

## SENATE FILE NO. SF0124

Defending Wyoming business-trade and commerce amendments.

Sponsored by: Senator(s) Nethercott, Driskill, Kost,  
Perkins, Steinmetz and Wasserburger and  
Representative(s) Barlow, Clausen, Eklund,  
Greear, Hunt and Sommers

## A BILL

for

1 AN ACT relating to trade and commerce; amending  
2 prohibitions against unfair trade or commerce  
3 discrimination; authorizing investigatory powers for the  
4 attorney general for antitrust claims; providing for civil  
5 penalties and additional civil remedies relating to  
6 antitrust violations as specified; amending criminal  
7 penalties for antitrust violations as specified; clarifying  
8 the applicability of manufacturing requirements to  
9 discrimination provisions; amending and repealing  
10 provisions related to the authority and duties of enforcing  
11 authorities; and providing for an effective date.

12

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

14

1           **Section 1.** W.S. 40-4-114.1 and 40-4-114.2 are created  
2 to read:

3

4           **40-4-114.1. Civil investigations by the attorney**  
5 **general.**

6

7           (a) Whenever the attorney general has probable cause  
8 to believe that any person, firm, corporation or other  
9 entity, whether foreign or domestic, has engaged in or is  
10 engaging in a violation of any provision of this act or of  
11 any provision of federal antitrust law that may be enforced  
12 by the attorney general, the attorney general may initiate  
13 an investigation. As part of any investigation under this  
14 section, the attorney general may administer oaths and  
15 affirmations, subpoena witnesses, documents or other  
16 matters, propound interrogatories to be answered in writing  
17 under oath and collect evidence. Any interrogatory or  
18 subpoena served under this subsection shall inform the  
19 party served of the right to file a petition as provided by  
20 subsection (b) of this section.

21

22           (b) Not later than five (5) business days after the  
23 service of any interrogatory or subpoena or at any time

1 before the return date specified in the interrogatory or  
2 subpoena, the party served under this section may file in  
3 the district court in the county in which the party  
4 resides, the district court in the county where the party  
5 transacts business or the district court in Laramie county  
6 a petition for an order modifying or setting aside the  
7 interrogatory or subpoena. Any petition filed under this  
8 subsection shall be served upon the attorney general. The  
9 petitioner may raise any objection or privilege that would  
10 be available under this act or upon service of a subpoena  
11 in a civil action.

12

13 (c) If any matter that the attorney general seeks to  
14 obtain by subpoena is not located within Wyoming and is not  
15 reducible to electronic reproduction and transmission, the  
16 party subpoenaed may make the matter available to the  
17 attorney general to examine the matter at the place where  
18 it is located. The attorney general may designate  
19 representatives, including officials of the state in which  
20 the matter is located, to inspect the matter on the  
21 attorney general's behalf. The attorney general may respond  
22 to similar requests from officials of other states and may  
23 inspect a matter on their behalf.

1

2 (d) The attorney general may apply to the district  
3 court for an order compelling compliance of any party who  
4 fails to obey a subpoena or answer an interrogatory issued  
5 under this section without lawful excuse and upon  
6 reasonable notice to all persons affected by the subpoena  
7 or interrogatory.

8

9 (e) The attorney general may request that an  
10 individual who refuses to comply with a subpoena or answer  
11 an interrogatory on the grounds that the testimony or  
12 matter may incriminate the individual be ordered by the  
13 court to provide the testimony or matter. Except for a  
14 prosecution for perjury, an individual who complies with a  
15 court order to provide testimony or matter after asserting  
16 a privilege against self-incrimination to which the  
17 individual is entitled by law shall not have the testimony  
18 or matter provided, or evidence derived therefrom, or  
19 received against the individual used in any criminal  
20 investigation or proceeding.

21

22 (f) Any person, firm, corporation or other entity,  
23 whether foreign or domestic, upon whom an interrogatory or

1 subpoena is served pursuant to this section shall comply  
2 with the terms of the interrogatory or subpoena unless  
3 otherwise provided by this section or by order of the  
4 district court.

5

6 (g) Any person who fails to appear with the intent to  
7 avoid, evade or prevent compliance, in whole or in part,  
8 with any investigation under this act or who removes from  
9 any place, conceals, withholds, mutilates, alters, destroys  
10 or by any other means falsifies any matter or documentary  
11 material in the possession, custody or control of any  
12 person subject to the request or subpoena, or who knowingly  
13 conceals any relevant information with the intent to avoid,  
14 evade or prevent compliance shall be liable for a civil  
15 penalty as provided in this subsection. The attorney  
16 general may, upon petition to the court, recover a civil  
17 penalty not to exceed twenty-five thousand dollars  
18 (\$25,000.00). If civil penalties are assessed in or as the  
19 result of any litigation, the attorney general is entitled  
20 to reasonable attorney fees and costs.

