

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Name, image, likeness and personal data.

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

A BILL

for

1 AN ACT relating to personal data and digital identity;
2 establishing a natural person's rights with respect to
3 personal data and their name, image and likeness;
4 establishing requirements for the processing of personal
5 data; providing for enforcement; specifying applicability;
6 providing penalties; requiring rulemaking; making
7 conforming amendments; providing legislative findings;
8 providing definitions; and providing for an effective date.

9

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

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STAFF COMMENT

This draft provides a broad list of rights with respect to the personal data of a natural person. Anyone processing personal data, from the largest corporation down to the individual, would have to comply with the exercise of these rights unless another state or federal law conflicts or preempts this newly created article (except for certain state or local government entities which are exempted). Given the breadth of law that may conflict or preempt, LSO cannot determine with certainty when this law would or would not apply, and there may be unintended consequences.

15 **Section 1.** W.S. 40-30-201 through 40-30-206 is created
16 to read:

17

18 **ARTICLE 2 - PERSONAL DATA AND DIGITAL IDENTITY PROTECTIONS**

19

20 **40-30-201. Legislative findings.**

21

22 The legislature finds and declares that a natural person's
23 name, image, likeness, digital identity and other personal
24 data are inherent to the natural person and are the
25 intangible personal property of the natural person subject
26 to the protections provided by this article and the United
27 States and Wyoming Constitutions.

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STAFF COMMENT

Alternative language for this draft that is more broadly applicable might read as follows:

40-30-201. Personal data ownership.

A natural person's name, image, likeness, digital identity and other personal data are inherent to the natural person and are the intangible personal property of the natural person. As intangible personal property, personal data is subject to the property protections provided by this article, the Wyoming Uniform Commercial Code and the United States and Wyoming Constitutions.

40-30-202. Definitions.

(a) As used in this article:

(i) "Consent" means a clear, affirmative act signifying a natural person's freely given, specific, informed and unambiguous agreement, such as by a written statement, including by electronic means or through a personal digital identity, by which the natural person

1 signifies agreement to the processing of personal data.

2 None of the following constitutes consent:

3

4 (A) Acceptance of a general or broad terms
5 of use or similar document that contains descriptions of
6 personal data processing and other, unrelated information;

7

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

10

11 (C) Agreement obtained through dark
12 patterns. As used in this paragraph, "dark pattern" means a
13 user interface designed or manipulated with the substantial
14 effect of subverting or impairing user autonomy, decision-
15 making or choice.

16

17 (ii) "Controller" means a person who, alone or
18 jointly with others, processes personal data for any
19 purpose other than personal use. As used in this paragraph
20 "personal use" shall not include any use of a professional
21 or commercial nature whether for profit or not;

22

1 (iii) "De-identified data" means data that cannot
2 reasonably be used to infer information about, or otherwise
3 be linked to, an identified or identifiable natural person
4 or personal digital identity, or a device linked to a
5 natural person or personal digital identity, if the
6 controller who possesses the data:

7

8 (A) Takes reasonable measures to ensure that
9 the data cannot be associated with a natural person or
10 personal digital identity; and

11

12 (B) Publicly commits to maintain and use the
13 data only in a de-identified fashion and not attempt to re-
14 identify the data.

15

16 (iv) "Personal data" means information that is
17 linked or reasonably linkable to an identified or
18 identifiable natural person or personal digital identity
19 and does not include de-identified data or publicly
20 available information. As used in this paragraph, "publicly
21 available information" means information that is lawfully
22 made available from federal, state, or local government
23 records and information that a controller has a reasonable

1 basis to believe the natural person has lawfully made
2 available to the general public;

3

4 (v) "Process" or "processing" means the
5 collection, use, sale, storage, transfer, disclosure,
6 analysis, deletion or modification of personal data;

7

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

12

13 (A) The disclosure of personal data to a
14 third party for purposes of providing a product or service
15 requested by the natural person;

16

17 (B) The disclosure or transfer of personal
18 data to an affiliate of the controller;

19

20 (C) The disclosure or transfer to a third
21 party of personal data as an asset that is part of a
22 proposed or actual merger, acquisition, bankruptcy or other

1 transaction in which the third party assumes control of all
2 or part of the controller's assets;

3

4 (D) The disclosure of personal data:

5

6 (I) That a natural person directs the
7 controller to disclose or intentionally discloses by using
8 the controller to interact with a third party; or

9

10 (II) Intentionally made available by a
11 natural person to the general public via a channel of mass
12 media.

