TITLE 40 - TRADE AND COMMERCE

CHAPTER 1 - TRADEMARKS AND SERVICE MARKS

40-1-101. Definitions.

(a) The term "trademark" as used in this act means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

(b) The term "service mark" as used in this act means any word, name, symbol or device or any combination thereof used by a person, to identify and distinguish the services of one (1) person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(c) The term "mark" as used in this act includes any trademark or service mark entitled to registration under this act whether registered or not.

(d) The term "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this act includes a juristic person as well as a natural person. The term "juristic person" includes a firm, partnership, corporation, association, union or other organization or business entity capable of suing and being sued in a court of law.

(e) The term "applicant" as used in this act embraces the person filing an application for registration of a mark under this act, and the legal representatives, successors or assigns of such person.

(f) The term "registrant" as used in this act embraces the person to whom the registration of a mark under this act is issued and the legal representatives, successors or assigns of such person.

(g) The term "use" in this act means the bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in a mark. For the purposes of this act, a mark shall be deemed to be in use in this state:

(i) On goods when it is placed in any manner on the goods or other containers on the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state; and

(ii) On services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(h) A mark shall be deemed to be "abandoned" under this act when either of the following occurs:

(i) When its use has been discontinued with the intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two (2) consecutive years shall constitute prima facie evidence of abandonment;

(ii) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(j) The term "dilution" as used in this act means the lessening of the capacity of a registrant's mark to identify and distinguish goods or services, regardless of the presence or absence of:

(i) Competition between the parties; or

(ii) Likelihood of confusion, mistake or deception.

(k) The term "secretary" as used in this act means the secretary of state or the designee of the secretary charged with the administration of this act.

(m) "This act" means W.S. 40-1-101 through 40-1-116.

40-1-102. Marks which cannot be registered.

(a) A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(i) Consists of or comprises immoral, deceptive or scandalous matter; or

(ii) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

(iii) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(iv) Consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent; or

(v) Consists of a mark which, (A) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or (B) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (C) is primarily merely a surname; provided, however, that nothing in this paragraph shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five (5) years before the date on which the claim of distinctiveness is made; or

(vi) Consists of or comprises a mark which is the same as, or deceptively similar to, a mark registered in this state, a trade name or the name of a juristic person, or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

40-1-103. Application for registration; filing fee.

(a) Subject to the limitations set forth in this act, any person who uses a mark in this state may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(i) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, or similar information for other juristic persons, as specified by the secretary;

(ii) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(iii) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest;

(iv) A statement that the applicant is the owner of the mark, that the mark is in use and that to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance as to be likely, when applied to the goods or services of such other person, to cause confusion or to cause mistake or to deceive; and

(v) If required by the secretary, a statement as to whether an application to register the mark, or portions or a composite, has been filed by the applicant or a predecessor in interest in the United States patent and trademark office; and, if so, the applicant shall provide full particulars including the filing date and serial number of each application, the status and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

(b) The application shall be signed and verified by oath, affirmation or declaration subject to perjury laws by the applicant or by a member of the firm or an officer of the corporation or association applying.

(c) The application shall be accompanied by a specimen or facsimile of such mark in triplicate. The secretary may also require that a drawing of the mark, complying with requirements as the secretary may specify, accompany the application.

(d) The application for registration shall be accompanied by a filing fee, set in accordance with W.S. 40-1-116, but not to exceed three hundred dollars ($300.00) and payable to the secretary.

40-1-104. Examination of application; amendment of application.

(a) Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with this act.

(b) The applicant shall provide any additional pertinent information requested by the secretary, including a description of a design mark and may make or authorize the secretary to make such amendments to the application as may be reasonably requested by the secretary or deemed by the applicant to be advisable to respond to any rejection or objection.

(c) The secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registerable and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter be or shall have become distinctive of the applicant's or registrant's goods or services.

(d) Amendments may be made by the secretary upon the application submitted by the applicant upon the applicant's agreement or a fresh application may be required to be submitted.

(e) If the applicant is found not to be entitled to registration, the secretary shall advise the applicant of the reasons. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until (A) the secretary finally refuses registration of the mark or (B) the applicant fails to reply or amend within the specified period,

whereupon the application shall be deemed to have been abandoned.

40-1-105. Term of registration; renewals.

(a) Registration of a mark is effective for a term of five (5) years from the date of registration and, upon application filed within six (6) months prior to the expiration of such term, in a manner complying with the requirements of the secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee set in accordance with W.S. 40-1-116, but not to exceed one hundred fifty dollars ($150.00) and payable to the secretary, shall accompany the application for renewal of the registration.

(b) Renewal periods.-A mark registration may be renewed for successive periods of five (5) years in like manner. All applications for renewal under this act, whether of registrations made under this act or of registrations effected under any prior act, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

(c) Repealed By Laws 1997, ch. 112, § 3.

(d) Existing registration.-Any registration in force on the date on which this act shall become effective shall continue in full force and effect for the unexpired term and may be renewed by filing an application for renewal with the secretary, complying with the requirements of the secretary, and paying the aforementioned renewal fee within six (6) months prior to the expiration of the registration.

(e) Repealed By Laws 1997, ch. 112, § 3.

40-1-106. Assignment of marks and registration; change of name.

(a) Any mark and its registration under this act shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon the payment of a fee set in accordance with W.S. 40-1-116, but not to exceed seventy-five dollars ($75.00) and payable to the secretary. Upon recording of

the assignment, the secretary shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this act shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary within three (3) months after the date thereof or prior to such subsequent purchase.

(b) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the secretary upon the payment of the recording fee. The secretary may issue in the name of the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee, a new certificate or registration for the remainder of the term of the registration or last renewal thereof.

(c) A photocopy or photograph of any instrument referred to in subsections (a) and (b) of this section shall be accepted for recording if it is certified by the applicant, or their successors, to be a true and correct copy of the original.

40-1-107. Public record of marks.

The secretary shall keep for public examination a record of all marks registered or renewed under this act.

40-1-108. Cancellation of registration.

(a) The secretary shall cancel from the register in whole or in part:

(i) Repealed By Laws 1997, ch. 112, § 3.

(ii) Any registration concerning which the secretary shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record and shall receive payment of a fee set in accordance with W.S. 40-1-116, but not to exceed thirty dollars ($30.00);

(iii) All registrations granted under this act and not renewed in accordance with the provisions hereof;

(iv) Any registration concerning which a court of competent jurisdiction shall find:

(A) That the registered mark has been abandoned;

(B) That the registrant is not the owner of the mark;

(C) That the registration was granted improperly;

(D) That the registration was obtained fraudulently;

(E) That the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States patent and trademark office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that the registrant is the owner of a concurrent registration of his mark in the United States patent and trademark office covering an area including this state, the registration hereunder shall not be cancelled;

(F) That the mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered.

(v) When a court of competent jurisdiction shall order cancellation of a registration on any ground.

40-1-109. Classification of marks.

(a) Repealed By Laws 1997, ch. 112, § 3.

(b) Repealed By Laws 1997, ch. 112, § 3.

(c) The secretary shall by regulation establish a classification of goods and services for marks for the convenience of administration of this act, but not to limit or extend the applicant's or registrant's rights.

40-1-110. False or fraudulent representations or declarations; liability for damages sustained.

Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary under the provisions of this act, by

knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

40-1-111. Civil liability.

Subject to the provisions of W.S. 40-1-113 any person who shall (a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this act in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services, or (b) reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services, shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in W.S. 40-1-112, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

40-1-112. Remedies.

(a) Any owner of a mark registered under this act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three (3) times such profits and damages and reasonable attorneys' fees of the prevailing party in such cases where the court finds the other party committed such wrongful acts with knowledge or

in bad faith or otherwise as according to the circumstances of the case.

(b) The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

40-1-113. Marks acquired at common law.

Nothing in this act shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

40-1-114. Inapplicable to livestock brands, marks or tags.

This act shall not be construed to apply to brands, marks or tags on livestock.

40-1-115. Injury to business reputation; dilution.

(a) The owner of a mark which is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another's use of a mark, commencing after the owner's mark becomes famous, which causes dilution of the distinctive quality of the owner's mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous, a court may consider factors such as, but not limited to:

(i) The degree of inherent or acquired distinctiveness of the mark in this state;

(ii) The duration and extent of use of the mark in connection with the goods and services;

(iii) The duration and extent of advertising and publicity of the mark in this state;

(iv) The geographical extent of the trading area in which the mark is used;

(v) The channels of trade for the goods or services with which the owner's mark is used;

(vi) The degree of recognition of the owner's mark in its and in the other's trading areas and channels of trade in this state; and

(vii) The nature and extent of use of the same or similar mark by third parties.

(b) The owner shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this act, subject to the discretion of the court and the principles of equity.

40-1-116. Powers of secretary of state; filing and other fees.

(a) The secretary has the power reasonably necessary to perform the duties required of him by this act including the promulgation of rules and regulations necessary to carry out the purposes of this act.

(b) The secretary shall set and collect filing, service and copying fees to recover the costs of providing those services and administering this act. Fees shall not exceed the costs of providing these services and administering this act.

ARTICLE 2 - BAD FAITH ASSERTION OF PATENT INFRINGEMENT

40-1-201. Definitions.

(a) As used in this article:

(i) "Demand letter" means a letter, email or other communication asserting or claiming that the target engaged in patent infringement;

(ii) "Target" means a person that:

(A) Receives a demand letter or other allegation of patent infringement;

(B) Is threatened with or has a lawsuit filed against the person that alleges patent infringement; or

(C) Conducts business with a customer who receives a demand letter asserting that the person's product, service or technology infringes a patent.

40-1-202. Bad faith assertion of patent infringement; prohibited; factors to determine bad faith.

(a) Except as otherwise provided in this article, no person shall make a bad faith assertion of patent infringement as provided in this section.

(b) A court may consider any of the following factors as evidence that a person made a bad faith assertion of patent infringement:

(i) The person issued a demand letter which did not include one (1) or more of the following:

(A) The patent number;

(B) The name and address of the patent owner and assignee, if any;

(C) Specific factual allegations describing the target's product, service or technology that infringes the patent or is otherwise covered by the patent.

(ii) The person did not conduct an analysis comparing the patent to the product, service or technology of the target prior to sending the demand letter or, if an analysis was conducted, the analysis did not identify the specific area that the product, service or technology of the target infringes the patent or is otherwise covered by the patent;

(iii) If a demand letter does not contain all of the information provided in paragraph (i) of this subsection and the target requests the missing information, the person fails to provide the missing information within thirty (30) days;

(iv) The demand letter requires a response or payment of a license fee within a specified time that is less than thirty (30) days;

(v) The person knew or should have known that the claim of patent infringement is unenforceable;

(vi) The claim of patent infringement is deceptive;

(vii) The person making the assertion of patent infringement does not own or have the right to enforce or license the patent;

(viii) The person sent the same or substantially similar demand letter to multiple recipients and made assertions against a variety of products, services or technologies without addressing product, service or technology differences in a reasonable manner;

(ix) The person made a threat of legal action that the person knows or should have known cannot be legally taken or is not intended to be taken;

(x) The person falsely represents in a demand letter that a complaint has been filed with a court alleging patent infringement;

(xi) The claim of patent infringement is based on a patent that has expired or has previously been held invalid or unenforceable in a final unappealable or unappealed judicial or administrative decision;

(xii) Any other factor the court finds relevant.

(c) A court may consider any of the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(i) The demand letter includes all of the information specified in paragraph (b)(i) of this section;

(ii) If a demand letter does not contain all of the information provided in paragraph (b)(i) of this section and the target requests the missing information, the person provides the missing information within thirty (30) days;

(iii) The person engages in a good faith effort to establish that the target has infringed the patent and to negotiate an appropriate remedy;

(iv) The person has made a substantial investment in the use of the patent or in the production or sale of a product, service or technology covered by the patent;

(v) The person is the inventor or joint inventor of the patent or, if the patent is filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee of the patent;

(vi) The person has successfully enforced the patent or a substantially similar patent through litigation or has demonstrated good faith business practices in previous efforts to enforce the patent.

40-1-203. Private right of action.

(a) A target or other person aggrieved by a bad faith assertion of patent infringement in violation of this article may bring an action in a court of proper jurisdiction. A court may award any of the following remedies to a plaintiff prevailing in an action brought pursuant to this section:

(i) Equitable relief;

(ii) Damages;

(iii) Costs and fees, including reasonable attorney fees;

(iv) Exemplary damages in an amount equal to fifty thousand dollars ($50,000.00) or three (3) times the total of damages, costs and fees, whichever is greater.

40-1-204. Enforcement.

(a) The attorney general may enforce the provisions of this article and investigate violations of this article.

(b) The attorney general or any district attorney may on behalf of the state bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this article. The court may, upon entry of final judgment finding a violation of this article, award restitution when appropriate to any person suffering loss because of a violation of this article if proof of the loss is submitted to the satisfaction of the court.

40-1-205. Exceptions.

(a) The provisions of this article shall not apply to:

(i) A person that owns or has the right to license or enforce a patent if the person is:

(A) Notifying another of the ownership right or enforcement right in the patent;

(B) Notifying another that the patent is available for license or sale;

(C) Notifying another of the infringement of the patent pursuant to title 35 of the United States Code or section 262 of title 42 of the United States Code; or

(D) Seeking compensation from another person for a past or present infringement of a patent, or for a license, if it is reasonable to believe that the person owes the compensation.

(ii) A demand letter sent by:

(A) An owner of the patent that is using the patent in connection with substantial research, commercial development, production, manufacturing, processing or delivery of products or materials; or

(B) Any institution of higher education or any technology transfer organization whose primary purpose is to facilitate the commercialization of technology developed by an institution of higher education.

CHAPTER 2 - TRADE NAMES REGISTRATION

40-2-101. Definitions.

(a) As used in this act unless the context otherwise requires:

(i) "Applicant" means a person filing an application for registration or reservation of a trade name under this act, his legal representatives, successors or assigns;

(ii) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two (2) or more of the foregoing having a joint or common interest, or any other legal or commercial entity;

(iii) "Registrant" means a person to whom registration of a trade name under this act is issued, his legal representatives, successors or assigns;

(iv) "Trade name" means a word, name, or any combination of the foregoing in any form or arrangement used by a person to identify his business, vocation, or occupation and distinguish it from the business, vocation or occupation of others;

(v) "This act" means W.S. 40-2-101 through 40-2-109.

40-2-102. Registrability.

(a) A trade name shall not be registered if it:

(i) Is the same as, or deceptively similar to, a trademark or service mark registered in this state, or is not distinguishable from the names of other business entities as required by W.S. 17-16-401;

(ii) Contains any word or phrase which indicates that it is engaged in the business of banking or insurance, except as provided in subsections (b) through (d) of this section.

(b) National banking associations previously approved by the comptroller of the currency, whose principal place of business is located within the state of Wyoming and who are actively engaged in the business of banking on the effective date of this act may be registered with the Wyoming secretary of state and entitled to all of the protection of other registered trade names.

(c) Any person desiring to register a bank trade name for any proposed national banking association shall comply with the provisions of this act. The secretary of state shall conditionally approve the proposed trade name if not the same as or deceptively similar to any trade name registered under this act, a trademark or service mark registered in this state or the name of a corporation incorporated or authorized to do business in this state, or which is exclusively reserved under W.S. 17-16-402. Conditional approval shall expire in twelve (12) months unless extended for good cause for an additional period of six (6) months. Conditional approval shall not become final and the name registered until the applicant has received approval to engage in the business of banking by the comptroller of the currency, and actually engages in the business of banking in this state.

(d) Any person desiring to conditionally register a bank trade name for any proposed Wyoming state chartered bank shall

comply with the provisions of this act. The secretary of state shall conditionally approve the proposed trade name if it is not the same as or deceptively similar to any trademark or service mark registered in this state, and is distinguishable upon the records of the secretary of state from other business names as required by W.S. 17-16-401. Conditional approval shall expire in twelve (12) months but may be extended for good cause for an additional six (6) months. The conditional approval shall terminate upon approval of the proposed charter by the Wyoming state banking commissioner and the Wyoming state banking board and the filing of the bank's articles of incorporation with the secretary of state since at that time the name of the state chartered bank will be protected by W.S. 17-16-401(b).

40-2-103. Reservation.

(a) Any person intending to adopt a trade name for use and intending to apply for registration of a trade name may reserve the trade name in the following manner. Reservation shall be made by filing an application with the secretary of state to reserve a specified trade name, executed by the applicant. If the secretary of state finds that the name is available for use, and upon payment of thirty dollars ($30.00), he shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty (120) days. The reservation is not renewable.

(b) The right to the exclusive use of a specified trade name so reserved may be transferred to any other person by filing a notice of the transfer in the office of the secretary of state, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

40-2-104. Application for registration.

(a) Subject to the limitations set forth in this act and upon payment of one hundred dollars ($100.00), any person who adopts a trade name for use in this state may file an application for registration of the trade name in duplicate in the office of the secretary of state on forms furnished by the secretary of state setting forth, but not limited to, the following information:

(i) The name and business address of the applicant for registration, and if a corporation, the state of incorporation;

(ii) The trade name sought to be registered;

(iii) The general nature of the business in fact conducted by the applicant;

(iv) The signature of the applicant acknowledged before a notarial officer.

(b) Upon compliance by the applicant with the requirements of this act, the secretary of state shall return a duplicate copy of the application for registration to the applicant stamped with the date of filing.

40-2-105. Duration and renewal.

(a) Registration of a trade name under this act is effective for ten (10) years. Within six (6) months prior to the expiration of a term, registration may be renewed for additional ten (10) year periods. A renewal fee of fifty dollars ($50.00) shall accompany an application for renewal of registration. The application for renewal shall include a statement that the trade name is still in use in this state. Notification of expiration and the forms for application for renewal shall be furnished to the registrant by the secretary of state.

(b) The secretary of state shall notify registrants of trade names of the necessity of renewal within the year next preceding the expiration of the ten (10) years from the date of registration or renewal by writing to the last known address of the registrants.

40-2-106. Assignment.

Any trade name registered under this act is assignable with the goodwill of the business in which the trade name is used. Assignment shall be by an instrument in writing duly executed and shall be recorded with the secretary of state upon payment of twenty-five dollars ($25.00). Upon recording the assignment, the secretary of state shall issue a certificate in the name of the assignee for the remainder of the term of the registration.

40-2-107. Cancellation.

(a) The secretary of state shall cancel from the registration record:

(i) Any registration upon request for cancellation from the registrant or the assignee of record and upon payment

of a fee of ten dollars ($10.00) to the secretary of state to be credited to the general fund;

(ii) Any registration granted under this act and not renewed in accordance with its provisions;

(iii) Any registration if a court of competent jurisdiction finds:

(A) That the registered trade name has been abandoned;

(B) That the registrant is not the owner of the trade name;

(C) That the registration was granted improperly; or

(D) That the registration was obtained fraudulently.

40-2-108. Fraudulent registration.

Any person who procures the registration of any trade name in the office of the secretary of state under the provisions of this act, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, is liable for the payment of all damages sustained in consequence of the filing or registration and the costs of the action together with reasonable attorneys' fees as determined by the court, to be recovered in any court of competent jurisdiction by any party injured.

40-2-109. Common-law rights.

This act shall not adversely affect rights in trade names, or the enforcement of rights in trade names, acquired at any time in good faith at common law.

CHAPTER 3 - MULTILEVEL AND PYRAMID DISTRIBUTORSHIPS

40-3-101. Short title.

This act may be cited as the "Wyoming Multilevel and Pyramid Distributorship Act."

40-3-102. Definitions.

(a) As used in this act:

(i) "Multilevel distribution companies" means any person, firm, corporation or other business entity which sells, distributes or supplies for a valuable consideration, goods or services through independent agents, contractors or distributors, at different levels wherein such participants may recruit other participants, and wherein commissions, cross-commissions, bonuses, refunds, discounts, dividends or other considerations in the program are, or may be, paid as a result of the sale of such goods or services or the recruitment, actions or performances of additional participants;

(ii) "Multilevel distribution marketing plan" means any agreement for a definite or indefinite period, either expressed or implied, in which a person agrees, for a valuable consideration, to distribute goods or services of a multilevel distribution company to members of the public or to persons who occupy different levels in the multilevel distribution company's distribution system;

(iii) "Distributor" means any independent contracted person, agent, employer or participant who has agreed to perform, at one (1) or more levels in a multilevel distribution marketing plan, the functions of distributing the goods or services of the multilevel distribution company or the recruitment of subordinate distributors or both functions;

(iv) "Resalable condition" means products that will pass without objection in the trade, or are still fit for the ordinary purposes for which the products are used;

(v) "Referral sale" means any inducement offered to a person, for the purpose of selling a product or service, which is the opportunity to receive compensation without exercising a bona fide and commensurate responsibility for the sale of the product or service to the ultimate customer; or any offer to a person of an opportunity to receive compensation related to the recruitment of third persons who will be entitled to substantially similar recruiting opportunities when the offer is used as an inducement for the payment of an entrance fee, given toward a purchase or other consideration, except for the actual cost of necessary sales materials by the persons to whom the offer is made;

(vi) "Endless chain" means any scheme or plan for the disposal or distribution of property or services whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one (1) or more additional persons into participation in the scheme or plan or for the chance to receive compensation when the person introduced by the participant introduces a new participant;

(vii) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, other tangible document or recording, reproductions of information stored magnetically, file layout, code conversion tables, computer programs to convert file to readable printout, wherever situate.

40-3-103. Endless chains and referral sales prohibited.

No person may contrive, prepare, set up, propose or operate an endless chain or referral sale.

40-3-104. Prohibitions and requirements.

Every multilevel distribution company shall provide in its contract of participation that the contract may be cancelled for any reason at any time by a participant upon notification in writing to the company of his election to cancel. If the participant has purchased products while the contract of participation was in effect, all unencumbered products in a resalable condition then in the possession of the participant shall be repurchased by the multilevel distribution company. The repurchase shall be at a price of not less than ninety percent (90%) of the original net cost to the participant returning such goods, taking into account any sales made by or through such participant prior to notification to the company of the election to cancel.

40-3-105. Restrictions on marketing programs.

(a) No multilevel distribution company, nor any participant, shall require participants in its marketing program to purchase products or services or pay any other consideration in order to participate in the marketing program unless the multilevel distribution company agrees in writing:

(i) To repurchase all or part of any products which are unencumbered and in a resalable condition at a price of not

less than ninety percent (90%) of the original net cost to the participant, taking into account any sales made by or through such participant prior to notification to the company of election to cancel;

(ii) To repay not less than ninety percent (90%) of the original net cost of any services purchased by the participants; or

(iii) To refund not less than ninety percent (90%) of any other consideration paid by the participant in order to participate in the marketing program.

40-3-106. Additional restrictions in marketing programs.

(a) No multilevel distribution company or participant in its marketing program shall:

(i) Operate or, directly or indirectly, participate in the operation of any multilevel marketing program wherein the financial gains to the participants are primarily dependent upon the continued, successive recruitment of other participants and where sales to nonparticipants are not required as a condition precedent to realization of the financial gains;

(ii) Offer to pay, pay or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration to any participant in a multilevel marketing program solely for the solicitation or recruitment of other participants therein;

(iii) Offer to pay, pay or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration to any participant in a multilevel marketing program in connection with the sale of any product or service unless the participant performs a bona fide supervisory, distributive, selling or soliciting function in the sale or delivery of the product or services to the ultimate consumer; or

(iv) Offer to pay, pay or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration to any participant:

(A) If payment thereof is or would be dependent on the element of chance dominating over the skill or judgment of the participant;

(B) If no amount of judgment or skill exercised by the participant has any appreciable effect upon any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration which the participant may receive; or

(C) If the participant is without that degree of control over the operation of the plan as to enable him substantially to affect the amount of finder's fee, bonus, refund, override, commission, cross-commission, dividend or other consideration which he may receive or be entitled to receive.

40-3-107. Representations of prospective income restricted.

Multilevel distribution companies shall not represent directly or by implication that participants in a multilevel marketing program will earn or receive any stated gross or net amount, or represent in any manner the past earnings of participants. A written or verbal description of the manner in which the marketing plan operates shall not, standing alone, constitute a representation of earnings, past or future. Multilevel distribution companies shall not represent directly or by implication, that it is relatively easy to secure or retain additional distributors or sales personnel or that all or substantially all participants will succeed.

40-3-108. Licensed activities excluded.

Nothing in W.S. 40-3-101 through 40-3-125 shall apply to acts or practices permitted under the laws of this state or under rules, regulations or decisions interpreting the laws, or to any person who has procured a license as provided by W.S. 39-17-106(a) or (b).

40-3-109. Notice of activity and consent to service of process.

Each multilevel distribution company numbering among its participants any resident of this state shall file with the state's attorney general a statement giving notice of this fact and designating the secretary of state of this state its agent

for service of process for any alleged violation of this act. The written notice shall further set forth the intention of the multilevel distribution company to abide by the provisions of this act. Compliance with this section shall not subject any multilevel distribution company to the provisions or consequences of any other statute of this state.

40-3-110. Secretary of state agent for service of process for violations.

Any multilevel distribution company, which fails to comply with W.S. 40-3-109 is deemed to have thereby appointed the secretary of state its agent for service of process for any alleged violation of this act.

40-3-111. Investigatory powers.

(a) If the attorney general has reason to believe that a person has engaged in activity which violates the provisions of this act, he shall make an investigation to determine if this act has been violated, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(b) If the person's records are located outside this state, the person at his option shall either make them available to the attorney general at a convenient location within this state or pay the reasonable and necessary expenses for the attorney general or his representative to examine them at the place where they are maintained. The attorney general may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(c) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the attorney general may apply to the district court for an order compelling compliance.

40-3-112. Service of process.

(a) Service of any type of process authorized by this act shall be personal within this state, but if such personal service cannot be obtained, substituted service may be made in the following manner:

(i) By service as provided by W.S. 40-3-109 and 40-3-110;

(ii) By service on the secretary of state;

(iii) Personal service without the state;

(iv) By registered or certified mail to the last known place of business, residence or abode of such persons for whom it is intended;

(v) As to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil action has been filed; or

(vi) By such service as a district court may direct in lieu of personal service within this state.

40-3-113. Venue of action for injunctive relief.

An action under this act may be brought in the district court of the county in which the alleged violator resides or has his place of business or in the district court of Laramie county, Wyoming.

40-3-114. Injunctive relief against violations; remedy not exclusive.

The attorney general may, whenever it appears to him that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, bring an action in the name of the people of the state in a district court to enjoin the acts or practices or to enforce compliance with this act or any rule or order hereunder. Upon a proper showing, a permanent or preliminary injunction or restraining order shall be granted. The court shall not require the attorney general to post a bond. This section is not deemed to be exclusive of the remedies available to the state and the criminal penalties found in this

act may also apply to individuals who are the subject of an action brought under this section.

40-3-115. Civil penalty for violating injunction.

The attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five thousand dollars ($5,000.00) per violation from any person who violates the terms of an injunction issued under W.S. 40-3-114.

40-3-116. Acceptance of assurance of voluntary compliance authorized.

In the enforcement of this act, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice alleged to be violative of this act from any person who has engaged in, is engaging in or is about to engage in such act or practice.

40-3-117. Jurisdiction retained by court.

The court shall retain jurisdiction in any case where an injunction is entered or a consent agreement is reached or an assurance of voluntary compliance is agreed upon.

40-3-118. Additional relief authorized; appointment of receiver.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest any monies or property, real or personal, which the court finds to have been acquired by means of any act or practice committed in violation of this act. Such additional relief may include the appointment of a receiver whenever it appears to the satisfaction of the court that the defendant threatens or is about to remove, conceal or dispose of his property to the damage of persons to whom restoration would be made under this act.

40-3-119. Receiver's power to acquire and dispose of property.

Any receiver appointed pursuant to W.S. 40-3-118 has the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, monies and effects, land and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description derived in violation of this act by any multilevel distribution company

or any distributor in any multilevel distribution marketing plan sponsored by such company, including property which has been commingled with company or distributor property, if it cannot be identified in kind because of such commingling, and to sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

40-3-120. Civil penalty for willful violation; willful violation defined.

In any action brought pursuant to this act, if the court finds that any person has engaged in prohibited activities in willful violation of or in reckless disregard for any provision of this act, the attorney general or county attorney in any county in which the violation occurred, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than two thousand dollars ($2,000.00) per violation. For purposes of this section, a willful or reckless disregard occurs when the party committing the violation knew or should have known that his conduct was a violation of this act.

40-3-121. Property acquisition and disposition remedy available in action for private remedy.

The remedy provided by W.S. 40-3-119 is available to any person in any action brought for a private remedy against any multilevel distribution company or any distributor in the multilevel distribution marketing plan sponsored by the company.

40-3-122. Penalties for violations; other criminal remedies unimpaired.

Any person who willfully violates any provision of this act, or who willfully violates any rule or order under this act, shall upon conviction be fined not more than five hundred dollars ($500.00) or imprisoned in a county jail for not more than one (1) year, or be punished by both such fine and imprisonment, but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

40-3-123. Limitation of actions.

No action shall be maintained to enforce any liability created under this act unless brought before the expiration of three (3)

years after the act or transaction constituting the violation or the expiration of one (1) year after the discovery by the plaintiff of the fact constituting the violation.

40-3-124. Causes of action under other law unimpaired.

Nothing in this act shall in any way affect causes of action arising under other laws of this state or under the common law brought by any private person.

40-3-125. Severability of provisions.

If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

CHAPTER 4 - DISCRIMINATION

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

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

(i) Make, enter into, form or become a party to any plan, contract, agreement, consolidation, merger or combination of any kind whatsoever to prevent competition or to control or influence production or prices thereof.

(ii) Repealed By Laws 2009, Ch. 172, § 2.

(iii) Repealed By Laws 2009, Ch. 172, § 2.

(b) Any person, firm, corporation or other entity violating subsection (a) of this section is guilty of unfair discrimination and any agreement, contract, whether express or implied, or any provision of an agreement or contract violating subsection (a) of this section is illegal and void to the extent it violates subsection (a) of this section.

(c) This chapter shall not:

(i) Repealed By Laws 2009, Ch. 172, § 2.

(ii) Repealed By Laws 2009, Ch. 172, § 2.

(iii) Prevent the sale of goods at commercial discounts customary in the sale of the goods;

(iv) Prohibit cooperative agreements for antitrust exceptions approved and operating pursuant to W.S. 35-24-101 through 35-24-116;

(v) Prohibit the development, agreement on and use of standards designed to permit or encourage competition or interoperability among products or services, provided the standards do not include provisions fixing or colluding on the prices or colluding to prevent competition by limiting the availability of the products or services;

(vi) Prohibit any person, firm, corporation or other entity from entering into any agreement or contract with a customer which specifies the price charged, or the services furnished, to the customer, or which gives discounts or additional services to the customer for purchasing specified volumes or multiple products of the same or similar product or service; or

(vii) Prohibit any person, firm, corporation or other entity from offering a customer loyalty program.

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

40-4-102. Duty of attorney general and county attorney upon complaint.

If complaint shall be made to the attorney general of the state of Wyoming, or the county attorney of any county thereof, that any corporation, chartered in this state or any foreign corporation, doing business in this state by virtue of compliance with the laws thereof, or any person or firm of persons doing business in this state, is guilty of unfair discrimination, within the terms of this act, it shall be the duty of the attorney general, and the county attorneys of this state to institute an inquiry as to such discrimination, giving to the party complained against notice and reasonable opportunity to be heard, and if in the judgment of such prosecuting officers, or either of them, any corporation, foreign or domestic, or any person or firm of persons shall have

been guilty of unfair discrimination, within the terms of this act, it shall be their duty to institute quo warranto proceeding, to forfeit the charter of said domestic corporation, or if a foreign corporation to procure an order of court to cause the permit of said corporation to do business in this state, immediately forfeited.

40-4-103. Ouster of corporation for doing business after revocation of charter or permit.

If after the revocation of such charter, in the case of domestic corporation; or if its permit, if it be a foreign corporation, any corporation shall continue or attempt to do business in the state of Wyoming, it shall be the duty of the attorney general, by a proper suit, in the name of the state of Wyoming to oust such corporation from all business of every kind and character in said state of Wyoming.

40-4-104. Penalty for violation of provisions.

