

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Wyoming data privacy act.

Sponsored by: Select Committee on Blockchain, Financial
Technology and Digital Innovation Technology

A BILL

for

1 AN ACT relating to trade and commerce; establishing
2 requirements for the controlling and processing of personal
3 data for Wyoming residents; providing for enforcement under
4 the Wyoming Consumer Protection Act by the attorney general
5 or through a private cause of action; providing
6 definitions; specifying applicability; providing penalties;
7 requiring rulemaking; making conforming amendments; and
8 providing for an effective date.

9

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

11

1 **Section 1.** W.S. 40-30-201 through 40-30-210 is
2 created to read:

3

4 *****
5 *****

6 **STAFF COMMENT**

7

8 This draft is based heavily on Colorado's Privacy Act. It
9 differs primarily in its enforcement mechanism and
10 penalties. This draft allows for private causes of action
11 under the Wyoming Consumer Protection Act, the relevant
12 portions of which are included in a staff comment at the
13 end of this bill draft for easy reference. Additionally,
14 many of the dates included in this draft are based on
15 Colorado's dates and the Committee may wish to consider
16 whether those dates are appropriate for this bill, more
17 specifically in W.S. 40-30-203(a)(i)(C) and (e).

18

19 This draft relies heavily on references to federal laws and
20 regulations which could change in the future. An appendix
21 is included in the materials.

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23 *****
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25

26 **CHAPTER 30 - DIGITAL AND PERSONAL DATA**

27

28 **ARTICLE 2 - WYOMING DATA PRIVACY ACT**

29

30 **40-30-201. Short title.**

31

32 This article shall be known and may be cited as the
33 "Wyoming Data Privacy Act".

34

1 **40-30-202. Definitions.**

2

3 (a) As used in this article:

4

5 (i) "Affiliate" means a legal entity that
6 controls, is controlled by or is under common control with
7 another legal entity. As used in this paragraph "control"
8 means:

9

10 (A) Ownership of, control of or power to
11 vote twenty-five percent (25%) or more of the outstanding
12 shares of any class of voting security of the entity,
13 directly or indirectly, or acting through one (1) or more
14 other persons;

15

16 (B) Control in any manner over the election
17 of a majority of the directors, trustees or general
18 partners of the entity or of natural persons exercising
19 similar functions; or

20

21 (C) The power to exercise, directly or
22 indirectly, a controlling influence over the management or
23 policies of the entity as determined by the applicable

1 prudential regulator, as defined in 12 U.S.C. sec. 5481
2 (24), if any.

3

4 (ii) "Authenticate" means to use reasonable
5 means to determine that a request to exercise any of the
6 rights in W.S. 40-30-203(a) is being made by or on behalf
7 of a consumer who is entitled to exercise the rights;

8

9 (iii) "Business associate" means as defined in
10 45 CFR 160.103;

11

12 (iv) "Child" means a person under the age of
13 thirteen (13) years;

14

15 (v) "Consent" means a clear, affirmative act
16 signifying a consumer's freely given, specific, informed
17 and unambiguous agreement, such as by a written statement,
18 including by electronic means or through a personal digital
19 identity, or other clear, affirmative action by which the
20 consumer signifies agreement to the processing of personal
21 data. None of the following constitutes consent:

22

1 (A) Acceptance of a general or broad terms
2 of use or similar document that contains descriptions of
3 personal data processing along with other, unrelated
4 information;

5

6 (B) Hovering over, muting, pausing or
7 closing a given piece of content;

8

9 (C) Agreement obtained through dark
10 patterns.

11

12 (vi) "Consumer" means a natural person who is a
13 Wyoming resident acting only in an individual or household
14 context and does not include a natural person acting in a
15 commercial or employment context, as a job applicant or as
16 a beneficiary of someone acting in an employment context;

17

18 (vii) "Controller" means a person who, alone or
19 jointly with others, determines the purposes for and means
20 of processing personal data;

21

1 (viii) "Covered entity" means a health plan,
2 health care clearing house or health information as those
3 terms are defined in 45 CFR 160.103;

4

5 (ix) "Dark pattern" means a user interface
6 designed or manipulated with the substantial effect of
7 subverting or impairing user autonomy, decision-making or
8 choice;

9

10 (x) "Decision that produces legal or similarly
11 significant effects concerning a consumer" means a decision
12 that results in the provision or denial of financial or
13 lending services, housing, insurance, education enrollment
14 or opportunity, criminal justice, employment opportunities,
15 health care services or access to essential goods or
16 services;

17

18 (xi) "De-identified data" means data that cannot
19 reasonably be used to infer information about, or otherwise
20 be linked to, an identified or identifiable natural person
21 or personal digital identity, or a device linked to a
22 natural person or personal digital identity, if the
23 controller who possesses the data:

1

2 (A) Takes reasonable measures to ensure that
3 the data cannot be associated with a natural person or
4 personal digital identity;

5

6 (B) Publicly commits to maintain and use the
7 data only in a de-identified fashion and not attempt to re-
8 identify the data; and

9

10 (C) Contractually obligates any recipients
11 of the information to comply with the requirements of this
12 paragraph.

13

14 (xii) "Health care facility" means any entity
15 that is licensed, certified or otherwise authorized or
16 permitted by law to administer medical treatment in this
17 state;

18

19 (xiii) "Health care information" means
20 individually identifiable information relating to the past,
21 present or future health status of a natural person;

22

1 (xiv) "Health care provider" means a person
2 licensed, certified or registered in this state under title
3 33 of the Wyoming statutes to practice medicine, pharmacy,
4 chiropractic, nursing, physical therapy, podiatry,
5 dentistry, optometry, occupational therapy or other healing
6 arts;

7
8 (xv) "HIPAA" means the federal Health Insurance
9 Portability and Accountability Act of 1996, as amended, 42
10 U.S.C. secs. 1320d to 1320d-9;

11
12 (xvi) "Identified or identifiable natural person"
13 means a natural person who can be readily identified,
14 directly or indirectly, in particular by reference to an
15 identifier such as a name, an identification number,
16 specific geolocation data or an online identifier;

17
18 (xvii) "Personal data" means information that is
19 linked or reasonably linkable to an identified or
20 identifiable natural person or personal digital identity
21 and does not include de-identified data or publicly
22 available information. As used in this paragraph, "publicly
23 available information" means information that is lawfully

1 made available from federal, state, or local government
2 records and information that a controller has a reasonable
3 basis to believe the consumer has lawfully made available
4 to the general public;

5

6 (xviii) "Process" or "processing" means the
7 collection, use, sale, storage, disclosure, analysis,
8 deletion or modification of personal data and includes the
9 actions of a controller directing a processor to process
10 personal data;

11

12 (xix) "Processor" means a person who processes
13 personal data on behalf of a controller;