13

14 (vii) "Targeted advertising" means displaying to
15 a natural person an advertisement that is selected based on
16 personal data obtained or inferred over time from the
17 natural person's activities across nonaffiliated websites,
18 applications or online services to predict preferences or
19 interests. Targeted advertising does not include:

20

21 (A) Advertising to a natural person in
22 response to the natural person's request for information or
23 feedback;

1

2

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

4

5

(C) Advertisements based on the context of a natural person's current search query, visit to a website or online application; or

8

9

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

12

13

40-30-203. Personal data rights.

14

15

(a) No controller shall process the personal data of a natural person in violation of the natural person's personal data rights set forth in subsection (b) of this section.

19

20

(b) With respect to their personal data a natural person has the following rights:

22

23

(i) The right to opt out:

1

2 (A) A natural person has the right to opt
3 out of the processing of personal data concerning the
4 natural person for purposes of:

5

6 (I) Targeted advertising;

7

8 (II) The sale of personal data;

9

10 (III) Profiling. As used in this
11 paragraph, "profiling" means any form of processing of
12 personal data to evaluate, analyze or predict personal
13 aspects concerning a natural person's economic situation,
14 health, personal preferences, interests, reliability,
15 behavior, location or movements.

16

17 (B) A controller that processes personal
18 data for purposes of targeted advertising or the sale of
19 personal data shall provide a clear and conspicuous method
20 to exercise the right to opt out of the processing of
21 personal data concerning the natural person pursuant to
22 subparagraph (A) of this paragraph.

23

1 *****
 2 *****
 3 STAFF COMMENT
 4 The language above does not provide a method for a natural
 5 person to become notified that a controller has their
 6 personal data. The committee may wish to consider whether
 7 adding a notification requirement is necessary or if there
 8 is another mechanism that should be put in place.
 9 *****
 10 *****
 11

12 (ii) Right of access. A natural person has the
 13 right to confirm whether a controller is processing
 14 personal data concerning the natural person and to access
 15 the natural person's personal data;

16
 17 (iii) Right to correction. A natural person has
 18 the right to correct inaccuracies in the natural person's
 19 personal data, taking into account the nature of the
 20 personal data and the purposes of the processing of the
 21 natural person's personal data;

22
 23 (iv) Right to deletion. A natural person has the
 24 right to delete personal data concerning the natural
 25 person;

26
 27 (v) Right to data portability. When exercising
 28 the right to access personal data pursuant to paragraph

1 (ii) of this subsection, a natural person has the right to
2 obtain the personal data in a portable and, to the extent
3 technically feasible, readily usable format that allows the
4 natural person to transmit the data to another entity
5 without hindrance. A natural person may exercise this right
6 not more than two (2) times per calendar year for any one
7 (1) controller. Nothing in this paragraph requires a
8 controller to provide the data to the natural person in a
9 manner that would disclose the controller's trade secrets.

10

11 (c) In responding to a natural person's requests
12 pursuant to their rights under subsection (b) of this
13 section:

14

15 (i) A controller shall inform a natural person of
16 any action taken on a request under subsection (b) of this
17 section without undue delay and not more than forty-five
18 (45) days after receipt of the request. The controller may
19 extend the forty-five (45) day period to an additional
20 forty-five (45) days where reasonably necessary, taking
21 into account the complexity and number of requests. The
22 controller shall inform the natural person of an extension

1 within forty-five (45) days after receipt of the request,
2 together with the reasons for the extension;

3

4 (ii) If a controller does not take action on the
5 request of a natural person, the controller shall inform
6 the natural person, without undue delay and not more than
7 forty-five (45) days after receipt of the request, of the
8 reasons for not taking action;

9

10 (iii) A controller shall respond to the request
11 and provide any required information in the controller's
12 possession free of charge;

13

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

21

22 (d) A natural person may authorize another person,
23 acting on the natural person's behalf, to exercise any of

1 the rights specified in subsection (b) of this section. A
 2 controller shall comply with a request received from a
 3 person authorized by the natural person to act on the
 4 natural person's behalf if the controller is able to
 5 authenticate, with reasonable effort, the identity of the
 6 natural person and the authorized agent's authority to act
 7 on the natural person's behalf.