Any person, firm or corporation violating any of the provisions of this chapter shall be fined in any sum not more than five thousand dollars ($5,000.00), or by imprisonment in the county jail not exceeding one (1) year, or both such fine and imprisonment.

40-4-105. Cumulative remedies.

Nothing in this act shall be construed as repealing any other act or part of an act, but the remedies herein provided shall be cumulative to all other remedies, provided by law.

40-4-106. Repealed By Laws 2009, Ch. 172, § 2.

40-4-107. Sale at less than cost prohibited; cost defined.

(a) It shall be unlawful for any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state, to sell, offer for sale or advertise for sale any article or product, at less than the cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article or product for the purpose of injuring competitors and destroying competition.

(b) The term cost as applied to production or manufacturing is hereby defined as including the cost of raw materials and labor and as applied to distribution cost shall

mean the invoice or replacement cost, whichever is lower, of the article or product to the distributor and vendor plus any freight charges, all applicable federal, state and local taxes and any charges imposed by federal, state or local government that are not taxes that are paid by the distributor and vendor and are not included in the invoice cost.

(c) Repealed By Laws 2009, Ch. 172, § 2.

40-4-108. Repealed By Laws 2009, Ch. 172, § 2.

40-4-109. Proof of intent; cost survey as evidence of cost.

In any injunction proceeding or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or which he acts. Where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of this act.

40-4-110. Persons, agreements and transactions exempted from W.S. 40-4-107 and 40-4-109.

(a) The provisions of W.S. 40-4-107 and 40-4-109 shall not apply to any sale made:

(i) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(ii) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof;

(iii) By an officer acting under the orders of any court;

(iv) In an endeavor made in good faith to meet the prices of a competitor selling the same or similar article or product in the same locality or trade area;

(v) When the goods are sold for promotional purposes at a special sale of limited duration including but not limited to a grand opening sale, an annual anniversary sale, an annual customer appreciation sale or a community, neighborhood or mall wide sale;

(vi) In a sale of limited duration to reduce inventory, dispose of slow selling items or dispose of items replaced or to be replaced by new models;

(vii) Of any products in a class of products where the prices are identical for the same volume throughout the class provided the total revenues from all the sales of products of that class by the vendor exceed the costs as defined in W.S. 40-4-107. For pharmaceuticals, for the purposes of this subsection, prices are identical if they are identical for a supply for a defined period of time even though the physical quantities of pharmaceuticals may be different.

(b) Any person, firm or corporation who performs work upon, renovates, alters or improves any personal property belonging to another person, firm or corporation, shall be construed to be a vendor within the meaning of this act.

(c) W.S. 40-4-107 through 40-4-110 shall not apply to any person entering into a cooperative arrangement for antitrust exceptions approved pursuant to W.S. 35-24-101 through 35-24-116.

40-4-111. Repealed By Laws 2009, Ch. 172, § 2.

40-4-112. Repealed By Laws 2009, Ch. 172, § 2.

40-4-113. Repealed By Laws 2009, Ch. 172, § 2.

40-4-114. Enjoining violations; recovery of damages.

(a) Any person, firm, private corporation or trade association, having a reasonably foreseeable physical and economic causal nexus to the specific act or acts alleged to be a violation, may maintain an action to enjoin a continuance of any act or acts in violation of this act.

(b) Any injured person may maintain an action for violation of this act against the alleged violator to recover

the actual damages sustained by the injured person together with reasonable attorneys fees and costs.

(c) Repealed By Laws 2009, Ch. 172, § 2.

(d) Repealed By Laws 2009, Ch. 172, § 2.

(e) Repealed By Laws 2009, Ch. 172, § 2.

(f) Repealed By Laws 2009, Ch. 172, § 2.

(g) Repealed By Laws 2009, Ch. 172, § 2.

40-4-115. Repealed By Laws 2009, Ch. 172, § 2.

40-4-116. Repealed By Laws 2009, Ch. 172, § 2.

40-4-117. Repealed By Laws 2009, Ch. 172, § 2.

40-4-118. Repealed By Laws 2009, Ch. 172, § 2.

40-4-119. Repealed By Laws 2009, Ch. 172, § 2.

40-4-120. Repealed By Laws 2009, Ch. 172, § 2.

40-4-121. Repealed By Laws 2009, Ch. 172, § 2.

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

Any manufacturer, or any jobber or distributor for any manufactured product, or any salesman, agent or representative of any such manufacturer, jobber or distributor who requires, or attempts to require, of any dealer or agent residing in the state of Wyoming, who sells or services the products of such manufacturer, jobber or distributor, that such Wyoming agent or dealer construct or build any particular type or standard of building in order to maintain his agency or dealership to sell such manufactured product, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars ($1,000.00), or sentenced to imprisonment in the county jail for not more than six (6) months, or shall be subject to both such fine and imprisonment.

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

Any manufacturer, or any jobber or distributing agent for any manufactured product, or any salesman, agent or representative of any such manufacturer, jobber or distributor, who requires, or attempts to require, of any Wyoming agent or dealer selling or servicing the products of such manufacturer, jobber or distributor, that such Wyoming dealer or agent purchase accessories or products of such manufacturer, jobber or distributor in order to obtain other products of such manufacturer, jobber or distributor shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars ($1,000.00), or sentenced to imprisonment in the county jail for not more than six (6) months, or shall be subject to both such fine and imprisonment.

CHAPTER 5 - PAINT

40-5-101. Repealed By Laws 1996, ch. 22, § 1.

40-5-102. Repealed By Laws 1996, ch. 22, § 1.

40-5-103. Repealed By Laws 1996, ch. 22, § 1.

40-5-104. Repealed By Laws 1996, ch. 22, § 1.

40-5-105. Repealed By Laws 1996, ch. 22, § 1.

40-5-106. Repealed By Laws 1996, ch. 22, § 1.

40-5-107. Repealed By Laws 1996, ch. 22, § 1.

40-5-108. Repealed By Laws 1996, ch. 22, § 1.

40-5-109. Repealed By Laws 1996, ch. 22, § 1.

40-5-110. Repealed By Laws 1996, ch. 22, § 1.

40-5-111. Repealed By Laws 1996, ch. 22, § 1.

40-5-112. Repealed By Laws 1996, ch. 22, § 1.

40-5-113. Repealed By Laws 1996, ch. 22, § 1.

40-5-114. Repealed By Laws 1996, ch. 22, § 1.

40-5-115. Repealed By Laws 1996, ch. 22, § 1.

40-5-116. Repealed By Laws 1996, ch. 22, § 1.

40-5-117. Repealed By Laws 1996, ch. 22, § 1.

CHAPTER 6 - TRUTH IN FABRICS

40-6-101. Repealed By Laws 1996, ch. 23, § 1.

40-6-102. Repealed By Laws 1996 , ch. 23, § 1.

40-6-103. Repealed By Laws 1996 , ch. 23, § 1.

CHAPTER 7 - STANDARDS FOR ANTIFREEZE AND PETROLEUM PRODUCTS

40-7-101. Products must conform to standards.

No antifreeze product, engine fuel or petroleum product shall be sold or offered for sale in the state of Wyoming, unless it conforms to the standards of quality prescribed in this act or rules promulgated under it.

40-7-102. Definitions.

(a) As used in this act:

(i) "Antifreeze manufacturer" means any person who packages antifreeze products in containers for storage, distribution or sale in this state;

(ii) "Antifreeze products" means any fluid which will prevent freezing or enhance cooling efficiency of the cooling system, radiator or heat transfer system of an engine when added to that system;

(iii) "ASTM" means the American Society for Testing and Materials;

(iv) "Board" means the state board of agriculture;

(v) "Director" means the director of the department of agriculture or his duly authorized representative;

(vi) "Dealer" means any person in the business of delivering or distributing to a consumer or selling, offering for sale, refining or manufacturing any petroleum products, liquefied petroleum gas, engine fuel or antifreeze products in this state;

(vii) "Department" means the Wyoming department of agriculture;

(viii) "Diesel fuel" means a refined petroleum product suitable as a fuel in compression ignition diesel engines, both fixed and mobile, including all grades and qualities;

(ix) "Fuel oil" means a refined petroleum product, commonly known as heating oil, furnace oil, domestic oil or distillates, used for heating, power generation and cooking purposes, including all grades and qualities;

(x) "Gasoline" means a volatile substance produced, manufactured, blended, distilled or compounded from petroleum, natural gas, oil, shale oils or coal and other volatile flammable liquids which can be used as a fuel in a spark ignition internal combustion engine, and which meets the standards and specifications of this act. "Gasoline" includes all grades and qualities, leaded or unleaded, but excludes diesel fuel;

(xi) "Gasohol" means a motor fuel composed of ninety percent (90%) gasoline by volume and ten percent (10%) denatured ethanol by volume;

(xii) "Kerosene" means a refined petroleum product, also known as kerosine, used as heating or illuminating oil that includes all grades and qualities;

(xiii) "Liquefied petroleum gas" or "LP" means a volatile petroleum product which can be used as either a liquid or a gas for domestic, commercial, industrial or engine fuel, including all grades and qualities, composed predominately of the following hydrocarbons or mixtures thereof: propane, propylene, butanes and butylenes, but excluding prepackaged nonrefillable liquefied petroleum gas products;

(xiv) "Mislabeled" means a package label or dispensing device of a product which bears any statement, design or device regarding it, regarding ingredients or substances therein, or regarding the properties, quality or kind of the products, which is false or misleading in any manner;

(xv) "Petroleum products" means all illuminating, fuel and power oils, which are products of petroleum, or into which petroleum or any product of petroleum enters or is found

as a constituent, and includes but is not limited to gasoline, kerosene, diesel fuel, fuel oil, gasohol, gasoline alcohol blends, biodiesel blends, engine fuels and liquefied petroleum gas. Any petroleum product sold at retail shall have a designation and meet specifications provided by the ASTM;

(xvi) "Products" means all petroleum products and antifreeze products;

(xvii) "Retail dealer" means any dealer or person who sells products to the consumer or user of the products;

(xviii) "Sell" or "sale" means the delivery or distribution of a product to a consumer and includes barter and exchange;

(xix) "Wholesale dealer" or "supplier" means a dealer who sells products to a retail dealer;

(xx) "Biodiesel" means a fuel comprised of mono akyl esters of long chain fatty acids derived from vegetable oils or animal fats which may or may not be blended with diesel fuel;

(xxi) "Biofuel" means any commercially produced liquid or gas used to propel motor vehicles or otherwise substitute for liquid or gaseous fuels that is derived from agricultural crops or residues or from forest products or byproducts, as distinct from petroleum or other fossil carbon sources. "Biofuel" includes, but is not limited to, ethanol, methanol derived from biomass, levulinic acid, biodiesel, pyrolysis oils from wood, hydrogen or methane from biomass, or combinations of any of the above that may be used to propel motor vehicles either alone or in blends with conventional gasoline or diesel fuels;

(xxii) "Nonrefined products" means any liquid or gas added to diesel, gasoline or gasohol comprising more than one-half of one percent (.5%) by volume and that:

(A) Is not refined; or

(B) Was added after the diesel fuel, gasoline or gasohol left the refinery.

(xxiii) "Oxygenate" means an oxygen-containing, ashless, organic compound which can be used as a fuel, or fuel

supplement such as, but not limited to, ether, ethanol, methanol and other alcohols;

(xxiv) "Refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of petroleum products;

(xxv) "Biodiesel blend" means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the "XX" represents the volume percentage of biodiesel fuel in the blend;

(xxvi) "E85 fuel ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally seventy-five percent (75%) to eighty-five percent (85%) volume denatured fuel ethanol;

(xxvii) "Engine fuel" means any liquid or gaseous matter used for the generation of power in an internal combustion engine. "Engine fuel" includes but is not limited to fuels derived from petroleum, biomass and vegetable oils, new or used. Any engine fuel sold at retail must have a designation and meet specifications provided by the ASTM;

(xxviii) "Ethanol" or "denatured fuel ethanol" means nominally anhydrous ethyl alcohol meeting ASTM D 4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of United States bureau of alcohol, tobacco, and firearms approved substances before blending with gasoline;

(xxix) "Gasoline alcohol blend" means a fuel consisting primarily of gasoline and a substantial amount (more than thirty-five hundredths percent (0.35%) mass of oxygen or more than fifteen hundredths percent (0.15%) mass of oxygen if methanol is the only oxygenate) of one (1) or more alcohols;

(xxx) "Low sulfur" means low sulfur diesel fuel that meets ASTM D 975 standards, including grade low sulfur no. 1-D S500 or grade low sulfur no. 2-D S500. Diesel fuel containing higher amounts of sulfur for off-road use is defined by United States environmental protection agency regulations;

(xxxi) "M100 fuel methanol" means nominally anhydrous methyl alcohol, generally containing small amounts of additives,

suitable for use as a fuel in a compression-ignition internal combustion engine;

(xxxii) "M85 fuel methanol" means a blend of methanol and hydrocarbons of which the methanol portion is nominally seventy percent (70%) to eighty-five percent (85%) volume;

(xxxiii) "Oxygen content of gasoline" means the percentage of oxygen by mass contained in a gasoline;

(xxxiv) "Substantially similar" means the United States environmental protection agency's substantially similar rule, section 211(f)(1) of the Clean Air Act, 42 U.S.C. 7545(f)(1);

(xxxv) "Total alcohol" means the aggregate total percentage by volume of all alcohol contained in any fuel defined in this chapter;

(xxxvi) "Total oxygenate" means the aggregate total percentage by volume of all oxygenates contained in any fuel defined in this chapter;

(xxxvii) "Ultra low sulfur diesel" means ultra low sulfur diesel fuel that meets ASTM D 975 standards and contains no more than fifteen (15) parts per million (1,000,000) sulfur, including grade ultra low sulfur no. 1-D S15 or grade ultra low sulfur no. 2-D S15;

(xxxviii) "This act" means W.S. 40-7-101 through 40-7-111.

40-7-103. Board to promulgate standards.

(a) The board shall promulgate rules and standards of quality for products to implement this act, including the adoption of ASTM or other appropriate standards or specifications and definitions for products not defined in this chapter, subject to the following:

(i) Repealed by Laws 2009, Ch. 130, § 2.

(ii) Repealed By Laws 2009, Ch. 130, § 2.

(iii) Fuel oil ASTM grades No. 1 and No. 2 shall have a flash point not lower than one hundred fifteen degrees Fahrenheit (115F F);

(iv) Fuel oil ASTM grades No. 4, No. 5 and No. 6 shall not contain more than one and one-half percent (1.5%) sulfur by weight;

(v) Kerosene shall:

(A) Repealed By Laws 2009, Ch. 130, § 2.

(B) Repealed By Laws 2009, Ch. 130, § 2.

(C) Have a flash point not lower than one hundred fifteen degrees Fahrenheit (115H F);

(D) Meet the standards set forth in ASTM D3699.

(vi) Any gasoline, gasohol or diesel fuel sold in the wholesale or retail market place that contains any oxygenate, biofuel or nonrefined product shall be clearly labeled with the name and maximum percentage by volume of any ethanol or other oxygenate, biofuel or nonrefined product.

40-7-104. Penalty for violations.

Any person violating any of the provisions of this act is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars ($750.00).

40-7-105. Enforcement.

The director shall enforce this act and may periodically collect samples of petroleum, engine fuel and antifreeze products for analysis from pipelines, storage tanks and transport tanks at refineries, intermediate storage and dispensing facilities and every storage tank directly supplying these products to retail dispensing devices located at a retail sales facility. A sample taken from dispensing devices located at retail sales facilities shall be acquired after allowing at least one (1) gallon of product to flow from the dispenser.

40-7-106. Seizure and sale.

Any product sold, stored, transported or offered for sale as a petroleum product, engine fuel or antifreeze in this state which does not conform to the provisions of this act or rules promulgated under it shall be seized by the director and sold in accordance with state law. The proceeds of the sale shall be

applied on payment of court costs or other necessary expenses incurred in making the seizure and condemnation.

40-7-107. Analysis by state chemist; ASTM standards to apply.

(a) The state chemist shall make, or cause to be made under his direction, analysis and examinations of the petroleum and antifreeze products furnished to him by the director, or his deputies, to determine whether the products conform to this act and rules promulgated under it and shall certify examination results to the director following applicable ASTM methods designated in the ASTM standards required for each product.

(b) ASTM specifications and definitions for petroleum products not defined in Wyoming statutes shall be adopted by the board.

40-7-108. Repealed By Laws 1985, ch. 134, § 2.

40-7-109. Exemption for retail dealer.

No retail dealer shall be subject to penalties under this act if he relied on a written guarantee or invoice from a wholesaler or supplier that the products delivered complied with this act.

40-7-110. Antifreeze must be approved by state chemist.

No antifreeze dealer shall sell or offer for sale any antifreeze product which has not been approved by the state chemist and registered with the department on forms prescribed by the department. Registration forms shall only be submitted by a manufacturer. Registration does not expire, but a registration shall be amended to reflect any changes in product formulation or product package labeling.

40-7-111. Electronic transmittals.

The director may allow the testing, inspection and reporting requirements of this chapter to be conducted electronically as provided by the Uniform Electronic Transaction Act, W.S. 40-21-101 through 40-21-119 and any applicable federal electronic requirements.

CHAPTER 8 - STANDARDS FOR TRACTOR FUEL

40-8-101. Repealed By Laws 1985, ch. 134, § 2.

40-8-102. Repealed By Laws 1985, ch. 134, § 2.

40-8-103. Repealed By Laws 1985, ch. 134, § 2.

40-8-104. Repealed By Laws 1985, ch. 134, § 2.

40-8-105. Repealed By Laws 1985, ch. 134, § 2.

40-8-106. Repealed By Laws 1985, ch. 134, § 2.

CHAPTER 9 - STANDARDS FOR NATURAL GAS

40-9-101. Standard natural gas defined.

(a) For the purpose of this chapter standard natural gas shall be considered to have an average standard of heating units of not less than one thousand (1,000) British thermal units per cubic foot of gas, ascertained and determined by the state chemist in accordance with standard conditions, to wit:

(i) At a temperature of sixty degrees Fahrenheit (60A F);

(ii) Under pressure of thirty (30) inches of mercury.

40-9-102. Factors to be considered in fixing rates.

The standard of heating units herein prescribed and any variations therefrom, in any gas distributed by any utility, or utilities, to users of natural gas, shall be taken into consideration by the public service commission as an additional factor to the factors provided for in W.S. 37-2-118, as a basis for fixing rates and rate schedules for the allowable charges the utility may make against the users of natural gas in any particular town, city or community, in which the question of such rates shall be presented to said commission, as provided for in W.S. 37-2-118.

40-9-103. Tests and report of state chemist upon complaint; use of results as evidence and in fixing rates.

Whenever any complaint is made, as provided for in W.S. 37-2-118, that the heat units of the natural gas supplied by any utility to the users thereof in any town or municipality are below the standard thereof theretofore used as a factor in the basis for rates to be charged by the utility in that particular

town or municipality, the public service commission shall notify the state chemist to make proper tests of the heating units of the gas furnished by such utility to the complaining municipality. The state chemist shall certify to the public service commission and to the mayor of the complaining town or municipality the result of such test, which said certificate shall be used as competent evidence by the public service commission at the hearing of said complaint, and shall be used by the commission as one (1) of the factors as a basis for any change in the rates the commission may find necessary to make.

40-9-104. Municipality may require test every 3 months.

The mayor, or city council of any town or municipality, in which natural gas is furnished by any utility is hereby given the right to require the state chemist to make a test of such gas every three (3) months and to certify the results thereof to said mayor, or city council and public service commission.

40-9-105. Expense of tests charged to state university.

Any and all expenses incurred by the state chemist in carrying out the provisions of this chapter shall be a charge against the University of Wyoming.

CHAPTER 10 - WEIGHTS AND MEASURES

40-10-101. Repealed By Laws 1993, ch. 160, § 3.

40-10-102. Repealed By Laws 1993, ch. 160, § 3.

40-10-103. Repealed By Laws 1993, ch. 160, § 3.

40-10-104. Repealed By Laws 1993, ch. 160, § 3.

40-10-105. Repealed By Laws 1993, ch. 160, § 3.

40-10-106. Repealed By Laws 1993, ch. 160, § 3.

40-10-107. Repealed By Laws 1993, ch. 160, § 3.

40-10-108. Repealed By Laws 1993, ch. 160, § 3.

40-10-109. Repealed By Laws 1993, ch. 160, § 3.

40-10-110. Repealed By Laws 1993, ch. 160, § 3.

40-10-111. Repealed By Laws 1993, ch. 160, § 3.

40-10-112. Repealed By Laws 1993, ch. 160, § 3.

40-10-113. Repealed By Laws 1993, ch. 160, § 3.

40-10-114. Repealed By Laws 1993, ch. 160, § 3.

40-10-115. Repealed By Laws 1993, ch. 160, § 3.

40-10-116. Repealed By Laws 1993, ch. 160, § 3.

40-10-117. Definitions.

(a) Repealed By Laws 2009, Ch. 191, § 2.

(b) As used in this chapter:

(i) "Accreditation" means a formal recognition by the national institute of standards and technology, as a laboratory that is competent to carry out specific tests or calibrations or types of tests or calibrations;

(ii) "Calibration" means a set of operations which establishes, under specified conditions, the relationship between values indicated by a measuring instrument or measuring system or values represented by a material measure, to the corresponding known values of a measurement;

(iii) "Commerce" means the buying and selling of goods;

(iv) "Commercial weighing and measuring equipment" means weighing and measuring devices commercially used or employed to establish the size, quantity, extent, area or measurements of goods purchased, offered or submitted for sale, hire or award, or in computing a basic charge or payment for services;

(v) "Condemned for repairs" means a weight or measure found to be incorrect and which, following policies set forth by the director, can be repaired. Weights or measures which are condemned for repair shall be marked as such and be sealed so that the weight or measure cannot be used and is made inoperable until all appropriate repairs are completed;

(vi) "Confiscation and seizure" means that an incorrect weight or measure is taken into custody by the department following procedures and policies set forth by the director. Weights or measures which are confiscated shall be marked as such and if possible shall be removed from the premises to the direct custody of the department;

(vii) "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this act;

(viii) "Department" means the department of agriculture;

(ix) "Director" means the director of the department of agriculture or his duly authorized representative;

(x) "Field standard" means a physical standard that meets specifications and tolerances in the National Institute of Standards and Technology Handbook 105-series standards, is traceable to the reference or working standards through comparisons or using acceptable laboratory procedures as adopted by the National Conference on Weights and Measures and published in the United States Department of Commerce National Institute of Standards and Technology Handbook 143, "State Weights and Measures Laboratories Program Handbook," and is used in conjunction with commercial weighing and measuring equipment. All field standards may be defined by rule and regulation and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the director;

(xi) "International system of units" means the modernized metric system as established in 1960 by the general conference on weights and measures as interpreted or modified for the United States by the secretary of commerce;

(xii) "Mass" means the same as "weight";

(xiii) "Net weight" means the weight of a commodity excluding any materials, substances or items not considered to be part of the commodity. Materials, substances or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments and coupons, except that packaging materials may be considered to be part of services such as shipping;

(xiv) "Package" means any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale;

(xv) "Physical standard" means weights and measures that are traceable to the United States prototype standards supplied by the federal government, including, but not limited to, standards adopted by the United States department of the interior, bureau of land management applicable to onshore oil and gas leases, the United States federal energy regulatory commission, the United States department of transportation, the state of Wyoming public service commission, or approved as being satisfactory by the National Institute of Standards and Technology. Physical standards shall be the state reference and working standards for weights and measures and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology as demonstrated through laboratory accreditation or recognition;

(xvi) "Primary standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived;

(xvii) "Random weight package" means a package that is one of a lot, shipment or delivery of packages of the same commodity with no fixed pattern of weights;

(xviii) "Recognition" means a formal recognition by the National Institute of Standards and Technology weights and measures division that a laboratory has demonstrated the ability to provide traceable measurement results and is competent to carry out specific tests or calibrations or specific types of tests or calibrations;

(xix) "Reference standard" means:

(A) A standard, generally of the highest metrological quality available at a given location, from which measurements made at that location are derived; or

(B) The physical standards of the state that serve as the legal reference from which all other standards for weights and measures within that state are derived.

(xx) "Registered service person" means an individual who for hire, award, commission or any other payment of any kind, installs, services, repairs or reconditions a commercial

weighing or measuring device, and who is registered with the director;

(xxi) "Reject" means a weight or measure found to be incorrect, and following policies set forth by the director may be used until repaired. A weight or measure which is rejected shall be marked as such, and may be used for the period of time specified pursuant to rule and regulation;

(xxii) "Sale from bulk" means a sale of commodities in which the quantity is determined at the time of sale;

(xxiii) "Secondary standards" means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations;

(xxiv) "Standard package" means a package that is one of a lot, shipment or delivery of packages of the same commodity with identical net contents declarations, such as, one (1) liter bottles or twelve (12) fluid ounce cans of carbonated soda, five hundred (500) gram or five (5) pound bags of sugar, one hundred (100) meter or three hundred (300) foot packages of rope;

(xxv) "Traceability" means the result of a measurement or the value of a standard which can be verified as correct when compared with a national or international standard;

(xxvi) "Uncertainty" means a parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the measurement;

(xxvii) "Verification" means the formal evaluation of a standard or device against the specifications and tolerances for determining conformance;

(xxviii) "Weight" as used in connection with any commodity or service means net weight. When a commodity is sold by drained weight, the term means net drained weight. When used in this chapter, "weight" and "mass" have the same meaning;

(xxix) "Weight and measure" means weights and measures of every kind, instruments and devices for weighing and measuring, and any appliance or accessory associated with such instruments or devices;

(xxx) "Working standard" means:

(A) A standard that is usually calibrated against a reference standard and is used routinely to calibrate or check material measures, measuring instruments or reference materials; or

(B) The physical standards that are traceable to the reference standards through comparisons, using acceptable laboratory procedures and used in the enforcement of weights and measures laws and regulations.

(xxxi) "This act" or "this chapter" means W.S. 40-10-117 through 40-10-136.

40-10-118. Recognized systems.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one (1) or both of these systems shall be used for all commercial purposes in the state. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the United States Department of Commerce National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

40-10-119. Physical standards.

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved by the United States Department of Commerce National Institute of Standards and Technology, shall be the state primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the United States Department of Commerce National Institute of Standards and Technology or demonstrated through laboratory accreditation or recognition. Field standards may be prescribed by the director and shall be verified upon their initial receipt, and as specified by rule and regulation.

40-10-120. Technical requirements for weighing and measuring devices.

(a) The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering and

other weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in the United States Department of Commerce National Institute of Standards and Technology Handbook 44, "Specification, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," shall apply to weighing and measuring devices in this state, and may be amended by rule or regulation.

(b) The Uniform Regulation for National Type Evaluation as adopted by the National Conference on Weights and Measures and published in the United States Department of Commerce National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," are adopted and shall apply to type evaluation in this state, and may be amended by rule or regulation.

40-10-121. Department of agriculture duties and powers.

(a) The department of agriculture shall perform the following functions:

(i) Assure that weights and measures in commercial service within the state are suitable for their intended use, properly installed and accurate, and are so maintained by their owner or user;

(ii) Prevent unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within this state;

(iii) Promote uniformity, to the extent practicable and desirable, between weights and measures requirements of this state and those of other states and federal agencies.

(b) Unless requested by the operator of the weighing or measuring equipment, the department shall have no authority over weights and measures used in activities subject to the authority of the United States department of the interior associated with on shore oil and gas, the United States federal energy regulatory commission, the Wyoming public service commission associated with pipelines and utilities or the Wyoming oil and gas conservation commission.

(c) Except as otherwise required by law, rule, regulation or third party agreement, the department shall have no authority over weights and measures used pursuant to a written agreement between the parties using the weighing device.

40-10-122. Powers and duties of the director.

(a) The director shall:

(i) Maintain traceability of the state standards to the national standards established by the United States Department of Commerce National Institute of Standards and Technology as demonstrated through laboratory recognition or accreditation;

(ii) Enforce the provisions of this act;

(iii) Issue reasonable rules and regulations for the enforcement of this act;

(iv) Grant exemptions from the provisions of this act or any regulations promulgated pursuant thereto when appropriate for the maintenance of good commercial practices within the state;

(v) Conduct investigations to ensure compliance with this act and the rules and regulations promulgated pursuant to this act;

(vi) Delegate authority to appropriate personnel as required for the proper administration and enforcement of this act;

(vii) Inspect and test in a timely manner, weights and measures kept, offered or exposed for sale;

(viii) Promulgate rules and regulations regarding inspecting and testing weights and measures used commercially, to ascertain if they are correct:

(A) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count; or

(B) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

(ix) Approve for use and mark weights and measures found to be correct, reject and mark as rejected, condemn and mark as condemned and make inoperable weights and measures found to be incorrect. Rejected weights and measures shall be

condemned and made inoperable if not corrected within the time specified or if used in a manner not specifically authorized;

(x) Weigh, measure or inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this act or rules and regulations promulgated pursuant to this act. In carrying out the provisions of this paragraph, the director shall employ recognized sampling procedures adopted by National Conference on Weights and Measures and published in the United States Department of Commerce National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods;"

(xi) Prescribe, by rule and regulation, the appropriate term, unit of weight or unit of measure to be used, whenever an existing practice of declaring the quantity by weight, measure, numerical count, time or combination thereof, does not facilitate value comparisons by consumers or may lead to consumer confusion;

(xii) Allow reasonable variations from the stated quantity of contents, to allow for loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(xiii) Establish labeling requirements, requirements for the presentation of cost-per-unit information, establish standards of weight, measure, count and fill for any packaged commodity and establish requirements for open dating information;

(xiv) Verify the field standards for weights and measures used by any jurisdiction or registered service person operating within Wyoming before being put into service, and as often thereafter as deemed necessary by the director, and approve the same when found to be correct;

(xv) Provide for registration of persons qualified by training and experience to install, service and repair weighing or measuring devices;

(xvi) Provide that only persons who are registered are authorized to place in service devices which have been

rejected or condemned and repaired or newly installed devices, whether new or used, until an official inspection by an authorized inspector is made;

(xvii) Provide for the training of weights and measures personnel and establish minimum training and performance requirements, for all weights and measures personnel, including county, municipal, state or registered servicepersons;

(xviii) Verify advertised prices, price representations and point-of-sale systems, as necessary to determine:

(A) The accuracy of prices and computations and proper use of the equipment; and

(B) The accuracy of prices printed or recalled from a database in systems utilizing scanning or coding means in lieu of manual entry. In carrying out the provisions of this paragraph, the director shall:

(I) Employ recognized procedures, as adopted by the National Conference on Weights and Measures and published in the United States Department of Commerce National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations, Examination Procedures for Price Verification"; and

(II) Conduct inspections and investigations to ensure compliance.

(xix) Establish fees for testing and inspection, which may include actual hourly cost plus mileage for any inspections requested other than the routine inspection. The hourly cost shall be as determined by the director and the mileage cost shall be as provided by W.S. 9-3-103;

(xx) Establish reasonable laboratory fees for testing, inspection and calibration of standards or weight and measuring devices.

(b) The director may allow the licensing, testing, inspection and reporting requirements of this chapter to be conducted electronically as provided by the Uniform Electronic Transaction Act, W.S. 40-21-101 through 40-21-119 and any applicable federal electronic requirements.

40-10-123. Special enforcement powers.

(a) When necessary for the enforcement of this act or rules and regulations promulgated pursuant to this act, the director is:

(i) Authorized to enter any commercial premises open to the public during normal business hours. If the premises are not open to the public, he shall obtain consent before making entry, or obtain a search warrant;

(ii) Empowered to issue stop-use, hold and removal orders with respect to any weights and measures commercially used or any packaged commodities or bulk commodities kept, offered or exposed for sale; and

(iii) Empowered to seize, as evidence, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of the provisions of this act or rules and regulations promulgated pursuant to this act;

(iv) Authorized to report the results of investigations and inspections to the owner or person in charge by hand delivering, mailing or sending electronically.

40-10-124. Powers and duties of local officials.

Any weights and measures official appointed for a county or city shall have the duties and powers enumerated in this act, excepting those duties reserved to the state by law or regulation. These powers and duties shall extend to their respective jurisdictions, except that the jurisdiction of a county official shall not extend to any city for which a weights and measures official has been appointed. No requirement set forth by local agencies may be less stringent than or conflict with the requirements of the state.