14

15 (xx) "Profiling" means any form of processing of
16 personal data to evaluate, analyze or predict personal
17 aspects concerning an identified or natural person's
18 economic situation, health, personal preferences,
19 interests, reliability, behavior, location or movements;

20

21 (xxi) "Protected health information" means as
22 defined in 45 CFR 160.103;

23

1 (xxii) "Pseudonymous data" means personal data
2 that can no longer be attributed to a specific natural
3 person or personal digital identity without the use of
4 additional information if the additional information is
5 kept separately and is subject to technical and
6 organizational measures to ensure that the personal data is
7 not attributed to a specific natural person;

8

9 (xxiii) "Sale", "sell" or "sold" means the
10 exchange of personal data for monetary or other valuable
11 consideration by a controller to a third party and does not
12 include any of the following:

13

14 (A) The disclosure of personal data to a
15 processor who processes the personal data on behalf of a
16 controller;

17

18 (B) The disclosure of personal data to a
19 third party for purposes of providing a product or service
20 requested by the consumer;

21

22 (C) The disclosure or transfer of personal
23 data to an affiliate of the controller;

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(D) The disclosure or transfer to a third party of personal data as an asset that is part of a proposed or actual merger, acquisition, bankruptcy or other transaction in which the third party assumes control of all or part of the controller's assets;

(E) The disclosure of personal data:

(I) That a consumer directs the controller to disclose or intentionally discloses by using the controller to interact with a third party; or

(II) Intentionally made available by a consumer to the general public via a channel of mass media.

(xxiv) "Sensitive data" means:

(A) Personal data revealing racial or ethnic origin, religious beliefs, a mental or physical health condition or diagnosis, sex life or sexual orientation, citizenship or citizenship status;

1 (B) Genetic or biometric data that may be
2 processed for the purpose of uniquely identifying a natural
3 person; or

4

5 (C) Personal data from a known child.

6

7 (xxv) "Targeted advertising" means displaying to a
8 consumer an advertisement that is selected based on
9 personal data obtained or inferred over time from the
10 consumer's activities across nonaffiliated websites,
11 applications or online services to predict consumer
12 preferences or interests. Targeted advertising does not
13 include:

14

15 (A) Advertising to a consumer in response to
16 the consumer's request for information or feedback;

17

18 (B) Advertisements based on activities
19 within a controller's own websites or online applications;

20

21 (C) Advertisements based on the context of a
22 consumer's current search query, visit to a website or
23 online application; or

1

2 (D) Processing personal data solely for
3 measuring or reporting advertising performance, reach or
4 frequency.

5

6 (xxvi) "Third party" means a person, public
7 authority, agency or body other than a consumer,
8 controller, processor or affiliate of the processor or the
9 controller;

10

11 **40-30-203. Consumer personal data rights.**

12

13 (a) Consumers may exercise the following rights by
14 submitting a request using the methods specified by a
15 controller in the privacy notice required under W.S. 40-30-
16 207(a). The method specified by the controller shall take
17 into account the ways in which consumers normally interact
18 with the controller, the need for secure and reliable
19 communication relating to the request and the ability of
20 the controller to authenticate the identity of the consumer
21 making the request. Controllers shall not require a
22 consumer to create a new account to exercise consumer
23 rights pursuant to this section but may require a consumer

1 to use an existing account. A consumer may submit a request
2 at any time to a controller specifying which of the
3 following rights the consumer wishes to exercise:

4

5 (i) The right to opt out:

6

7 (A) A consumer has the right to opt out of
8 the processing of personal data concerning the consumer for
9 purposes of:

10

11 (I) Targeted advertising;

12

13 (II) The sale of personal data; or

14

15 (III) Profiling in furtherance of
16 decisions that produce legal or similarly significant
17 effects concerning a consumer.

18

19 (B) A controller that processes personal
20 data for purposes of targeted advertising or the sale of
21 personal data shall provide a clear and conspicuous method
22 to exercise the right to opt out of the processing of
23 personal data concerning the consumer pursuant to

1 subparagraph (A) of this paragraph. The controller shall
2 provide the opt out method clearly and conspicuously in any
3 privacy notice required to be provided to consumers under
4 this article, and in a clear, conspicuous and readily
5 accessible location outside the privacy notice;

6

7 (C) Effective July 1, 2024, a controller
8 that processes personal data for purposes of targeted
9 advertising or the sale of personal data shall allow
10 consumers to exercise the right to opt out of the
11 processing of personal data concerning the consumer for
12 purposes of targeted advertising or the sale of personal
13 data pursuant to subdivisions (A)(I) and (A)(II) of this
14 paragraph through a user-selected universal opt out
15 mechanism or personal digital identity;

16

17 (D) Notwithstanding a consumer's decision to
18 exercise the right to opt out of the processing of personal
19 data through a universal opt out mechanism or personal
20 digital identity pursuant to subparagraph (C) of this
21 paragraph, a controller may enable the consumer to consent,
22 through a web page, application or a similar method, to the
23 processing of the consumer's personal data for purposes of

1 targeted advertising or the sale of personal data, and that
2 consent takes precedence over any choice reflected through
3 the universal opt out mechanism. Before obtaining a
4 consumer's consent to process personal data for purposes of
5 targeted advertising or the sale of personal data pursuant
6 to this subparagraph, a controller shall provide the
7 consumer with a clear and conspicuous notice informing the
8 consumer about the choices available under this section,
9 describing the categories of personal data to be processed
10 and the purposes for which they will be processed and
11 explaining how and where the consumer may withdraw consent.
12 The web page, application or other means by which a
13 controller obtains a consumer's consent to process personal
14 data for purposes of targeted advertising or the sale of
15 personal data shall also allow the consumer to revoke the
16 consent as easily as it is affirmatively provided. Consent
17 provided under this subparagraph shall expire not more than
18 three (3) years following the date the consent is provided,
19 and unless reaffirmed by the consumer the consumer shall be
20 considered to have opted out.

21

22 (E) Any consumer whose personal data is
23 transferred to a third party as described in W.S. 40-30-

1 202(a)(xxiii)(D) shall be deemed to have opted out unless
2 consent is reobtained.

3

4 (ii) Right of access. A consumer has the right to
5 confirm whether a controller is processing personal data
6 concerning the consumer and to access the consumer's
7 personal data;

8

9 (iii) Right to correction. A consumer has the
10 right to correct inaccuracies in the consumer's personal
11 data, taking into account the nature of the personal data
12 and the purposes of the processing of the consumer's
13 personal data;

14

15 (iv) Right to deletion. A consumer has the right
16 to delete personal data concerning the consumer;

17

18 (v) Right to data portability. When exercising
19 the right to access personal data pursuant to paragraph
20 (ii) of this subsection, a consumer has the right to obtain
21 the personal data in a portable and, to the extent
22 technically feasible, readily usable format that allows the
23 consumer to transmit the data to another entity without

1 hindrance. A consumer may exercise this right not more than
2 two (2) times per calendar year. Nothing in this paragraph
3 requires a controller to provide the data to the consumer
4 in a manner that would disclose the controller's trade
5 secrets.