21

22 (h) Whenever criminal or civil intelligence, records  
23 of investigations, investigative information or any other

1 information held by any state or federal agency is  
2 available to the attorney general on a confidential or  
3 restricted basis, the attorney general may obtain and use  
4 the information unless otherwise prohibited by law. Any  
5 records of investigations or intelligence or investigative  
6 information that are exempt from disclosure under the  
7 Public Records Act shall remain confidential and exempt  
8 from disclosure under that act.

9

10 (j) Any written response, testimony or document  
11 obtained by the attorney general under this section or any  
12 information derived directly or indirectly from any written  
13 response, testimony or document obtained by the attorney  
14 general shall be deemed records of investigations and shall  
15 be exempt from disclosure under the Public Records Act.

16

17 **40-4-114.2. Civil enforcement by the attorney**  
18 **general.**

19

20 (a) Whenever the attorney general has reasonable  
21 cause to believe that any person, firm, corporation or  
22 other entity, foreign or domestic, has engaged in, is  
23 engaging in or is about to engage in any action or practice

1 that is unlawful under this act, the attorney general may  
2 bring an action in the name of the state of Wyoming against  
3 that person, firm, corporation or entity to:

4

5 (i) Obtain a declaratory judgment that the  
6 action or practice violates the provisions of this act;

7

8 (ii) Enjoin any action or practice that violates  
9 the provisions of this act by issuing a temporary  
10 restraining order, an ex parte temporary restraining order  
11 or a preliminary or permanent injunction, without bond;

12

13 (iii) Recover a civil penalty not to exceed  
14 fifty thousand dollars (\$50,000.00) for each violation of  
15 this act or of any injunction, judgment or consent  
16 agreement issued or entered into under this act;

17

18 (iv) Obtain an order requiring divestiture of  
19 any assets:

20

21 (A) Acquired in violation of W.S. 40-4-101  
22 and after the court determines that divestiture is  
23 necessary to avoid the creation or continuation of a

1 monopoly or to avoid any likely substantial lessening of  
2 competition that results from a transaction found to be in  
3 violation of W.S. 40-4-101; or

4

5 (B) To restore competition to any line of  
6 Wyoming commerce that has been eliminated by a violation of  
7 W.S. 40-4-101.

8

9 (v) Recover actual damages or restitution on  
10 behalf of the state and its agencies that are injured  
11 either directly or indirectly by reason of any violation of  
12 this act.

13

14 (b) The attorney general may bring a civil action in  
15 the name of the state of Wyoming as *parens patriae* on  
16 behalf of any person residing within Wyoming to secure  
17 damages or restitution for losses incurred directly or  
18 indirectly because of any violation of this act. For any  
19 action to be initiated under this subsection, the attorney  
20 general shall give notice to all persons on whose behalf  
21 the action would be initiated by publication or other means  
22 specified by the court. Any person on whose behalf a civil  
23 action would be brought may elect to have their claims

1 excluded from the civil action by filing a notice of  
2 election with the court within the time specified in the  
3 notice by the attorney general. Any person who is  
4 represented by the attorney general in a civil action under  
5 this subsection who fails to submit a timely notice of  
6 election and for which a final judgment has been issued  
7 shall be precluded from asserting any claim or initiating  
8 any civil action that could have been brought based on the  
9 facts alleged or proven in the attorney general's action  
10 under this subsection.

11

12 (c) The attorney general shall recover the costs of  
13 any investigation, expert costs and reasonable attorney  
14 fees and costs if successful in any civil action initiated  
15 under this section.

16

17 (d) In lieu of initiating or continuing an  
18 investigation or civil action, the attorney general may  
19 accept and enter into a consent agreement with respect to  
20 any action or practice alleged to violate this act. Any  
21 consent agreement may include a stipulation for the payment  
22 of civil penalties as authorized in this act, reimbursement  
23 of the attorney general's reasonable expenses, costs and

1 attorney fees, the payment of restitution and actual  
2 damages for Wyoming residents with an interest in the  
3 consent agreement or an agreement to abide by any  
4 injunctive provisions or prohibitions.