40-10-125. Misrepresentation of quantity or pricing.

(a) No person shall:

(i) Sell, offer or expose for sale less than the quantity represented;

(ii) Take more than the represented quantity when he furnishes the weight or measure by means of which the quantity is determined; or

(iii) Represent the quantity in any manner tending to mislead or deceive another person.

(b) No person shall misrepresent the price of any commodity offered, exposed or advertised for sale by weight, measure or count, nor represent the price in any matter tending to mislead or in any way deceive another person.

40-10-126. Method of sale.

(a) Except as otherwise provided by the director, or by firmly established trade custom and practice:

(i) Commodities in liquid form shall be sold by liquid measure or by weight; and

(ii) Commodities not in liquid form shall be sold by weight, by measure or by count.

(b) The method of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons.

40-10-127. Sale of gasoline and distillates on other than gross volume basis unlawful; exception; "sale" defined.

(a) Except as provided in subsection (b) of this section, the sale of gasoline and distillates, excluding liquified petroleum gas, on a temperature corrected basis or on any basis other than the gross volume of gasoline or distillate actually delivered is unlawful. Any contract in violation of this section shall be unenforceable to the extent of the violation.

(b) Sellers of motor fuel within this state shall offer to prospective purchasers the option to buy the product either by gross gallons or on the assumption that the temperature of the product is sixty degrees Fahrenheit (60S F) or the centigrade equivalent. This purchaser option may be exercised only on an annual basis and applied only to single deliveries of seven thousand five hundred (7,500) gallons or more or the metric equivalent. Any adjustments to volumes during the temperature compensation process shall be made in accordance with the standards set by the American Society of Testing Materials.

(c) For purposes of this act, "sale" does not include the exchange of gasoline or distillate between refiners or transporters of petroleum or petroleum products.

40-10-128. Sale from bulk.

(a) Except when the parties agree in advance that a delivery ticket is not required, all bulk sales in which the buyer and seller are not both present to witness the measurement shall be accompanied by a delivery ticket containing the following information:

(i) The name and address of the buyer and seller;

(ii) The date delivered;

(iii) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity, such as when temperature compensated sales are made;

(iv) The identity of the product in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and

(v) The count of individually wrapped packages, for commodities purchased from bulk, but delivered in packages;

(vi) The unit price, unless all parties agree the unit price is not required.

40-10-129. Information required on packages.

(a) Except as otherwise provided in this act or by rule or regulation promulgated pursuant to this act, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:

(i) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(ii) The quantity of contents in terms of weight, measure or count; and

(iii) The name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered or exposed for sale, or sold in any place other than on the premises where packed.

40-10-130. Declarations of unit price on random weight packages.

In addition to the declarations required by W.S. 40-10-128, any package in a lot containing random weights of the same commodity shall include on the outside of the package a plain and conspicuous declaration of the price per pound or kilogram and the total selling price of the package, at the time it is offered or exposed for sale at retail.

40-10-131. Advertising packages for sale.

Whenever a packaged commodity is advertised with the retail price stated, there shall be a conspicuous declaration of quantity on the package.

40-10-132. Prohibited acts.

(a) No person shall:

(i) Use or possess any incorrect weight or measure for use in commerce;

(ii) Sell or offer for sale any incorrect weight or measure for use in commerce;

(iii) Remove any tag, seal or mark from any weight or measure or weighing or measuring device, without specific written authorization from the proper authority;

(iv) Hinder or obstruct any weights and measures official in the performance of his duties;

(v) Use or possess any weight, measure, weighing or measuring device that for use in commerce has not been tested and certified as correct by the department or a registered service person;

(vi) Place any weight, measure, weighing or measuring device into commercial service without having a current certificate of registration as a registered service person; or

(vii) Violate any provision of this act or rules or regulations promulgated under this act.

40-10-133. Criminal penalties.

Any person who commits any of the acts enumerated in W.S. 40-10-132 is guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than three (3) months, or both. Upon a subsequent conviction within any five (5) year period, he shall be punished by a fine of not less than five hundred dollars ($500.00) nor more than seven hundred fifty dollars ($750.00) or by imprisonment for up to six (6) months, or both.

40-10-134. Restraining order and injunction.

The director is authorized to apply to any court of competent jurisdiction for a restraining order, or a temporary or permanent injunction, restraining any person from violating any provision of this act.

40-10-135. Presumptive evidence.

Whenever there shall exist a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that the weight or measure or weighing or measuring device is regularly used in commerce.

40-10-136. License required; fee.

(a) Every person who owns or is responsible for a weight, measure, weighing or measuring device regulated by this act shall obtain an annual license for each establishment on or before April 1 from the department and pay a fee as provided in this subsection. The fees collected by the department under this section shall be deposited in the general fund. Fees shall be set by the department as follows:

(i) Not less than ten dollars ($10.00) nor more than twenty-five dollars ($25.00) for establishments with no more than five (5) devices;

(ii) Not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for establishments with more than five (5) and less than eleven (11) devices;

(iii) Not more than seventy-five dollars ($75.00) for establishments with eleven (11) or more devices.

(b) The director shall define premise and inspection locations, including physical addresses and circumstances for special events.

(c) For purposes of this section, "establishment" means a place of business under one (1) management at one (1) physical location.

CHAPTER 11 - FOREIGN TRADE ZONES

40-11-101. Definitions.

As used in this act, the term "public corporation" means the state of Wyoming, any municipality, county or other political subdivision thereof, any public agency of this state or any municipality of one or more other states. The term "act of congress" means the act of congress, entitled "An act to provide for the establishment, operation and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", 19 U.S.C. §§ 81a to 81u.

40-11-102. Application by public corporation to establish and operate zone; designation of agency to apply on behalf of state.

(a) Any public corporation may make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with the act of congress and amendments thereto.

(b) The Wyoming business council is the public entity designated and authorized to apply, on behalf of the state of Wyoming, for foreign trade zone authority, sub-zone authority or port of entry pursuant to the act of congress and regulations issued pursuant to the act.

(c) The designation of the Wyoming business council to apply on behalf of the state of Wyoming for foreign trade zone or sub-zone authority shall not prohibit other public corporations from applying for foreign trade zone authority pursuant to the act of congress.

40-11-103. Application by private corporation to establish and operate.

Any private corporation organized under the laws of this state for the purpose of establishing, operating and maintaining a foreign trade zone in accordance with the act of congress may make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with the act of congress.

40-11-104. Establishment and operation by corporation; conditions and restrictions.

(a) Any public or private corporation authorized by this chapter to make such application and whose application is granted pursuant to the terms of the act of congress may establish, operate, and maintain the foreign trade zone:

(i) Subject to the conditions and restrictions of the act of congress, and any amendments thereto;

(ii) Under such rules and regulations and for the period of time that may be prescribed by the board established by the act of congress to carry out the provisions of the act.

40-11-105. Powers of public corporation to provide indemnity and deposit money with United States.

(a) If authorized to establish, operate and maintain a foreign trade zone, a public corporation may, in addition to its other powers:

(i) It may, for itself, provide for such indemnity or assurance to the United States or its agencies as they may request;

(ii) Deposit such sums of money with the United States as the United States or its agencies may request, providing such money is available therefor by direct appropriation or otherwise.

CHAPTER 12 - CONSUMER PROTECTION

ARTICLE 1 - IN GENERAL

40-12-101. Short title.

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

40-12-102. Definitions.

(a) As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

(B) Either:

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

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

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

40-12-103. Unsolicited merchandise.

Unless otherwise agreed, when unsolicited merchandise is delivered to a person, he has a right to refuse such merchandise and is not obligated to return such merchandise to the sender. Such unsolicited merchandise is deemed an unconditional gift to the recipient, who may use it in any manner without any obligation to the sender. This section does not apply if there is evidence that the merchandise has been misdelivered, or if the delivered merchandise is offered as a good faith substitution for merchandise previously solicited by the recipient.

40-12-104. Home solicitation sales.

(a) For purposes of this section, "home solicitation sale" means the sale or lease of merchandise, other than farm

equipment, for cash when the cash sales price, whether under a single sale or multiple sales, exceeds twenty-five dollars ($25.00) and in which the seller or a person acting for him engages in a personal solicitation of the sale at the residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. A personal solicitation of a sale at the residence of the buyer includes contact with the buyer in person or by telephone. "Home solicitation sale" does not include:

(i) A sale made pursuant to a preexisting revolving charge account;

(ii) A sale made subsequent to a personal contact or a telephone contact at the residence of the buyer but pursuant to negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale;

(iii) A sale made pursuant to a telephone solicitation when the seller offers a full refund and right of cancellation for at least ten (10) days after receipt of the merchandise and the right of refund and cancellation is communicated during the initial telephone solicitation and is conspicuously displayed with the merchandise; or

(iv) A sale in which a consumer acquires use of property under a rental-purchase agreement as defined in W.S. 40-19-102(a)(xi), with an initial period of one (1) week or less, by placing a telephone call to a merchant and by requesting that specific property be delivered to the consumer's residence or such other place as the consumer directs and such rental-purchase agreement is consummated at the consumer's residence.

(b) Except as hereinafter provided, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this part. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase. Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form

of written expression the intention of the buyer not to be bound by the home solicitation sale.

(c) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency and:

(i) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation; and

(ii) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(d) The period within which cancellation may occur pursuant to this section shall not commence until the buyer is furnished a copy of the completed, approved and accepted contract, is given the name and address to which the notice of cancellation should be sent and is provided with a written statement of his right of cancellation. The statement of the buyer's right of cancellation shall comply with W.S. 40-14-253(b).

(e) Except as hereinafter provided, within ten (10) days after a home solicitation sale has been cancelled:

(i) The seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness;

(ii) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller, and if the seller fails to tender the goods as provided by this subsection, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement;

(iii) The seller may retain as a cancellation fee five percent (5%) of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the buyer voids the sale on any ground independent of his right to cancel or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee;

(iv) Until the seller has complied with the obligations imposed by this subsection, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

(f) Except as provided under subsection (e) of this section, within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of the goods within thirty (30) days after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them.

(g) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for thirty (30) days thereafter, during which time the goods are otherwise at the seller's risk.

(h) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this section.

40-12-105. Unlawful practices.

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

(i) Represents that merchandise has a source, origin, sponsorship, approval, accessories or uses it does not have;

(ii) Represents that he has a sponsorship, approval or affiliation he does not have;

(iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not;

(iv) Represents that merchandise is available to the consumer for a reason that does not exist;

(v) Represents that merchandise has been supplied in accordance with a previous representation, if it has not; except that this subsection does not apply to merchandise supplied to

the recipient by mistake or merchandise of equal or greater value supplied as a reasonably equivalent substitute for unavailable merchandise previously ordered by the recipient;

(vi) Represents that replacement or repair is needed, if it is not;

(vii) Makes false or misleading statements of fact concerning the price of merchandise or the reason for, existence of, or amounts of a price reduction;

(viii) Represents that a consumer transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations if the representation is false;

(ix) Represents that the consumer will receive a rebate, discount or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent upon an event occurring after the consumer enters into the transaction;

(x) Advertises merchandise with intent not to sell it as advertised;

(xi) Advertises merchandise with intent not to supply reasonably expectable public demand, unless the advertisement discloses the limitation;

(xii) Represents that merchandise is original or new if he knows that it is deteriorated, damaged, altered, reconditioned, reclaimed, used or secondhand. For purposes of this subsection, the terms "original" or "new" include merchandise previously sold but returned within a reasonable time by the consumer for full credit if such merchandise is not damaged or deteriorated;

(xiii) Advertises under the guise of obtaining sales personnel when in fact the purpose of the advertisement is to sell merchandise to the sales personnel applicants;

(xiv) Employs "bait and switch" advertising which consists of an offer to sell merchandise which the seller does not intend to sell, which advertising is accompanied by one (1) or more of the following practices:

(A) Refusal to show the merchandise advertised;

(B) False disparagement in any respect of the advertised merchandise or the terms of sale;

(C) Requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised merchandise;

(D) Knowingly showing or demonstrating defective merchandise which is unusable or practicable for the purpose set forth in the advertisement;

(E) Accepting a deposit for the merchandise and subsequently charging the buyer for a higher priced item without his consent; or

(F) Willful failure to either make deliveries of the merchandise or to make a refund therefor.

(xv) Engages in unfair or deceptive acts or practices;

(xvi) Violates W.S. 40-12-601;

(xvii) Willfully fails to comply with the duties imposed by W.S. 34-29-106.

40-12-106. Restraining unlawful practices.

Whenever the enforcing authority has reasonable cause to believe that any person has engaged in, is engaging in, or is about to engage in any practice which is unlawful under W.S. 40-12-104 or 40-12-105, and that proceedings would be in the public interest, he may bring an action in the name of this state against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such practice, upon the giving of appropriate notice to that person. The notice must state generally the relief sought and must be served in accordance with the Wyoming Rules of Civil Procedure. Before commencing any action, the enforcing authority shall give the person against whom proceedings are contemplated a reasonable opportunity to show why proceedings should not be instituted. The action may be brought in the district court of the county in which the person resides or has his principal place of business or in the district court of Laramie county, Wyoming. The

district court may issue temporary restraining orders or preliminary or permanent injunctions, in accordance with the principles of equity, to restrain and prevent violations of this act. The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or restoration of money or property, real or personal, which may have been acquired by means or any act or practice restrained. The remedies provided by this section, W.S. 40-12-108 and 40-12-111 shall be the exclusive remedies for violations of this act.

40-12-107. Assurances of voluntary compliance.

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

40-12-108. Private remedies.

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

(b) Any person who is entitled to bring an action under subsection (a) of this section on his own behalf against an alleged violator of this act for damages for an unlawful deceptive trade practice may bring a class action against such person on behalf of any class of persons of which he is a member and which has been damaged by such unlawful deceptive trade practice, subject to and pursuant to the Wyoming Rules of Civil Procedure governing class actions, except as herein expressly provided. If the court determines that actual damages have been suffered by reason of the unlawful deceptive trade practice, the court shall award reasonable attorney's fees to the plaintiffs in a class action under this subsection, provided that such fees shall be determined by the amount of time reasonably expended by the attorney for the plaintiffs and not by the amount of the judgment. Any monies or property recovered in a class action

under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after judgment becomes final shall be returned to the party depositing the same.

40-12-109. Limitation of actions.

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

40-12-110. Exemptions.

(a) Nothing in this act shall apply to:

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

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

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

(a) As used in this section:

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

(ii) "Major life activities" means functions associated with the normal activities of independent daily living such as caring for one's self, performing manual tasks,

walking, seeing, hearing, speaking, breathing, learning and working;

(iii) "Mental or educational impairment" means:

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

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

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

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

40-12-112. Investigative powers of enforcing authority.

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

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

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

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

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

(f) Whenever criminal or civil intelligence, investigative information or any other information held by any state or federal agency is available to the enforcing authority on a confidential or a similarly restricted basis, the enforcing authority, in the course of the investigation of any violation of this act, may obtain and use the information. Any intelligence or investigative information that is confidential

or exempt under W.S. 16-4-201 through 16-4-205 retains its status as confidential or exempt.

40-12-113. Civil penalties.

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

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

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

40-12-114. Effect on other remedies.

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

ARTICLE 2 - PROMOTIONAL ADVERTISING OF PRIZES

40-12-201. Definitions.

(a) As used in this article:

(i) "Prize" means a gift, award or other item or service of value;

(ii) "Prize notice" means a notice given to an individual in this state that satisfies all of the following:

(A) Is or contains a representation that the individual has been selected or may be eligible to receive a prize;

(B) Conditions receipt of a prize on a payment from the individual or requires or invites the individual to make a contact to learn how to receive the prize or to obtain other information related to the notice.

(iii) "Prize notice" does not include any of the following:

(A) A notice given at the request of the individual;

(B) A notice informing the individual that he has been awarded a prize as a result of his actual prior entry in a game, drawing, sweepstakes or other contest, if the individual is awarded the prize stated in the notice.

(iv) "Solicitor" means a person who represents to an individual that the individual has been selected or may be eligible to receive a prize;

(v) "Sponsor" means a person on whose behalf a solicitor gives a prize notice;

(vi) "Verifiable retail value" of a prize means:

(A) A price at which the solicitor or sponsor can demonstrate that a substantial number of the prizes have been sold by a person other than the solicitor or sponsor in the trade area in which the prize notice is given; or

(B) If the solicitor or sponsor is unable to satisfy subparagraph (A) of this paragraph, no more than one and five-tenths (1.5) times the amount the solicitor or sponsor paid for the prize.

40-12-202. Written prize notice required.

If a solicitor represents to an individual that the individual has been selected or may be eligible to receive a prize, the solicitor shall not request, and the solicitor or sponsor shall not accept, a payment from the individual in any form before the individual receives a written prize notice that contains all of the information required under W.S. 40-12-203(a) presented in the manner required under W.S. 40-12-203(b) through (f).

40-12-203. Delivery and contents of written prize notices.

(a) A written prize notice shall contain all of the following information presented in the manner required under subsections (b) through (f) of this section:

(i) The name and address of the solicitor and sponsor;

(ii) The verifiable retail value of each prize the individual has been selected or may be eligible to receive;

(iii) If the notice lists more than one (1) prize that the individual has been selected or may be eligible to receive, a statement of the odds the individual has of receiving each prize;

(iv) Any requirement or invitation for the individual to view, hear or attend a sales presentation in order to claim a prize, the approximate length of the sales presentation and a detailed description of the property or service that is the subject of the sales presentation. The description of the property or service shall include the price of the property or service, the size of the property, length of the service and any other information required to make an informed determination as to the value of the property or service;

(v) Any requirement that the individual pay shipping or handling fees or any other charges to obtain or use a prize;

(vi) If receipt of the prize is subject to a restriction, a statement that a restriction applies, a description of the restriction and a statement containing the location in the notice where the restriction is described; and

(vii) Any limitations on eligibility.

(b) The verifiable retail value and the statement of odds required in a written prize notice under paragraphs (a)(ii) and

(iii) of this section shall be stated in immediate proximity to each listing of the prize in each place the prize appears on the written prize notice and shall be in the same size and boldness of type as the prize, and provided:

(i) The statement of odds shall include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be delivered. The number of prizes and written prize notices shall be stated in Arabic numerals. The statement of odds shall be in the following form: ".... (number of prizes) out of .... written prizes notices"; and

(ii) The verifiable retail value shall be in the following form: "verifiable retail value: $....".

(c) If an individual is required to pay shipping or handling fees or any other charges to obtain or use a prize, the following statement shall appear in immediate proximity to each listing of the prize in each place the prize appears in the written prize notice and shall be in not less than ten (10) point boldface type: "YOU MUST PAY $.... IN ORDER TO RECEIVE OR USE THIS ITEM".

(d) The information required in a written prize notice under paragraph (a)(iv) of this section shall be on the first page of the written prize notice in not less than ten (10) point boldface type. The information required under paragraphs (a)(vi) and (vii) of this section shall be in not less than ten (10) point boldface type.

(e) If a written prize notice is given by a solicitor on behalf of a sponsor, the name of the sponsor shall be more prominently and conspicuously displayed than the name of the promoter.

(f) A solicitor or sponsor shall not do any of the following:

(i) Place on an envelope containing a written prize notice any representation that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize;

(ii) Deliver a written prize notice that contains language, or is designed in a manner, that would lead a reasonable person to believe that it originates from a

government agency, public utility, insurance company, consumer reporting agency, debt collector or law firm unless the written prize notice originates from that source;

(iii) Represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has been selected to receive a particular prize unless the representation is true.

40-12-204. Sales presentations.

(a) If a prize notice requires or invites an individual to view, hear or attend a sales presentation in order to claim a prize, the sales presentation shall not begin until the solicitor does all of the following:

(i) Informs the individual of the prize, if any, that has been awarded to the individual; and

(ii) If the individual has been awarded a prize, delivers to the individual the prize or the item selected by the individual under W.S. 40-12-205 if the prize is not available.

40-12-205. Prize award required; options if prize not available.

(a) A solicitor who represents to an individual in a written prize notice that the individual has been awarded a prize shall provide the prize to the individual unless the prize is not available. If the prize is not available, the solicitor shall provide the individual with any one (1) of the following items selected by the individual:

(i) Any other prize listed in the written prize notice that is available and that is of equal or greater value;

(ii) The verifiable retail value of the prize in the form of cash, a money order or a certified check;

(iii) A voucher, certificate or other evidence of obligation stating that the prize will be shipped to the individual within thirty (30) days at no cost to the individual.

(b) If a voucher, certificate or other evidence of obligation delivered under paragraph (a)(iii) of this section is not honored within thirty (30) days, the solicitor shall deliver to the individual the verifiable retail value of the prize in

the form of cash, a money order or a certified check. The sponsor shall make the payment to the individual if the solicitor fails to do so.

40-12-206. Penalties.

(a) Except as provided by subsection (b) of this section, any individual who violates this article is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars ($750.00), imprisonment for not more than six (6) months, or both, for each violation.

(b) Whoever intentionally violates this article is guilty of a misdemeanor punishable by a fine of not more than ten thousand dollars ($10,000.00), imprisonment for not more than one (1) year, or both. A person intentionally violates this article if the violation occurs after the attorney general or a district attorney has notified the person by certified mail that the person is in violation of this article.

40-12-207. Enforcement.

(a) The attorney general shall investigate violations of this article.

(b) The attorney general or any district attorney may on behalf of the state:

(i) Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this article. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of this article if proof of the loss is submitted to the satisfaction of the court;

(ii) Bring an action in any court of competent jurisdiction for the penalties authorized under W.S. 40-12-206.

40-12-208. Private action.

(a) In addition to any other remedies, a person suffering pecuniary loss because of a violation by another person of this article may bring an action in any court of competent jurisdiction and shall recover all of the following:

(i) The greater of five hundred dollars ($500.00) or twice the amount of the pecuniary loss;

(ii) Costs and reasonable attorney fees.

40-12-209. Exemptions.

The provisions of this article shall not apply to the sale or purchase, or solicitation or representation in connection therewith, of goods from a catalog or of books, recordings, video cassettes, periodicals and similar goods through a membership group or club which is regulated by the federal trade commission through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and the recipient of the goods is given the opportunity, after examination of the goods, to receive a full refund of charges for the goods or unused portion thereof, upon return of the undamaged goods or unused portion of the goods.

ARTICLE 3 - TELEPHONE SOLICITATION

40-12-301. Definitions.

(a) As used in this article:

(i) "Caller identification service" means a type of telephone service or system which allows telephone subscribers to see the telephone numbers from which incoming telephone calls are dialed;

(ii) "Consumer" means an actual or prospective purchaser, lessee or recipient of consumer goods or services;

(iii) "Consumer goods or services" means any real property or any tangible or intangible personal property or any services which are marketed and intended to be used for personal, family or household purposes, including, without limitation, any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed, as well as cemetery lots and timeshare estates;

(iv) "Doing business in this state" refers to businesses which conduct telephonic sales calls from a location

in Wyoming or from other states or nations to consumers located in Wyoming;

(v) "Enforcing authority" means the Wyoming attorney general;

(vi) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a seller or telephone solicitor and a consumer with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer regarding products or services offered by such seller or telephone solicitor which relationship has not been previously terminated by either party;

(vii) "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods or services;

(viii) "National do-not-call list" means the list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization;

(ix) "Telephonic sales call" means a call made by a telephone solicitor to a consumer, for the purpose of soliciting a sale of any consumer goods or services, for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes;

(x) "Telephone solicitor" means any natural person, business entity or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing devices;

(xi) "Unpublished cellular telephone number" means a cellular telephone number:

(A) That has not been requested by the subscriber to be published in any telephone directory or any list of telephone service subscribers; and

(B) Whose prefix or telephone number has been determined by the public service commission to be primarily for cellular telephone service.

(xii) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

(A) In response to an express request of the person called;

(B) Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call;

(C) To any person with whom the telephone solicitor had an established business relationship; or

(D) By a telephone solicitor or merchant making less than two hundred twenty-five (225) unsolicited calls per year.

40-12-302. Telephone solicitations.

(a) Any telephone solicitor or merchant who makes an unsolicited telephonic sales call to a residential or mobile telephone number shall disclose at the outset of the conversation and in a clear and conspicuous manner to the person receiving the call, the following information:

(i) The name of the individual caller;

(ii) The identity of the telephone solicitor or merchant and a telephone number and address at which the telephone solicitor or merchant may be contacted;

(iii) That the purpose of the call is to sell consumer goods or services; and

(iv) The nature of the consumer goods or services.

(b) No telephone solicitor or merchant shall willfully make or cause to be made any unsolicited telephonic sales call to any residential, mobile or telephonic paging device telephone number more than sixty (60) days after the number for that telephone appears in the national do-not-call list. This subsection does not apply to any person who calls an actual or prospective seller or lessor of real property when the call is

made in response to a yard sign or other form of advertisement placed by the seller or lessor.

(c) No telephone solicitor or merchant who makes an unsolicited telephonic sales call to the telephone line of a residential subscriber in this state shall knowingly utilize any method to block or otherwise circumvent the subscriber's use of a caller identification service.

(d) No telephone solicitor shall initiate any unsolicited telephonic sales call to a consumer before the hour of 8 a.m. or after 8 p.m. local time at the consumer's location.

(e) No telephone solicitor or merchant shall willfully make or cause to be made any unsolicited telephonic sales call to any unpublished cellular telephone number.

40-12-303. Automated sales calls.

(a) No telephone solicitor or merchant shall make or knowingly allow a telephonic sales call to be made if the call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.

(b) Subsection (a) of this section does not prohibit the use of an automated telephone dialing system with live messages if:

(i) The calls are made or messages given solely in response to calls initiated by the persons to whom the automatic calls or live messages are directed;

(ii) The telephone numbers selected for automatic dialing have been screened to exclude any telephone subscriber who is included on the national do-not-call list and any unlisted telephone number; or

(iii) The call is to a consumer with whom the caller had an established business relationship.

40-12-304. Investigation of complaints; enforcement; attorney's fees.

(a) The enforcing authority shall investigate any complaints received concerning violations of this article. If, after investigating any complaint, the enforcing authority finds

that there has been a willful violation of this article, the enforcing authority may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor or merchant. The civil penalty imposed shall be as follows:

(i) For the first violation, not to exceed five hundred dollars ($500.00);

(ii) For the second violation, not to exceed two thousand five hundred dollars ($2,500.00);

(iii) For the third and subsequent violations, not to exceed five thousand dollars ($5,000.00) per violation.

(b) An action under this section may be brought in the district court of the county in which the telephone solicitor or merchant resides or had its principle place of business or in the district court of Laramie county Wyoming. The civil penalty provided under this section may be recovered in any action brought under this article by the enforcing authority, or the enforcing authority may terminate any investigation or action upon agreement by the telephone solicitor or merchant to pay a stipulated civil penalty. The enforcing authority or the court may waive any civil penalty if the telephone solicitor or merchant has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(c) In any civil litigation resulting from a transaction involving a violation of this article, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive reasonable attorney's fees and costs from the nonprevailing party.

(d) The remedies provided by this section are not exclusive and shall not preclude the imposition of any other relief or criminal penalties provided by law.

(e) It shall be an affirmative defense to an action brought by an enforcing authority for a violation of W.S. 40-12-302(b) that the person called a consumer listed on the national do-not-call list as a result of a good faith error.

40-12-305. Notice of activity and consent to service of process.

Each telephone solicitor or merchant making unsolicited telephonic sales calls and doing business in this state shall file with the attorney general of this state a statement giving notice of this fact and designating the secretary of state of this state its agent for service of process, unless a lawful resident is designated as agent for service of process, for any alleged violation of this article. The written notice shall further set forth the intention of the telephone solicitor or merchant to abide by the provisions of this article. Compliance with this section shall not subject any telephone solicitor or merchant to the provisions or consequences of any other statute of this state.

ARTICLE 4 - COMMERCIAL ELECTRONIC MAIL

40-12-401. Definitions.

(a) As used in this article:

(i) "Assist the transmission" means actions taken by a person to provide substantial assistance or support which enables any person to formulate, compose, send, originate, initiate or transmit a commercial electronic mail message when the person providing the assistance knows or consciously avoids knowing that the initiator of the commercial electronic mail message is engaged or intends to engage in any practice that violates this article;

(ii) "Commercial electronic mail message" means an electronic mail message sent for the purpose of promoting real property, goods or services for sale or lease. It does not mean an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has agreed to such an arrangement;

(iii) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered;

(iv) "Enforcing authority" means the Wyoming attorney general;

(v) "Initiate the transmission" refers to the action by the original sender of an electronic mail message, not to the action by any intervening interactive computer service that may handle or retransmit the message, unless such intervening

interactive computer service assists in the transmission of an electronic mail message when it knows or consciously avoids knowing that the person initiating the transmission is engaged or intends to engage in any act or practice that violates this article;

(vi) "Interactive computer service" means any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions;

(vii) "Internet domain name" refers to a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy;

(viii) "Service provider" means an entity offering the transmission, routing or providing of connections for digital online communications between or among points specified by a user, of material of the user's choosing, without modification to the content of the material sent or received.

40-12-402. Sending unpermitted or misleading electronic mail prohibited.

(a) No person may initiate the transmission, conspire with another to initiate the transmission or assist the transmission of a commercial electronic mail message from a computer located in Wyoming or to an electronic mail address that the sender knows or has reason to know is held by a Wyoming resident, or to an address that the sender knows or has reason to know is located in a state or other jurisdiction with laws similar to this state's laws regarding commercial electronic mail, that:

(i) Uses a third party's internet domain name without permission of the third party, or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or

(ii) Contains false or misleading information in the subject line.

(b) For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is a Wyoming resident if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address.

(c) For purposes of this article, a service provider does not assist in the transmission of a commercial electronic mail message in violation of this article if:

(i) The activity which violates this article was not directed by the service provider or its agent;

(ii) The service provider does not receive a financial benefit directly attributable to the violation of this article by one (1) of its customers; and

(iii) The service provider does not provide the equipment or complete management of systems found to have an open mail relay.

40-12-403. Investigation of complaints; enforcement; attorney's fees.

(a) The enforcing authority shall investigate any complaints received concerning violations of this article. If, after investigating any complaint, the enforcing authority finds that there has been a violation of this article, the enforcing authority may bring an action to impose a civil penalty and to seek other relief, including injunctive relief. The civil penalty imposed shall be as follows:

(i) For the first violation, not to exceed five hundred dollars ($500.00);

(ii) For the second violation, not to exceed two thousand five hundred dollars ($2,500.00);

(iii) For the third and subsequent violations, not to exceed five thousand dollars ($5,000.00) per violation.

(b) An action under this section may be brought in the district court of the county in which a commercial electronic mail message that violates this article has been received or in the district court of Laramie county, Wyoming. The civil penalty provided under this section may be recovered in any action brought under this article by the enforcing authority, or the

enforcing authority may terminate any investigation or action upon agreement with the person violating this article to pay a stipulated civil penalty.

(c) In any civil litigation resulting from a transaction involving a violation of this article, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive reasonable attorney's fees and costs from the nonprevailing party.

(d) The remedies provided by this section are not exclusive and shall not preclude the imposition of any other relief or criminal penalties provided by law.

40-12-404. Immunity from liability for blocking of commercial electronic mail by interactive computer service.

(a) An interactive computer service may, upon its own initiative, block the receipt or transmission through its service of any commercial electronic mail that it reasonably believes is, or will be, sent in violation of this article.

(b) No interactive computer service may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is, or will be, sent in violation of this article.

ARTICLE 5 - CREDIT FREEZE REPORTS

40-12-501. Definitions.

(a) As used in this act:

(i) "Breach of the security of the data system" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of personal identifying information maintained by a person or business and causes or is reasonably believed to cause loss or injury to a resident of this state. Good faith acquisition of personal identifying information by an employee or agent of a person or business for the purposes of the person or business is not a breach of the security of the data system, provided that the personal identifying information is not used or subject to further unauthorized disclosure;

(ii) "Consumer" means any person who is utilizing or seeking credit for personal, family or household purposes;

(iii) "Consumer reporting agency" means any person whose business is the assembling and evaluating of information as to the credit standing and credit worthiness of a consumer, for the purposes of furnishing credit reports, for monetary fees and dues to third parties;

(iv) "Credit report" means any written or oral report, recommendation or representation of a consumer reporting agency as to the credit worthiness, credit standing or credit capacity of any consumer and includes any information which is sought or given for the purpose of serving as the basis for determining eligibility for credit to be used primarily for personal, family or household purposes;

(v) "Creditor" means the lender of money or vendor of goods, services or property, including a lessor under a lease intended as a security, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such lender or vendor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any other person in any way associated with any of them;

(vi) "Financial institution" means any person licensed or chartered under the laws of any state or the United States as a bank holding company, bank, savings and loan association, credit union, trust company or subsidiary thereof doing business in this state;

(vii) "Personal identifying information" means the first name or first initial and last name of a person in combination with one (1) or more of the data elements specified in W.S. 6-3-901(b)(iii) through (xiv), when the data elements are not redacted.