6

7 (b) In responding to consumer requests:

8

9 (i) A controller shall inform a consumer of any
10 action taken on a request under subsection (a) of this
11 section without undue delay and not more than forty-five
12 (45) days after receipt of the request. The controller may
13 extend the forty-five (45) day period by forty-five (45)
14 additional days where reasonably necessary, taking into
15 account the complexity and number of the requests. The
16 controller shall inform the consumer of an extension within
17 forty-five (45) days after receipt of the request, together
18 with the reasons for the delay;

19

20 (ii) If a controller does not take action on the
21 request of a consumer, the controller shall inform the
22 consumer, without undue delay and, at the latest, within
23 forty-five (45) days after receipt of the request, of the

1 reasons for not taking action and instructions for how to
2 appeal the decision with the controller as described in
3 subsection (c) of this section;

4

5 (iii) Upon request, a controller shall provide to
6 the consumer the information specified in this section free
7 of charge; except that, for a second or subsequent request
8 within a twelve (12) month period, the controller may
9 charge a fee not to exceed twenty-five (\$.25) cents per
10 standard page or a fee not to exceed the actual cost of
11 providing a copy, printout or photograph of a record in a
12 format other than a standard page;

13

14 (iv) A controller is not required to comply with
15 a request to exercise any of the rights under subsection
16 (a) of this section if the controller is unable to
17 authenticate the request using commercially reasonable
18 efforts, in which case the controller may request the
19 provision of additional information reasonably necessary to
20 authenticate the request.

21

22 *****

23 *****

24 **STAFF COMMENT**

1 This draft requires an appeals process, but does not
2 establish any standards for that process. The Committee
3 may wish to consider what standards should be applied.

4 *****
5 *****
6

7 (c) An appeals process shall be maintained and shall
8 operate as follows:

9
10 (i) A controller shall establish an internal
11 process whereby consumers may appeal a refusal to take
12 action on a request to exercise any of the rights under
13 subsection (a) of this section within a reasonable period
14 after the consumer's receipt of the notice sent by the
15 controller under paragraph (b)(ii) of this section. The
16 appeal process shall be conspicuously available and as easy
17 to use as the process for submitting a request under this
18 section;

19
20 (ii) Within forty-five (45) days after receipt of
21 an appeal, a controller shall inform the consumer of any
22 action taken or not taken in response to the appeal, along
23 with a written explanation of the reasons in support of the
24 response. The controller may extend the forty-five (45) day
25 period by sixty (60) additional days where reasonably

1 necessary, taking into account the complexity and number of
2 requests serving as the basis for the appeal. The
3 controller shall inform the consumer of an extension within
4 forty-five (45) days after receipt of the appeal, together
5 with the reasons for the delay;

6

7 (iii) The controller shall inform the consumer of
8 the consumer's ability to contact the attorney general or
9 file a private cause of action if the consumer has concerns
10 about the result of the appeal.

11

12 (d) A consumer may authorize another person, acting
13 on the consumer's behalf, to exercise any of the rights
14 specified in subsection (a) of this section, including
15 through a technology indicating the consumer's intent such
16 as a web link indicating a preference or browser setting,
17 browser extension or global device setting. A controller
18 shall comply with a request received from a person
19 authorized by the consumer to act on the consumer's behalf
20 if the controller is able to authenticate, with
21 commercially reasonable effort, the identity of the
22 consumer and the authorized agent's authority to act on the
23 consumer's behalf.

1

2 (e) Beginning January 1, 2025, all consumer rights
3 specified in subsection (a) of this section shall be
4 applicable to a consumers' personal digital identity and
5 any action taken or request made through a World Wide Web
6 Consortium ("W3C") standards compliant personal digital
7 identity shall be construed as a direct action or request
8 of the consumer.

9

10 *****
11 *****
12 **STAFF COMMENT**
13 The Committee may wish to consider if January 1, 2025 is an
14 appropriate date for the above subsection, and whether the
15 W3C standards are appropriate for personal digital
16 identity.
17 *****
18 *****
19

20 (f) Nothing in this article shall be construed to
21 limit any existing rights of a consumer.

22

23 **40-30-204. Applicability.**

24

25 (a) Except as specified in subsection (b) of this
26 section, this article applies to a controller who:

27

1 (i) Conducts business in Wyoming or produces or
2 delivers commercial products or services that are
3 intentionally targeted to residents of Wyoming; and

4

5 (ii) Satisfies one (1) or both of the following
6 thresholds:

7

8 (A) Controls or processes the personal data
9 of ten thousand (10,000) consumers or more during a
10 calendar year;

11

12 (B) Derives revenue or receives a discount
13 on the price of goods or services from the sale of personal
14 data and processes or controls the personal data of two
15 thousand five hundred (2,500) consumers or more.

16

17 (b) Subject to subsection (d) of this section, this
18 article does not apply to:

19

20 (i) Protected health information that is
21 collected, stored and processed by a covered entity or its
22 business associates;

23

1 (ii) Patient identifying information, as defined
2 in 42 CFR 2.11, that is governed by and collected and
3 processed pursuant to 42 CFR 2, established pursuant to 42
4 U.S.C. sec. 290dd-2;

5

6 (iii) Identifiable private information, as
7 defined in 45 CFR 46.102, for purposes of the federal
8 policy for the protection of human subjects pursuant to 45
9 CFR 46;

10

11 (iv) Identifiable private information that is
12 collected as part of human subjects research pursuant to
13 the ICH E6 good clinical practice guideline issued by the
14 international council for harmonisation of technical
15 requirements for pharmaceuticals for human use or the
16 protection of human subjects under 21 CFR 50 and 56;

17

18 (v) Personal data used or shared in research
19 conducted in accordance with either or both of the
20 categories set forth in paragraphs (iii) or (iv) of this
21 subsection;

22

1 (vi) Information and documents created by a
2 covered entity for purposes of complying with HIPAA and its
3 implementing regulations;

4

5 (vii) Patient safety work product, as defined in
6 42 CFR 3.20, that is created for purposes of patient safety
7 improvement pursuant to 42 CFR 3, established pursuant to
8 42 U.S.C. secs. 299b-21 to 299b-26;

9

10 (viii) Information that is:

11

12 (A) De-identified in accordance with the
13 requirements for de-identification set forth in 45 CFR 164;
14 and

15

16 (B) Derived from any of the health care
17 related information described in this section.