5

6 (e) Any civil action brought under this section may  
7 be brought in the district court of the county in which any  
8 party resides or has a principal place of business or in  
9 the district court of Laramie county.

10

11 (f) In addition to any action authorized by state  
12 law, the attorney general may proceed under any provision  
13 of federal antitrust law to enforce the provisions of this  
14 act.

15

16 (g) This section shall apply only to actions  
17 initiated by the attorney general.

18

19 **Section 2.** W.S. 40-4-101(a)(intro), (i), by creating  
20 a new paragraph (iv) and (d), 40-4-104, 40-4-122 and  
21 40-4-123 are amended to read:

22

1           40-4-101. What constitutes unfair discrimination;  
2 penalty; exceptions; definitions.

3

4           (a) Any person, firm, corporation, foreign or  
5 domestic, or other entity doing business in the state of  
6 Wyoming ~~and engaged in the production, manufacture, sale or~~  
7 ~~distribution of any commodity in general use,~~ shall not:

8

9                   (i) Make, enter into, form or become a party to  
10 any plan, contract, agreement, conspiracy, asset  
11 acquisition, consolidation, merger or combination of any  
12 kind whatsoever to prevent or substantially lessen  
13 competition, create a monopoly or to control or influence  
14 production or prices thereof ~~i-~~ or

15

16                   (iv) Monopolize, attempt to monopolize or  
17 combine or conspire to monopolize any part of trade or  
18 commerce.

19

20           (d) As used in this chapter, "this act" means W.S.  
21 40-4-101 through ~~40-4-105, 40-4-107, 40-4-109, 40-4-110 and~~  
22 ~~40-4-114~~ 40-4-123.

23

1           **40-4-104. Criminal enforcement and penalties.**

2

3           (a) Any person, firm, ~~or~~ corporation or other entity  
4 violating any of the provisions of this ~~chapter act~~ shall  
5 be fined in any sum not more than ~~five thousand dollars~~  
6 ~~(\$5,000.00)~~ fifty thousand dollars (\$50,000.00) per  
7 violation of this act, or by imprisonment in the county  
8 jail not exceeding one (1) year, or both. ~~such fine and~~  
9 ~~imprisonment.~~

10

11           (b) The district attorney may enforce criminal  
12 violations of this act against any person, firm,  
13 corporation or entity.

14

15           **40-4-122. Requiring construction of particular**  
16 **building to maintain agency or dealership.**

17

18 Any manufacturer, or any jobber or distributor for any  
19 manufactured product, or any salesman, agent or  
20 representative of any such manufacturer, jobber or  
21 distributor who requires, or attempts to require, of any  
22 dealer or agent residing in the state of Wyoming, who sells  
23 or services the products of such manufacturer, jobber or

1 distributor, that such Wyoming agent or dealer construct or  
2 build any particular type or standard of building in order  
3 to maintain his agency or dealership to sell such  
4 manufactured product, shall be guilty of a misdemeanor, ~~and~~  
5 ~~upon conviction thereof shall be fined not more than one~~  
6 ~~thousand dollars (\$1,000.00), or sentenced to imprisonment~~  
7 ~~in the county jail for not more than six (6) months, or~~  
8 ~~shall be subject to both such fine and imprisonment~~  
9 punishable as provided by this act.

10

11 **40-4-123. Requiring purchase of accessories to**  
12 **maintain agency or dealership.**

13

14 Any manufacturer, or any jobber or distributing agent for  
15 any manufactured product, or any salesman, agent or  
16 representative of any such manufacturer, jobber or  
17 distributor, who requires, or attempts to require, of any  
18 Wyoming agent or dealer selling or servicing the products  
19 of such manufacturer, jobber or distributor, that such  
20 Wyoming dealer or agent purchase accessories or products of  
21 such manufacturer, jobber or distributor in order to obtain  
22 other products of such manufacturer, jobber or distributor  
23 shall be guilty of a misdemeanor, ~~and upon conviction~~

1 ~~thereof shall be fined not more than one thousand dollars~~  
2 ~~(\$1,000.00), or sentenced to imprisonment in the county~~  
3 ~~jail for not more than six (6) months, or shall be subject~~  
4 ~~to both such fine and imprisonment~~ punishable as provided  
5 by this act.

6

7 **Section 3.** W.S. 40-4-102 and 40-4-103 are repealed.

8

9 **Section 4.** This act is effective July 1, 2021.

10

11

(END)