SENATE FILE NO. SF0109

Prohibit Red Flag Gun Seizure Act.

Sponsored by: Senator(s) Biteman, Bouchard, French, Hutchings, Ide, Laursen, D, McKeown and Salazar and Representative(s) Allemand, Andrew, Hornok, Ottman and Winter

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; amending loss of firearms rights

5 for nonviolent felons; preempting local law; providing

6 definitions; providing for a civil action; providing a

7 penalty; waiving sovereign immunity; authorizing attorney's

8 fees; authorizing the attorney general to initiate a civil

9 action; repealing a crime; and providing for an effective

10 date.

11

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

13

1   **Section 1.** W.S. 1-39-122 and 9-14-301 through

2   9-14-304 are created to read:

3

4   **1-39-122. Liability; enforcement of a red flag gun**

5   **seizure.**

6

7   A governmental entity is liable for damages resulting from

8   a violation of W.S. 9-14-303(b) pursuant to W.S. 9-14-304.

9

10   ARTICLE 3

11   PROHIBIT RED FLAG GUN SEIZURE ACT

12

13   **9-14-301. Short title.**

14

15   This article shall be known and may be cited as the

16   "Prohibit Red Flag Gun Seizure Act."

17

18   **9-14-302. Declaration of authority.**

19

20   (a) The Prohibit Red Flag Gun Seizure Act is enacted

21   under the authority of the second and tenth amendments to

22   the United States constitution, article 1, section 24 of

23   the Wyoming constitution, Wyoming's agreement with the

1 United States that the state adopted when it joined the

2 Union under the United States constitution's system of dual

3 sovereignty, and Printz v. United States, 521 U.S. 898

4 (1997).

5

6   (b) The legislature further declares that the

7 authority for W.S. 9-14-301 through 9-14-303 is provided by

8 the findings in W.S. 6-8-406.

9

10   (c) The legislature finds:

11

12   (i) The second amendment to the constitution of

13 the United States guarantees the right to keep and bear

14 arms;

15

16   (ii) The fifth and fourteenth amendments to the

17 constitution of the United States requires due process of

18 law prior to the deprivation of life, liberty or property;

19

20   (iii) The tenth amendment to the constitution of

21 the United States expresses that the powers not delegated

22 to the United States by the constitution, nor prohibited

1 by it to the states, are reserved to the states

2 respectively.

3

4   **9-14-303. Prohibiting the implementation or**

5 **enforcement of a red flag gun seizure, preempting local**

6 **law, penalties.**

7

8   (a) For purposes of this act:

9

10   (i) "Red flag gun seizure" means a federal

11 statute, rule, executive order, judicial order or judicial

12 finding or any state statute, rule, executive order,

13 judicial order or judicial finding that does any of the

14 following:

15

16   (A) Prohibits a specific person from

17 owning, possessing, transporting, transferring or receiving

18 a firearm, ammunition or related accessories unless the

19 person has been convicted of a violent felony crime, is

20 subject to an order of protection prohibiting firearms

21 pursuant to W.S. 7-3-508, 7-3-509, 35-21-104, 35-21-105 or

22 a substantially similar law of another jurisdiction or is

1 ordered not to possess a firearm, ammunition or related

2 accessories as a condition of bond; or

3

4   (B) Orders the removal or requires the

5 surrender of a firearm, ammunition or related accessories

6 from a specific person unless the person has been convicted

7 of a violent felony crime, is subject to an order of

8 protection prohibiting firearms pursuant to W.S. 7-3-508,

9 7-3-509, 35-21-104, 35-21-105 or a substantially similar

10 law of another jurisdiction or is ordered not to possess a

11 firearm, ammunition or related accessories as a condition

12 of bond.

13

14   (ii) "Violent felony" means as defined in W.S.

15 6-1-104(a)(xii);

16

17   (iii) "This act" means W.S. 9-14-301 through

18 9-14-304.

19

20   (b) The state of Wyoming, including any agency or any

21 political subdivision in the state, shall be prohibited

22 from implementing or enforcing any federal statute, rule,

23 executive order, judicial order or judicial findings or any

1 state statute, rule, executive order, judicial order or

2 judicial findings that would enforce a red flag gun seizure

3 order against or upon a resident of Wyoming.