18

19 (ix) Information maintained in the same manner as
20 information under paragraphs (i) through (viii) of this
21 subsection by:

22

23 (A) A covered entity or business associate;

1

2 (B) A health care facility or health care
3 provider; or

4

5 (C) A program of a qualified service
6 organization as defined in 42 CFR 2.11;

7

8 (x) The following:

9

10 (A) Except as provided in subparagraph (B)
11 of this paragraph, an activity involving the collection,
12 maintenance, disclosure, sale, communication, or use of any
13 personal data bearing on a consumer's creditworthiness,
14 credit standing, credit capacity, character, general
15 reputation, personal characteristics or mode of living by:

16

17 (I) A consumer reporting agency as
18 defined in 15 U.S.C. sec. 1681a(f);

19

20 (II) A furnisher of information as set
21 forth in 15 U.S.C. sec. 1681s-2 that provides information
22 for use in a consumer report, as defined in 15 U.S.C. sec.
23 1681a (d); or

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(III) A user of a consumer report as set forth in 15 U.S.C. sec. 1681b.

(B) The exemption provided by this paragraph applies only to the extent that the activity is regulated by the federal Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq., as amended, and the resulting personal data is not collected, maintained, disclosed, sold, communicated or used except as authorized by the federal Fair Credit Reporting Act, as amended.

(xi) Personal data:

(A) Collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6801 et seq., as amended, and implementing regulations, if the collection, processing, sale or disclosure is in compliance with that law;

(B) Collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. sec. 2721 et seq., as amended, if the

1 collection, processing, sale, or disclosure is regulated by
2 that law, including implementing rules, regulations or
3 exemptions;

4

5 (C) Regulated by the federal Children's
6 Online Privacy Protection Act of 1998, 15 U.S.C. secs. 6501
7 to 6506, as amended, if collected, processed and maintained
8 in compliance with that law; or

9

10 (D) Regulated by the federal Family
11 Educational Rights and Privacy Act of 1974, 20 U.S.C. sec.
12 1232g et seq., as amended, and its implementing
13 regulations;

14

15 (xii) Data maintained for employment records
16 purposes;

17

18 (xiii) An air carrier as defined in and regulated
19 under 49 U.S.C. sec. 40101 et seq., as amended, and 49
20 U.S.C. sec. 41713, as amended;

21

22 (xiv) A national securities association
23 registered pursuant to the federal Securities Exchange Act

1 of 1934, 15 U.S.C. sec. 78o-3, as amended, or implementing
2 regulations;

3

4 (xv) Customer data maintained by a public utility
5 as defined in W.S. 37-1-101(a)(vi) if the data is not
6 collected, maintained, disclosed, sold, communicated or
7 used except as authorized by state and federal law;

8

9 (xvi) Data maintained by a state institution of
10 higher education, the state, the judicial department of the
11 state, or a county, city or municipality if the data is
12 collected, maintained, disclosed, communicated and used as
13 authorized by state and federal law for noncommercial
14 purposes. This paragraph does not affect any other
15 exemption available under this article;

16

17 (xvii) Information used and disclosed in
18 compliance with 45 CFR 164.512;

19

20 (xviii) A financial institution or an affiliate
21 of a financial institution as defined by and that is
22 subject to the federal Gramm-Leach-Bliley Act, 15 U.S.C.

1 sec. 6801 et seq., as amended, and implementing
2 regulations, including Regulation P, 12 CFR 1016.

3

4 (c) The obligations imposed on controllers or
5 processors under this article shall not:

6

7 (i) Except as otherwise allowed under W.S. 40-30-
8 210, restrict a controller's or processor's ability to
9 comply with federal, state or local laws, rules or
10 regulations;

11

12 *****
13 *****

14 **STAFF COMMENT**

15

16 **For the Committee's consideration: under Colorado's privacy**
17 **act this paragraph originally read as follows:**

18

19 (i) Restrict a controller's or processor's ability to
20 do any of the following

21

22 (A) Comply with federal, state or local
23 laws, rules or regulations;

24

25 (B) Comply with a civil, criminal or
26 regulatory inquiry, investigation, subpoena or summons by
27 federal, state, local or other governmental authorities;

28

29 (C) Cooperate with law enforcement agencies
30 concerning conduct or activity that the controller or
31 processor reasonably and in good faith believes may violate
32 federal, state or local law;

33

1 (D) Investigate, exercise, prepare for or
2 defend actual or anticipated legal claims;
3

4 (E) Conduct internal research to improve,
5 repair or develop products, services or technology;
6

7 (F) Identify and repair technical errors
8 that impair existing or intended functionality;
9

10 (G) Perform internal operations that are
11 reasonably aligned with the expectations of the consumer
12 based on the consumer's existing relationship with the
13 controller;
14

15 (H) Provide a product or service
16 specifically requested by a consumer or the parent or
17 guardian of a child, perform a contract to which the
18 consumer is a party or take steps at the request of the
19 consumer before entering into a contract;
20

21 (J) Protect the vital interests of the
22 consumer or of another individual;
23

24 (K) Prevent, detect, protect against or
25 respond to security incidents, identity theft, fraud,
26 harassment or malicious, deceptive or illegal activity or
27 to preserve the integrity or security of systems or to
28 investigate, report, or prosecute those responsible for any
29 actions under this subparagraph;
30

31 (M) Process personal data for reasons of
32 public interest in the area of public health, but solely to
33 the extent that the processing:
34

35 (I) Is subject to suitable and specific
36 measures to safeguard the rights of the consumer whose
37 personal data are processed; and
38

39 (II) Is under the responsibility of a
40 professional subject to confidentiality obligations under
41 federal, state or local law.
42

43 (N) Assist another person with any of the
44 activities set forth in this subsection;

1 *****
2 *****
3

4 (ii) Apply where compliance by the controller or
5 processor with this article would violate an evidentiary
6 privilege under Wyoming law or prevent a controller or
7 processor from providing personal data concerning a
8 consumer to a person covered by an evidentiary privilege
9 under Wyoming law as part of a privileged communication;
10

11 (iii) Apply to information made available by a
12 third party that the controller has a reasonable basis to
13 believe is protected speech under applicable law.
14

15 *****
16 *****

17 **STAFF COMMENT**
18 **For the Committee's consideration, Colorado's privacy act**
19 **included a paragraph as follows:**
20
21

22 (iv) Apply to the processing of personal data by
23 an individual in the course of a purely personal or
24 household activity.

25 *****
26 *****
27

1 (d) Personal data that is processed by a controller
2 under an exception provided by this section:

3

4 (i) Shall not be processed for any purpose other
5 than a purpose expressly listed in this section or as
6 otherwise authorized by this article; and

7

8 (ii) Shall be processed solely to the extent that
9 the processing is necessary, reasonable and proportionate
10 to the specific purpose or purposes listed in this section
11 or as otherwise authorized by this article. Any ambiguity
12 shall be resolved in favor of the consumer.

13

14 (e) If a controller processes personal data pursuant
15 to an exemption in this section, the controller bears the
16 burden of demonstrating that the processing qualifies for
17 the exemption and complies with the requirements in
18 subsection (d) of this section.