(A) Repealed by Laws 2015, ch. 63, § 2.

(B) Repealed by Laws 2015, ch. 63, § 2.

(C) Repealed by Laws 2015, ch. 63, § 2.

(D) Repealed by Laws 2015, ch. 63, § 2.

(E) Repealed by Laws 2015, ch. 63, § 2.

(viii) "Redact" means alteration or truncation of data such that no more than five (5) digits of the data elements provided in subparagraphs (vii)(A) through (D) of this subsection are accessible as part of the personal information;

(ix) "Security freeze" means a notice placed in a consumer's credit report, at the request of the consumer, that prohibits the credit rating agency from releasing the consumer's credit report or any information from it relating to an extension of credit or the opening of a new account, without the express authorization of the consumer;

(x) "Substitute notice" means:

(A) An electronic mail notice when the person or business has an electronic mail address for the subject persons;

(B) Conspicuous posting of the notice on the website page of the person or business if the person or business maintains one; and

(C) Publication in applicable local or statewide media.

(xi) "This act" means W.S. 40-12-501 through 40-12-511.

(b) "Personal identifying information" as defined in paragraph (a)(vii) of this section does not include information, regardless of its source, contained in any federal, state or local government records or in widely distributed media that are lawfully made available to the general public.

40-12-502. Computer security breach; notice to affected persons.

(a) An individual or commercial entity that conducts business in Wyoming and that owns or licenses computerized data that includes personal identifying information about a resident of Wyoming shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal identifying information has been or will be misused. If the investigation determines that the misuse of personal identifying information about a Wyoming resident has occurred or is reasonably likely to occur, the individual or the commercial

entity shall give notice as soon as possible to the affected Wyoming resident. Notice shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

(b) The notification required by this section may be delayed if a law enforcement agency determines in writing that the notification may seriously impede a criminal investigation.

(c) Any financial institution as defined in 15 U.S.C. 6809 or federal credit union as defined by 12 U.S.C. 1752 that maintains notification procedures subject to the requirements of 15 U.S.C. 6801(b)(3) and 12 C.F.R. Part 364 Appendix B or Part 748 Appendix B, is deemed to be in compliance with this section if the financial institution notifies affected Wyoming customers in compliance with the requirements of 15 U.S.C. 6801 through 6809 and 12 C.F.R. Part 364 Appendix B or Part 748 Appendix B.

(d) For purposes of this section, notice to consumers may be provided by one (1) of the following methods:

(i) Written notice;

(ii) Electronic mail notice;

(iii) Substitute notice, if the person demonstrates:

(A) That the cost of providing notice would exceed ten thousand dollars ($10,000.00) for Wyoming-based persons or businesses, and two hundred fifty thousand dollars ($250,000.00) for all other businesses operating but not based in Wyoming;

(B) That the affected class of subject persons to be notified exceeds ten thousand (10,000) for Wyoming-based persons or businesses and five hundred thousand (500,000) for all other businesses operating but not based in Wyoming; or

(C) The person does not have sufficient contact information.

(iv) Substitute notice shall consist of all of the following:

(A) Conspicuous posting of the notice on the Internet, the World Wide Web or a similar proprietary or common carrier electronic system site of the person collecting the data, if the person maintains a public Internet, the World Wide Web or a similar proprietary or common carrier electronic system site; and

(B) Notification to major statewide media. The notice to media shall include a toll-free phone number where an individual can learn whether or not that individual's personal data is included in the security breach.

(e) Notice required under subsection (a) of this section shall be clear and conspicuous and shall include, at a minimum:

(i) A toll-free number:

(A) That the individual may use to contact the person collecting the data, or his agent; and

(B) From which the individual may learn the toll-free contact telephone numbers and addresses for the major credit reporting agencies.

(ii) The types of personal identifying information that were or are reasonably believed to have been the subject of the breach;

(iii) A general description of the breach incident;

(iv) The approximate date of the breach of security, if that information is reasonably possible to determine at the time notice is provided;

(v) In general terms, the actions taken by the individual or commercial entity to protect the system containing the personal identifying information from further breaches;

(vi) Advice that directs the person to remain vigilant by reviewing account statements and monitoring credit reports;

(vii) Whether notification was delayed as a result of a law enforcement investigation, if that information is reasonably possible to determine at the time the notice is provided.

(f) The attorney general may bring an action in law or equity to address any violation of this section and for other relief that may be appropriate to ensure proper compliance with this section, to recover damages, or both. The provisions of this section are not exclusive and do not relieve an individual or a commercial entity subject to this section from compliance with all other applicable provisions of law.

(g) Any person who maintains computerized data that includes personal identifying information on behalf of another business entity shall disclose to the business entity for which the information is maintained any breach of the security of the system as soon as practicable following the determination that personal identifying information was, or is reasonably believed to have been, acquired by an unauthorized person. The person who maintains the data on behalf of another business entity and the business entity on whose behalf the data is maintained may agree which person or entity will provide any required notice as provided in subsection (a) of this section, provided only a single notice for each breach of the security of the system shall be required. If agreement regarding notification cannot be reached, the person who has the direct business relationship with the resident of this state shall provide notice subject to the provisions of subsection (a) of this section.

(h) A covered entity or business associate that is subject to and complies with the Health Insurance Portability and Accountability Act, and the regulations promulgated under that act, 45 C.F.R. Parts 160 and 164, is deemed to be in compliance with this section if the covered entity or business associate notifies affected Wyoming customers or entities in compliance with the requirements of the Health Insurance Portability and Accountability Act and 45 C.F.R. Parts 160 and 164.

40-12-503. Security freeze.

(a) Except as provided in W.S. 40-12-505, a consumer may place a security freeze on the consumer's credit report by:

(i) Making a request to a consumer reporting agency in writing by certified mail; and

(ii) Providing proper identification.

(b) If a security freeze is in place, a consumer reporting agency may not release a consumer's credit report or information derived from the credit report to a third party that intends to

use the information to determine a consumer's eligibility for credit or the opening of a new account without prior authorization from the consumer.

(c) Notwithstanding subsection (b) of this section, a consumer reporting agency may communicate to a third party requesting a consumer's credit report that a security freeze is in effect on the consumer's credit report. If a third party requesting a consumer's credit report in connection with the consumer's application for credit is notified of the existence of a security freeze under this subsection, the third party may treat the consumer's application as incomplete.

(d) Upon receiving a request from a consumer under subsection (a) of this section, the consumer reporting agency shall:

(i) Place a security freeze on the consumer's credit report within five (5) business days after receiving the consumer's request;

(ii) Send a written confirmation of the security freeze to the consumer within ten (10) business days after placing the security freeze; and

(iii) Provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorizations for removal or temporary lift of the security freeze.

(e) A consumer reporting agency shall require proper identification of the consumer requesting to place, remove, or temporarily lift a security freeze.

(f) A consumer reporting agency shall develop a contact method to receive and process a consumer's request to place, remove or temporarily lift a security freeze. The contact method shall include:

(i) A postal address;

(ii) An electronic contact method chosen by the consumer reporting agency, which may include the use of fax, Internet or other electronic means; and

(iii) The use of telephone in a manner that is consistent with any federal requirements placed on the consumer reporting agency.

(g) A security freeze placed under this section may be removed or temporarily lifted only in accordance with W.S. 40-12-504.

40-12-504. Permanent removal or temporary lift of security freeze; requirements and timing.

(a) A consumer reporting agency may remove a security freeze from a consumer's credit report only if:

(i) The consumer makes a material misrepresentation of fact in connection with the placement of the security freeze and the consumer reporting agency notifies the consumer in writing before removing the security freeze; or

(ii) The consumer reporting agency receives the consumer's request through a contact method established and required in accordance with W.S. 40-12-503(f) and the consumer reporting agency receives the consumer's proper identification and other information sufficient to identify the consumer including the consumer's personal identification number or password.

(b) A consumer reporting agency shall temporarily lift a security freeze upon receipt of:

(i) The consumer's request through the contact method established by the consumer reporting agency;

(ii) The consumer's proper identification and other information sufficient to identify the consumer including the consumer's personal identification number or password;

(iii) A specific designation of the period of time for which the security freeze is to be lifted; and

(iv) The consumer reporting agency receives the payment of any fee required under W.S. 40-12-506.

(c) A consumer reporting agency shall temporarily lift a security freeze from a consumer's credit report within:

(i) Three (3) business days after the business day on which the consumer's request to temporarily lift the security freeze is received by the consumer reporting agency through the contact method developed by the consumer reporting agency as required under W.S. 40-15-503(f); or

(ii) On or after September 1, 2008, within fifteen (15) minutes after the consumer's request is received by the consumer reporting agency through the electronic contact method developed by the consumer reporting agency as required under W.S. 40-12-503(f) or the use of telephone, during normal business hours and includes the consumer's proper identification and correct personal identification number or password.

(d) A consumer reporting agency shall permanently remove a security freeze from a consumer's credit report within three (3) business days after the business day on which the consumer's request is received by the consumer reporting agency through the contact method developed by the agency to receive such requests as required under W.S. 40-12-503(f).

(e) A consumer reporting agency need not temporarily lift a security freeze within the time provided in subsection (c) of this section if:

(i) The consumer fails to meet the requirements of subsection (b) of this section; or

(ii) The consumer reporting agency's ability to temporarily lift the security freeze within fifteen (15) minutes is prevented by:

(A) An act of God, including fire, earthquakes, hurricanes, storms or similar natural disaster or phenomena;

(B) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations or similar occurrence;

(C) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time or similar disruption;

(D) Governmental action, including emergency orders or regulations, judicial or law enforcement action or similar directives;

(E) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems;

(F) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or

(G) Receipt of a removal request outside of normal business hours.

40-12-505. Exceptions.

(a) Notwithstanding W.S. 40-12-503, a consumer reporting agency may furnish a consumer's credit report to a third party if:

(i) The purpose of the credit report is to:

(A) Use the credit report for purposes permitted under 15 U.S.C. § 1681b(c);

(B) Review the consumer's account with the third party, including for account maintenance or monitoring, credit line increases or other upgrades or enhancements;

(C) Collect on a financial obligation owed by the consumer to the third party requesting the credit report;

(D) Collect on a financial obligation owed by the consumer to another person; or

(E) The third party requesting the credit report is a subsidiary, affiliate, agent, assignee or prospective assignee of the person holding the consumer's account or to whom the consumer owes a financial obligation.

(b) The consumer's request for a security freeze does not prohibit the consumer reporting agency from disclosing the consumer's credit report for other than credit related purposes consistent with the definition of credit report in W.S. 40-12-501(a).

(c) The following types of credit report disclosures by consumer reporting agencies to third parties are not prohibited by a security freeze:

(i) The third party does not use the credit report for the purpose of serving as a factor in establishing a consumer's eligibility for credit;

(ii) The release is pursuant to a court order, warrant or subpoena requiring release of the credit report by the consumer reporting agency;

(iii) The third party is a child support agency, or its agent or assignee, acting under Part D, Title IV of the Social Security Act or a similar state law;

(iv) The third party is the federal department of health and human services or a similar state agency, or its agent or assignee, investigating Medicare or Medicaid fraud;

(v) The purpose of the credit report is to investigate or collect delinquent taxes, assessments or unpaid court orders and the third party is:

(A) The federal internal revenue service;

(B) A state taxing authority;

(C) The department of transportation, division of motor vehicles;

(D) A county, municipality, or other entity with taxing authority;

(E) A federal, state or local law enforcement agency; or

(F) The agent or assignee of any entity listed in this paragraph.

(vi) The third party is administering a credit file monitoring subscription to which the consumer has subscribed; or

(vii) The third party requests the credit report for the sole purpose of providing the consumer with a copy of the consumer's credit report or credit score upon the consumer's request.

(d) The security freeze provisions of W.S. 40-12-503 do not apply to:

(i) A consumer reporting agency, the sole purpose of which is to resell credit information by assembling and merging information contained in the database of another consumer reporting agency and that does not maintain a permanent database of credit information from which a consumer's credit report is produced;

(ii) A deposit account information service company that issues reports concerning account closures based on fraud, substantial overdrafts, automated teller machine abuse or similar information concerning a consumer to a requesting financial institution for the purpose of evaluating a consumer's request to create a deposit account;

(iii) A check services or fraud prevention services company that issues:

(A) Reports on incidents of fraud; or

(B) Authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers or similar methods of payment.

(iv) A consumer reporting agency, with respect to its database of files that consist entirely of public records and is used solely for one (1) or more of the following:

(A) Criminal record information;

(B) Tenant screening;

(C) Employment screening; or

(D) Fraud prevention or detection.

(v) A database or file which consists solely of information adverse to the interests of the consumer including, but not limited to, criminal record information which is used for fraud prevention or detection, tenant screening, employment screening or any purpose permitted by the Fair Credit Reporting Act, 15 U.S.C. 1681b;

(vi) A person to the extent the person offers fraud prevention services which provide reports on incidents of fraud

or reports used primarily in the detection or prevention of fraud; or

(vii) Setting or adjusting of a rate, adjusting a claim or underwriting for insurance purposes.

(e) Nothing in this article prohibits a person from obtaining, aggregating or using information lawfully obtained from public records in a manner that does not otherwise violate this article.

40-12-506. Fees for security freeze.

(a) Except as provided in subsection (b) of this section, a consumer reporting agency may charge a reasonable fee not to exceed ten dollars ($10.00) to a consumer for each placing, temporary lifting or removing of a security freeze.

(b) A consumer reporting agency may not charge a fee for placing, temporarily lifting or removing a security freeze if:

(i) The consumer is a victim of identity theft as defined by W.S. 6-3-901; and

(ii) The consumer provides the consumer reporting agency with a valid copy of a police report or police case number documenting the identity fraud.

40-12-507. Changes to information in a credit report subject to a security freeze.

(a) If a credit report is subject to a security freeze, a consumer reporting agency shall notify the consumer who is the subject of the credit report within thirty (30) days if the consumer reporting agency changes their information concerning the consumer's:

(i) Name;

(ii) Date of birth;

(iii) Social security number; or

(iv) Address.

(b) Notwithstanding subsection (a) of this section, a consumer reporting agency may make technical modifications to

information in a credit report that is subject to a security freeze without providing notification to the consumer. Technical modifications under this subsection include:

(i) The addition or subtraction of abbreviations to names and addresses; and

(ii) Transpositions or corrections of incorrect numbering or spelling.

(c) When providing notice of a change of address under subsection (a) of this section, the consumer reporting agency shall provide notice to the consumer at both the new address and the former address.

40-12-508. Violations; penalties.

(a) If a consumer reporting agency intentionally or negligently violates a valid security freeze by releasing credit information that has been placed under a security freeze, the affected consumer is entitled to:

(i) Notification within five (5) business days following the agency's discovery, or notification from another source, of the release of the information. The notification under this paragraph shall include specificity as to the information released and the third party recipient of the information;

(ii) Notification that the consumer may file a complaint with the federal trade commission and the state attorney general.

(b) If a consumer reporting agency intentionally or negligently violates a valid security freeze by releasing credit information that has been placed under a security freeze and fails to take steps to correct the release and fails to give the notification required under subsection (a) of this section, the affected consumer is entitled to, in a civil action against the consumer reporting agency, recover:

(i) Injunctive relief to prevent or restrain further violation of the security freeze;

(ii) A civil penalty in an amount not to exceed one thousand dollars ($1,000.00) plus any damages available under other civil laws; and

(iii) Reasonable expenses, court costs, investigative costs and attorney's fees.

(c) Each violation of the security freeze shall be counted as a separate incident for purposes of imposing penalties under this section.

40-12-509. Factual declaration of innocence after identity theft.

(a) A person who reasonably believes that he or she is the victim of identity theft as defined by W.S. 6-3-901 may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports or other material, relevant and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(b) After a court has issued a determination of factual innocence pursuant to subsection (a) of this section, the court may order the name and associated personal identifying information contained in court records, files and indexes accessible by the public deleted, sealed or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(c) Upon making a determination of factual innocence, the court shall provide the consumer written documentation of the order.

(d) A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

(e) The supreme court shall develop a form for use in issuing an order pursuant to this section.

(f) The attorney general shall establish and maintain a data base of individuals who have been victims of identity theft and that have received determinations of factual innocence. The attorney general shall provide a victim of identity theft or his authorized representative access to the database in order to establish that the individual has been a victim of identity theft. Access to the database shall be limited to criminal justice agencies, victims of identity theft and individuals and agencies authorized by the victims.

(g) The attorney general shall establish and maintain a toll free number to provide access to information under subsection (f) of this section.

(h) In order for a victim of identity theft to be included in the database established pursuant to subsection (f) of this section, he shall submit to the attorney general a court order obtained pursuant to this section, a full set of fingerprints and any other information prescribed by the attorney general.

(j) Upon receiving information pursuant to subsection (h) of this section, the attorney general shall verify the identity of the victim against any driver's license or other identification record maintained by the department of transportation, division of motor vehicles.

ARTICLE 6 - USE OF ARREST PHOTOGRAPHS

40-12-601. Unauthorized use of arrest photographs; penalty.

(a) A person who operates a website that disseminates photographic records of arrested individuals made by law enforcement agencies as part of routinely documenting an arrest and who charges individuals to remove their photographs shall remove any photograph and related name and personal information from all websites owned or controlled by that person without

charging a fee within thirty (30) days of the date of a request to remove the photograph and information if the request:

(i) Is made in writing; and

(ii) Contains written documentation that all charges stemming from the arrest for which the photograph was made:

(A) Were resolved through acquittal or otherwise without a conviction; or

(B) Following conviction, were expunged or set aside pursuant to court order.

(b) For purposes of this section, paper or electronic copies of official court records or law enforcement records constitute written documentation.

(c) A person who violates subsection (a) of this section commits an unlawful practice under W.S. 40-12-105.

ARTICLE 7 - EXTERIOR STORM DAMAGE REPAIR CONTRACTS

40-12-701. Definitions.

(a) As used in this article:

(i) "Consumer" means an individual who enters into a transaction primarily for personal, family or household purposes;

(ii) "Contractor" means a person or entity in the business of contracting or offering to contract with an owner or possessor of residential real estate to repair or replace roof, siding or gutter systems;

(iii) "Emergency repairs" includes only those repairs from exterior storm damage reasonably necessary to prevent immediate or imminent harm to a residential building until a consumer and contractor can contract for exterior storm damage repair pursuant to the provisions of this article;

(iv) "Exterior storm damage" means damage caused by wind, hail or another weather-related event to the siding system, gutter system, roof system or window and skylight system of a residential building;

(v) "Residential building" means a single or multiple family dwelling of up to four (4) units and ancillary buildings or structures, including farm and ranch structures, if any;

(vi) "Roof system" includes roof coverings, roof sheathing, roof weatherproofing, roof framing, roof ventilation and roof insulation.

40-12-702. Requirements for exterior storm damage repair solicitations and advertisements.

(a) An individual or other entity contacting a consumer for the purposes of soliciting exterior storm damage repair services, including general advertisements for these services, shall disclose the following information ?to the consumer:

(i) The business name;

(ii) Whether the contractor has general liability insurance and any licensure required by the authority having jurisdiction.

(b) Beginning July 1, 2017, the contractor license or registration number for the jurisdiction in which an individual or other entity holds a contractor’s license, if the authority having jurisdiction requires such a license, shall appear in all contracts, bids and advertisements involving exterior storm damage repair services.

(c) Contractors soliciting exterior storm damage repair services in this state shall not: ?

(i) Pay, advertise or promise to pay or rebate all or any portion of any insurance deductible. Contractors may pay or rebate any discount available for the use of any goods or services;

(ii) Pay any compensation directly or indirectly to any person associated with the property unless disclosed to the consumer in writing;

(iii) Accept money or any form of compensation in exchange for allowing another contractor to use its business name or contractor’s license number for the purpose of misrepresenting a contractor's identity as a licensed contractor;

(iv) Offer to exclusively represent, advertise to exclusively represent or require by contract the right to exclusively represent a consumer with respect to any insurance claim in connection with exterior storm damage repair services; or

(v) Claim to be, or act as, an adjuster as defined in W.S. 26-1-102(a)(i) or an insurance consultant as defined in W.S. 26-9-220, with respect to any insurance claim.

40-12-703. Disclosure requirements for exterior storm damage repair proposals.

(a) An individual or other entity who prepares a repair proposal for exterior storm damage repair services in anticipation of entering into an exterior storm damage repair contract shall disclose the following information to the consumer:

(i) A precise description and location of all damage claimed or included in the repair proposal;

(ii) A detailed description and itemization of any emergency repairs already completed; and

(iii) If damaged areas are excluded from the repair proposal, identification of those areas and any reasons for their exclusion.

(b) The disclosures required under subsection (a) of this section shall be made in writing and shall be included in the repair proposal.

40-12-704. Disclosure requirements for exterior storm damage repair contracts.

Any contract for exterior storm damage repairs shall include a copy of a repair proposal that contains the disclosures required under W.S. 40-12-703(a).

40-12-705. Exterior storm damage repair contracts; right to cancel; waiver.

(a) A consumer who has entered into a written contract with a contractor to provide exterior storm damage repair goods and services has the right to cancel the contract within three (3) business days of the date on which the contract was entered

into or, if the services are to be paid directly by or on behalf of the consumer from the proceeds of a property or casualty insurance policy, within three (3) business days after the consumer has received notice in writing from the insurer that the claim has been denied, in whole or in part, whichever is later. Cancellation is evidenced by the consumer giving written notice of cancellation to the contractor at the address stated in the contract. Notice of cancellation may be in electronic form, effective the date of the electronic transmission or, if given by mail, is effective upon postmark, properly addressed to the contractor and postage prepaid. Written notice also may be given to the contractor by personal delivery. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the consumer not to be bound by the contract.

(b) The consumer may waive the three (3) day cancellation period if the insurer has provided written notice that the claim has been approved. The waiver shall be in writing, signed by the consumer and accompanied by a copy of the insurer's notice of approval.

(c) Before entering a contract referred to in subsection (a) of this section, the contractor shall:

(i) Furnish the consumer with a statement in boldface type of a minimum size of twelve (12) points, in substantially the following form: "You may cancel this contract at any time within three (3) business days of the date on which the contract was entered into or within three (3) business days after you have been notified that your insurer has, in whole or in part, denied your claim to pay for the goods and services to be provided under this contract, whichever is later. See attached notice of cancellation form for an explanation of this right. You may waive this right if your insurer has provided written notice that your claim has been approved. The waiver must be in writing, signed by you and accompanied by a copy of the insurer's notice of approval."; and

(ii) Furnish each consumer a fully completed form captioned, "NOTICE OF CANCELLATION," which shall be attached to or accompany the contract and which shall contain in boldface type of a minimum size of twelve (12) points the following information and statements:

"NOTICE OF CANCELLATION

You may cancel this contract within three (3) business days from when it is entered into for any reason or, if your insurer in whole or in part denies your claim to pay for goods and services to be provided under this contract, you may cancel the contract by mailing or delivering (including via electronic transmission) a signed and dated copy of this cancellation notice or any other written notice-to (name of contractor) at (address of contractor's place of business, e-mail address and facsimile number if applicable) at any time within three (3) business days of the date on which the contract was entered into or within three (3) business days after you have been notified that your claim has been denied in whole or in part, whichever is later. Notice of cancelation, if in electronic form, is effective the date of the electronic transmission or, if given by mail, is effective upon postmark, properly addressed to the contractor and postage prepaid. If you cancel, any payments made by you under the contract will be returned within three (3) business days following receipt by the contractor of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION.

.....

(date)

.....

(Consumer's signature)"

(d) Within three (3) days after a contract referred to in subsection (a) of this section has been cancelled, the contractor shall tender to the consumer any payments made by the consumer and any note or other evidence of indebtedness. If the contractor has performed any emergency repair, the contractor is entitled to separately bill the consumer for such services if the consumer has received a detailed description and itemization of charges for those services.

40-12-706. Private remedies.

Any person who violates this article shall be subject to the remedy provisions relating to unlawful trade practices provided in W.S. 40-12-108 and 40-12-109.

CHAPTER 13 - COPYRIGHTED MUSIC

ARTICLE 1 - PROTECTION OF COPYRIGHT USERS

40-13-101. Short title.

This act may be cited as the "Protection of Copyright Users Act".

40-13-102. Definitions.

(a) The following words, terms and phrases, when used in this act, shall have the meaning ascribed in this section, except where the context clearly indicates a different meaning:

(i) "Blanket license" includes any device or contract whereby public performance of musical compositions for profit is authorized of combined copyrights of two (2) or more owners;

(ii) "Blanket royalty or fee" includes any device or contract whereby prices for performing rights of musical compositions are not based upon the performance of individual copyrights;

(iii) "Composition" includes any and all musical, instrumental or vocal, compositions, which may be transcribed and reproduced by mechanical, electronic, magnetic means or devices, or any method now known or later developed;

(iv) "Copyright" means the exclusive rights and privileges provided for under the constitution of the United States and federal copyright laws;

(v) "Music licensing agency" means and includes any person, corporation or any association, society, partnership, union, or other organization of two (2) or more copyright owners or proprietors, which has or claims the exclusive or nonexclusive authority to issue, grant or to contract for, performing rights licenses for two (2) or more copyright owners. When two (2) or more copyright owners or proprietors are represented by the same agent or representative, this agent or representative shall be deemed to be a "music licensing agency";

(vi) "Performing rights" means "public performance for profit" of musical compositions;

(vii) "Person" means any individual, resident or nonresident of this state, and every domestic or foreign or

alien partnership, society, association, corporation, or other organization;

(viii) "User" means any person, who, directly or indirectly, performs, or causes to be performed, musical compositions for profit.

40-13-103. Licensing requirements.

(a) No music licensing agency and no copyright owner who is a member of such music licensing agency or who licenses the performing rights to his music through a music licensing agency shall license the use of, or in any manner whatsoever dispose of, in this state, the performing rights in or to any musical composition which has been copyrighted, and is the subject of a valid existing copyright under the laws of the United States or collect any compensation on account of any sale, license or other disposition, unless such music licensing agency and each copyright owner shall:

(i) File annually with the secretary of state in duplicate a certified copy of each performing rights contract or license agreement made available from such music licensing agency or copyright owner to any user within the state;

(ii) Issue, upon request, licenses of performing rights of the compositions in the repertory of the music licensing agency to a radio broadcasting network, telecasting network or music service, on terms which authorize the simultaneous and delayed performance by broadcasting or telecasting or simultaneous performance by music service as the case may be, by some or all of the stations in this state affiliated with such radio or television network or by some or all subscriber outlets in this state affiliated with any music service without requiring a separate license for such station or subscriber for such performance.

40-13-104. Discrimination prohibited.

All groups and persons affected by this act are prohibited from discriminating against the citizens of this state by charging higher and more inequitable rates for music licenses in this state than in other states.

40-13-105. Licenses and fees; choices.

The licenses and fees made available pursuant to this article shall provide users with genuine economic choices between the various licenses and fees provided for application within the state of Wyoming.

40-13-106. Time for filing contracts and licenses; filing fee.

The contracts and licenses required by this article shall be filed with the secretary of state. A filing fee of five dollars ($5.00) shall be paid to the secretary of state at the time of each filing.

40-13-107. Blanket license fees.

Charges and fees under any blanket license for a blanket royalty or fee shall be valid and enforceable only to the extent that the music licensing agency shall have complied with the provisions of this act.

40-13-108. Doing business defined; amenability to process; service on nonresidents.

(a) All persons, groups, corporations, associations, foreign or domestic, subject to this act shall be deemed to be doing business within this state and amenable to the process of the courts of the state of Wyoming when:

(i) Any such persons, combinations or groups have been issued licenses, either from within or from without the state, for the privilege of using commercially and publicly any copyrighted work or works pooled in a common group or entity;

(ii) When any of the functions of the entity, organization, pool or combines, have been performed in this state.

(b) If such owners of copyrights comply with the provisions of this act they shall be granted the privilege of conducting business within this state in a legal manner, and may invoke the benefits of the state government and its political subdivisions in their behalf, using all of the privileges available to the citizens of this state. Use of such privileges shall be deemed to be an acceptance of the provisions of this act.

(c) The acceptance by such persons of the rights and privileges conferred by the law of this state to any of its citizens shall be deemed equivalent to and construed to be an appointment by such nonresidents of the secretary of state of the state of Wyoming to be their true and lawful attorney upon whom may be served all summons and processes growing out of a violation of this act. Service of such summons or process shall be made by leaving a copy with a fee of five dollars ($5.00) with the secretary of state of Wyoming, or in his office. Such service shall be sufficient and valid personal service upon any such nonresident defendant, copyright holder or owner, persons or defendants, combination, entity or organization. Notice of such service and a copy of the summons or process shall be forthwith sent by registered mail requiring personal delivery, by the prosecutor bringing any action under this chapter, to any defendant at his last known address, and the defendant's return receipt and the prosecutor's affidavit of compliance herewith are appended to the process and entered as a part of the return. The secretary of state shall keep a record of all such summons and process which shall show the day and time of service.

40-13-109. Injunction.

In the event any person, or groups of persons, or any combination, refuse to comply with the provisions of this act, then the county attorney for any county or the attorney general upon complaint of any violation, may institute injunction proceedings against the persons in the district court. The court may enjoin all persons from violating the provisions of this act and the constitutional provisions prohibiting price fixing, monopolies and combinations.

40-13-110. Right to sue; limitation; damages.

Any person in this state who is injured in his business or property or aggrieved by reason of any violation of this act may sue therefor within six (6) years of said violation in the district court in the county in which the violation or any part thereof took place, to recover any damages sustained as a result of the violation of the terms of this act, and shall be entitled to recover his costs, including reasonable attorney's fees. The court may in its discretion increase the award of damages to an amount not to exceed three (3) times the actual damages sustained.

40-13-111. Existing contracts not affected.

No blanket license or contract in existence with a user in the state of Wyoming at the time of the passage of this act shall be affected by this act.

40-13-112. Special appearances deemed general.

In the event any person, or any defendant is proceeded against as herein outlined, and is served with process according to law, appears in any proceeding by counsel or otherwise, or institutes any special proceeding attacking such proceeding, or makes any motion therein, either special or general, or appears to obtain the judgment of the court solely upon the sufficiency of the service of process, or upon any phase or particularity of the injunction proceedings, such special proceeding or appearance, or motion, or appearance shall be deemed as a general appearance.

40-13-113. Penalty for violations.

A person or music licensing agency who violates this act is guilty of a high misdemeanor and upon conviction is punishable for each violation by a fine of not to exceed one thousand dollars ($1,000.00), or by imprisonment in the state prison for a period of one (1) year, or both.

ARTICLE 2 - PROTECTION OF SOUND PRODUCTIONS

40-13-201. Definitions.

(a) As used in W.S. 40-13-201 through 40-13-206:

(i) "Owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing sounds on phonograph records, discs, tapes, films or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived;

(ii) "Performer" means any person appearing in a performance.

40-13-202. Prohibited acts.

(a) No person shall:

(i) Knowingly and without the consent of the owner, transfer or cause to be transferred any sounds recorded on a

phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or to cause to be sold for profit or used to promote the sale of any product, the article on which the sounds are transferred; or

(ii) Knowingly and without the consent of the performer or his agent, transfer to or cause to be transferred to any phonograph record, disc, wire, tape, film or other article, any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with intent to sell or to cause to be sold for profit or used to promote the sale of any product, the article on which the performance is transferred.

40-13-203. Forfeiture and destruction.

Any article produced in violation of W.S. 40-13-202 and any equipment or components used in producing the article is subject to forfeiture to and destruction by law enforcement agencies.

40-13-204. Additional prohibited act; evidence.