8

9 (e) A violation of this section shall be considered a
 10 consumer transaction that constitutes a deceptive trade
 11 practice under W.S. 40-12-105.

12

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 14 *****

15 **STAFF COMMENT**

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

25

26 **40-12-101. Short title.**

27

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

30

31 **40-12-102. Definitions.**

32

33 (a) As used in this act:

1
2 (i) "Person" means a natural person,
3 corporation, trust, partnership, incorporated or
4 unincorporated association or any other legal entity;

5
6 (ii) "Consumer transactions" means the
7 advertising, offering for sale, sale or distribution of any
8 merchandise to an individual for purposes that are
9 primarily personal, family or household;

10
11 (iii) "Documentary material" means the original
12 or a copy of any book, record, report, memorandum, paper,
13 communication, tabulation, map, chart, photograph,
14 mechanical transcription, other tangible document or
15 recording, reproductions of information stored
16 magnetically, file layout, code conversion tables or
17 computer programs to convert file to readable printout,
18 wherever situated;

19
20 (iv) "Examination" of documentary material
21 includes the inspection, study or copying of any such
22 material, and the taking of testimony under oath or
23 acknowledgement with respect to any such documentary
24 material or copy thereof;

25
26 (v) "Advertisement" includes the attempt by
27 publication, dissemination, solicitation or circulation,
28 whether oral, visual, written or otherwise, and whether in
29 person, by telephone or by any other means to induce
30 directly or indirectly any person to enter into any
31 obligation or to acquire any title or interest in any
32 merchandise;

33
34 (vi) "Merchandise" includes any service or any
35 property, tangible or intangible, real, personal or mixed,
36 or any other object, ware, good, commodity, or article of
37 value wherever situated;

38
39 (vii) "Enforcing authority" means the attorney
40 general of Wyoming;

41
42 (viii) "Cure" as applied to an unlawful
43 deceptive trade practice as defined in W.S. 40-12-105 means
44 either:
45

1 (A) To offer in writing to adjust or modify
2 the consumer transaction to which the unlawful deceptive
3 trade practice relates to conform to the reasonable
4 expectations of the consumer generated by such unlawful
5 deceptive trade practice and to perform such offer if
6 accepted by the consumer; or

7
8 (B) To offer in writing to rescind such
9 consumer transaction and to perform such offer if accepted
10 by the consumer.

11
12 (ix) "Uncured unlawful deceptive trade practice"
13 means an unlawful deceptive trade practice as defined in
14 W.S. 40-12-105:

15
16 (A) With respect to which a consumer who
17 has been damaged by the unlawful deceptive trade practice
18 has given notice to the alleged violator pursuant to W.S.
19 40-12-109; and

20
21 (B) Either:
22
23 (I) No offer to cure has been made to
24 such consumer within fifteen (15) days after such notice;
25 or

26
27 (II) The unlawful deceptive trade
28 practice has not been cured as to such consumer within a
29 reasonable time after his acceptance of the offer to cure.

30
31 (x) "This act" means W.S. 40-12-101 through 40-12-
32 114.

33
34 **40-12-105. Unlawful practices.**

35
36 (a) A person engages in a deceptive trade practice
37 unlawful under this act when, in the course of his business
38 and in connection with a consumer transaction, he
39 knowingly:

40
41 **40-12-106. Restraining unlawful practices.**

42
43 Whenever the enforcing authority has reasonable cause to
44 believe that any person has engaged in, is engaging in, or
45 is about to engage in any practice which is unlawful under

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

18

19 **40-12-107. Assurances of voluntary compliance.**

20

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

33

34 **40-12-108. Private remedies.**

35

36 (a) A person relying upon an uncured unlawful
37 deceptive trade practice may bring an action under this act
38 for the damages he has actually suffered as a consumer as a
39 result of such unlawful deceptive trade practice.