19

20 **40-30-205. Responsibility according to role.**

21

22 (a) Processors shall follow the instructions of the
23 controller and assist the controller to meet its

1 obligations under this article. Taking into account the
2 nature of processing and the information available to the
3 processor, the processor shall assist the controller by:

4

5 (i) Taking appropriate technical and
6 organizational measures, insofar as this is possible, for
7 the fulfillment of the controller's obligation to respond
8 to consumer requests to exercise consumers' rights under
9 W.S. 40-30-203;

10

11 (ii) Helping to meet the controller's obligations
12 to the security of processing personal data and in relation
13 to notification of a breach of the security of the system
14 pursuant to W.S. 40-12-502; and

15

16 (iii) Providing information to the controller
17 necessary to enable the controller to conduct and document
18 any data protection assessments required by W.S. 40-30-208.
19 The controller and processor are each responsible for only
20 the measures allocated to them under this article.

21

22 (b) Notwithstanding the instructions of a controller,
23 a processor shall:

1

2 (i) Ensure that each person processing personal
3 data is subject to a duty of confidentiality with respect
4 to the data; and

5

6 (ii) Engage a subcontractor only after providing
7 the controller with an opportunity to object and pursuant
8 to a written contract in accordance with subsection (d) of
9 this section that requires the subcontractor to meet the
10 obligations of the processor with respect to personal data.

11

12 (c) Taking into account the context of processing, the
13 controller and the processor shall implement appropriate
14 technical and organizational measures to ensure a level of
15 security appropriate to the risk and establish a clear
16 allocation of the responsibilities between them to
17 implement the measures.

18

19 (d) Processing by a processor shall be governed by a
20 contract between the controller and the processor that
21 establishes:

22

1 (i) The processing instructions to which the
2 processor is bound, including the nature and purpose of the
3 processing;

4

5 (ii) The type of personal data subject to
6 processing;

7

8 (iii) The duration of the processing;

9

10 (iv) The requirements imposed by this subsection
11 and subsections (b) and (c) of this section; and

12

13 (v) The following requirements:

14

15 (A) At the choice of the controller, the
16 processor shall delete or return all personal data to the
17 controller as requested at the end of the provision of
18 services, unless retention of the personal data is required
19 by law;

20

21 (B) The processor shall make available to
22 the controller all information necessary to demonstrate
23 compliance with the obligations in this article and shall

1 allow for, and contribute to, reasonable audits and
2 inspections by the controller or the controller's
3 designated auditor. Alternatively, the processor may, with
4 the controller's consent, arrange for a qualified and
5 independent auditor to conduct, at least annually and at
6 the processor's expense, an audit of the processor's
7 policies and technical and organizational measures in
8 support of the obligations under this article using an
9 appropriate and accepted control standard or framework and
10 audit procedure for the audits as applicable. The processor
11 shall provide a report of the audit to the controller upon
12 request.

13

14 (e) No contract shall relieve a controller or a
15 processor from the liabilities and obligations imposed on
16 them by virtue of its role in the processing relationship
17 as defined by this article.

18

19 (f) Determining whether a person is acting as a
20 controller or processor with respect to a specific
21 processing of data is a fact-based determination that
22 depends upon the context in which personal data is to be
23 processed. A person who is not limited in the processing of

1 personal data pursuant to a controller's instructions, or
2 that fails to adhere to the instructions, is a controller
3 and not a processor with respect to a specific processing
4 of data. A processor who continues to adhere to a
5 controller's instructions with respect to a specific
6 processing of personal data remains a processor. If a
7 processor begins, alone or jointly with others, to
8 determine the purposes and means of the processing of
9 personal data, the person is a controller with respect to
10 the processing.

11

12 (g) A controller or processor that discloses personal
13 data to another controller or processor in compliance with
14 this article does not violate this article if the recipient
15 processes the personal data in violation of this article,
16 and, at the time of disclosing the personal data, the
17 disclosing controller or processor did not have actual
18 knowledge that the recipient intended to commit a
19 violation.

20

21 (h) A controller or processor receiving personal data
22 from a controller or processor in compliance with this
23 article as specified in subsection (g) of this section does

1 not violate this article if the controller or processor
2 from which it receives the personal data fails to comply
3 with applicable obligations under this article.

4

5 **40-30-206. Processing de-identified data.**

6

7 (a) This article does not require a controller or
8 processor to do any of the following solely for purposes of
9 complying with this article:

10

11 (i) Reidentify de-identified data;

12

13 (ii) Comply with an authenticated consumer
14 request to access, correct, delete or provide personal data
15 in a portable format pursuant to W.S. 40-30-203(a), if all
16 of the following are true:

17

18 (A) The controller is not reasonably capable
19 of associating the request with the personal data or it
20 would be unreasonably burdensome for the controller to
21 associate the request with the personal data;

22

1 (B) The controller does not use the personal
2 data to recognize or respond to the specific consumer who
3 is the subject of the personal data or associate the
4 personal data with other personal data about the same
5 specific consumer;

6

7 (C) The controller does not sell the
8 personal data to any third party or otherwise voluntarily
9 disclose the personal data to any third party, except as
10 otherwise authorized by the consumer.

11

12 (iii) Maintain data in identifiable form or
13 collect, obtain, retain or access any data or technology to
14 enable the controller to associate an authenticated
15 consumer request with personal data.

16

17 (b) A controller that uses de-identified data shall
18 exercise reasonable oversight to monitor compliance with
19 any contractual commitments to which the de-identified data
20 is subject and shall take appropriate steps to address any
21 breaches of contractual commitments.

22

1 (c) The rights provided in W.S. 40-30-203(a)(ii)
2 through (a)(v) do not apply to pseudonymous data if the
3 controller can demonstrate that the information necessary
4 to identify the consumer is kept separately and is subject
5 to effective technical and organizational controls that
6 prevent the controller from accessing the information.

7

8 **40-30-207. Duties of controllers.**

9

10 (a) Duty of transparency:

11

12 (i) A controller shall provide consumers with a
13 reasonably accessible, clear and meaningful privacy notice
14 that includes:

15

16 (A) The categories of personal data
17 collected or processed by the controller or a processor;

18

19 (B) The purposes for which the categories of
20 personal data is processed;

21

22 (C) How and where consumers may exercise the
23 rights established by W.S. 40-30-203, including the

1 controller's contact information and how a consumer may
2 appeal a controller's action with regard to the consumer's
3 request;

4

5 (D) The categories of personal data that the
6 controller shares with third parties, if any;

7

8 (E) The categories of third parties, if any,
9 with whom the controller shares personal data.