No person shall knowingly or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, distribute or possess any article which has been produced without the consent of the owner or performer. Possession of five (5) or more duplicate copies or twenty (20) or more individual copies of recorded articles produced without the consent of the owner or performer is prima facie evidence that the devices are intended for sale or distribution in violation of this section.

40-13-205. Penalty.

(a) Any person who violates any portion of W.S. 40-13-202 is guilty of a felony and shall be imprisoned in the state penitentiary for not less than one (1) year nor more than two (2) years or fined not more than ten thousand dollars ($10,000.00), or both. Each violation is a separate offense.

(b) Any person who violates the provisions of W.S. 40-13-204 is guilty of a misdemeanor and shall be imprisoned in the county jail for not more than one (1) year or fined not more than ten thousand dollars ($10,000.00), or both. Each violation is a separate offense.

40-13-206. Exceptions.

(a) W.S. 40-13-201 through 40-13-206 do not apply to:

(i) Any broadcaster who, in connection with or as part of a radio, television or cable broadcast transmission or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording;

(ii) Any person who transfers such sounds in the home, for personal use and without compensation for the transfer;

(iii) The transfer of sounds or possession of duplicate copies within an educational institution, solely for educational purposes; or

(iv) Any common carrier whose services or facilities are merely contracted for and used by another for the purpose of transferring sound.

ARTICLE 3 - COPYRIGHT LICENSE ENFORCEMENT

40-13-301. Definitions.

(a) As used in this act:

(i) "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, P. L. 94-553 (17 U.S.C. § 101 et seq.). "Copyright owner" shall not include the owner of a copyright in a motion picture or audiovisual work or in part of a motion picture or audiovisual work;

(ii) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc.;

(iii) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern or any other place of business or professional office located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast or otherwise transmitted;

(iv) "Royalty" or "royalties" means the fees payable to a performing rights society for public performance rights;

(v) "This act" means W.S. 40-13-301 through 40-13-305.

40-13-302. Information required to be provided regarding royalty contracts; contract requirements.

(a) No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than seventy-two (72) hours prior to the execution of that contract, it provides to the proprietor, in writing the following:

(i) A schedule of the rates and terms of royalties under the contract;

(ii) Upon request of the proprietor, the opportunity to review the most current available list of the members or affiliates represented by the society;

(iii) Notice that it will make available, upon written request of any proprietor or bona fide trade association representing groups of proprietors, at the sole expense of the proprietor or bona fide trade association representing groups of proprietors, by electronic means or otherwise, the most current available listing of the copyrighted musical works in such performing rights society's repertory. The notice shall specify the means by which the information can be secured;

(iv) Notice that the performing rights society has a toll free telephone number which can be used to answer inquiries of a proprietor regarding specific musical works and the copyright owners represented by that performing rights society; and

(v) Notice that it complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights for public performances are offered to any proprietor.

(b) Every contract between a performing rights society and proprietor for the payment of royalties executed, issued or renewed in this state on or after July 1, 1996 shall:

(i) Be in writing;

(ii) Be signed by the parties; and

(iii) Include at least the following information:

(A) The proprietor's name and business address and the name and location of each place of business to which the contract applies;

(B) The name and address of the performing rights society;

(C) The duration of the contract; and

(D) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of that contract.

40-13-303. Restrictions.

(a) No performing rights society or any agent or employee thereof shall:

(i) With respect to a contract executed, issued or renewed on or after July 1, 1996, collect or attempt to collect from a proprietor licensed by that performing rights society a royalty payment except as provided in a contract executed pursuant to the provisions of this act;

(ii) Enter onto the premises of a proprietor's business for the purpose of discussing a contract for payment of royalties for the use of copyrighted works by that proprietor without first identifying himself to the proprietor or his employees and disclosing that the agent is acting on behalf of the performing rights society and disclosing the purposes of the discussion.

40-13-304. Civil actions.

Any person who suffers a violation of this act may bring an action to recover actual damages and reasonable attorney's fees and seek an injunction or any other remedy available at law or in equity.

40-13-305. Applicability.

This act shall not apply to contracts between performing rights societies and broadcasters licensed by the federal communications commission or to contracts with cable operators, programmers or other transmission services. This act also shall not apply to investigations conducted by law enforcement agencies.

CHAPTER 14 - WYOMING UNIFORM CONSUMER CREDIT CODE

ARTICLE 1 - GENERAL PROVISIONS AND DEFINITIONS

40-14-101. Short title.

This act shall be known and may be cited as "Wyoming Uniform Consumer Credit Code."

40-14-102. Purposes; rules of construction.

(a) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this act are:

(i) To simplify, clarify and modernize the law governing retail installment sales, consumer credit, small loans and usury;

(ii) To provide rate ceilings to assure an adequate supply of credit to consumers;

(iii) To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(iv) To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(v) To permit and encourage the development of fair and economically sound consumer credit practices;

(vi) To conform the regulation of consumer credit transactions to the policies of the federal Consumer Credit Protection Act; and

(vii) To make uniform the law, including administrative rules, among the various jurisdictions.

(c) A reference to a requirement imposed by this act includes reference to a related rule of the administrator adopted pursuant to this act.

40-14-103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement its provisions.

40-14-104. Construction against implicit repeal.

This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

40-14-105. Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

40-14-106. Waiver; agreement to forego rights; settlement of claims; legal rate of interest; applicability.

(a) Except as otherwise provided in this act, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this act.

(b) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this act, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this act, if disputed in good faith, may be settled by agreement.

(c) A claim, whether or not disputed, against a buyer, lessee, or debtor may be settled for less value than the amount claimed.

(d) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this act is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

(e) If there is no agreement or provision of law for a different rate, the interest of money shall be at the rate of seven percent (7%) per annum.

(f) The Financial Technology Sandbox Act shall apply to this act. [NOTE: This section will be effective 1/1/2020.]

40-14-107. Effect on powers of organizations.

(a) This act prescribes maximum charges for all creditors, except lessors and those excluded (W.S. 40-14-121), extending consumer credit including consumer credit sales (W.S. 40-14-204), consumer loans (W.S. 40-14-304), and consumer related sales and loans (W.S. 40-14-257 and 40-14-355), and displaces existing limitations on the powers of those creditors based on maximum charges.

(b) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies and commercial banks and trust companies, this act displaces existing limitations on their powers based solely on amount or duration of credit.

(c) Except as provided in subsection (a) of this section, this act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(d) Except as provided in subsections (a) and (b) of this section, this act does not displace:

(i) Limitations on powers of supervised financial organizations defined by W.S. 40-14-140(a)(xix) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land or other similar restrictions designed to protect deposits; or

(ii) Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

40-14-120. Territorial application.

(a) Except as otherwise provided in this section, this act applies to consumer credit transactions made in this state. For purposes of this act, a consumer credit transaction is made in this state if:

(i) A signed writing evidencing the obligation or offer of the consumer is received by the creditor or person acting on behalf of the creditor in this state;

(ii) Repealed By Laws 2013, Ch. 124, § 3.

(iii) The credit transaction is secured by a dwelling, as defined in W.S. 40-14-640(a), located in Wyoming; or

(iv) A consumer who is a resident of this state enters into a consumer credit transaction while in this state with a creditor who has offered or advertised in this state by means, including but not limited to mail brochure, telephone, print, radio, television, internet or other electronic means.

(b) With respect to sales made pursuant to a revolving charge account (W.S. 40-14-208), this act applies if the buyer's communication or indication of his intention to establish the account is received by the seller in this state. If no communication or indication of intention is given by the buyer before the first sale, this act applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this state.

(c) With respect to loans made pursuant to a lender credit card or similar arrangement (W.S. 40-14-140(a)(ix)), this act applies if the debtor's communication or indication of his intention to establish the arrangement with the lender is

received by the lender in this state. If no communication or indication of intention is given by the debtor before the first loan, this act applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this state.

(d) The part on limitations on creditors' remedies (part 1) of the article on remedies and penalties (article 5) applies to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

(e) If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this state:

(i) A seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the article on credit sales (article 2) or by the article on loans (article 3); and

(ii) A seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices (part 4) of the article on credit sales (article 2) or of the article on loans (article 3).

(f) Except as provided in subsection (d) of this section, a sale, lease, loan or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(g) For the purposes of this act, the residence of a buyer, lessee, or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(h) Notwithstanding other provisions of this section:

(i) Except as provided in subsection (d) of this section, this act does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(ii) This act applies if the buyer, lessee, or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(j) Except as provided in subsection (h) of this section, the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this act applies:

(i) That the law of another state shall apply;

(ii) That the buyer, lessee, or debtor consents to the jurisdiction of another state; and

(iii) That fixes venue.

(k) The following provisions of this act specify the applicable law governing certain cases:

(i) Applicability (W.S. 40-14-602) of the part on powers and functions of administrator (part 1) of the article on administration (article 6); and

(ii) Applicability (W.S. 40-14-630) of the part on notification and fees (part 2) of the article on administration (article 6).

40-14-121. Exclusions.

(a) Except as required by W.S. 40-14-641, this act does not apply to:

(i) Extensions of credit to government or governmental agencies or instrumentalities;

(ii) Except as otherwise provided in the article on insurance [article 4], the sale of insurance by an insurer if the premium is not financed;

(iii) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(iv) Repealed by Laws 1983, ch. 62, § 2.

(v) Ceilings on rates and charges or limits on loan maturities of a credit union organized under the laws of this state or of the United States if these ceilings or limits are established by these laws; or

(vi) Credit sales, loans or leases primarily for an agricultural purpose except as provided in article 2, part 6 and article 3, part 6 of this code.

40-14-140. General definitions.

(a) In addition to definitions appearing in subsequent articles, in this act:

(i) "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed;

(ii) "Administrator" means the administrator designated in the article (article 6) on administration (W.S. 40-14-603);

(iii) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance;

(iv) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products,

fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof;

(v) "Closing costs" with respect to a debt secured by an interest in land includes:

(A) Fees or premiums for title examination, title insurance, or similar purposes including surveys;

(B) Fees for preparation of a deed, settlement statement, or other documents;

(C) Escrows for future payments of taxes and insurance;

(D) Fees for notarizing deeds and other documents;

(E) Appraisal fees; and

(F) Credit reports.

(vi) "Conspicuous".-A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court;

(vii) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment;

(viii) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program;

(ix) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(A) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(B) By the lender's payment or agreement to pay the debtor's obligations; or

(C) By the lender's purchase from the obligee of the debtor's obligations.

(x) Repealed By Laws 2013, Ch. 124, § 3.

(xi) "Official fees" means:

(A) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(B) Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in subparagraph (A) of this paragraph which would otherwise be payable.

(xii) "Organization" means a sole proprietorship, limited liability company, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, association or other entity, public or private;

(xiii) "Payable in installments" means that payment is required or permitted by a written agreement in five (5) or more installments. If any periodic payment other than the down payment under an agreement requiring or permitting two (2) or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale, consumer lease or consumer loan is "payable in installments";

(xiv) "Person" includes a natural person or an individual, and an organization;

(xv)(A) "Person related to" with respect to an individual, means:

(I) The spouse of the individual;

(II) A brother, brother-in-law, sister, sister-in-law of the individual;

(III) An ancestor or lineal descendant of the individual or his spouse; and

(IV) Any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual;

(B) "Person related to" with respect to an organization means:

(I) A person directly or indirectly controlling, controlled by or under common control with the organization;

(II) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(III) The spouse of a person related to the organization; and

(IV) A relative by blood or marriage of a person related to the organization who shares the same home with him.

(xvi) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence;

(xvii) "Rule of 78's" means the method used in the calculation of rebate upon prepayment where the unearned portion of the credit service charge or loan finance charge is a fraction of the charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs and the denominator is the sum of all periodic balances under the related consumer credit sale agreement, the loan agreement or, if the balance owing resulted from a refinancing or a consolidation, the related refinancing agreement or consolidation agreement;

(xviii) "Seller credit card" means an arrangement in which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person or from that person and any other person;

(xix) "Supervised financial organization" means a person other than an insurance company or other organization primarily engaged in an insurance business, which is:

(A) Organized, chartered or holding an authorization certificate under the laws of this state, any other state or of the United States which authorizes the person to make loans and to receive deposits including a savings, share, certificate or deposit account; and

(B) Subject to supervision by an official or agency of any state or of the United States.

(xx) "Licensee" means an organization licensed under this act;

(xxi) "Incident to the extension of credit" means a charge assessed at any time during the duration of a credit transaction that is not assessed to a consumer in a comparable cash transaction whether imposed by the original creditor or an assignee or servicer of the credit transaction;

(xxii) "Regulation Z" means regulation Z as promulgated by the board of governors of the federal reserve system and codified in 12 C.F.R. part 1026 et seq., as amended;

(xxiii) "Channeling agent" means the third party licensing system that gathers the application information and distributes it to Wyoming for review for the approval or denial decision;

(xxiv) "Registry" means the nationwide licensing system and registry maintained by the State Regulatory Registry, LLC;

(xxv) "This act" means W.S. 40-14-101 through 40-14-702.

40-14-141. Definition.

In this act "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90-321; 82 U.S. Statutes 146), as amended, and includes regulations issued pursuant to that act.

40-14-142. Index of definitions.

(a) Definitions in this act and the sections in which they appear are:

(i) "Actuarial method"-W.S. 40-14-140(a)(i);

(ii) "Administrator"-W.S. 40-14-140(a)(ii);

(iii) "Administrator"-W.S. 40-14-603;

(iv) "Agreement"-W.S. 40-14-140(a)(iii);

(v) "Agricultural purpose"-W.S. 40-14-140(a)(iv);

(vi) "Amount financed"-W.S. 40-14-211;

(vii) Repealed By Laws 2008, Ch. 116, § 2.

(viii) Repealed By Laws 2008, Ch. 116, § 2.

(ix) "Cash price"-W.S. 40-14-210;

(x) "Closing costs"-W.S. 40-14-140(a)(v);

(xi) "Conspicuous"-W.S. 40-14-140(a)(vi);

(xii) "Consumer credit insurance"-W.S. 40-14-403(a)(i);

(xiii) "Consumer credit sale"-W.S. 40-14-204;

(xiv) "Consumer lease"-W.S. 40-14-206;

(xv) "Consumer loan"-W.S. 40-14-304;

(xvi) "Consumer related loan"-W.S. 40-14-355;

(xvii) "Consumer related sale"-W.S. 40-14-257;

(xviii) Repealed By Laws 2012, Ch. 98, § 2.

(xix) Repealed By Laws 2012, Ch. 98, § 2.

(xx) "Credit"-W.S. 40-14-140(a)(vii);

(xxi) "Credit Insurance Act"-W.S. 40-14-403(a)(ii);

(xxii) "Credit service charge"-W.S. 40-14-209;

(xxiii) "Earnings"-W.S. 40-14-140(a)(viii);

(xxiv) "Federal Consumer Credit Protection Act"-W.S. 40-14-141;

(xxv) "Goods"-W.S. 40-14-205(a);

(xxvi) "Home solicitation sale"-W.S. 40-14-251;

(xxvii) "Lender"-W.S. 40-14-307(a);

(xxviii) "Lender credit card or similar arrangement"-W.S. 40-14-140(a)(ix);

(xxix) "Loan"-W.S. 40-14-306;

(xxx) "Loan finance charge"-W.S. 40-14-309;

(xxxi) "Loan primarily secured by an interest in land"-W.S. 40-14-305;

(xxxii) Repealed By Laws 2013, Ch. 124, § 3.

(xxxiii) "Merchandise certificate"-W.S. 40-14-205(b);

(xxxiv) "Official fees"-W.S. 40-14-140(a)(xi);

(xxxv) "Organization"-W.S. 40-14-140(a)(xii);

(xxxvi) "Payable in installments"-W.S. 40-14-140(a)(xiii);

(xxxvii) "Pawnbroker"-W.S. 40-14-359(a)(i);

(xxxviii) "Pawn finance charge"-W.S. 40-14-359(a)(ii);

(xxxix) "Pawn transaction"-W.S. 40-14-359(a)(iii);

(xl) "Person"-W.S. 40-14-140(a)(xiv);

(xli) "Person related to"-W.S. 40-14-140(a)(xv);

(xlii) "Post-dated check or similar arrangement"-W.S. 40-14-362(a)(i);

(xliii) "Post-dated check casher"-W.S. 40-14-362(a)(ii);

(xliv) "Precomputed" (loan)-W.S. 40-14-307(b);

(xlv) "Precomputed" (sale)-W.S. 40-14-205(g);

(xlvi) "Presumed" or "presumption"-W.S. 40-14-140(a)(xvi);

(xlvii) "Principal"-W.S. 40-14-307(c);

(xlviii) "Revolving charge account"-W.S. 40-14-208;

(xlix) "Revolving loan account"-W.S. 40-14-308;

(l) "Rule of 78's"-W.S. 40-14-140(a)(xvii);

(li) "Sale of goods"-W.S. 40-14-205(d);

(lii) "Sale of an interest in land"-W.S. 40-14-205(f);

(liii) "Sale of services"-W.S. 40-14-205(e);

(liv) "Seller"-W.S. 40-14-207;

(lv) "Seller credit card"-W.S. 40-14-140(a)(xviii);

(lvi) "Services"-W.S. 40-14-205(c);

(lvii) "Supervised financial organization"-W.S. 40-14-140(a)(xix);

(lviii) "Supervised lender"-W.S. 40-14-341(b);

(lix) "Supervised loan"-W.S. 40-14-341(a);

(lx) "Channeling agent" – W.S. 40-14-140(a)(xxiii);

(lxi) "Clerical or support duties" – W.S. 40-14-640(a)(ii);

(lxii) "Depository institution" – W.S. 40-14-640(a)(iii);

(lxiii) "Dwelling" – W.S. 40-14-640(a)(iv);

(lxiv) "Federal banking agency" – W.S. 40-14-640(a)(v);

(lxv) "Immediate family member" – W.S. 40-14-640(a)(vi);

(lxvi) "Individual" – W.S. 40-14-640(a)(vii);

(lxvii) "Licensee" – W.S. 40-14-140(a)(xx);

(lxviii) "Loan processor or underwriter" – W.S. 40-14-640(a)(viii);

(lxix) "Mortgage loan originator" – W.S. 40-14-640(a)(ix);

(lxx) "Nontraditional mortgage product" – W.S. 40-14-640(a)(x);

(lxxi) "Real estate brokerage activity" – W.S. 40-14-640(a)(xi);

(lxxii) "Registered mortgage loan originator" – W.S. 40-14-640(a)(xii);

(lxxiii) "Registry" – W.S. 40-14-140(a)(xxiv);

(lxxiv) "Residential mortgage loan" – W.S. 40-14-640(a)(xiv);

(lxxv) "Timeshare plan" – W.S. 40-14-640(a)(xv);

(lxxvi) "Unique identifier" – W.S. 40-14-640(a)(xvi);

(lxxvii) "Incident to the extension of credit" – W.S. 40-14-140(a)(xxi);

(lxxviii) "Regulation Z" – W.S. 40-14-140(a)(xxii);

(lxxix) "This act" - W.S. 40-14-140(a)(xxv).

ARTICLE 2 - CREDIT SALES

40-14-201. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code Credit Sales."

40-14-202. Scope.

This article applies to consumer credit sales, including home solicitation sales, and consumer leases; in addition part 6 applies to consumer related sales.

40-14-203. Definitions.

(a) The following definitions apply to this act and appear in this article as follows:

(i) "Amount financed"-W.S. 40-14-211;

(ii) Repealed By Laws 2008, Ch. 116, § 2.

(iii) "Cash price"-W.S. 40-14-210;

(iv) "Consumer credit sale"-W.S. 40-14-204;

(v) "Consumer lease"-W.S. 40-14-206;

(vi) "Consumer related sale"-W.S. 40-14-257;

(vii) Repealed By Laws 2008, Ch. 116, § 2.

(viii) "Credit service charge"-W.S. 40-14-209;

(ix) "Goods"-W.S. 40-14-205(a);

(x) "Home solicitation sale"-W.S. 40-14-251;

(xi) "Merchandise certificate"-W.S. 40-14-205(b);

(xii) "Precomputed"-W.S. 40-14-205(g);

(xiii) "Revolving charge account"-W.S. 40-14-208;

(xiv) "Sale of goods"-W.S. 40-14-205(d);

(xv) "Sale of an interest in land"-W.S. 40-14-205(f);

(xvi) "Sale of services"-W.S. 40-14-205(e);

(xvii) "Seller"-W.S. 40-14-207;

(xviii) "Services"-W.S. 40-14-205(c).

40-14-204. Definition of "consumer credit sale".

(a) Except as provided in subsection (b) of this section, "consumer credit sale" is a sale of goods, services or an interest in land in which:

(i) Credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(ii) The buyer is a person other than an organization;

(iii) The goods, services or interest in land are purchased primarily for a personal, family or household purpose;

(iv) Either the debt is payable in installments or a credit service charge is made; and

(v) With respect to a sale of goods or services, the amount financed does not exceed seventy-five thousand dollars ($75,000.00) or the debt is secured by a dwelling, as defined in W.S. 40-14-640(a)(iv), located in Wyoming.

(b) Unless the sale is made subject to this act by agreement pursuant to W.S. 40-14-256, "consumer credit sale" does not include:

(i) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement; or

(ii) A sale of an interest in land if the credit service charge does not exceed eighteen percent (18%) per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term, except as provided for disclosure and debtors' remedies in W.S. 40-14-520.

(c) Repealed by Laws 1981, ch. 147, § 2.

40-14-205. Additional definitions.

(a) "Goods" includes a goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(b) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(c) "Services" includes:

(i) Work, labor, and other personal services;

(ii) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(iii) Insurance provided by a person other than the insurer.

(d) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(e) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(f) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(g) A sale, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance.

40-14-206. Definition of "consumer lease".

(a) "Consumer lease" means a lease of goods:

(i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose;

(ii) In which the amount payable under the lease does not exceed seventy-five thousand dollars ($75,000.00); and

(iii) Which is for a term exceeding four (4) months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

40-14-207. Definition of "seller".

Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

40-14-208. Definition of "revolving charge account".

(a) "Revolving charge account" means an arrangement between a seller and a buyer pursuant to which:

(i) The seller may permit the buyer to purchase goods or services on credit either from the seller or pursuant to a seller credit card;

(ii) The unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account;

(iii) A credit service charge if made is not precomputed but is computed on the outstanding unpaid balances of the buyer's account from time to time; and

(iv) Either the buyer has the privilege of paying in full or in installments or the seller periodically imposes charges computed on the account for delaying payment and permits the buyer to continue to purchase on credit.

40-14-209. Definition of "credit service charge".

(a) "Credit service charge" means the sum of:

(i) All charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as a condition of or an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and

(ii) Charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted.

(b) Credit service charge does not include:

(i) Charges as a result of default;

(ii) Additional charges pursuant to W.S. 40-14-213;

(iii) Delinquency charges specified by W.S. 40-14-214;

(iv) Deferral charges pursuant to W.S. 40-14-215;

(v) A discount not in excess of five percent (5%) offered by a seller for purposes of inducing payment by cash, check or other means not involving the use of a seller or lender credit card, if the discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously in accordance with the federal Consumer Credit Protection Act, P.L. 90-321, 82 Stat. 146, 15 U.S.C. § 470 et seq.; or

(vi) Reasonable credit application fees whether or not credit is extended.

40-14-210. Definition of "cash price".

"Cash price" means the price at which the creditor offers, in the ordinary course of business, to sell for cash the property or services which are the subject of a consumer credit

transaction. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements, and may include taxes to the extent imposed on the cash sale, but shall not include any other charges of the types described in section 1026.4 of regulation Z of the federal Consumer Credit Protection Act.

40-14-211. Definition of "amount financed".

(a) "Amount financed" means the total of the following items to the extent that payment is deferred:

(i) The cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in;

(ii) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(iii) If not included in the cash price:

(A) Any applicable sales, use, excise, or documentary stamp taxes;

(B) Amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees; and

(C) Additional charges permitted by W.S. 40-14-213.

40-14-212. Credit service charge for consumer credit sales other than revolving charge accounts.

(a) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(b) The credit service charge, calculated according to the actuarial method, may not exceed:

(i) Where the amount financed does not exceed seventy-five thousand dollars ($75,000.00), the equivalent of the greater of either of the following:

(A) The total of: Thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is one thousand dollars ($1,000.00) or less and twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars ($1,000.00); or

(B) Twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed.

(C) Repealed by Laws 1981, ch. 147, § 1.

(ii) Where the amount financed exceeds seventy-five thousand dollars ($75,000.00), any credit service charge specified in the buyer's sale agreement.

(c) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed:

(i) The credit service charge may be calculated on the assumption that all scheduled payments will be made when due; and

(ii) The effect of prepayment is governed by the provisions on rebate upon prepayment (W.S. 40-14-221).

(d) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed ten (10) days or more after that date, with the date of commencement of delivery or performance. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(e) Subject to classifications and differentiations the seller may reasonably establish, he may make the same credit service charge on all amounts financed within a specified range.

A credit service charge so made does not violate subsection (b) of this section if:

(i) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (b) of this section; and

(ii) When applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a)(i) of this section by more than eight percent (8%) of the rate calculated according to paragraph (a)(i) of this section.

(f) Notwithstanding subsection (b) of this section, the seller may contract for and receive a minimum credit service charge of not more than thirty dollars ($30.00).

40-14-213. Additional charges.

(a) In addition to the credit service charge permitted by this part, a seller may contract for and receive the following additional charges in connection with a consumer credit sale:

(i) Official fees and taxes;

(ii) Charges for insurance as described in subsection (b) of this section; and

(iii) Charges excluded from the credit service charge by the federal Consumer Credit Protection Act or by rule adopted by the administrator.

(b) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss:

(i) With respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller, and stating that the buyer may choose the person through whom the insurance is to be obtained;

(ii) With respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and this fact is clearly disclosed in

writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof;

(iii) Repealed By Laws 2013, Ch. 124, § 3.

(c) Reasonable closing costs (W.S. 40-14-140(a)(v)) are additional charges.

40-14-214. Delinquency charges.

(a) With respect to a consumer credit sale, refinancing, or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its scheduled due date in an amount not exceeding the greater of:

(i) Five percent (5%) of the unpaid amount of the installment; or

(ii) Ten dollars ($10.00).

(b) A delinquency charge under subsection (a) of this section may be collected only once on an installment however long it remains in default. No delinquency charge may be collected if the installment has been deferred and a deferral charge (W.S. 40-14-215) has been paid or incurred until ten (10) days after the deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(c) No delinquency charge may be collected on an installment which is paid in full within ten (10) days after its scheduled installment due date even though an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

40-14-215. Deferral charges.

(a) With respect to a consumer credit sale, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one (1) or more unpaid installments, and the seller may make and collect a charge which the buyer expressly agrees to pay as consideration

for the deferral. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(b) The seller, in addition to the deferral charge, may make appropriate additional charges (W.S. 40-14-213), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(c) Except in connection with a revolving charge account, the parties may agree in writing at the time of a consumer credit sale, refinancing, or consolidation that if an installment is not paid within ten (10) days after its due date, the seller may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the seller elects to accelerate the maturity of the agreement.

(d) A delinquency charge made by the seller on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

40-14-216. Credit service charge on refinancing.

(a) With respect to a consumer credit sale, refinancing, or consolidation, the seller may by agreement with the buyer refinance the unpaid balance and may contract for and receive a credit service charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (W.S. 40-14-212). For the purpose of determining the credit service charge permitted, the amount financed resulting from the refinancing comprises the following:

(i) If the transaction was not precomputed, the total of the unpaid balance and accrued charges on the date of refinancing, or, if the transaction was precomputed, the amount which the buyer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (W.S. 40-14-221) on the date of refinancing except that for the purpose of computing this amount no minimum credit service charge (W.S. 40-14-212(f)) shall be allowed; and

(ii) Appropriate additional charges (W.S. 40-14-213), payment of which is deferred.

40-14-217. Credit service charge on consolidation.

(a) If a buyer owes an unpaid balance to a seller with respect to a consumer credit sale, refinancing, or consolidation, and becomes obligated on another consumer credit sale, refinancing, or consolidation with the same seller, the parties may agree to a consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

(i) The parties may agree to refinance the unpaid balance with respect to the previous sale pursuant to the provisions on refinancing (W.S. 40-14-216) and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent sale. The seller may contract for and receive a credit service charge based on the aggregate amount financed resulting from the consolidation at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (W.S. 40-14-212);

(ii) The parties may agree to consolidate by adding together the unpaid balances with respect to the two (2) sales.

40-14-218. Credit service charge for revolving charge accounts.

(a) With respect to a consumer credit sale made pursuant to a revolving charge account, the parties to the sale may contract for the payment by the buyer of a credit service charge not exceeding that permitted in this section.

(b) A charge may be made in each billing cycle which is a percentage of an amount no greater than:

(i) The average daily balance of the account;

(ii) The unpaid balance of the account on the same day of the billing cycle; or

(iii) The median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the same day of the billing cycle is included. A charge may be made pursuant to this paragraph only if the seller, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the

percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent (8%) of the charge on the median amount.

(c) Except as provided in paragraph (ii) of this subsection:

(i) If the billing cycle is monthly, the charge may not exceed one and three-fourths percent (1.75%) of the amount pursuant to subsection (b) of this section; or

(ii) If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty (30). For the purposes of this section, a variation of not more than four (4) days from month to month is "the same day of the billing cycle".

(d) Notwithstanding subsection (c) of this section, if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding fifty cents ($.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents ($.50) which bears the same relation to fifty cents ($.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly.

40-14-219. Advances to perform covenants of buyer.

(a) If the agreement with respect to a consumer credit sale, refinancing, or consolidation contains covenants by the buyer to perform certain duties pertaining to insuring or preserving collateral and the seller pursuant to the agreement pays for performance of the duties on behalf of the buyer, the seller may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the buyer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the buyer performed by the seller pertain to insurance, a brief description of the insurance paid for by the seller including the type and amount of coverages. No further information need be given.

(b) A credit service charge may be made for sums advanced pursuant to subsection (a) of this section at a rate not

exceeding the rate stated to the buyer pursuant to the laws relating to disclosure with respect to the sale, refinancing, or consolidation, except that with respect to a revolving charge account the amount of the advance may be added to the unpaid balance of the amount and the seller may make a credit service charge not exceeding that permitted by the provisions on credit service charge for revolving charge accounts (W.S. 40-14-218).

40-14-220. Right to prepay.

Subject to the provisions on rebate upon prepayment (W.S. 40-14-221), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

40-14-221. Rebate upon prepayment.

(a) Except as provided in subsection (b) of this section, upon prepayment in full of the unpaid balance of a precomputed consumer credit sale, refinancing or consolidation, the unearned credit service charge shall be refunded based upon the Rule of 78's if the transaction under its original terms did not exceed sixty-one (61) monthly installments and upon the actuarial method, if the transaction by its original terms exceeded sixty-one (61) monthly installments. An amount not less than the unearned portion of the credit service charge calculated according to this section shall be rebated to the debtor. With respect to irregular payment transactions, the administrator may prescribe by rule the refund formula. If the rebate otherwise required is less than one dollar ($1.00), no rebate need be made.

(b) Upon prepayment in full of a consumer credit sale, refinancing, or consolidation, other than one (1) pursuant to a revolving charge account, if the credit service charge then earned is less than any permitted minimum credit service charge (W.S. 40-14-212(f)) contracted for, whether or not the sale, refinancing, or consolidation is precomputed, the seller may collect or retain the minimum charge, as if earned, not exceeding the credit service charge contracted for.

(c) If a deferral (W.S. 40-14-215) has been agreed to, the unearned portion of the credit service charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of

the credit service charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the credit service charge or shall be added to the unpaid balance.

(d) This section does not preclude the collection or retention by the seller of delinquency charges (W.S. 40-14-214).

(e) If the maturity is accelerated for any reason and judgment is obtained, the buyer is entitled to the same rebate as if payment had been made on the date judgment is entered.

(f) Upon prepayment in full of a consumer credit sale by the proceeds of consumer credit insurance (W.S. 40-14-403), the buyer or his estate is entitled to the same rebate as though the buyer had prepaid the agreement on the date the proceeds of the insurance are paid to the seller, but no later than ten (10) business days after satisfactory proof of loss is furnished to the seller.

40-14-222. Applicability; information required.

