or other equitable relief, recovery of
14 damages or other legal remedies permitted by law and
15 payment of reasonable attorney fees.

16

17 (c) In any action brought under subsection (b) of
18 this section, the court may award the prevailing party,
19 other than the state of Wyoming or any political
20 subdivision of the state, reasonable attorney fees.
21 Sovereign immunity shall not be an affirmative defense in
22 any action pursuant to this section.

23

1 (d) The attorney general is authorized to bring any
2 action necessary to enforce the provisions of this act.

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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. Any immunity
13 in actions based on a contract entered into by a
14 governmental entity is waived except to the extent provided
15 by the contract if the contract was within the powers
16 granted to the entity and was properly executed and except
17 as provided in W.S. 1-39-120(b). The claims procedures of
18 W.S. 1-39-113 apply to contractual claims against
19 governmental entities.

20

1 **Section 3.** This act is effective immediately upon the
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)