10

11 (ii) If a controller sells personal data to third
12 parties or processes personal data for targeted
13 advertising, the controller shall clearly and conspicuously
14 disclose the sale or processing, as well as the manner in
15 which a consumer may exercise the right to opt out of the
16 sale or processing;

17

18 (iii) A controller shall not:

19

20 (A) Require a consumer to create a new
21 account to exercise a right;

22

1 (B) Based solely on the exercise of a right
2 and unrelated to feasibility or the value of a service,
3 increase the cost of, or decrease the availability of, a
4 product or service.

5
6 (iv) Nothing in this article shall be construed
7 to require a controller to provide a product or service
8 that requires the personal data of a consumer that the
9 controller does not collect or maintain or to prohibit a
10 controller from offering a different price, rate, level,
11 quality or selection of goods or services to a consumer,
12 including offering goods or services for no fee, if the
13 offer is related to a consumer's voluntary participation in
14 a bona fide loyalty, rewards, premium features, discount or
15 club card program.

16
17 (b) Duty of purpose specification. A controller shall
18 specify to a consumer the express purposes for which
19 personal data is collected and processed.

20
21 (c) Duty of data minimization. A controller's
22 collection of personal data shall be adequate, relevant and

1 limited to what is reasonably necessary in relation to the
2 specified purposes for which the data is processed.

3

4 (d) Duty to avoid secondary use. A controller shall
5 not process personal data for purposes that are not
6 reasonably necessary to or compatible with the specified
7 purposes for which the personal data is processed, unless
8 the controller first obtains the consumer's consent.

9

10 (e) Duty of care. A controller shall take reasonable
11 measures to secure personal data during both storage and
12 use from unauthorized acquisition of the data. Data
13 security practices shall be appropriate to the volume,
14 scope and nature of the personal data processed and the
15 nature of the business.

16

17 (f) Duty to avoid unlawful discrimination. A
18 controller shall not process personal data in violation of
19 state or federal laws that prohibit unlawful discrimination
20 against consumers.

21

22 (g) Duty regarding sensitive data. A controller shall
23 not process a consumer's sensitive data without first

1 obtaining the consumer's consent or, in the case of the
2 processing of personal data concerning a known child,
3 without first obtaining consent from the child's parent or
4 legal guardian.

5

6 **40-30-208. Data protection assessments; attorney**
7 **general access and evaluation; definition.**

8

9 (a) A controller shall not conduct processing that
10 presents a heightened risk of harm to a consumer without
11 conducting and documenting a data protection assessment of
12 each of its processing activities that involves personal
13 data acquired on or after the effective date of this
14 section that presents a heightened risk of harm to a
15 consumer.

16

17 (b) For purposes of this section, "processing that
18 presents a heightened risk of harm to a consumer" includes
19 all of the following:

20

21 (i) Processing personal data for purposes of
22 targeted advertising or for profiling if the profiling
23 presents a reasonably foreseeable risk of:

1

2 (A) Unfair or deceptive treatment of, or
3 unlawful disparate impact on, consumers;

4

5 (B) Financial or physical injury to
6 consumers;

7

8 (C) A physical or other intrusion upon the
9 solitude or seclusion, or the private affairs or concerns,
10 of consumers if the intrusion would be offensive to a
11 reasonable person; or

12

13 (D) Other substantial injury to consumers.

14

15 (ii) Selling personal data;

16

17 (iii) Processing sensitive data.

18

19 (c) Data protection assessments shall identify and
20 weigh the benefits that may flow, directly and indirectly,
21 from the processing to the controller, the consumer, other
22 stakeholders and the public against the potential risks to
23 the rights of the consumer associated with the processing,

1 as mitigated by safeguards that the controller can employ
2 to reduce the risks. The controller shall factor into this
3 assessment the use of de-identified data and the reasonable
4 expectations of consumers, as well as the context of the
5 processing and the relationship between the controller and
6 the consumer whose personal data will be processed.

7

8 (d) A controller shall make the data protection
9 assessment available to the attorney general upon request.
10 The attorney general may evaluate the data protection
11 assessment for compliance with the duties contained in W.S.
12 40-30-207 and with other laws, including subsection (a) of
13 this section. Data protection assessments are confidential
14 and exempt from public inspection and copying under the
15 Wyoming Public Records Act, W.S. 16-4-201 through 16-4-205.
16 The disclosure of a data protection assessment pursuant to
17 a request from the attorney general under this subsection
18 does not constitute a waiver of any attorney-client
19 privilege or work-product protection that might otherwise
20 exist with respect to the assessment and any information
21 contained in the assessment.

22

1 (e) A single data protection assessment may address a
2 comparable set of processing operations that include
3 similar activities.

4

5 (f) Data protection assessment requirements apply to
6 processing activities created or generated after July 1,
7 2023, and are not retroactive.

8

9 **40-30-209. Enforcement;**

10

11 A violation of this article is a deceptive trade practice
12 under W.S. 40-12-105.

13

14 *****
15 *****

16 **STAFF COMMENT**

17 This draft places enforcement of the act under the
18 provisions of the Wyoming Consumer Protection Act. Some of
19 these provisions are amended further in this draft. Should
20 the Committee wish to provide alternative penalties or
21 requirements it may be better to make specific provisions
22 for that in the new language of this draft and not rely on
23 the Wyoming Consumer Protection Act. For the Committee's
24 consideration and reference the relevant portions of that
25 act are included below:

26

27 **40-12-101. Short title.**

28

29 This act may be cited as the "Wyoming Consumer Protection
30 Act."

31

32 **40-12-102. Definitions.**

1
2 (a) As used in this act:

3
4 (i) "Person" means a natural person,
5 corporation, trust, partnership, incorporated or
6 unincorporated association or any other legal entity;

7
8 (ii) "Consumer transactions" means the
9 advertising, offering for sale, sale or distribution of any
10 merchandise to an individual for purposes that are
11 primarily personal, family or household;

12
13 (iii) "Documentary material" means the original
14 or a copy of any book, record, report, memorandum, paper,
15 communication, tabulation, map, chart, photograph,
16 mechanical transcription, other tangible document or
17 recording, reproductions of information stored
18 magnetically, file layout, code conversion tables or
19 computer programs to convert file to readable printout,
20 wherever situated;

21
22 (iv) "Examination" of documentary material
23 includes the inspection, study or copying of any such
24 material, and the taking of testimony under oath or
25 acknowledgement with respect to any such documentary
26 material or copy thereof;

27
28 (v) "Advertisement" includes the attempt by
29 publication, dissemination, solicitation or circulation,
30 whether oral, visual, written or otherwise, and whether in
31 person, by telephone or by any other means to induce
32 directly or indirectly any person to enter into any
33 obligation or to acquire any title or interest in any
34 merchandise;

35
36 (vi) "Merchandise" includes any service or any
37 property, tangible or intangible, real, personal or mixed,
38 or any other object, ware, good, commodity, or article of
39 value wherever situated;

40
41 (vii) "Enforcing authority" means the attorney
42 general of Wyoming;