40

41 (b) Any person who is entitled to bring an action
42 under subsection (a) of this section on his own behalf
43 against an alleged violator of this act for damages for an
44 unlawful deceptive trade practice may bring a class action
45 against such person on behalf of any class of persons of

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

16
17 **40-12-109. Limitation of actions.**

18
19 No action may be brought under this act, except under W.S.
20 40-12-106, unless the consumer bringing the action gives
21 within the following time limits notice in writing to the
22 alleged violator of the act, (a) within one (1) year after
23 the initial discovery of the unlawful deceptive trade
24 practice, (b) within two (2) years following such consumer
25 transaction, whichever occurs first, and unless the
26 unlawful deceptive trade practice becomes an uncured
27 unlawful deceptive trade practice as defined in this act.
28 The notice required under this section shall state fully
29 the nature of the alleged unlawful deceptive trade practice
30 and the actual damage suffered therefrom. No action may be
31 brought under this act, except under W.S. 40-12-106, unless
32 said action is initiated within one (1) year after the
33 furnishing of notice as required under this section.

34
35 **40-12-110. Exemptions.**

36
37 (a) Nothing in this act shall apply to:

38
39 (i) Acts or practices required or permitted by
40 state or federal law, rule or regulation or judicial or
41 administrative decision;

42
43 (ii) Acts or practices by the publisher, owner,
44 agent or employee of a newspaper, periodical, radio or
45 television station or any other person without knowledge of

1 the deceptive character of the advertisement in the
2 publication or dissemination of an advertisement supplied
3 by another.

4
5 **40-12-111. Violations involving older persons or**
6 **persons with disabilities; civil penalty.**

7
8 (a) As used in this section:

9
10 (i) "Person with disabilities" means any person
11 who has a mental or educational impairment which
12 substantially limits one (1) or more major life activities;

13
14 (ii) "Major life activities" means functions
15 associated with the normal activities of independent daily
16 living such as caring for one's self, performing manual
17 tasks, walking, seeing, hearing, speaking, breathing,
18 learning and working;

19
20 (iii) "Mental or educational impairment" means:

21
22 (A) Any mental or psychological disorder or
23 specific learning disability;

24
25 (B) Any educational deficiency which
26 substantially affects a person's ability to read and
27 comprehend the terms of any contractual agreement entered
28 into.

29
30 (iv) "Older person" means a person who is over
31 sixty (60) years of age.

32
33 (b) Any person who willfully uses, or has willfully
34 used, a method, act or practice in violation of this act
35 which victimizes or attempts to victimize an older person
36 or a person with disabilities, and commits such violation
37 when the person knew or should have known that the conduct
38 was unfair or deceptive, shall make restitution or
39 reimbursement to the older person or person with
40 disabilities including reasonable attorney fees and costs,
41 and, in addition, is liable for a civil penalty of up to
42 fifteen thousand dollars (\$15,000.00) for each violation
43 recoverable by the office of the attorney general.

44

1 **40-12-112. Investigative powers of enforcing**
2 **authority.**
3

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

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

34 (c) Upon failure of a person without lawful excuse to
35 obey a subpoena and upon reasonable notice to all persons
36 affected, the enforcing authority may apply to the district
37 court for an order compelling compliance.
38

39 (d) The enforcing authority may request that an
40 individual who refuses to comply with a subpoena on the
41 ground that testimony or matter may incriminate the
42 individual, be ordered by the court to provide the
43 testimony or matter. Except in a prosecution for perjury,
44 an individual who complies with a court order to provide
45 testimony or matter after asserting a privilege against

1 self-incrimination to which the individual is entitled by
2 law shall not have the testimony or matter so provided, or
3 evidence derived therefrom, received against the individual
4 in any criminal investigation or proceeding.

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

19
20 (f) Whenever criminal or civil intelligence,
21 investigative information or any other information held by
22 any state or federal agency is available to the enforcing
23 authority on a confidential or a similarly restricted
24 basis, the enforcing authority, in the course of the
25 investigation of any violation of this act, may obtain and
26 use the information. Any intelligence or investigative
27 information that is confidential or exempt under W.S. 16-4-
28 201 through 16-4-205 retains its status as confidential or
29 exempt.