4

5   (c) This state and any agency or any political

6 subdivision, including any law enforcement agency, in the

7 state of Wyoming shall be prohibited from using any

8 personnel or funds appropriated by the legislature of the

9 state of Wyoming, any other source of funds that originated

10 within the state of Wyoming or accepting any federal funds

11 to implement any federal statute, rule, executive order,

12 judicial order or judicial findings or any state statute,

13 rule, executive order, judicial order or judicial findings

14 that would enforce a red flag gun seizure order against or

15 upon a resident of Wyoming. Nothing in this section shall

16 be construed to prohibit Wyoming officials from accepting

17 aid from federal officials to enforce any Wyoming law not

18 in conflict with this act.

19

20   (d) This act shall preempt any local law, ordinance

21 or regulation regarding a red flag gun seizure order or any

22 other law, ordinance or regulation that may conflict with

23 any provision of this act.

1

2   (e) Nothing in this act shall be construed to

3   prohibit or prevent a firearm, firearm accessory or

4   ammunition from being seized as evidence by law enforcement

5   in the course of a lawful investigation.

6

7   **9-14-304. Civil actions permitted, remedies.**

8

9   (a) Any agency of the state, political subdivision or

10 law enforcement agency that employs any public officer or

11 peace officer, as defined in W.S. 7-2-101(a)(iv), who

12 knowingly violates any provision of this act and enforces a

13 red flag gun seizure against any resident of the state of

14 Wyoming while acting within the scope of their employment

15 shall be liable to the injured party for damages resulting

16 from the public officer's or peace officer's conduct in a

17 civil action before the district court in which county the

18 red flag gun seizure was enforced. The court, upon a

19 finding of a violation of this act, may impose a civil

20 penalty against the agency or political subdivision in an

21 amount not to exceed fifty thousand dollars ($50,000.00)

22 per violation and may order any injunctive or other

23 equitable relief as permitted by law. The court shall hold

1 a hearing on a motion for injunctive or equitable relief of

2 a red flag gun seizure within thirty (30) days of service

3 of the petition.

4

5   (b) An interested party may bring a civil action to

6 enforce the provisions of this act. The district court may

7 order injunctive or other equitable relief, recovery of

8 damages or other legal remedies permitted by law and

9 payment of reasonable attorney fees.

10

11   (c) In any action brought under subsection (b) of

12 this section, the court may award the prevailing party,

13 other than the state of Wyoming or any political

14 subdivision of the state, reasonable attorney fees.

15 Sovereign immunity shall not be an affirmative defense in

16 any action pursuant to this section.

17

18   **Section 2.** W.S. 1-39-104(a) and 6-10-106(a)(intro)

19 are amended to read:

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21   **1-39-104. Granting immunity from tort liability;**

22 **liability on contracts; exceptions.**

23

1   (a) A governmental entity and its public employees

2 while acting within the scope of duties are granted

3 immunity from liability for any tort except as provided by

4 W.S. 1-39-105 through 1-39-112 and 1-39-122. Any immunity

5 in actions based on a contract entered into by a

6 governmental entity is waived except to the extent provided

7 by the contract if the contract was within the powers

8 granted to the entity and was properly executed and except

9 as provided in W.S. 1-39-120(b). The claims procedures of

10 W.S. 1-39-113 apply to contractual claims against

11 governmental entities.

12

13   **6-10-106. Rights lost by conviction of felony;**

14 **restoration.**

15

16   (a) A person convicted of a felony is incompetent to

17 be an elector or juror or to hold any office of honor,

18 trust or profit within this state or, if convicted of a

19 violent felony, to use or knowingly possess any firearm,

20 unless:

21

1   **Section 3.** W.S. 6-8-102(c) is repealed.

2

3   **Section 4.** This act is effective immediately upon the

4 completion of all acts necessary for a bill to become law

5 as provided by Article 4, Section 8 of the Wyoming

6 Constitution.

7

8   (END)