43

1 (viii) "Cure" as applied to an unlawful
2 deceptive trade practice as defined in W.S. 40-12-105 means
3 either:
4

5 (A) To offer in writing to adjust or modify
6 the consumer transaction to which the unlawful deceptive
7 trade practice relates to conform to the reasonable
8 expectations of the consumer generated by such unlawful
9 deceptive trade practice and to perform such offer if
10 accepted by the consumer; or
11

12 (B) To offer in writing to rescind such
13 consumer transaction and to perform such offer if accepted
14 by the consumer.
15

16 (ix) "Uncured unlawful deceptive trade practice"
17 means an unlawful deceptive trade practice as defined in
18 W.S. 40-12-105:
19

20 (A) With respect to which a consumer who
21 has been damaged by the unlawful deceptive trade practice
22 has given notice to the alleged violator pursuant to W.S.
23 40-12-109; and
24

25 (B) Either:
26

27 (I) No offer to cure has been made to
28 such consumer within fifteen (15) days after such notice;
29 or
30

31 (II) The unlawful deceptive trade
32 practice has not been cured as to such consumer within a
33 reasonable time after his acceptance of the offer to cure.
34

35 (x) "This act" means W.S. 40-12-101 through 40-12-
36 114.
37

38 **40-12-105. Unlawful practices.**
39

40 (a) A person engages in a deceptive trade practice
41 unlawful under this act when, in the course of his business
42 and in connection with a consumer transaction, he
43 knowingly:
44

45 **40-12-106. Restraining unlawful practices.**

1
2 Whenever the enforcing authority has reasonable cause to
3 believe that any person has engaged in, is engaging in, or
4 is about to engage in any practice which is unlawful under
5 W.S. 40-12-104 or 40-12-105, and that proceedings would be
6 in the public interest, he may bring an action in the name
7 of this state against such person to restrain by temporary
8 restraining order or preliminary or permanent injunction
9 the use of such practice. The action may be brought in the
10 district court of the county in which the person resides or
11 has his principal place of business or in the district
12 court of Laramie county, Wyoming. The district court may
13 issue temporary restraining orders, including ex parte
14 temporary restraining orders, or preliminary or permanent
15 injunctions, in accordance with the principles of equity,
16 to restrain and prevent violations of this act. The court
17 may make such additional orders or judgments as are
18 necessary to compensate identifiable persons for actual
19 damages or restoration of money or property, real or
20 personal, which may have been acquired by means or any act
21 or practice restrained.

22
23 **40-12-107. Assurances of voluntary compliance.**
24

25 The enforcing authority may accept written assurance of
26 voluntary compliance with respect to any practice believed
27 to be violative of W.S. 40-12-105 from any person who is
28 engaged or is about to engage in such practice. Such
29 assurance is not considered an admission of violation for
30 any purpose. Proof of failure to comply with the assurance
31 of voluntary compliance is prima facie evidence of a
32 violation of this act. Matters closed by virtue of the
33 acceptance of an assurance of voluntary compliance may at
34 any time be reopened by the enforcing authority for further
35 proceedings in the public interest, pursuant to W.S. 40-12-
36 106.

37
38 **40-12-108. Private remedies.**
39

40 (a) A person relying upon an uncured unlawful
41 deceptive trade practice may bring an action under this act
42 for the damages he has actually suffered as a consumer as a
43 result of such unlawful deceptive trade practice.
44

1 (b) Any person who is entitled to bring an action
2 under subsection (a) of this section on his own behalf
3 against an alleged violator of this act for damages for an
4 unlawful deceptive trade practice may bring a class action
5 against such person on behalf of any class of persons of
6 which he is a member and which has been damaged by such
7 unlawful deceptive trade practice, subject to and pursuant
8 to the Wyoming Rules of Civil Procedure governing class
9 actions, except as herein expressly provided. If the court
10 determines that actual damages have been suffered by reason
11 of the unlawful deceptive trade practice, the court shall
12 award reasonable attorney's fees to the plaintiffs in a
13 class action under this subsection, provided that such fees
14 shall be determined by the amount of time reasonably
15 expended by the attorney for the plaintiffs and not by the
16 amount of the judgment. Any monies or property recovered in
17 a class action under this subsection which cannot, with due
18 diligence, be restored to consumers within one (1) year
19 after judgment becomes final shall be returned to the party
20 depositing the same.

21

22 40-12-109. Limitation of actions.

23

24 No action may be brought under this act, except under W.S.
25 40-12-106, unless the consumer bringing the action gives
26 within the following time limits notice in writing to the
27 alleged violator of the act, (a) within one (1) year after
28 the initial discovery of the unlawful deceptive trade
29 practice, (b) within two (2) years following such consumer
30 transaction, whichever occurs first, and unless the
31 unlawful deceptive trade practice becomes an uncured
32 unlawful deceptive trade practice as defined in this act.
33 The notice required under this section shall state fully
34 the nature of the alleged unlawful deceptive trade practice
35 and the actual damage suffered therefrom. No action may be
36 brought under this act, except under W.S. 40-12-106, unless
37 said action is initiated within one (1) year after the
38 furnishing of notice as required under this section.

39

40 40-12-110. Exemptions.

41

42 (a) Nothing in this act shall apply to:

43

1 (i) Acts or practices required or permitted by
2 state or federal law, rule or regulation or judicial or
3 administrative decision;

4
5 (ii) Acts or practices by the publisher, owner,
6 agent or employee of a newspaper, periodical, radio or
7 television station or any other person without knowledge of
8 the deceptive character of the advertisement in the
9 publication or dissemination of an advertisement supplied
10 by another.

11
12 **40-12-111. Violations involving older persons or**
13 **persons with disabilities; civil penalty.**

14
15 (a) As used in this section:

16
17 (i) "Person with disabilities" means any person
18 who has a mental or educational impairment which
19 substantially limits one (1) or more major life activities;

20
21 (ii) "Major life activities" means functions
22 associated with the normal activities of independent daily
23 living such as caring for one's self, performing manual
24 tasks, walking, seeing, hearing, speaking, breathing,
25 learning and working;

26
27 (iii) "Mental or educational impairment" means:

28
29 (A) Any mental or psychological disorder or
30 specific learning disability;

31
32 (B) Any educational deficiency which
33 substantially affects a person's ability to read and
34 comprehend the terms of any contractual agreement entered
35 into.

36
37 (iv) "Older person" means a person who is over
38 sixty (60) years of age.

39
40 (b) Any person who willfully uses, or has willfully
41 used, a method, act or practice in violation of this act
42 which victimizes or attempts to victimize an older person
43 or a person with disabilities, and commits such violation
44 when the person knew or should have known that the conduct
45 was unfair or deceptive, shall make restitution or

1 reimbursement to the older person or person with
2 disabilities including reasonable attorney fees and costs,
3 and, in addition, is liable for a civil penalty of up to
4 fifteen thousand dollars (\$15,000.00) for each violation
5 recoverable by the office of the attorney general.