30
31 **40-12-113. Civil penalties.**

32
33 (a) The enforcing authority, upon petition to the
34 court, may recover, on behalf of the state, a civil penalty
35 of not more than five thousand dollars (\$5,000.00) from any
36 person who violates the terms of a permanent injunction
37 issued under W.S. 40-12-106.

38
39 (b) For purposes of this section, the court issuing
40 an injunction shall retain jurisdiction, and the cause
41 shall be continued.

42
43 (c) Except as provided in W.S. 40-12-111, any person
44 or agent or employee of the person, who willfully uses, or
45 has willfully used, a method or act, in violation of this

1 act, is liable for a civil penalty of not more than ten
 2 thousand dollars (\$10,000.00) for each violation. Willful
 3 violations occur when the person knew or should have known
 4 that the person's conduct was unfair or deceptive. This
 5 civil penalty may be recovered in any action brought under
 6 this act by the enforcing authority or the enforcing
 7 authority may terminate any investigation or action upon
 8 agreement by the person to pay a stipulated civil penalty.
 9 The enforcing authority or the court may waive any civil
 10 penalty if the person has previously made full restitution
 11 or reimbursement or has paid actual damages to the
 12 consumers who have been injured by the unlawful act or
 13 practice. If civil penalties are assessed in any
 14 litigation, the enforcing authority is entitled to
 15 reasonable attorney's fees and costs.

16

17 **40-12-114. Effect on other remedies.**

18

19 This act shall not prohibit actions under other statutory
 20 or common-law provisions against conduct or practices
 21 similar to those declared to be unlawful by W.S. 40-12-105.
 22 However, the remedies provided in this act are the
 23 exclusive remedies for actions brought pursuant to this
 24 act.

25 *****

26 *****

27

28 **40-30-204. Commercial use of the name, image or**
 29 **likeness of a natural person.**

30

31 (a) Any person who knowingly uses a natural person's
 32 name, voice, signature, image or likeness, in any manner,
 33 on or in products, merchandise or goods, or for purposes of
 34 advertising or selling, or soliciting purchases of
 35 products, merchandise, goods or services, without the
 36 person's prior consent, or, in the case of a minor, the

1 prior consent of his parent or legal guardian, shall be
2 liable for any damages sustained by the natural person
3 injured as a result thereof subject to the following:

4

5 (i) In any action brought under this section, the
6 person who violated this section shall be liable to the
7 injured party in an amount equal to the greater of seven
8 hundred fifty dollars (\$750.00) or the actual damages
9 proximately caused by the unauthorized use, and any profits
10 from the unauthorized use that are attributable to the use
11 and are not taken into account in computing the actual
12 damages. Punitive damages may also be awarded to the
13 injured part;

14

15 (ii) In establishing profits under paragraph (i)
16 of this subsection, the injured party shall be required to
17 present proof only of the gross revenue attributable to the
18 unauthorized use, and the person who violated this
19 subsection shall be required to prove deductible expenses;

20

21 (iii) The prevailing party in any action under
22 this article shall be entitled to attorney's fees and
23 costs.

1

2 (b) As used in this section, "image" means any
3 photograph or photographic reproduction, still or moving,
4 or any recording or live transmission, of any natural
5 person, such that the natural person is readily
6 identifiable. A natural person shall be deemed readily
7 identifiable from an image when a person who views the
8 image with the naked eye can reasonably determine that the
9 person depicted in the image is the same person who is
10 complaining of its unauthorized use. If the image includes
11 more than one (1) identifiable natural person, then the
12 natural person complaining of the use shall be entitled to
13 recovery of damages only if they are depicted as an
14 individual rather than solely as a member of a definable
15 group. A natural person shall be considered to be
16 represented as member of a definable group if they are
17 represented in the image solely as a result of being
18 present at the time the image was taken and are not singled
19 out as an individual in any manner. Subsection (a) of this
20 section applies to images only when the natural person is
21 readily identifiable and not a member of a definable group.