(a) For purposes of this part, consumer credit sale includes the sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (W.S. 40-14-204).

(b) Repealed by Laws 1982, ch. 61, § 2.

(c) Repealed by Laws 1982, ch. 61, § 2.

(d) The lessor shall disclose to the lessee to whom credit is extended with respect to a consumer lease the information required by this part.

(e) Repealed By Laws 2013, Ch. 124, § 3.

(f) Disclosure and advertising of consumer credit shall be made pursuant to the federal Consumer Credit Protection Act.

40-14-223. Repealed by Laws 1982, ch. 61, § 2.

40-14-224. Repealed by Laws 1982, ch. 61, § 2.

40-14-225. Statement of rate.

(a) Repealed by Laws 1982, ch. 61, § 2.

(b) Repealed by Laws 1982, ch. 61, § 2.

(c) Repealed by Laws 1982, ch. 61, § 2.

(d) Repealed by Laws 1982, ch. 61, § 2.

(e) A statement of rate complies with this part if it does not vary from the accurately computed rate by more than the following tolerances:

(i) The annual percentage rate may be more or less than the actual rate by not more than one-eighth of one percent (.125%) or may be rounded to the nearest one-fourth of one percent (.25%) for consumer credit sales payable in substantially equal installments when a seller determines the total credit service charge on the basis of a single add-on, discount, periodic or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by rule by the administrator;

(ii) The administrator may authorize by rule the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph (i) of this subsection by not more than the tolerances the administrator may allow; the administrator may not allow a tolerance greater than eight percent (8%) of that rate except to simplify compliance where irregular payments are involved; and

(iii) In case a seller determines the annual percentage rate in a manner other than as described in paragraph (i) or (ii) of this subsection, the administrator may authorize by rule other reasonable tolerances.

40-14-226. Repealed by Laws 1982, ch. 61, § 2.

40-14-227. Repealed by Laws 1982, ch. 61, § 2.

40-14-228. Repealed by Laws 1982, ch. 61, § 2.

40-14-229. Repealed by Laws 1982, ch. 61, § 2.

40-14-230. Repealed by Laws 1982, ch. 61, § 2.

40-14-231. Repealed by Laws 1982, ch. 61, § 2.

40-14-232. Repealed by Laws 1982, ch. 61, § 2.

40-14-233. Repealed by Laws 1982, ch. 61, § 2.

40-14-234. Repealed by Laws 1982, ch. 61, § 2.

40-14-235. Scope.

This part applies to consumer credit sales and consumer leases.

40-14-236. Use of multiple agreements.

A seller may not use multiple agreements with intent to obtain a higher credit service charge than would otherwise be permitted by this article or to avoid disclosure of an annual percentage rate pursuant to the laws relating to disclosure and advertising. The excess amount of credit service charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (W.S. 40-14-521) and the provisions on civil actions by administrator (W.S. 40-14-613).

40-14-237. Certain negotiable instruments prohibited.

In a consumer credit sale or consumer lease the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section. A holder in due course is not subject to the liabilities set forth in the provisions on the effect of violations on rights of parties (W.S. 40-14-521) and the provisions on civil actions by administrator (W.S. 40-14-613).

40-14-238. When assignee not subject to defenses.

(a) With respect to a consumer credit sale or consumer lease an agreement by the buyer or lessee not to assert against an assignee a claim or defense arising out of the sale or lease is enforceable only by an assignee not related to the seller or lessor who acquires the buyer's or lessee's contract in good faith and for value, who gives the buyer or lessee notice of the assignment as provided in this section and who, within forty-five (45) days after the mailing of the notice of assignment, receives no written notice of the facts giving rise to the buyer's or lessee's claim or defense. This agreement is enforceable only with respect to claims or defenses which have

arisen before the end of the forty-five (45) day period after notice was mailed. The notice of assignment shall be in writing and addressed to the buyer or lessee at his address as stated in the contract, identify the contract, describe the goods or services, state the names of the seller or lessor and buyer or lessee, the name and address of the assignee, the amount payable by the buyer or lessee and the number, amounts and due dates of the installments, and contain a conspicuous notice to the buyer or lessee that he has forty-five (45) days within which to notify the assignee in writing of any complaints, claims or defenses he may have against the seller or lessor and that if written notification of the complaints, claims or defenses is not received by the assignee within the forty-five (45) day period, the assignee will have the right to enforce the contract free of any claims or defenses the buyer or lessee may have against the seller or lessor which have arisen before the end of the forty-five (45) day period after notice was mailed.

(b) An assignee does not acquire a buyer's or lessee's contract in good faith within the meaning of subsection (a) of this section if the assignee has knowledge or, from his course of dealing with the seller or lessor or his records, notice of substantial complaints by other buyers or lessees of the seller's or lessor's failure or refusal to perform his contracts with them and of the seller's or lessor's failure to remedy his defaults within a reasonable time after the assignee notifies him of the complaints.

(c) To the extent that under this section an assignee is subject to claims or defenses of the buyer or lessee against the seller or lessor, the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee and rights of the buyer or lessee under this section can only be asserted as a matter of defense to or setoff against a claim by the assignee.

40-14-239. Balloon payments.

With respect to a consumer credit sale, other than one pursuant to a revolving charge account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due if the seller is still offering that type of credit and the buyer is creditworthy. Credit terms shall be as favorable as those offered to the general public by the seller for the same type of sale at the time a request for refinancing is approved. These provisions do

not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.

40-14-240. Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

40-14-241. Security in sales or leases.

(a) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is one thousand dollars ($1,000.00) or more, or, in the case of a security interest in goods the debt secured is three hundred dollars ($300.00) or more. Except as provided with respect to cross-collateral (W.S. 40-14-242), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(b) With respect to a consumer lease a lessor shall not take a security interest in property of the lessee to secure the debt arising from the lease. This subsection does not apply to a security deposit for a consumer lease.

(c) A security interest taken in violation of this section is void.

40-14-242. Cross-collateral.

(a) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases (W.S. 40-14-241), a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(b) If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (W.S. 40-14-217(a)(i)). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

40-14-243. Debt secured by cross-collateral.

(a) If debts arising from two (2) or more consumer credit sales, other than sales pursuant to a revolving charge account, are secured by cross-collateral (W.S. 40-14-242) or consolidated into one (1) debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one (1) or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

(b) Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(c) If the debts consolidated arose from two (2) or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

40-14-244. No assignment of earnings.

(a) A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as security for payment of a debt arising out of a consumer credit sale or a consumer lease. An assignment of earnings in violation of this

section is unenforceable by the assignee of the earnings and revocable by the buyer or lessee. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

(b) Notwithstanding the foregoing prohibition, a seller or lessor may take an assignment of commissions or accounts receivable payable to the buyer or lessee for services rendered for payment or as security for payment of a debt arising out of a consumer lease.

40-14-245. Referral sales.

With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

40-14-246. Notice of assignment.

The buyer or lessee is authorized to pay the original seller or lessor until the buyer or lessee receives notification of assignment of the rights to payment pursuant to a consumer credit sale or consumer lease and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the buyer or lessee, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the buyer or lessee may pay the seller or lessor.

40-14-247. Attorney's fees.

With respect to a consumer credit sale or consumer lease the agreement may provide for the payment by the buyer or lessee of reasonable attorney's fees after default and referral to an

attorney not a salaried employee of the seller, or of the lessor or his assignee. A provision in violation of this section is unenforceable.

40-14-248. Limitation on default charges.

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit sale may not provide for any charges as a result of default by the buyer other than those authorized by this act. A provision in violation of this section is unenforceable.

40-14-249. Authorization to confess judgment prohibited.

A buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease. An authorization in violation of this section is void.

40-14-250. Change in terms of revolving charge accounts.

(a) If a seller makes a change in the terms of a revolving charge account without complying with this section any additional cost or charge to the buyer resulting from the change is an excess charge and subject to the remedies available to debtors (W.S. 40-14-521) and to the administrator (W.S. 40-14-613).

(b) A seller may change the terms of the revolving charge account whether or not the change is authorized by prior agreement. Except as provided in subsection (c) of this section, the seller shall give to the buyer written notice of any change at least three (3) times, with the first notice at least six (6) months before the effective date of the change.

(c) The notice specified in subsection (b) of this section is not required if notice of any proposed change in the terms of a revolving charge account is given to the customer at least thirty (30) days prior to the effective date of such change or thirty (30) days prior to the beginning of the billing cycle within which such change will become effective, whichever is the earlier date, and if:

(i) The buyer after receiving notice of the change agrees in writing to the change;

(ii) The buyer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the buyer when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(iii) The change involves no significant cost to the buyer;

(iv) The buyer has previously consented in writing to the kind of change made and notice of the change is given to the buyer in two (2) billing cycles prior to the effective date of the change; or

(v) The change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two (2) billing cycles prior to the effective date of the change.

(d) The notice provided for in this section is given to the buyer when mailed to him at the address used by the seller for sending periodic billing statements.

40-14-251. Definition.

(a) "Home solicitation sale" means a consumer credit sale of goods or services with a purchase price of twenty-five dollars ($25.00) or more written under single or multiple contracts, in which the seller or a person acting for him engages in a personal solicitation of the sale including face-to-face confrontation or telephone solicitation, at a place other than the place of business of the seller and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him.

(b) "Home solicitation sale" shall not include:

(i) A sale consummated entirely by telephone or mail if initiated by the buyer;

(ii) A sale made pursuant to a preexisting revolving charge account; or

(iii) A sale made pursuant to prior negotiations between the parties at a business establishment with a fixed location where goods or services are offered or exhibited for sale.

40-14-252. Buyer's right to cancel.

(a) Except as provided in subsection (e) of this section, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this part.

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(c) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(d) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(e) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and:

(i) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation; and

(ii) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(f) If a home solicitation sale is also subject to the provisions on debtor's right to rescind certain transactions (W.S. 40-14-523), the buyer may proceed either under those provisions or under this part.

40-14-253. Form of agreement or offer; statement of buyer's rights; form of notice of cancellation; compliance by seller.

(a) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller shall:

(i) Present to the buyer and obtain his signature to a written agreement or offer to purchase which:

(A) Is in the same language as that principally used in the oral sales presentation;

(B) Designates the date on which the buyer actually signs as the date of the transaction;

(C) Contains the name and address of the seller; and

(D) In immediate proximity to the space reserved for the buyer's signature, contains a statement of the buyer's rights which substantially complies with subsection (b) of this section.

(ii) Provide a notice of cancellation form which substantially complies with subsection (c) of this section.

(b) The statement of the buyer's rights shall:

(i) Appear under the conspicuous caption "Buyer's right to cancel";

(ii) Be printed in boldface type of a minimum size of ten (10) points; and

(iii) Read as follows: "You, the buyer, may cancel this transaction at any time prior to 12:00 midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.".

(c) The notice of cancellation form shall:

(i) Be completed in duplicate;

(ii) Appear under the conspicuous caption "Notice of cancellation";

(iii) Be printed in boldface type of a minimum size of ten (10) points;

(iv) Be printed in the same language used in the written agreement or offer to purchase;

(v) Be attached to the written agreement or offer to purchase and be easily detachable; and

(vi) Read as follows:

"You may cancel this transaction without any penalty or obligation within three (3) business days from .... (enter date of transaction). If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice. Any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may if you wish comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty (20) days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to .... (name of seller), at .... (address of seller's place of business) not later than 12:00 midnight of .... (date).

I hereby cancel this transaction.

(Date) (Buyer's signature)"

(d) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller of his intention to cancel.

40-14-254. Restoration of down payment; retention of goods by buyer.

(a) Within ten (10) days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller shall tender to the buyer any goods traded in, any payments made by the buyer and any note or other evidence of indebtedness.

(b) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(c) Repealed by Laws 1979, ch. 117, § 2.

(d) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

40-14-255. Duty of buyer; no compensation for services prior to cancellation; noncompliance by buyer.

(a) Except retention of goods by the buyer pursuant to W.S. 40-14-254(d), within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale. The buyer is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay. For the purpose of this section, twenty (20) days is presumed to be a reasonable time.

(b) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(c) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

(d) If the buyer fails to comply with this section or agrees to return any goods to the seller at the seller's expense and risk and fails to do so, the buyer remains liable for

performance of all obligations under the written agreement or offer to purchase.

40-14-256. Sales subject to provisions by agreement of parties.

The parties to a sale other than a consumer credit sale may agree in a writing signed by the parties that the sale is subject to the provisions of this act applying to consumer credit sales. If the parties so agree the sale is a consumer credit sale for the purposes of this act.

40-14-257. Definition.

(a) A "consumer related sale" is a sale of goods, services, or an interest in land which is not subject to the provisions of this act applying to consumer credit sales and in which the amount financed does not exceed seventy-five thousand dollars ($75,000.00) if:

(i) The buyer is a person other than an organization; or

(ii) The debt is secured primarily by a security interest in a one (1) or two (2) family dwelling occupied by a person related to the debtor.

(b) With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for the payment by the buyer of an amount comprising the amount financed and a credit service charge not in excess of twenty-one percent (21%) per year calculated according to the actuarial method on the unpaid balances of the amount financed.

(c) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for the payment of a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (W.S. 40-14-218).

40-14-258. Applicability of other provisions to consumer related sales.

Except for the rate of the credit service charge and the rights to prepay and to rebate upon prepayment, the provisions of part 2 of this article apply to a consumer related sale.

40-14-259. Limitation on default charges in consumer related sales.

(a) The agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer's default:

(i) Reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(ii) Deferral charges not in excess of eighteen percent (18%) per year of the amount deferred for the period of deferral; and

(iii) Other charges that could have been made had the sale been a consumer credit sale.

(b) A provision in violation of this section is unenforceable.

40-14-260. Credit service charge for other sales.

With respect to a sale other than a consumer credit sale or a consumer related sale, the parties may contract for the payment by the buyer of any credit service charge.

40-14-261. Definitions; prohibited assignments; applicable provisions.

(a) "Sales financing" means being primarily engaged in the business of taking by assignment or financing in behalf of sellers or lessors, rights against debtors arising from consumer credit sales or consumer leases and undertaking direct collection of payment from or enforcement of rights against debtors arising from these sales or leases which at the time of assignment the buyer or lessee is not in default.

(b) "Sales finance company" means a person or organization engaged in the business of sales financing.

(c) Unless a person has first obtained a license from the administrator authorizing him to take assignments of and undertake direct collection of payments from or enforcement of rights against debtors arising from sales and leases, not in default at time of assignment, he shall not engage in the business of taking such assignments.

(d) Repealed By Laws 1996, ch. 86, § 3.

ARTICLE 3 - LOANS

40-14-301. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code-Loans."

40-14-302. Scope.

This article applies to consumer loans, including supervised loans; in addition part 6 applies to consumer related loans.

40-14-303. Definitions.

(a) The following definitions apply to this act and appear in this article as follows:

(i) Repealed By Laws 2008, Ch. 116, § 2.

(ii) "Consumer loan"-W.S. 40-14-304;

(iii) "Consumer related loan"-W.S. 40-14-355(a);

(iv) Repealed By Laws 2008, Ch. 116, § 2.

(v) "Lender"-W.S. 40-14-307(a);

(vi) "Loan"-W.S. 40-14-306;

(vii) "Loan finance charge"-W.S. 40-14-309;

(viii) "Loan primarily secured by an interest in land"-W.S. 40-14-305;

(ix) "Precomputed"-W.S. 40-14-307(b);

(x) "Principal"-W.S. 40-14-307(c);

(xi) "Revolving loan account"-W.S. 40-14-308;

(xii) "Supervised lender"-W.S. 40-14-341(b);

(xiii) "Supervised loan"-W.S. 40-14-341(a).

40-14-304. Definition of "consumer loan".

(a) Except with respect to a loan primarily secured by an interest in land, "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

(i) The debtor is a person other than an organization;

(ii) The debt is incurred primarily for a personal, family or household purpose;

(iii) Either the debt is payable in installments or a loan finance charge is made; and

(iv) Either the principal does not exceed seventy-five thousand dollars ($75,000.00) or the debt is secured by an interest in land or a dwelling, as defined in W.S. 40-14-640(a)(iv), located in Wyoming.

(b) Repealed by Laws 1981, ch. 147, § 2.

40-14-305. Loan primarily secured by an interest in land; definitions; limited to first mortgage loan.

(a) Unless the loan is made subject to this act by agreement as provided by W.S. 40-14-354 and except as provided by W.S. 40-14-320 with respect to disclosure and by W.S. 40-14-520 with respect to debtors' remedies, "consumer loan" does not include a "loan primarily secured by an interest in land" if:

(i) At the time the loan is made the value of this collateral is substantial in relation to the amount of the loan; and

(ii) The loan finance charge does not exceed eighteen percent (18%) per year calculated according to the actuarial method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(b) For purposes of this section, "loan primarily secured by an interest in land" is limited to a first mortgage loan which is not precomputed.

40-14-306. Definition of "loan".

(a) "Loan" includes:

(i) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(ii) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

(iii) The creation of debt pursuant to a lender credit card or similar arrangement; and

(iv) The forbearance of debt arising from a loan.

40-14-307. Additional definitions.

(a) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(b) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(c) "Principal" of a loan means the total of:

(i) The net amount paid to, receivable by, or paid or payable for the account of the debtor;

(ii) The amount of any discount excluded from the loan finance charge (W.S. 40-14-309(b)); and

(iii) To the extent that payment is deferred:

(A) Amounts actually paid or to be paid by the lender for registration, certificate of title or license fees if not included in paragraph (i) of this subsection; and

(B) Additional charges permitted by this article (W.S. 40-14-311).

40-14-308. Definition of "revolving loan account".

(a) "Revolving loan account" means an arrangement between a lender and a debtor pursuant to which:

(i) The lender may permit the debtor to obtain loans from time to time;

(ii) The unpaid balances of principal and the loan finance and other appropriate charges are debited to an account;

(iii) A loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time; and

(iv) Either the debtor has the privilege of paying in full or in installments or the lender periodically imposes charges computed on the account for delaying payment and permits the debtor to continue to obtain loans.

40-14-309. Definition of "loan finance charge".

(a) "Loan finance charge" means the sum of:

(i) All charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as a condition of or an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and

(ii) Charges incurred for investigating the collateral or credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made.

(b) The term does not include charges as a result of default, additional charges (W.S. 40-14-311), delinquency charges (W.S. 40-14-312), deferral charges (W.S. 40-14-313) or reasonable credit application fees whether or not credit is extended.

(c) If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

40-14-310. Loan finance charge for consumer loans other than supervised loans.

(a) With respect to a consumer loan other than a supervised loan (W.S. 40-14-341), a lender may contract for and receive a loan finance charge, calculated according to the actuarial method, not exceeding ten percent (10%) per year on the unpaid balances of the principal.

(b) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(i) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(ii) The effect of prepayment is governed by the provisions on rebate upon prepayment (W.S. 40-14-319).

(c) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(d) With respect to a consumer loan made pursuant to a revolving loan account:

(i) The loan finance charge shall be deemed not to exceed ten percent (10%) per year if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is five-sixths of one percent of an amount no greater than:

(A) The average daily balance of the debt;

(B) The unpaid balance of the debt on the same day of the billing cycle; or

(C) Subject to subsection (e) of this section, the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this paragraph and subparagraph (B) of this paragraph, a variation of not more than four (4) days from month to month is "the same day of the billing cycle".

(ii) If the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed ten percent (10%) per year if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to five-sixths of one percent as the number of days in the billing cycle bears to thirty (30); and

(iii) Notwithstanding subsection (a) of this section, if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents ($.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents ($.50) which bears the same relation to fifty cents ($.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (W.S. 40-14-311(a)(iii)).

(e) Subject to classifications and differentiations the lender may reasonably establish, he may make the same loan finance charge on all amounts financed within a specified range. A loan finance charge so made does not violate subsection (a) of this section if:

(i) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (a) of this section; and

(ii) When applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (i) of this subsection by more than eight percent (8%) of the rate calculated according to paragraph (i) of this subsection.

(f) Notwithstanding subsection (a) of this section, and except as provided for pawnbrokers in W.S. 40-14-360(f) and post-dated check cashers in W.S. 40-14-363, the lender may

contract for and receive a minimum loan finance charge of not more than thirty dollars ($30.00).

40-14-311. Additional charges.

(a) In addition to the loan finance charge permitted by this article, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(i) Official fees and taxes;

(ii) Charges for insurance as described in subsection (b) of this section;

(iii) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred (100) persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;

(iv) Charges excluded from the loan finance charge by the federal Consumer Credit Protection Act or by rule adopted by the administrator.

(b) An additional charge may be made for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

(i) With respect to insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender, and stating that the debtor may choose the person through whom the insurance is to be obtained;

(ii) With respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit, and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(iii) Repealed By Laws 2013, Ch. 124, § 3.

(c) Reasonable closing costs (W.S. 40-14-140(a)(v)) are additional charges.

40-14-312. Delinquency charges.

(a) With respect to a consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its scheduled due date in an amount not exceeding the greater of:

(i) Five percent (5%) of the unpaid amount of the installment; or

(ii) Ten dollars ($10.00).

(b) A delinquency charge under paragraph (a)(i) of this section may be collected only once on an installment however long it remains in default. No delinquency charge may be collected if the installment has been deferred and a deferral charge (W.S. 40-14-313) has been paid or incurred until ten (10) days after the deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(c) No delinquency charge may be collected on an installment which is paid in full within ten (10) days after its scheduled installment due date even though an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

(d) If two (2) installments or parts thereof of a precomputed loan are in default for ten (10) days or more, the lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment (W.S. 40-14-319) as of the maturity date of the first delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charge for consumer loans (W.S. 40-14-310) or the provisions on loan finance charge for supervised loans (W.S. 40-14-348), whichever is appropriate. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (W.S. 40-14-319). If the lender proceeds under this subsection, any delinquency or deferral

charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further delinquency or deferral charges shall be made.

40-14-313. Deferral charges.

(a) With respect to a consumer loan, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one (1) or more unpaid installments, and the lender may make and collect a charge which the debtor expressly agrees to pay as consideration for a deferral. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(b) The lender, in addition to the deferral charge, may make appropriate additional charges (W.S. 40-14-311), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(c) Except in connection with a revolving loan account, the parties may agree in writing at the time of a consumer loan, refinancing, or consolidation that if an installment is not paid within ten (10) days after its due date, the lender may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the lender elects to accelerate the maturity of the agreement.

(d) A delinquency charge made by the lender on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

40-14-314. Loan finance charge on refinancing.

(a) With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (W.S. 40-14-310) or the provisions on loan finance charge for supervised loans (W.S. 40-14-348), whichever is appropriate. For the purpose of determining the loan finance charge permitted,

the principal resulting from the refinancing comprises the following:

(i) If the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (W.S. 40-14-319) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (W.S. 40-14-319) shall be allowed; and

(ii) Appropriate additional charges (W.S. 40-14-311), payment of which is deferred.

40-14-315. Loan finance charge on consolidation.

(a) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (W.S. 40-14-314) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (W.S. 40-14-310) or the provisions on loan finance charge for supervised loans (W.S. 40-14-348), whichever is appropriate.

(b) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (W.S. 40-14-216) or the provisions on refinancing loans (W.S. 40-14-314), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or

loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (W.S. 40-14-310) or the provisions on loan finance charge for supervised loans (W.S. 40-14-348), whichever is appropriate.

40-14-316. Conversion to revolving loan account.

(a) The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to a revolving loan account, or a refinancing, or consolidation thereof, or the unpaid balance of a consumer credit sale, refinancing or consolidation. For the purpose of this section:

(i) The unpaid balance of a consumer loan, refinancing, or consolidation is an amount equal to the principal determined according to the provisions on refinancing (W.S. 40-14-314); and

(ii) The unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (W.S. 40-14-216).

40-14-317. Advances to perform covenants of debtor.

(a) If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor, the lender may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(b) A loan finance charge may be made for sums advanced pursuant to subsection (a) of this section at a rate not exceeding the rate stated to the debtor pursuant to the laws relating to disclosure with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan

account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (W.S. 40-14-310) or for supervised loans (W.S. 40-14-348), whichever is appropriate.

40-14-318. Right to prepay.

Subject to the provisions on rebate upon prepayment (W.S. 40-14-319), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty.

40-14-319. Rebate upon prepayment.

(a) Except as provided in subsection (b) of this section, upon prepayment in full of the unpaid balance of a precomputed consumer loan, refinancing or consolidation, the unearned loan finance charge shall be refunded based on the Rule of 78's if the transaction under its original terms did not exceed sixty-one (61) monthly installments and upon the actuarial method, if the transaction by its original terms exceeded sixty-one (61) monthly installments. An amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. With respect to irregular payment transactions, the administrator may prescribe by rule the refund formula. If the rebate otherwise required is less than one dollar ($1.00), no rebate need be made.

(b) Upon prepayment in full of a consumer loan, other than one pursuant to a revolving loan account, a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum loan finance charge within the limits stated in W.S. 40-14-310(f).

(c) If a deferral (W.S. 40-14-313) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the loan finance charge or shall be added to the unpaid balance.

(d) This section does not preclude the collection or retention by the lender of delinquency charges (W.S. 40-14-312).

(e) If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered.

(f) Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (W.S. 40-14-403), the debtor or his estate is entitled to the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than ten (10) business days after satisfactory proof of loss is furnished to the lender.

40-14-320. Applicability; information required.

(a) For purposes of this part, consumer loan includes a loan secured primarily by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (W.S. 40-14-304).

(b) Repealed by Laws 1982, ch. 61, § 2.

(c) Repealed by Laws 1982, ch. 61, § 2.

(d) Repealed By Laws 2013, Ch. 124, § 3.

(e) Disclosure and advertising of consumer credit shall be made pursuant to the federal Consumer Credit Protection Act.

40-14-321. Repealed by Laws 1982, ch. 61, § 2.

40-14-322. Repealed by Laws 1982, ch. 61, § 2.

40-14-323. Statement of rate.

(a) Repealed by Laws 1982, ch. 61, § 2.

(b) Repealed by Laws 1982, ch. 61, § 2.

(c) Repealed by Laws 1982, ch. 61, § 2.

(d) Repealed by Laws 1982, ch. 61, § 2.

(e) A statement of rate complies with this part if it does not vary from the accurately computed rate by more than the following tolerances:

(i) The annual percentage rate may be more or less than the actual rate by not more than one-eighth of one percent (.125%) or may be rounded to the nearest one-fourth of one percent (.25%) for consumer loans payable in substantially equal installments when a lender determines the total loan finance charge on the basis of a single add-on, discount, periodic or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by rule by the administrator;

(ii) The administrator may authorize by rule the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph (i) of this subsection by not more than the tolerances the administrator may allow; the administrator may not allow a tolerance greater than eight percent (8%) of that rate except to simplify compliance where irregular payments are involved; and

(iii) In case a lender determines the annual percentage rate in a manner other than as described in paragraph (i) or (ii) of this subsection, the administrator may authorize by rule other reasonable tolerances.

40-14-324. Repealed by Laws 1982, ch. 61, § 2.

40-14-325. Repealed by Laws 1982, ch. 61, § 2.

40-14-326. Repealed by Laws 1982, ch. 61, § 2.

40-14-327. Repealed by Laws 1982, ch. 61, § 2.

40-14-328. Repealed by Laws 1982, ch. 61, § 2.

40-14-329. Repealed by Laws 1982, ch. 61, § 2.

40-14-330. Repealed by Laws 1982, ch. 61, § 2.

40-14-331. Repealed by Laws 1982, ch. 61, § 2.

40-14-332. Scope.

This part applies to consumer loans.

40-14-333. Balloon payments.

With respect to a consumer loan, other than one pursuant to a revolving loan account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due if the creditor is still offering that type of credit and the debtor is credit worthy. Credit terms shall be as favorable as those offered to the general public by the creditor for the same type of credit at the time a request for refinancing is approved. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

40-14-334. No assignment of earnings.

(a) A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

(b) Notwithstanding the prohibition of subsection (a) of this section, a lender may take an assignment of commissions or accounts receivable payable to the debtor for services rendered for payment or as security for payment of a debt arising out of a consumer loan.

(c) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

40-14-335. Attorney's fees.

Except as provided by the provisions on limitations on attorney's fees as to certain supervised loans (W.S. 40-14-353), with respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney's fees after default and referral to an attorney not a salaried employee of the lender. A provision in violation of this section is unenforceable.

40-14-336. Limitation on default charges.

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this act. A provision in violation of this section is unenforceable.

40-14-337. Notice of assignment.

The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender.

40-14-338. Authorization to confess judgment prohibited.

A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void.

40-14-339. Change in terms of revolving loan accounts.

(a) If a lender makes a change in the terms of a revolving loan account without complying with this section any additional cost or charge to the debtor resulting from the change is an excess charge and subject to the remedies available to debtors (W.S. 40-14-521) and to the administrator (W.S. 40-14-613).

(b) A lender may change the terms of a revolving loan account whether or not the change is authorized by prior agreement. Except as provided in subsection (c) of this section, the lender shall give to the debtor written notice of any change at least three (3) times, with the first notice at least six (6) months before the effective date of the change.

(c) The notice specified in subsection (b) of this section is not required if notice of any proposed change in the terms of a revolving loan account is given to the customer at least thirty (30) days prior to the effective date of such change or thirty (30) days prior to the beginning of the billing cycle within which such change will become effective, whichever is the earlier date, and if:

(i) The debtor after receiving notice of the change agrees in writing to the change;

(ii) The debtor elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(iii) The change involves no significant cost to the debtor;

(iv) The debtor has previously consented in writing to the kind of change made and notice of the change is given to the debtor in two (2) billing cycles prior to the effective date of the change; or

(v) The change applies only to debts incurred after a date specified in a notice of the change given in two (2) billing cycles prior to the effective date of the change.

(d) The notice provided for in this section is given to the debtor when mailed to him at the address used by the lender for sending periodic billing statements.

40-14-340. Use of multiple agreements.

A lender may not use multiple agreements with intent to avoid disclosure of an annual percentage rate pursuant to the laws relating to disclosure and advertising. The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (W.S. 40-14-521) and the provisions on civil actions by administrator (W.S. 40-14-613).

40-14-341. Definitions.

(a) "Supervised loan" means a consumer loan in which the rate of the loan finance charge exceeds ten percent (10%) per year as determined according to the provisions on loan finance charge for consumer loans (W.S. 40-14-310).

(b) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

40-14-342. Authority to make or enforce supervised loans.

Unless a person is a supervised financial organization or has first obtained a license from the administrator authorizing him to make supervised loans, he shall not engage in the business of, (a) making supervised loans, or (b) taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans, but he may collect and enforce for three (3) months without a license if he promptly applies for a license and his application has not been denied.

40-14-343. Repealed By Laws 1996, ch. 86, § 3.

40-14-344. Repealed By Laws 1996, ch. 86, § 3.

40-14-345. Repealed By Laws 1996, ch. 86, § 3.

40-14-346. Repealed By Laws 1996, ch. 86, § 3.

40-14-347. Repealed By Laws 1996 , ch. 86, § 3.

40-14-348. Loan finance charge.

(a) With respect to a supervised loan, including a loan pursuant to a revolving loan account, and except as provided for pawnbrokers under W.S. 40-14-360(a) and post-dated check cashers under W.S. 40-14-363(a), a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(b) The loan finance charge, calculated according to the actuarial method, may not exceed:

(i) Where the initial principal does not exceed seventy-five thousand dollars ($75,000.00), the equivalent of the greater of either of the following:

(A) The total of: Thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is one thousand dollars ($1,000.00) or less and twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than one thousand dollars ($1,000.00); or

(B) Twenty-one percent (21%) per year on that part of the unpaid balances of the principal.

(C) Repealed by Laws 1981, ch. 147, § 2.

(ii) Where the initial principal exceeds seventy-five thousand dollars ($75,000.00), any loan finance charge specified in the debtor's loan agreement.

(c) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, single annual percentage rate or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. The finance charge may be contracted for and earned at the single annual percentage rate that would earn the same finance charge as the graduated rates when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method. If the loan is precomputed:

(i) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(ii) The effect of prepayment is governed by the provisions on rebate upon prepayment (W.S. 40-14-319).

(d) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(e) Subject to classifications and differentiations the lender may reasonably establish, he may make the same loan finance charge on all principal amounts within a specified range. A loan finance charge so made does not violate subsection (b) of this section, if:

(i) When applied to the median amount within each range, it does not exceed the maximum permitted in subsection (b) of this section; and

(ii) When applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (b)(i) of

this section by more than eight percent (8%) of the rate calculated according to paragraph (b)(i) of this section.