6
7 **40-12-112. Investigative powers of enforcing**
8 **authority.**
9

10 (a) If, by inquiry by the enforcing authority or as a
11 result of complaints, the enforcing authority has probable
12 cause to believe that a person has engaged in, or is
13 engaging in, an act or practice that violates this act,
14 investigators designated by the Wyoming attorney general
15 may administer oaths and affirmations, subpoena witnesses
16 or matter, and collect evidence. Within five (5) days,
17 excluding weekends and legal holidays, after the service of
18 a subpoena or at any time before the return date specified
19 therein, whichever is longer, the party served may file in
20 the district court in the county in which the party resides
21 or in which the party transacts business, or in the
22 district court for the first judicial district of Wyoming,
23 and serve upon the enforcing authority a petition for an
24 order modifying or setting aside the subpoena. The
25 petitioner may raise any objection or privilege which would
26 be available under this act or upon service of a subpoena
27 in a civil action. The subpoena shall inform the party
28 served of the party's rights under this subsection.

29
30 (b) If matter that the enforcing authority seeks to
31 obtain by subpoena is located outside the state, the person
32 subpoenaed may make it available to the enforcing authority
33 to examine the matter at the place where it is located.
34 The enforcing authority may designate representatives,
35 including officials of the state in which the matter is
36 located, to inspect the matter on its behalf, and the
37 enforcing authority may respond to similar requests from
38 officials of other states.

39
40 (c) Upon failure of a person without lawful excuse to
41 obey a subpoena and upon reasonable notice to all persons
42 affected, the enforcing authority may apply to the district
43 court for an order compelling compliance.
44

1 (d) The enforcing authority may request that an
2 individual who refuses to comply with a subpoena on the
3 ground that testimony or matter may incriminate the
4 individual, be ordered by the court to provide the
5 testimony or matter. Except in a prosecution for perjury,
6 an individual who complies with a court order to provide
7 testimony or matter after asserting a privilege against
8 self-incrimination to which the individual is entitled by
9 law shall not have the testimony or matter so provided, or
10 evidence derived therefrom, received against the individual
11 in any criminal investigation or proceeding.
12

13 (e) Any person upon whom a subpoena is served
14 pursuant to this section shall comply with the terms
15 thereof unless otherwise provided by order of the court.
16 Any person who fails to appear with the intent to avoid,
17 evade or prevent compliance in whole or in part with any
18 investigation under this act or who removes from any place,
19 conceals, withholds, mutilates, alters or destroys, or by
20 any other means falsifies any documentary material in the
21 possession, custody or control of any person subject to the
22 subpoena, or knowingly conceals any relevant information
23 with the intent to avoid, evade or prevent compliance is
24 liable for a civil penalty of not more than five thousand
25 dollars (\$5,000.00), reasonable attorney's fees and costs.
26

27 (f) Whenever criminal or civil intelligence,
28 investigative information or any other information held by
29 any state or federal agency is available to the enforcing
30 authority on a confidential or a similarly restricted
31 basis, the enforcing authority, in the course of the
32 investigation of any violation of this act, may obtain and
33 use the information. Any intelligence or investigative
34 information that is confidential or exempt under W.S. 16-4-
35 201 through 16-4-205 retains its status as confidential or
36 exempt.
37

38 **40-12-113. Civil penalties.**
39

40 (a) The enforcing authority, upon petition to the
41 court, may recover, on behalf of the state, a civil penalty
42 of not more than five thousand dollars (\$5,000.00) from any
43 person who violates the terms of a permanent injunction
44 issued under W.S. 40-12-106.
45

1 (b) For purposes of this section, the court issuing
2 an injunction shall retain jurisdiction, and the cause
3 shall be continued.
4

5 (c) Except as provided in W.S. 40-12-111, any person
6 or agent or employee of the person, who willfully uses, or
7 has willfully used, a method or act, in violation of this
8 act, is liable for a civil penalty of not more than ten
9 thousand dollars (\$10,000.00) for each violation. Willful
10 violations occur when the person knew or should have known
11 that the person's conduct was unfair or deceptive. This
12 civil penalty may be recovered in any action brought under
13 this act by the enforcing authority or the enforcing
14 authority may terminate any investigation or action upon
15 agreement by the person to pay a stipulated civil penalty.
16 The enforcing authority or the court may waive any civil
17 penalty if the person has previously made full restitution
18 or reimbursement or has paid actual damages to the
19 consumers who have been injured by the unlawful act or
20 practice. If civil penalties are assessed in any
21 litigation, the enforcing authority is entitled to
22 reasonable attorney's fees and costs.
23

24 **40-12-114. Effect on other remedies.**
25

26 This act shall not prohibit actions under other statutory
27 or common-law provisions against conduct or practices
28 similar to those declared to be unlawful by W.S. 40-12-105.
29 However, the remedies provided in this act are the
30 exclusive remedies for actions brought pursuant to this
31 act.

32 *****
33 *****
34

35 **40-30-210. Preemption; local governments.**
36

37 This article supersedes and preempts ordinances,
38 resolutions, regulations or the equivalent adopted by any

1 municipality, county or city regarding the processing of
2 personal data by controllers or processors.

3

4 **Section 2.** W.S. 16-4-203(d) by creating a new
5 paragraph (xxi), 40-12-102(a)(ii) and 40-12-105(a) by
6 creating a new paragraph (xviii) are amended to read:

7

8 **16-4-203. Right of inspection; grounds for denial;**
9 **access of news media; order permitting or restricting**
10 **disclosure; exceptions.**

11

12 (d) The custodian shall deny the right of inspection
13 of the following records, unless otherwise provided by law:

14

15 (xxi) Data protection assessments as provided in
16 W.S. 40-30-208.

17

18 **40-12-102. Definitions.**

19

20 (a) As used in this act:

21

22 (ii) "Consumer transactions" means:

23

1 (A) The advertising, offering for sale, sale
2 or distribution of any merchandise to an individual for
3 purposes that are primarily personal, family or household;
4 and

5

6 (B) For the purposes of W.S. 40-12-
7 105(a)(xviii), the controlling or processing of personal
8 data as applied in the Wyoming Data Privacy Act.

9

10 **40-12-105. Unlawful practices.**

11

12 (a) A person engages in a deceptive trade practice
13 unlawful under this act when, in the course of his business
14 and in connection with a consumer transaction, he
15 knowingly:

16

17 (xviii) Violates a provision of the "Wyoming Data
18 Privacy Act," W.S. 40-30-201 through 40-30-212.

19

20 **Section 3.** The attorney general shall promulgate any
21 rules necessary to implement this act.

22

23 **Section 4.** This act is effective July 1, 2022.

1

2

(END)