22

1 (c) Where an image or likeness of an employee of a
2 person using the image or likeness appearing in an
3 advertisement or other publication prepared by or in behalf
4 of the person is only incidental, and not essential, to the
5 purpose of the publication in which it appears, there shall
6 arise a rebuttable presumption affecting the burden of
7 producing evidence that the failure to obtain the consent
8 of the employee was not a knowing use of the employee's
9 image or likeness.

10

11 (d) For purposes of this section, a use of a name,
12 voice, signature, image, or likeness in connection with any
13 news, public affairs, sports broadcast or account or any
14 political campaign, shall not constitute a use for which
15 consent is required under subsection (a) of this section.

16

17 (e) The use of a name, voice, signature, image, or
18 likeness in a commercial medium shall not constitute a use
19 for which consent is required under subsection (a) of this
20 section solely because the material containing the use is
21 commercially sponsored or contains paid advertising. It
22 shall be a question of fact whether or not the use of the
23 natural person's name, voice, signature, image, or likeness

1 was so directly connected with the commercial sponsorship
2 or with the paid advertising as to constitute a use for
3 which consent is required under subsection (a) of this
4 section.

5

6 (f) Nothing in this section shall apply to the owners
7 or employees of any medium used for advertising, including,
8 but not limited to, newspapers, magazines, radio and
9 television networks and stations, cable television systems,
10 billboards, and transit ads, by whom any advertisement or
11 solicitation in violation of this section is published or
12 disseminated, unless it is established that the owners or
13 employees had knowledge of the unauthorized use of the
14 natural person's name, voice, signature, image, or likeness
15 as prohibited by this section.

16

17 **40-30-205. Applicability.**

18

19 (a) To the extent that a provision of this article
20 conflicts with or is preempted by another provision of
21 state or federal law, the other provision shall control
22 only to the extent of the conflict or preemption.

23

1 (b) Subject to subsection (d) of this section, this
2 article does not apply to personal data maintained by a
3 state institution of higher education, the state, or a
4 county, city or municipality if the data is collected,
5 maintained, disclosed, communicated and used as authorized
6 by state and federal law for noncommercial purposes.

7

8 (c) The obligations imposed on controllers under this
9 article shall not:

10

11 (i) Restrict a controller's ability to comply
12 with federal, state or local laws, rules or regulations;

13

14 (ii) Apply where compliance by the controller
15 with this article would violate an evidentiary privilege
16 under Wyoming law or prevent a controller from providing
17 personal data concerning a natural person to a person
18 covered by an evidentiary privilege under Wyoming law as
19 part of a privileged communication.

20

21 (d) Personal data that is processed by a controller
22 under an exception provided by this section or due to a
23 conflict with or preemption by other law shall be processed

1 solely to the extent that the processing is necessary,
2 reasonable and proportionate to the specific purpose or
3 purposes listed in this section or as otherwise authorized
4 by this article. The controller bears the burden of
5 demonstrating that the processing qualifies for the
6 exception or preemption. Any ambiguity shall be resolved in
7 favor of the natural person.

8

9 **40-30-206. Limitations;**

10

11 (a) Nothing in this article shall be construed to
12 limit any existing rights of a natural person with respect
13 to their personal data.

14

15 (b) The remedies provided for in this article are
16 cumulative and shall be in addition to any others provided
17 for by law.

18

19 **Section 2.** W.S. 40-12-102(a)(ii) and 40-12-105(a) by
20 creating a new paragraph (xviii) are amended to read:

21

22 **40-12-102. Definitions.**

23

1 (a) As used in this act:

2

3 (ii) "Consumer transactions" means:

4

5 (A) The advertising, offering for sale, sale
6 or distribution of any merchandise to an individual for
7 purposes that are primarily personal, family or household;
8 and

9

10 (B) For the purposes of W.S. 40-12-
11 105(a)(xviii), the processing of personal data as applied
12 in W.S. 40-30-203.

13

14 **40-12-105. Unlawful practices.**

15

16 (a) A person engages in a deceptive trade practice
17 unlawful under this act when, in the course of his business
18 and in connection with a consumer transaction, he
19 knowingly:

20

21 (xviii) Violates a provision of W.S. 40-30-203.

22

