

**CHAPTER 50**

**CLAIMS AGAINST GOVERNMENT EMPLOYEES—2**

Original Senate File No. 95

AN ACT to amend W.S. 1-41-102(a)(v), 1-41-103(c)(iii) and (iv) and (e)(i), (iii) and (v), 1-42-102(a)(v), 1-42-103(e)(i), (iii) and (v); and to repeal W.S. 1-41-103(e)(ii) and 1-42-103(e)(ii) relating to civil procedure; providing for defense of claims against employees of governmental entities and indemnification; prohibiting payment of claims unless a determination has been made that the public employee was acting within the scope of his duties; providing that payment of a claim against a peace officer out of the state self-insurance account is subject to a matching deductible or retention for defense costs; providing for an automatic reservation or right by the state to reject certain claims; providing definitions; conforming related statutes; and providing for an effective date.

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

**Section 1.** W.S. 1-41-102(a)(v), 1-41-103(c)(iii) and (iv) and (e)(i), (iii) and (v), 1-42-102(a)(v), 1-42-103(e)(i), (iii) and (v) are amended to read:

**1-41-102. Definitions.**

(a) As used in this act:

(v) "Public employee" means any officer, employee or servant of the state, provided the term:

(A) Includes elected or appointed officials, peace officers and persons acting on behalf or in service of the state in any official capacity, whether with or without compensation;

(B) Does not include:

(I) An independent contractor;

(II) A judicial officer exercising the authority vested in him; or

(III) Any local government employees or officials including county and prosecuting attorneys.

**1-41-103. Self-insurance account; creation; authorized payments.**

(c) Expenditures shall be made out of the self-insurance account for the following claims which have been settled or reduced to final judgment:

(iii) Claims against a peace officer employed by the University of Wyoming or a local government brought under the Wyoming Governmental Claims Act, provided:

(A) The act or omission upon which the claim is based has been determined by a court or jury to be within the peace officer's scope of duties;

(B) The indemnification for the judgment shall not exceed the limits provided by W.S. 1-39-118 and

(C) Any amount up to twenty thousand dollars (\$20,000.00) paid for or in defense of each claim shall be paid on a dollar for dollar matching basis from the fund and from the University of Wyoming or the local government employing the peace officer.

(iv) Claims against a peace officer employed by the University of Wyoming or a local government arising under 42 U.S.C. 1983 or other federal statutes, provided:

(A) Any amount up to twenty thousand dollars (\$20,000.00) paid from the account for or in defense of each claim shall be paid on a dollar for dollar matching basis from the fund and from the University of Wyoming or the local government employing the peace officer; and

(B) The conditions and limitations of subsection (e) of this section apply to all claims under this paragraph.

(e) The state shall defend claims against its public employees, or a state judicial officer exercising the authority vested in him, arising

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under 42 U.S.C. 1983 or other federal statutes, subject to the following conditions:

(i) The state shall defend and, to the extent provided by paragraph (v) of this subsection, indemnify any of its public employees against any claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the scope of duty;

(iii) If any civil action, suit or proceeding is brought against any public employee of the state which on its face falls within the provisions of paragraph (i) of this subsection, or which the public employee asserts to be based in fact upon an alleged act or omission in the scope of duty, the state shall appear and defend the public employee under an automatic reservation of right by the state to reject the claim unless the act or omission is determined to be within the scope of duty;

(v) Unless the act or omission upon which a claim is based is determined by the court or jury to be within the public employee's scope of duty, no public funds shall be expended in payment of the final judgment against the public employee;

**1-42-102. Definitions.**

(a) As used in this act:

(v) "Public employee" means any officer, employee or servant of a local government including elected or appointed officials and persons acting on behalf or in service of the local government in any official capacity, whether with or without compensation, but the term does not include an independent contractor, peace officer or a judicial officer exercising the authority vested in him;

**1-42-103. Local government insurance account; creation; authorized payments.**

(e) Claims against participating local governments and their public employees, or a judicial officer exercising the authority vested in him, arising under 42 U.S.C. 1983 or other federal statutes, shall be defended and indemnification paid subject to the following conditions:

(i) Public employees of participating local governments, other than peace officers, shall be defended and, to the extent provided by paragraph (v) of this subsection, indemnified against any claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the scope of duty;

(iii) Any civil action, suit or proceeding which is brought against any public employee which on its face falls within the provisions of paragraph (i) of this subsection, or which the public employee, other than peace officers, asserts is based on an alleged act or omission in the scope of duty, shall be defended under this act with an automatic reservation of right by the division to reject the claim unless the act or omission is determined to be within the scope of duty;

(v) Unless the act or omission upon which a claim is based is determined by the court or jury to be within the public employee's scope

of duty, no funds shall be expended from the local government insurance account in payment of the final judgment against the public employee;

**Section 2.** W.S. 1-41-103(e)(ii) and 1-42-103(e)(ii) are repealed.

**Section 3.** This act shall apply only to claims based upon an act, error or omission occurring on and after the effective date of this act.

**Section 4.** This act is effective June 9, 1988.

Approved March 14, 1988.