40-14-349. Use of multiple agreements.

With respect to a supervised loan, no lender may permit any person, or husband and wife, to become obligated in any way under more than one (1) loan agreement with the lender or with a person related to the lender, with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charge for supervised loans (W.S. 40-14-348) or to avoid disclosure of an annual percentage rate pursuant to the laws relating to disclosure and advertising. The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties (W.S. 40-14-521) and the provisions on civil actions by administrator (W.S. 40-14-613).

40-14-350. Restrictions on interest in land as security.

With respect to a supervised loan in which the principal is one thousand dollars ($1,000.00) or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

40-14-351. Regular schedule of payments; maximum loan term.

(a) Supervised loans, not made pursuant to a revolving loan account and in which the principal is one thousand dollars ($1,000.00) or less, shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor; and:

(i) Over a period of not more than thirty-seven (37) months if the principal is more than three hundred dollars ($300.00); or

(ii) Over a period of not more than twenty-five (25) months if the principal is three hundred dollars ($300.00) or less.

40-14-352. Conduct of business other than making loans.

A licensee may carry on other business at a location where he makes supervised loans unless he carries on other business for the purpose of evasion or violation of this act.

40-14-353. Limitation on attorney's fees.

With respect to a supervised loan in which the principal is one thousand dollars ($1,000.00) or less, the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

40-14-354. Loans subject to provisions by agreement of parties.

The parties to a loan other than a consumer loan may agree in a writing signed by the parties that the loan is subject to the provisions of this act applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this act.

40-14-355. Definition of "consumer related loan"; finance charge.

(a) A "consumer related loan" is a loan which is not subject to the provisions of this act applying to consumer loans and in which the principal does not exceed seventy-five thousand dollars ($75,000.00) if:

(i) The debtor is a person other than an organization; or

(ii) The debt is secured primarily by a security interest in a one (1) or two (2) family dwelling occupied by a person related to the debtor.

(b) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment by the debtor of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans or the provisions on loan finance charge for supervised loans (W.S. 40-14-348), whichever is appropriate.

40-14-356. Applicability of other provisions to consumer related loans.

Except for the rate of the loan finance charge and the rights to prepay and to rebate upon prepayment, the provisions of part 2 of this article apply to a consumer related loan.

40-14-357. Limitation on default charges in consumer related loans.

(a) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

(i) Reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(ii) Deferral charges not in excess of eighteen percent (18%) per year of the amount deferred for the period of deferral; and

(iii) Other charges that could have been made had the loan been a consumer loan.

(b) A provision in violation of this section is unenforceable.

40-14-358. Loan finance charge for other loans.

With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge.

40-14-359. Definitions; application.

(a) As used in W.S. 40-14-359 through 40-14-361:

(i) "Pawnbroker" means a person licensed pursuant to W.S. 40-14-634 to engage in the business of making pawn transactions;

(ii) "Pawn finance charge" means the sum of all charges, payable directly or indirectly by the customer and imposed directly or indirectly by the pawnbroker as an incident of the pawn transactions;

(iii) "Pawn transaction" means the act of lending money on the security of pledged tangible personal property, or the act of purchasing tangible personal property on the

condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

(b) W.S. 40-14-359 through 40-14-361 shall not supersede the rights of cities, towns and counties to regulate and license pawnshops in any fashion consistent with this act. The rights of cities, towns and counties to regulate pawn finance charges and maturities are preempted.

40-14-360. Pawn finance charge; limits on amount financed and terms; minimum pawn finance charge.

(a) No pawnbroker may contract for, charge or receive any amount as a charge in connection with a pawn transaction other than a pawn finance charge. No pawn finance charge shall exceed twenty percent (20%) per month on the unpaid principal balance of the pawn transaction.

(b) The amount financed in any one (1) pawn transaction to any one (1) customer shall not exceed three thousand dollars ($3,000.00).

(c) The maturity date of a pawn transaction shall be one (1) calendar month. The period shall expire on the same date in the succeeding month if there is such a date, otherwise on the last day of the succeeding month. If the expiration date is not a business day, the period expires on the next business day.

(d) Pawn finance charges are fully earned on the day the loan is made.

(e) Pawn transactions may be renewed from month to month without additional disclosures provided:

(i) There is no change in the original terms; and

(ii) Pawn finance charges are not compounded.

(f) Notwithstanding subsection (a) of this section, the lender may contract for and receive a minimum pawn finance charge of not more than five dollars ($5.00).

40-14-361. Limitation on agreement and practices.

(a) No pawnbroker shall make an agreement requiring the personal liability of a customer in connection with a pawn transaction. No customer may be required to redeem pledged goods

or make any payment on a pawn transaction. The sole remedy of a pawnbroker for nonpayment of a loan by a customer or failure to redeem or repurchase tangible personal property by a customer in a pawn transaction is the right to title of the pledged tangible personal property.

(b) Pawnbrokers shall not make any charge for insurance in connection with a pawn transaction.

(c) Pawnbrokers shall post in a conspicuous place on their premises a schedule of business days and hours during which pawn transactions may be redeemed.

40-14-362. Definitions.

(a) As used in W.S. 40-14-362 through 40-14-367:

(i) "Post-dated check or similar arrangement" means the act of lending money in which a check or draft is dated on a date subsequent to the date it was written or dated on the date written but held for any period of days prior to deposit or presentment due to the check casher's agreement with or representations to a debtor, whether express or implied;

(ii) "Post-dated check casher" means a person engaged in the business of lending money by means of post-dated check transactions or similar arrangements.

40-14-363. License required; post-dated check finance charge; limits on amount financed and terms; minimum finance charge.

(a) No person shall engage in business as a post-dated check casher in this state unless licensed in accordance with W.S. 40-14-634. No post-dated check casher may contract for, charge or receive any amount as a charge in connection with a post-dated check or similar arrangement other than a post-dated check finance charge as stated in this subsection. No post-dated check finance charge shall exceed the greater of thirty dollars ($30.00) or twenty percent (20%) per month on the principal balance of the post-dated check or similar arrangement.

(b) The maximum term of any post-dated check or similar arrangement subject to this part shall be one (1) calendar month. Extended payment plans under W.S. 40-14-366 are not subject to this subsection.

(c) Post-dated check finance charges are fully earned on the day the post-dated check or similar arrangement is made.

40-14-364. Limitation on multiple agreements.

No post-dated check or similar arrangement shall be repaid, refinanced or otherwise consolidated by proceeds of another post-dated check or similar arrangement accepted by the same post-dated check casher.

40-14-365. Right to rescind.

(a) A post-dated check or similar arrangement with a post-dated check casher may be rescinded by the consumer on or before 5:00 p.m. Mountain Time of the following business day, provided that the consumer returns to the post-dated check casher in cash or certified funds the full original amount of funds advanced. A rescission under this section shall be at no cost to the consumer.

(b) Information regarding how to exercise the right to rescind shall be provided in writing to the consumer at the consummation of every post-dated check or similar arrangement.

40-14-366. Extended payment plan; terms and conditions.

(a) Subject to the terms and conditions of this section, a consumer who is unable to repay a post-dated check or similar arrangement when due may elect once every twelve (12) months to repay the post-dated check or similar arrangement by means of an extended payment plan. The twelve (12) month period shall be measured from the date the consumer pays in full one extended payment plan with the post-dated check casher until the date that the consumer enters into another extended payment plan with the post-dated check casher.

(b) To request an extended payment plan, the consumer, before 5:00 p.m. Mountain Time on the last business day before the due date of the outstanding post-dated check or similar arrangement, shall request the plan and sign an amendment to the original agreement which memorializes the plan's terms.

(c) The extended payment plan's terms shall allow the consumer to repay the outstanding post-dated check or similar arrangement including any fee due in at least four (4) substantially equal installments and over a time period of at

least sixty (60) days. Each plan installment shall be due on or after a date on which the consumer receives regular income, or if the consumer has no regular income due dates shall be a minimum of two (2) weeks between installments. The consumer may prepay an extended payment plan in full at any time without penalty. As long as the consumer complies with the terms of the extended payment plan, the plan shall be at no additional cost to the consumer and the post-dated check casher shall not charge the consumer any interest or additional fees during the term of the extended payment plan. The post-dated check casher may, with each payment under the plan by a consumer, provide for the return of the consumer's prior held check and require a new check for the remaining balance under the plan.

(d) If the consumer fails to pay any extended payment plan installment when due, the consumer shall be in default of the payment plan and the post-dated check casher immediately may accelerate payment on the remaining balance and take action to collect all amounts due. Upon default, notwithstanding W.S. 40-14-363(a), the post-dated check casher may charge the consumer interest on the outstanding balance at an annual rate equal to six percent (6%) plus the prime rate as listed in the Wall Street Journal on January 1 of the year in which the consumer defaults.

40-14-367. Notification.

(a) A post-dated check casher shall provide the following written notice with each post-dated check or similar arrangement and obtain the signature of the consumer at least annually indicating receipt of the notice:

NOTICE

1. STATE LAW PROHIBITS A POST-DATED CHECK OR SIMILAR ARRANGEMENT FROM BEING REPAID, REFINANCED OR OTHERWISE CONSOLIDATED BY PROCEEDS OF ANOTHER POST-DATED CHECK OR SIMILAR ARRANGEMENT ACCEPTED BY THE SAME POST-DATED CHECK CASHER.

2. POST-DATED CHECK ADVANCES SHOULD BE USED FOR SHORT-TERM FINANCIAL NEEDS ONLY, NOT AS A LONG-TERM FINANCIAL SOLUTION. CUSTOMERS WITH CREDIT DIFFICULTIES SHOULD SEEK CREDIT COUNSELING.

40-14-368. Violations

The administrator is authorized to enforce an appropriate remedy, penalty, action or license revocation or suspension, as provided in articles 5 and 6 of this chapter, against a person licensed under the act for a violation of any portion of Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-634, H.R. 5122), or any regulation promulgated thereunder.

ARTICLE 4 - INSURANCE

40-14-401. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code-Insurance."

40-14-402. Scope.

(a) Except as provided in subsection (b) of this section, this article applies to insurance provided or to be provided in relation to a consumer credit sale (W.S. 40-14-204), a consumer lease (W.S. 40-14-206), or a consumer loan (W.S. 40-14-304).

(b) The provision on cancellation by a creditor (W.S. 40-14-453) applies to loans the primary purpose of which is the financing of insurance. No other provision of this article applies to insurance so financed.

(c) This article supplements and does not repeal W.S. 26-21-101 through 26-22-101. The provisions of this act concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of W.S. 26-21-101 through 26-21-114 and 26-23-201 do not apply to creditors and debtors.

40-14-403. Definitions.

(a) In this act:

(i) "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

(A) Insurance provided in relation to a credit transaction in which a payment is scheduled more than ten (10) years after the extension of credit;

(B) Insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or

(C) Insurance indemnifying the creditor against loss due to the debtor's default.

(ii) "Credit Insurance Act" means W.S. 26-21-101 through 26-21-114 and 26-23-201.

40-14-404. Creditor's provision of and charge for insurance; excess amount of charge.

(a) Except as otherwise provided in this article and subject to the provisions on additional charges (W.S. 40-14-213 and 40-14-311) and maximum charges (part 2 of article 2 and article 3), a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(b) The excess amount of a charge for insurance provided for in agreements in violation of this article is an excess charge for the purposes of the provisions of the article on remedies and penalties (article 5) as to effect of violations on rights of parties (W.S. 40-14-521) and of the provisions of the article on administration (article 6) as to civil actions by the administrator (W.S. 40-14-613).

40-14-405. Conditions applying to insurance to be provided by creditor.

(a) If a creditor agrees with a debtor to provide insurance:

(i) The insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within thirty (30) days after the term of the insurance commences under the agreement between the creditor and debtor; or

(ii) The creditor shall promptly notify the debtor of any failure or delay in providing the insurance.

40-14-406. Unconscionability.

(a) In applying the provisions of this act on unconscionability (W.S. 40-14-508 and 40-14-611) to a separate charge for insurance, consideration shall be given, among other factors, to:

(i) Potential benefits to the debtor including the satisfaction of his obligations;

(ii) The creditor's need for the protection provided by the insurance; and

(iii) The relation between the amount and terms of credit granted and the insurance benefits provided.

(b) If consumer credit insurance otherwise complies with this article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

40-14-407. Maximum charge by creditor for insurance.

(a) Except as provided in subsection (b) of this section, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

(b) A creditor who provides consumer credit insurance in relation to a revolving charge account (W.S. 40-14-208) or revolving loan account (W.S. 40-14-308) may calculate the charge to the debtor in each billing cycle by applying the current premium rate to:

(i) The average daily unpaid balance of the debt in the cycle;

(ii) The unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the credit service charge (W.S. 40-14-218) or loan finance charge (W.S. 40-14-310 and 40-14-348), but the specified range shall be the range used for that purpose; or

(iii) The unpaid balances of principal calculated according to the actuarial method.

40-14-408. Refund or credit required; amount.

(a) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or his estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to him by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account.

(b) This article does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this article amount to less than one dollar ($1.00), and except as provided in subsection (a) of this section does not require the creditor to account to the debtor for any portion of a separate charge for insurance because:

(i) The insurance is terminated by performance of the insurer's obligation;

(ii) The creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(iii) The creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(c) Except as provided in subsection (b) of this section, the creditor shall promptly make or cause to be made an appropriate refund or credit to the debtor with respect to any separate charge made to him for insurance if:

(i) The insurance is not provided or is provided for a shorter term than that for which the charge to the debtor for insurance was computed; or

(ii) The insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(d) A refund or credit required by subsection (c) of this section is appropriate as to amount if it is computed according

to a method prescribed or approved by the commissioner of insurance or a formula filed by the insurer with the commissioner of insurance at least thirty (30) days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is employed after the commissioner of insurance notifies the insurer that he disapproves it.

40-14-409. Existing insurance; choice of insurer.

If a creditor requires insurance, upon notice to the creditor the debtor shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor. The creditor shall promptly notify the debtor of his rights under this section.

40-14-410. Charge for insurance in connection with a deferral, refinancing, or consolidation; duplicate charges.

(a) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (W.S. 40-14-215 or 40-14-313), a refinancing (W.S. 40-14-216 or 40-14-314), or a consolidation (W.S. 40-14-217 or 40-14-315), unless:

(i) The debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

(ii) The debtor is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing, or consolidation;

(iii) The debtor receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (W.S. 40-14-408); and

(iv) The charge does not exceed the amount permitted by this article (W.S. 40-14-407).

(b) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to

which the creditor has previously contracted for or received a separate charge.

40-14-411. Cooperation between administrator and commissioner of insurance.

The administrator and the commissioner of insurance are authorized and directed to consult and assist one another in maintaining compliance with this article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this article, or of the insurance laws, rules, and regulations of this state, he shall advise the commissioner of insurance of the circumstances.

40-14-412. Administrative action of commissioner of insurance.

The Wyoming Administrative Procedure Act applies to and governs all administrative action taken by the commissioner of insurance pursuant to this section.

40-14-430. Term of insurance.

(a) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

(i) If any required evidence of insurability is not furnished until more than thirty (30) days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(ii) If the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(b) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(i) If the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least thirty (30) days notice to the debtor; or

(ii) If the debtor is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(c) The term of the insurance shall not extend more than fifteen (15) days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the debtor or as an incident to a deferral, refinancing, or consolidation.

40-14-431. Amount of insurance.

(a) Except as provided in subsection (b) of this section:

(i) In the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(ii) In the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(b) If consumer credit insurance is provided in connection with a revolving charge account or revolving loan account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.

40-14-432. Filing and approval of rates and forms.

(a) A creditor may not use a form or a schedule of premium rates or charges, the filing of which is required by this

section, if the commissioner of insurance has disapproved the form or schedule and has notified the insurer of his disapproval. A creditor may not use a form or schedule unless:

(i) The form or schedule has been on file with the commissioner of insurance for thirty (30) days, or has earlier been approved by him; and

(ii) The insurer has complied with this section with respect to the insurance.

(b) Except as provided in subsection (c) of this section, all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the commissioner of insurance. Within thirty (30) days after the filing of any form or schedule, he shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the Insurance Code or of any rule or regulation promulgated thereunder.

(c) If a group policy has been delivered in another state, the forms to be filed by the insurer with the commissioner of insurance are the group certificates and notices of proposed insurance. He shall approve them if:

(i) They provide the information that would be required if the group policy were delivered in this state; and

(ii) The applicable premium rates or charges do not exceed those established by his rules or regulations.

40-14-450. Property insurance.

(a) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

(i) The insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

(ii) The amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(iii) The term of the insurance is reasonable in relation to the terms of credit.

(b) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(c) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed or principal exclusive of changes for the insurance is three hundred dollars ($300.00) or more, and the value of the property is three hundred dollars ($300.00) or more.

40-14-451. Risk of loss or damage.

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the debtor is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

40-14-452. Liability insurance.

A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

40-14-453. Cancellation by creditor.

A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may be cancelled on a date not less than ten (10) days after the notice is delivered, or, if the notice is mailed, not less than thirteen (13) days after it is mailed.

ARTICLE 5 - REMEDIES AND PENALTIES

40-14-501. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code-Remedies and Penalties."

40-14-502. Scope.

This part applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and consumer loans; and, in addition, to extortionate extensions of credit (W.S. 40-14-507).

40-14-503. Restrictions on deficiency judgments in consumer credit sales.

(a) This section applies to a consumer credit sale of goods or services.

(b) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the cash price of the goods repossessed or surrendered was one thousand dollars ($1,000.00) or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller is not obligated to resell the collateral.

(c) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was one thousand dollars ($1,000.00) or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale.

(d) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (W.S. 40-14-243).

(e) The buyer may be liable in damages to the seller if the buyer has wrongfully damaged the collateral or if, after default and demand, the buyer has wrongfully failed to make the collateral available to the seller.

(f) If the seller elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment:

(i) He may not repossess the collateral; and

(ii) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

40-14-504. No garnishment before judgment.

Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale, a consumer lease, or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings.

40-14-505. Limitation on garnishment.

(a) For the purposes of this part:

(i) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(ii) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(b) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale, consumer lease, or consumer loan may not exceed the lesser of:

(i) Twenty-five percent (25%) of his disposable earnings for that week; or

(ii) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by section (6)(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. tit. 29, § 206(a)(1), in effect at the time the earnings are payable;

(iii) In the case of earnings for a pay period other than a week, the administrator shall prescribe by rule a

multiple of the federal minimum hourly wage equivalent in effect to that set forth in paragraph (b)(ii) of this section.

(c) No court may make, execute, or enforce an order or process in violation of this section.

(d) An individual's disposable earnings shall remain exempt to the extent provided in subsection (b) of this section if the earnings were deposited in the individual's account with a financial institution within twenty (20) calendar days prior to service of a writ of garnishment against the individual's account with the financial institution, on the day of service of the writ or within ten (10) business days after service of the writ. This subsection does not create any obligation on the part of a financial institution to conduct an investigation of the individual's account or otherwise make any determination about a judgment creditor's rights to funds in the account other than the financial institution's obligation to file with the court and serve on the individual an answer to the writ of garnishment. A judgment creditor may request that the court issue writs of garnishment to an individual's employer and the individual's financial institution at the same time; provided, however, that should the judgment creditor successfully garnish earnings as shown on an individual's pay advice, then the remaining proceeds from such pay advice deposited into an account with a financial institution shall be entirely exempt from execution, notwithstanding subsection (b) of this section.

(e) As used in this section, "financial institution" means as defined in W.S. 13-1-401(a)(ii).

40-14-506. No discharge from employment for garnishment.

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan.

40-14-507. Extortionate extensions of credit.

(a) If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of

the extension of credit is unenforceable through civil judicial processes against the debtor.

(b) If it is shown that an extension of credit was made at an annual rate exceeding forty-five percent (45%) calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (a) of this section.

40-14-508. Unconscionability.

(a) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(c) For the purpose of this section, a charge or practice expressly permitted by this act is not in itself unconscionable.

40-14-520. Interests in land.

(a) For purposes of the provisions of this part on civil liability for violation of disclosure provisions (W.S. 40-14-522) and on debtor's right to rescind certain transactions (W.S. 40-14-523):

(i) Consumer credit sale includes a sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (W.S. 40-14-204); and

(ii) Consumer loan includes a loan primarily secured by an interest in land without regard to the rate of the loan

finance charge if the loan is otherwise a consumer loan (W.S. 40-14-305).

40-14-521. Effect of violations on rights of parties.

(a) If a creditor has violated the provisions of this act applying to certain negotiable instruments (W.S. 40-14-237), or limitations on the schedule of payments or loan term for supervised loans (W.S. 40-14-351), the debtor is not obligated to pay the credit service charge or loan finance charge, and has a right to recover from the person violating this act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three (3) times the amount of the credit service charge or loan finance charge. No action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(b) If a creditor has violated the provisions of this act applying to authority to make supervised loans (W.S. 40-14-342), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than two (2) years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

(c) A debtor is not obligated to pay a charge in excess of that allowed by this act, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

(d) If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this act, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the administrator (W.S. 40-14-613). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(e) Except as otherwise provided, no violation of this act impairs rights on a debt.

(f) If an employer discharges an employee in violation of the provisions prohibiting discharge (W.S. 40-14-506), the employee may within forty-five (45) days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six (6) weeks.

(g) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability is imposed under subsections (a), (b) and (d) of this section and the validity of the transaction is not affected.

(h) In any case in which it is found that a creditor has violated this act, the court may award reasonable attorney's fees incurred by the debtor.

40-14-522. Civil liability for violation of disclosure provisions.

(a) Except as otherwise provided in this section, a creditor who, in violation of the laws relating to disclosure, other than the provisions on advertising (sections 2-313 and 3-312 [Repealed]), of the article on credit sales (article 2) and the article on loans (article 3), fails to disclose information to a person entitled to the information under this act is liable to that person in an amount equal to the sum of:

(i) Twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than one hundred dollars ($100.00) or more than one thousand dollars ($1,000.00); and

(ii) In the case of a successful action to enforce the liability under paragraph (a)(i) of this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) A creditor has no liability under this section if within fifteen (15) days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(c) A creditor may not be held liable in any action brought under this section for a violation of this act if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(d) Any action, which may be brought under this section against the original creditor in any credit transaction which does not involve a security interest in land, may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.

(e) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against

any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of W.S. 40-14-101 through 40-14-702 and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(f) No action pursuant to this section may be brought more than one (1) year after the date of the occurrence of the violation.

(g) Repealed by Laws 1988, ch. 49, § 2.

40-14-523. Repealed By Laws 2013, Ch. 124, § 3.

40-14-524. Refunds and penalties as setoff to obligation.

Refunds or penalties to which the debtor is entitled pursuant to this part may be set off against the debtor's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part.

40-14-540. Willful violations.

(a) A supervised lender who willfully makes charges in excess of those permitted by the provisions of the article on loans (article 3) applying to supervised loans (part 5) is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars ($1,000.00), or to imprisonment not exceeding six (6) months, or both.

(b) A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this act applying to authority to make supervised loans (W.S. 40-14-342) is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five thousand dollars ($5,000.00), or to imprisonment not exceeding one (1) year, or both.

(c) A person who willfully engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors

arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this act concerning notification (W.S. 40-14-631) or payment of fees (W.S. 40-14-632), is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding one thousand dollars ($1,000.00).

40-14-541. Disclosure violations.

(a) A person is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding five thousand dollars ($5,000.00), or to imprisonment not exceeding one (1) year, or both, if he willfully and knowingly:

(i) Gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this act on disclosure and advertising (part 3) of the article on credit sales (article 2) or of the article on loans (article 3), or of any related rule of the administrator adopted pursuant to this act;

(ii) Uses any rate table or chart, the use of which is authorized by rule of the administrator adopted pursuant to the provisions on calculation of rate to be disclosed (W.S. 40-14-225 and 40-14-323), in a manner which consistently understates the annual percentage rate determined according to those provisions; or

(iii) Otherwise fails to comply with any requirement of provisions of this act on disclosure and advertising (part 3) of the article on credit sales (article 2) or of the article on loans (article 3), or of any related rule of the administrator adopted pursuant to this act.

ARTICLE 6 - ADMINISTRATION

40-14-601. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code-Administration."

40-14-602. Applicability.

(a) This part applies to persons who in this state:

(i) Make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (W.S. 40-14-257) and consumer related loans (W.S. 40-14-355); or

(ii) Directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in paragraph (i) of this subsection, wherever they are made.

40-14-603. Administrator.

"Administrator" means the state banking commissioner of the state of Wyoming.

40-14-604. Powers of administrator; harmony with federal regulations; reliance on rules; duty to report and cooperate.

(a) In addition to other powers granted by this act, the administrator within the limitations provided by law may:

(i) Receive and act on complaints, take action designed to obtain voluntary compliance with this act, or commence proceedings on his own initiative;

(ii) Counsel persons and groups on their rights and duties under this act;

(iii) Establish programs for the education of consumers with respect to credit practices and problems;

(iv) Make studies appropriate to effectuate the purposes and policies of this act and make the results available to the public;

(v) Adopt, amend, and repeal substantive rules when specifically authorized by this act, and adopt, amend, and repeal procedural rules to carry out the provisions of this act;

(vi) Appoint any necessary hearing examiners, clerks, and other employees and agents and fix their compensation, and request the attorney general to appoint attorneys necessary to represent the administrator in the enforcement of this act;

(vii) Require a licensee under this act or an applicant for a license issued under this act to submit to a background investigation including fingerprint checks for state, national and international criminal history record checks as necessary. While exercising his authority under this paragraph,

the administrator may utilize background checks completed by the division of criminal investigation, other government agencies in this state or in other states, the federal bureau of investigation, the registry or another entity designated by the registry;

(viii) Determine the content of application forms and the means by which an applicant applies for, renews or amends a license under this act. The administrator may allow applicants to utilize the registry or an entity designated by the registry for the processing of applications and fees.

(b) The administrator may adopt rules not inconsistent with the federal Consumer Credit Protection Act to assure a meaningful disclosure of credit terms so that a prospective debtor will be able to compare more readily the various credit terms available to him and to avoid the uninformed use of credit. These rules may contain classifications, differentiations or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this act which in the judgment of the administrator are necessary or proper to effectuate the purposes or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this act relating to disclosure of credit terms.

(c) To keep the administrator's rules in harmony with the federal Consumer Credit Protection Act and with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code, the administrator, so far as is consistent with the purposes, policies and provisions of this act, may:

(i) Before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code; and

(ii) In adopting, amending, and repealing rules, take into consideration:

(A) The regulations so prescribed by the consumer financial protection bureau; and

(B) The rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

(d) Except for return of an excess charge, no liability is imposed under this act for an act done or omitted in conformity

with a rule of the administrator notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

(e) The administrator shall, as required by W.S. 9-2-1014, report to the governor on the operation of his office, on the use of consumer credit in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the administrator is authorized to conduct research and make appropriate studies. The report shall include a description of the examination and investigation procedures and policies of his office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this act, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and debtors which have come to his attention through his examinations and investigations and the disposition of them under existing law and a general statement of the activities of his office and of others to promote the purposes of this act. The report shall not identify the creditors against whom action is taken by the administrator.

(f) Any person refusing or obstructing access to the administrator or representatives designated by the administrator to any accounts, books, records or papers, refusing to furnish any required information, or hindering a full examination or investigation of the accounts, books, records or papers, is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars ($750.00), imprisonment for a period of not more than six (6) months, or both.

(g) Any person who wrongfully fails or refuses to comply with an order of the administrator as may be provided for under this act is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars ($100.00) per day for each day the order is not complied with.

(h) Any person failing to submit reports to the administrator as may be required under this act is subject to a civil penalty of not more than ten dollars ($10.00) per day for each day the reports are delayed beyond the stated time the reports are required to be submitted.

(j) Reports required of persons by the administrator under this act and materials relating to examinations and investigations of persons subject to this act shall be subject to the provisions of W.S. 16-4-203(d)(v) and 9-1-512, as applicable.

40-14-605. Administrative powers with respect to supervised financial organizations.

(a) With respect to supervised financial organizations, the powers of examination and investigation (W.S. 40-14-606) and administrative enforcement (W.S. 40-14-608) shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the administrator under this act may be exercised by him with respect to a supervised financial organization.

(b) If the administrator receives a complaint or other information concerning noncompliance with this act by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(c) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this act. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

40-14-606. Examination and investigatory powers.

(a) The administrator may conduct examinations of persons licensed under this act at intervals he deems necessary to determine whether violations of this act and other applicable laws, rules and regulations pertaining to consumer credit are occurring and the frequency and seriousness of such violations.

(b) In addition to the examinations provided for in subsection (a) of this section, if the administrator has probable cause to believe that a person has engaged in an act which is subject to action by the administrator, he may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths

or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(c) If the person's records are located outside this state, the person at his option shall either make them available at a location within this state convenient to the administrator or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. For the purpose of this section, the administrator shall have free and reasonable access during normal business hours to the offices, place of business and records of the person being examined or investigated. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(d) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court for an order compelling compliance.

(e) The administrator shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this act.

(f) Each licensee or person subject to examination or investigation under this act shall pay to the administrator an amount assessed by the administrator to cover the direct and indirect cost of examinations or investigations conducted pursuant to this section.

40-14-607. Applicability of Administrative Procedure Act.

Except as otherwise provided, the Wyoming Administrative Procedure Act applies to and governs all administrative action taken by the administrator pursuant to this act.

40-14-608. Administrative enforcement orders.

(a) After notice and hearing the administrator may order a creditor or a person acting in his behalf to cease and desist from engaging in violations of this act. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of its order in the district court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(b) Within thirty (30) days after service of the petition for review upon the administrator, or within any further time the court may allow, the administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may:

(i) Reverse or modify the order if the findings of fact of the administrator are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(ii) Grant any temporary relief or restraining order it deems just; and

(iii) Enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

(c) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

(d) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the supreme court as provided by the Wyoming Rules of Civil Procedure and the Rules of the Supreme Court [by the Wyoming Rules of Appellate Procedure]. The administrator's copy of the

testimony shall be available at reasonable times to all parties for examination without cost.

(e) A proceeding for review under this section must be initiated within thirty (30) days after a copy of the order of the administrator is received by the creditor or person acting on his behalf. If no proceeding is so initiated, the administrator may obtain a decree of the district court for enforcement of its order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(f) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction (W.S. 40-14-611).

40-14-609. Assurance of discontinuance.

If it is claimed that a person has engaged in conduct subject to an order by the administrator (W.S. 40-14-608) or by a court (W.S. 40-14-610 through 40-14-612), the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

40-14-610. Injunctions against violations.

The administrator may bring a civil action to restrain a person from violating this act and for other appropriate relief.

40-14-611. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(a) The administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of:

(i) Making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;

(ii) Fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer loans; or

(iii) Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases, or consumer loans.

(b) In an action brought pursuant to this section the court may grant relief only if it finds:

(i) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(ii) That the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(iii) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(c) In applying this section, consideration shall be given to each of the following factors, among others:

(i) Belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(ii) In the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;

(iii) In the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

(iv) The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(v) The fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(d) In an action brought pursuant to this section, a charge or practice expressly permitted by this act is not in itself unconscionable.

40-14-612. Temporary relief.

With respect to an action brought to enjoin violations of the act (W.S. 40-14-610) or unconscionable agreements or fraudulent or unconscionable conduct (W.S. 40-14-611), the administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

40-14-613. Civil actions.

(a) After demand, the administrator may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this act. An action may relate to transactions with more than one (1) debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this act, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the administrator, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the excess charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the administrator to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is

dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(b) The administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this act, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this act, it may assess a civil penalty of no more than five thousand dollars ($5,000.00). No civil penalty pursuant to this subsection may be imposed for violations of this act occurring more than two (2) years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

40-14-614. Jury trial.

In an action brought by the administrator under this act, he has no right to trial by jury.

40-14-615. Debtors' remedies not affected.

The grant of powers to the administrator in this article does not affect remedies available to debtors under this act or under other principles of law or equity.

40-14-616. Enforcement.

(a) The administrator, in carrying out enforcement activities under this section, in cases where an annual percentage rate or finance charge was inaccurately disclosed, shall notify the creditor of the disclosure error and is authorized, in accordance with this section, to require the creditor to make an adjustment to the account of the person to whom credit was extended, to assure that the person will not be required to pay a finance charge in excess of the finance charge

actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. For the purposes of this section, except where the disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in determining whether a disclosure error has occurred and in calculating any adjustment:

(i) The administrator shall apply:

(A) For transactions consummated after January 1, 1977, until March 31, 1982, with respect to the annual percentage rate, a tolerance of one-quarter of one percent (.25%) more or less than the actual rate determined without regard to W.S. 40-14-225 and 40-14-323, except in the case of an irregular mortgage lending transaction consummated between January 1, 1977, and March 31, 1982, in which a tolerance of one-half of one percent (.5%) is allowed; and

(B) With respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance provided under this section for the annual percentage rate, except that with respect to transactions consummated on or after April 1, 1982 the administrator shall apply:

(I) For transactions that have a scheduled amortization of ten (10) years or less with respect to the annual percentage rate, a tolerance not to exceed one-quarter of one percent (.25%) more or less than the actual rate determined without regard to W.S. 40-14-225 and 40-14-323;

(II) For transactions that have a scheduled amortization of more than ten (10) years, with respect to the annual percentage rate, only such tolerances as are allowed under W.S. 40-14-225 and 40-14-323; and

(III) For all transactions, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerances provided under this subsection for the annual percentage rate.

(b) The administrator shall require an adjustment when he determines that the disclosure error resulted from a clear and consistent pattern or practice of violations, gross negligence or a willful violation which was intended to mislead the person to whom the credit was extended. Notwithstanding the preceding sentence, except where the disclosure error resulted from a willful violation which was intended to mislead the person to

whom credit was extended, the administrator need not require such an adjustment if he determines that the disclosure error:

(i) Resulted from an error involving the disclosure of a fee or charge that would otherwise be excludable in computing the finance charge, including but not limited to violations involving the disclosures described in rules adopted by the administrator in which event the administrator may require such remedial action as he determines to be equitable, except that for transactions consummated on or after April 1, 1982 the adjustment shall be ordered for violations of W.S. 40-14-213(b) and 40-14-311(b);

(ii) Involved a disclosed amount which was ten percent (10%) or less of the amount that should have been disclosed and, in cases where the error involved a disclosed finance charge, the annual percentage rate was disclosed correctly, and, in cases where the error involved a disclosed annual percentage rate, the finance charge was disclosed correctly, in which event the administrator may require such adjustment as he determines to be equitable;

(iii) Involved a total failure to disclose either the annual percentage rate or the finance charge, in which event the administrator may require any adjustment as he determines to be equitable; or

(iv) Resulted from any other unique circumstance involving clearly technical and nonsubstantive disclosure violations that do not adversely affect information provided to the consumer and that have not misled or otherwise deceived the consumer.

(c) In the case of other disclosure errors, the administrator may require such an adjustment.

(d) Notwithstanding subsection (b) of this section, no adjustment shall be ordered:

(i) If it would have a significantly adverse impact upon the safety or soundness of the creditor, but, in any such case, the administrator may require a partial adjustment in an amount which does not have such an impact, except that, with respect to any transaction consummated after the effective date of this section, the administrator shall require the full adjustment, but permit the creditor to make the required

adjustment in partial payments over an extended period of time which the administrator considers to be reasonable;

(ii) If the amount of the adjustment would be less than one dollar ($1.00), except that if more than one (1) year has elapsed since the date of the violation, the administrator may require that the amount shall be paid into the state treasury; or

(iii) Except where disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than two (2) years after the violation, or in the case of any other extension of credit, as follows:

(A) With respect to creditors that are subject to examination by the administrator, except in connection with violations arising from practices identified in the current examination and only in connection with transactions that are consummated after the date of the immediately preceding examination, except that where practices giving rise to violations identified in earlier examinations have not been corrected, adjustments for those violations shall be required in connection with transactions consummated after the date of the examination in which the practices were first identified;

(B) With respect to creditors that are not subject to examination by the administrator, except in connection with transactions that are consummated after March 31, 1980; and

(C) In no event after the later of the expiration of the life of the credit extension or two (2) years after the agreement to extend credit was consummated.

(e) Notwithstanding any other provision of this section, an adjustment under this subsection may be required by the administrator only by an order issued in accordance with the rules and regulations of the administrator pursuant to this act.

(f) Except as otherwise specifically provided in this subsection and notwithstanding any other provision of law, the administrator may not require a creditor to make dollar adjustments for errors in any requirements under this act except as otherwise specifically provided.

(g) A creditor is not subject to an order to make an adjustment, if, within sixty (60) days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account so as to assure that the person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(h) Notwithstanding the second sentence of subsection (a), subparagraph (d)(iii)(A) and subparagraph (d)(iii)(B) of this section, the administrator shall require an adjustment for an annual percentage rate disclosure error that exceeds a tolerance of one-quarter of one percent (.25%) less than the actual rate determined without regard to W.S. 40-14-225 and 40-14-323, except in the case of an irregular mortgage lending transaction with respect to any transaction consummated between January 1, 1977 and March 31, 1980.

40-14-630. Applicability.

This part applies to a person engaged in this state in making consumer credit sales, consumer leases or consumer loans, including a pawnbroker, sales finance company and post-dated check casher, and to a person having an office or place of business who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases or loans.

40-14-631. Notification.

(a) Persons subject to this part shall file notification with the administrator within thirty (30) days after commencing business in this state, and, thereafter, on or before January 31 of each year. The notification shall state:

(i) Name of the person;

(ii) Name in which business is transacted if different from paragraph (a)(i) of this section;

(iii) Address of principal office, which may be outside this state;

(iv) Address of all offices or retail stores, if any, in this state at which consumer credit sales, consumer leases,

or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;

(v) If consumer credit sales, consumer leases, or consumer loans are made otherwise than at an office or retail store in this state, a brief description of the manner in which they are made;

(vi) Address of designated agent upon whom service of process may be made in this state; and

(vii) Whether supervised loans are made.

(b) If information in a notification becomes inaccurate after filing, such change shall be promptly given the administrator.

40-14-632. Fees.

(a) A person required to file notification shall on or before January 31 of each year pay to the administrator an annual fee of twenty-five dollars ($25.00) for that year.

(b) Persons required to file notification who are sellers, lessors or lenders shall pay an additional fee at the time and in the manner stated in subsection (a) of this section of twenty-five dollars ($25.00) for each one hundred thousand dollars ($100,000.00), or part thereof, in excess of one hundred thousand dollars ($100,000.00), of the original unpaid balances arising from consumer credit sales, consumer leases and consumer loans made in this state within the preceding calendar year and held either by the seller, lessor or lender for more than thirty (30) days after the inception of the sale, lease or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease or loan resulting in an increase in the amount of an obligation is considered a new sale, lease or loan to the extent of the amount of the increase. The administrator may by rule increase this fee to an amount not greater than thirty-five dollars ($35.00) per one hundred thousand dollars ($100,000.00), or part thereof, in excess of one hundred thousand dollars ($100,000.00) of the original unpaid balances if he determines that an increase is necessary to cover the cost of administration of this act.

(c) Persons required to file notification who are assignees shall pay an additional fee at the time and in the

manner stated in subsection (a) of this section of twenty-five dollars ($25.00) for each one hundred thousand dollars ($100,000.00), or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases and consumer loans made in this state taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee. The administrator may by rule increase this fee to an amount not greater than thirty-five dollars ($35.00) per one hundred thousand dollars ($100,000.00), or part thereof, in excess of one hundred thousand dollars ($100,000.00) if he determines that an increase is necessary to cover the cost of administration of this act.

40-14-633. Crediting of monies.

All fees and other monies received by the administrator under the provisions of this act shall be deposited by the administrator with the state treasurer and credited to the consumer credit administration account, except the amount paid for data processing by the registry or any other entity designated by the registry. The funds deposited in the account under this act shall be subject to appropriation by the legislature to the administrator and shall be expended only to carry out the duties of the administrator. Expenditures shall be made from the account by warrants drawn by the state auditor, upon vouchers issued and signed by the administrator.

40-14-634. License required; application; fee; conditions and execution; license nontransferable; display; renewal.

(a) The administrator shall receive and act on all applications for licenses required under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain the information the administrator requires by rule to make an evaluation of the financial responsibility, character and business qualifications of the applicant.

(b) The administrator shall issue a license unless, upon investigation, he finds that the financial responsibility, character and business qualifications of the applicant, and of the members thereof, if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will not be operated honestly and fairly within the purposes of this act.

(c) The application for one (1) or more licenses shall be accompanied by a processing fee not to exceed five hundred dollars ($500.00) for each license applied for, as set by rule of the administrator. If the expenses of the investigation and evaluation exceed the amount of the fee, the applicant shall reimburse the administrator the excess amount. If the expenses of the investigation and evaluation are less than the amount of the fee or if the application is withdrawn prior to the completion of the investigation and evaluation, the unexpended amount shall remain in the consumer credit administration account to be expended in accordance with W.S. 40-14-633.

(d) An applicant shall be notified when the application is approved. Within twenty (20) days after notification, the applicant shall pay an initial license fee not to exceed five hundred dollars ($500.00), as set by rule of the administrator.

(e) Each office or place of business shall be licensed separately.

(f) The license shall be prominently displayed at the place of business named in the license. The license shall not be transferable or assignable.

(g) If a licensee wishes to move his office to another location, the licensee shall:

(i) Give at least thirty (30) days written notice to the administrator; and

(ii) Pay a license modification fee not to exceed one hundred dollars ($100.00), as set by rule of the administrator.

(h) Each license issued under this act shall expire on December 31. The license shall be renewed annually not less than thirty (30) days before the stated expiration date. The renewal fee for each license shall not exceed five hundred dollars ($500.00), as set by rule of the administrator.

(j) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if:

(i) The administrator has notified the applicant in writing that his application has been denied; or

(ii) The administrator has not issued a license within sixty (60) days after the application for the license was filed. A request for a hearing may not be made more than fifteen (15) days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

(k) The administrator may establish different fees authorized under this section for each category of licensee. The administrator shall establish fees in accordance with the following:

(i) Fees shall be established by rule or regulation promulgated in accordance with the Wyoming Administrative Procedure Act;

(ii) Fees shall be established in an amount to ensure that, to the extent practicable, the total revenue generated from the fees collected approximates, but does not exceed, the direct and indirect costs of administering the regulatory provisions required under this act;

(iii) The administrator shall maintain records sufficient to support the fees charged.

(m) A license shall not be issued under subsection (b) of this section if the applicant has been convicted of, pled guilty or nolo contendere to, a felony in a domestic, foreign or military court during the seven (7) year period preceding the date of the application for licensing, or at any time preceding such date of application if such felony involved an act of fraud, dishonesty, breach of trust or money laundering.

(n) A license may be issued at the discretion of the administrator under subsection (b) of this section if the applicant has been convicted of, pled guilty or nolo contendere to a misdemeanor in a domestic, foreign or military court involving an act of fraud, dishonesty, breach of trust or money laundering.

(o) In order to fulfill the purposes of this act, the administrator may establish relationships or contract with the registry or any other entity designated by the registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this act.

(p) In addition to the other requirements of this section, in connection with an application for licensing, the applicant shall, at a minimum, furnish to the administrator or the registry information concerning the identity of the applicant, the owners or persons in charge of the applicant and individuals designated in charge of the applicant's places of business, including:

(i) Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(ii) Personal history and experience, including the submission of authorization for the registry or the administrator to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(q) For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of paragraph (p)(i) of this section and subparagraph (p)(ii)(B) of this section, the administrator may use the registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(r) For the purposes of this section and in order to reduce the points of contact which the administrator may have to maintain for purposes of paragraph (p)(ii) of this section, the administrator may use the registry as a channeling agent for requesting and distributing information to and from any source as directed by the administrator.

40-14-635. Revocation or suspension of license.

(a) The administrator may issue to a person licensed under this act an order to show cause why his license should not be revoked or suspended for a period not in excess of six (6) months. The order shall state the place for a hearing and set a

time for the hearing that is no less than ten (10) days from the date of the order. After the hearing the administrator shall revoke or suspend the license if he finds that:

(i) The licensee has repeatedly and willfully violated this act or any rule or order lawfully made pursuant to this act; or

(ii) Facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(b) No revocation or suspension of a license is lawful unless prior to institution of proceedings by the administrator notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the administrator finds that probable cause for revocation of a license exists and that enforcement of this act requires immediate suspension of a license pending investigation, he may, after a hearing upon five (5) days written notice, enter an order suspending the license for not more than thirty (30) days.

(d) Whenever the administrator revokes or suspends a license, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five (5) days after the entry of the order he shall deliver to the licensee a copy of the order and the findings supporting the order.

(e) Any person holding a license under this act may relinquish the license by notifying the administrator in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

(f) No revocation, suspension or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

(g) The administrator may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists

which clearly would have justified the administrator in refusing to grant a license.

(h) For purposes of this section, "licensee" shall also mean a licensed mortgage loan originator pursuant to W.S. 40-14-641.

40-14-636. Records; confidentiality.

(a) For purposes of this section, "licensee" shall also mean a licensed mortgage loan originator pursuant to W.S. 40-14-640 and an organization employing or contracting with a mortgage loan originator.

(b) Every licensee shall maintain records in a manner that will enable the administrator to determine whether the licensee is complying with the provisions of this act. The administrator may by rule, and in accordance with W.S. 40-14-606(c), specify the manner in which records are to be made available. The records need not be kept in the place of business of the licensee, if the administrator is given free access to the records wherever located. The records pertaining to any transaction governed by this act need not be preserved for more than two (2) years after making the final entry relating to the transaction. In the case of a revolving loan account the two (2) years is measured from the date of each entry.

(c) Except as provided in subsections (d), (e) and (j) of this section, all information or reports obtained by the administrator from an applicant or licensee are confidential.

(d) Except as provided in P.L. 110-289, section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the registry. Such information and any other confidential material obtained by the administrator may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(e) The administrator may enter into cooperative, coordinating or information sharing agreements with any other

supervisory agency or any organization affiliated with or representing one (1) or more supervisory agencies with respect to the periodic examination or other supervision of any office in Wyoming of an out-of-state licensee, and the administrator may accept the parties' reports of examination and reports of investigation in lieu of conducting his own examinations or investigations.

(f) Information or material that is subject to a privilege or confidentiality protection under subsection (d) of this section shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or agency of the federal government or the respective state; or

(ii) Subpoena, discovery or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the registry with respect to such information or material, the person to whom such information or material pertains waives that privilege, in whole or in part.

(g) Any Wyoming law relating to the disclosure of confidential supervisory information or any information or material described in subsection (d) of this section that is inconsistent with subsection (d) of this section shall be superceded by the requirements of this section.

(h) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originator that is included in the registry for access by the public.

(j) The administrator may enter into contracts with any supervisory agency having concurrent jurisdiction over a Wyoming licensee pursuant to this act to engage the services of the agency's examiners at a reasonable rate of compensation. Any contract under this subsection shall not be subject to the provisions of W.S. 9-2-1016(b).

(k) This section does not prohibit the administrator from disclosing to the public a list of persons licensed under this act.

40-14-637. Surety bonds.

(a) Any organization employing or contracting with a mortgage loan originator shall maintain a surety bond to the state of Wyoming in accordance with this section. The surety bond shall be used to cover individual mortgage loan originators employed by or under contract with the organization. The amount of the bond shall be established by rule of the administrator based upon the volume of residential mortgage loan activity transacted by the organization under this act.

(b) The surety bond shall be a continuing obligation of the issuing surety. The surety's liability under the bond for any claims made under the bond either individually or in the aggregate shall in no event exceed the face amount of the bond issued. The bond shall be issued by a surety authorized to do business in the state of Wyoming. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the administrator.

(c) In the event an organization or mortgage loan originator employed by or under contract with an organization has violated any of the provisions of this act or a rule or order lawfully made pursuant to this act pertaining to a residential mortgage loan transaction, or federal law or regulation pertaining to the mortgage lending or mortgage brokering, and has damaged any person by such violation, then the bond shall be forfeited and paid by the surety to the state of Wyoming for the benefit of any person so damaged, in an amount sufficient to satisfy the violation or the bond in its entirety if the violation exceeds the amount of the bond.

(d) Surety bonds shall remain effective continuously until released in writing by the administrator. If a bond has not been previously released by the administrator, the bond shall expire two (2) years after the date of the surrender, revocation or expiration of the license.

40-14-638. Mortgage call reports.

Each organization employing or contracting with a mortgage loan originator shall submit to the registry reports of condition, which shall be in such form and shall contain such information as required by the registry.

40-14-639. Report to the registry.

The administrator shall regularly report violations of this act relating to transactions conducted by mortgage loan originators, as well as enforcement actions and other relevant information, to the registry subject to the provisions contained in W.S. 40-14-636. The administrator shall establish by rule a process where a mortgage loan originator may challenge information entered into the registry by the administrator.

40-14-640. Additional definitions.

(a) As used in this part:

(i) Repealed By Laws 2013, Ch. 27, § 2.

(ii) "Clerical or support duties" means:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms;

(iii) "Depository institution" means an organization as defined in 12 U.S.C. 1813 of the Federal Deposit Insurance Act and includes any credit union;

(iv) "Dwelling" means a residential structure that contains one (1) to four (4) units, whether or not that structure is attached to real property. "Dwelling", if it is used as a residence, includes an individual condominium unit, cooperative unit, mobile home and trailer;

(v) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration or the federal deposit insurance corporation;

(vi) "Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, stepsibling and any adoptive relationship included in this paragraph;

(vii) "Individual" means a natural person;

(viii) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of an organization employing or contracting with a mortgage loan originator, or an exempt person under W.S. 40-14-121;

(ix) "Mortgage loan originator":

(A) Means an individual who for compensation or gain or in the expectation of compensation or gain:

(I) Takes a residential mortgage loan application; or

(II) Offers or negotiates the terms of a residential mortgage loan.

(B) Shall not include any individual engaged solely as a loan processor or underwriter except as otherwise described in W.S. 40-14-641(d);

(C) Shall not include a person who only performs real estate brokerage activities and is licensed or registered in accordance with Wyoming law, unless the person is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator; and

(D) Shall not include a person solely involved in extensions of credit relating to timeshare plans.

(x) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage;

(xi) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(B) Arranging meetings or communicating with any party interested in the sale, purchase, lease, rental or exchange of real property;

(C) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, unless the negotiating relates to the financing of these transactions, which shall then constitute engaging in the business as a mortgage loan originator;

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) Offering to engage in any activity, or act in any capacity, described in subparagraph (A), (B), (C) or (D) of this paragraph.

(xii) "Registered mortgage loan originator" means any individual who:

(A) Is registered with, and maintains a unique identifier through, the registry; and

(B) Meets the definition of mortgage loan originator and is an employee of:

(I) An institution regulated by the farm credit administration;

(II) A depository institution; or

(III) A subsidiary that is:

(1) Owned and controlled by a depository institution; and

(2) Regulated by a federal banking agency.

(xiii) Repealed By Laws 2013, Ch. 27, § 2.

(xiv) "Residential mortgage loan" means a consumer loan as defined in W.S. 40-14-304 or a consumer credit sale as defined in W.S. 40-14-204, made primarily for personal, family

or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(xv) "Timeshare plan" means as defined in 11 U.S.C. § 101(53D);

(xvi) "Unique identifier" means a number or other identifier assigned by protocols established by the registry.

40-14-641. Loan originator licensing; registration; rulemaking.

(a) An individual, unless specifically exempted under subsection (c) of this section, shall not engage in the business of a mortgage loan originator for any dwelling located in Wyoming without first obtaining and maintaining annually a license in accordance with part 4 of this article. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the registry.

(b) In order to facilitate an orderly transition to licensing and minimize disruption in the marketplace, the effective date for subsection (a) of this section shall be July 1, 2010.

(c) An individual is exempt from subsection (a) of this section if he is:

(i) A registered mortgage loan originator, when acting for an entity described in W.S. 40-14-640(a)(xii)(B)(I), (II) or (III);

(ii) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(iii) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(iv) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage

broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator;

(v) An individual engaging solely in loan processor or underwriter activities, who does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(d) A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license pursuant to subsection (a) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the registry.

(e) For the purpose of implementing an orderly and efficient licensing process the administrator may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications.

40-14-642. Loan originator application; processing.

(a) Applicants for a mortgage loan originator license shall apply in a form prescribed by the administrator. Each application form shall contain content as established by the administrator and may be changed or updated as necessary by the administrator in order to carry out the purposes of part 4 of this article.

(b) In order to fulfill the purposes of this act, the administrator may establish relationships or contract with the registry or any other entity designated by the registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this act.

(c) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the registry information concerning the applicant's identity, including:

(i) Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(ii) Personal history and experience, including the submission of authorization for the registry and the administrator to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(d) For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of paragraph (c)(i) of this section and subparagraph (c)(ii)(B) of this section, the administrator may use the registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(e) For the purposes of this section and in order to reduce the points of contact which the administrator may have to maintain for purposes of subparagraphs (c)(ii)(A) and (B) of this section, the administrator may use the registry as a channeling agent for requesting and distributing information to and from any source as directed by the administrator.

(f) Each application submitted under subsection (a) of this section shall be accompanied by an application fee not to exceed three hundred dollars ($300.00), as established by rule of the administrator. When an application for licensure is denied or withdrawn, the administrator shall retain all fees paid by the applicant.

40-14-643. Issuance of loan originator licenses.

(a) The administrator shall not issue a mortgage loan originator license unless the administrator makes at a minimum the following findings:

(i) The applicant has not had a mortgage loan originator license revoked in any governmental jurisdiction,

except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(ii) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court:

(A) During the seven (7) year period preceding the date of the application for licensing and registration; or

(B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust or money laundering. Any pardon of a conviction shall not be a conviction for the purposes of this paragraph.

(iii) The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of this act;

(iv) The applicant has completed the prelicensing education requirement pursuant to W.S. 40-14-644;

(v) The applicant has passed a written test that meets the test requirement described in W.S. 40-14-645.

(b) For purposes of paragraph (a)(iii) of this section, a person has shown that he is not financially responsible when he has shown a disregard in the management of his own financial condition. A determination that an individual has not shown financial responsibility shall include, but not be limited to:

(i) Having any outstanding judgment, except a judgment solely as a result of medical expenses;

(ii) Having any outstanding tax lien or other government lien;

(iii) Having any foreclosure within the past three (3) years;

(iv) Having a pattern of seriously delinquent accounts within the past three (3) years.

(c) Upon written request, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(i) The administrator has notified the applicant in writing that his application has been denied, or objections to the application have been filed with the administrator;

(ii) The administrator has not issued a license within sixty (60) days after a complete application for the license was filed.

(d) If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the administrator for his reasonable and necessary expenses incurred as a result of the hearing. Notwithstanding any provision under the Wyoming Administrative Procedure Act, a request for hearing shall not be made more than fifteen (15) days after the applicant has received notification by certified mail that the application has been denied and stating in substance the administrator's finding supporting denial of the application or that objections have been filed and the substance thereof.

40-14-644. Prelicensing and relicensing education of loan originators.

(a) In order to meet the prelicensing education requirement referred to in W.S. 40-14-643(a)(iv), a person shall complete at least twenty (20) hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(i) Three (3) hours of federal law and regulations related to mortgage origination;

(ii) Three (3) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues; and

(iii) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the registry. The review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, as approved by the registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online or by any other means approved by the registry.

(e) The prelicensing education requirements approved by the registry in paragraphs (a)(i), (ii) and (iii) of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in Wyoming.

(f) An individual licensed under W.S. 40-14-641 after July 1, 2009 and who subsequently applies to be licensed again:

(i) Shall not have to complete prelicensing education requirements;

(ii) Shall have completed all the continuing education requirements pursuant to W.S. 40-14-647.

40-14-645. Testing of mortgage loan originators.

(a) In order to meet the written test requirement under W.S. 40-14-643(a)(v), an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the registry and administered by a test provider approved by the registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(i) Ethics;

(ii) Federal law and regulation pertaining to mortgage origination;

(iii) Wyoming law and regulation pertaining to mortgage origination; and

(iv) Federal and Wyoming law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(c) Nothing in this section shall prohibit a test provider from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent (75%) correct answers to test questions.

(e) An individual may retake a test three (3) times with each test taking occurring at least thirty (30) days after the preceding test.

(f) After failing three (3) tests, an individual shall wait at least six (6) months before taking the test again.

(g) A licensed mortgage loan originator who fails to maintain a valid license for at least five (5) years shall retake the written test. Any time the individual spends working as a registered mortgage loan originator shall not be counted against this five (5) year period.

40-14-646. Standards for loan originator license renewal; rulemaking.

(a) The minimum standards for license renewal for mortgage loan originators shall include the following:

(i) The mortgage loan originator continues to meet the minimum standards for license issuance under W.S. 40-14-643(a)(i) through (v);

(ii) The mortgage loan originator has satisfied the annual continuing education requirements described in W.S. 40-14-647;

(iii) The mortgage loan originator has paid the license renewal fee not to exceed three hundred dollars ($300.00), as established by rule of the administrator.

(b) Each mortgage loan originator license shall expire on December 31. The license shall be renewed annually by satisfying the minimum standards for license renewal not less than thirty (30) days before the stated expiration date. The administrator may establish rules for the reinstatement of expired licenses consistent with the standards established by the registry.

40-14-647. Continuing education for mortgage loan originators; rulemaking.

(a) In order to meet the annual continuing education requirements required by W.S. 40-14-646(a)(ii), a licensed mortgage loan originator shall complete at least eight (8) hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(i) Three (3) hours of federal law and regulations relating to mortgage origination;

(ii) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues; and

(iii) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the registry. The review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the registry.

(e) A licensed mortgage loan originator:

(i) Except as provided in W.S. 40-14-646(b), shall only receive credit for a continuing education course in the year in which the course is taken; and

(ii) Shall not take the same approved course in the same year or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

(g) An individual having successfully completed the education requirements approved by the registry in paragraphs (a)(i), (ii) and (iii) of this section for any state shall be accepted as credit towards completion of continuing education requirements in Wyoming.

(h) An individual meeting the requirements of W.S. 40-14-646(a)(i) and (iii) may make up any deficiency in continuing education as established by rule of the administrator.

(j) An individual licensed under W.S. 40-14-641 after July 1, 2009 and who subsequently applies to be licensed again shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

40-14-648. Authority to require license.

(a) In addition to any other duties imposed upon the administrator by law, the administrator shall require mortgage loan originators to be licensed and registered through the registry. In order to carry out this requirement the administrator may participate in the registry. For this purpose, the administrator may establish by rule any requirements as necessary, including but not limited to:

(i) Background checks for:

(A) Criminal history through fingerprint or other databases;

(B) Civil or administrative records;

(C) Credit history; or

(D) Any other information as deemed necessary by the registry.

(ii) The payment of fees to apply for or renew licenses through the registry; and

(iii) Requirements for amending or surrendering a license or any other such activities as the administrator deems necessary for participation in the registry.

40-14-649. Unique identifier; rulemaking.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan applications forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule of the administrator.

ARTICLE 7 - EFFECTIVE DATE; PREVIOUS TRANSACTIONS

40-14-701. Time of taking effect; provisions for transition.

(a) Except as otherwise provided in this section, this act takes effect at 12:01 a.m. on July 1, 1971.

(b) To the extent appropriate to permit the administrator to prepare for operation of this act when it takes effect and to act on applications for licenses to make supervised loans under this act (W.S. 40-14-343(a) [repealed]), the part on supervised loans (part 5) of the article on loans (article 3) and the article on administration (article 6) take effect as provided by law.

(c) Transactions entered into before this act takes effect and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this act as though the repeal, amendment, or modification had not occurred, but this act applies to:

(i) Refinancings, consolidations, and deferrals made after this act takes effect of sales, leases, and loans whenever made;

(ii) Sales or loans made after this act takes effect pursuant to revolving charge accounts (W.S. 40-14-208) and revolving loan accounts (W.S. 40-14-308) entered into, arranged or contracted for before this act takes effect; and

(iii) All credit transactions made before this act takes effect insofar as the article on remedies and penalties (article 5) limits the remedies of creditors.

(d) With respect to revolving charge accounts (W.S. 40-14-208) and revolving loan accounts (W.S. 40-14-308) entered into, arranged, or contracted for before this act takes effect, disclosure pursuant to the laws relating to disclosure shall be made not later than thirty (30) days after this act takes effect.

40-14-702. Continuation of licensing.

All persons licensed or otherwise authorized under the provisions of W.S. 40-14-101 through 40-14-702 are licensed to make supervised loans under this act pursuant to the part on supervised loans (part 5) of the article on loans (article 3), and all provisions of that part apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

CHAPTER 15 - MOTOR VEHICLE FRANCHISE ACT

40-15-101. Repealed by Laws 1988, ch. 98, § 2.

40-15-102. Repealed by Laws 1988, ch. 98, § 2.

40-15-103. Repealed by Laws 1988, ch. 98, § 2.

40-15-104. Repealed by Laws 1988, ch. 98, § 2.

40-15-105. Repealed by Laws 1988, ch. 98, § 2.

40-15-106. Repealed by Laws 1988, ch. 98, § 2.

40-15-107. Repealed by Laws 1988, ch. 98, § 2.

40-15-108. Repealed by Laws 1988, ch. 98, § 2.

40-15-109. Repealed by Laws 1988, ch. 98, § 2.

CHAPTER 16 - TRADING STAMPS

40-16-101. Prohibited.

It shall be unlawful for any person, firm, association or corporation to use, issue, or distribute, or for any person, firm, association or corporation to furnish to any other person, firm, association or corporation to use, issue or distribute, in, with, or for the sale of goods, wares, merchandise or service, any stamps, coupons, tickets, certificates, cards, or other similar devices, which shall entitle the purchaser receiving the same with the sale of goods, wares, merchandise or service to procure from any person, firm, association or corporation, any goods, wares, merchandise or service upon the production of any number of such stamps, coupons, tickets, certificates, cards or other similar devices.

40-16-102. Exceptions.

(a) W.S. 40-16-101 through 40-16-103 shall not apply to the use, issuance, distribution, furnishing or redemption of any coupon, ticket, certificate, card or other similar device which is:

(i) Issued, distributed, furnished or redeemed by a manufacturer or packer in connection with the sale of its manufactured or packed products, when the coupon, ticket, certificate, card or other similar device is redeemable without, or accompanying, cash for any product of the manufacturer or packer or for any products not manufactured or packed by the manufacturer or packer if those products are offered by the manufacturer or packer solely for promotional purposes;

(ii) Issued, distributed, furnished or redeemed by a merchant when such coupon, ticket, certificate, card, or other similar device is redeemable at face value, in cash or merchandise from the general stock of said merchant at regular retail prices at the option of the holder thereof.

(b) W.S. 40-16-101 through 40-16-103 shall not be interpreted to prohibit promotional activities conducted by a manufacturer in connection with the sale of the manufacturer's service or product which offers consumers the opportunity to submit to the manufacturer or its agents, stated proof of purchases of the manufacturer's service, product or cash in exchange for one (1) or more services or products not manufactured by the manufacturer.

40-16-103. Penalty for violation; continuing offense; liability of officers and agents; enjoining or ousting violators.

Any person, firm, association or corporation violating any provision of this act shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one hundred dollars ($100.00), or by imprisonment not to exceed sixty (60) days, or by both such fine and imprisonment. Each day said person, firm, association or corporation is in violation of this act shall constitute a separate and distinct offense. Whenever a firm, association or corporation shall violate any provision of this act, such violation shall be deemed to be also that of the individual directors, officers, or agents of such firm, association or corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation. A firm, association or corporation and its different officers, agents, and servants may each be prosecuted separately for violation of any provision of this act, and the acquittal or conviction of one such officer, agent or servant shall not abate the prosecution of the others. Violators of any provision of this act may also be enjoined or ousted from the continuing of such violation by proceedings brought by the district attorney of the proper district, or by the attorney general, regardless of whether criminal proceedings have been instituted.

CHAPTER 17 - MOTOR VEHICLES

40-17-101. Definitions; express warranties; duty to make warranty repairs.

(a) As used in this section:

(i) "Consumer" means any person:

(A) Who purchases a motor vehicle, other than for the purpose of resale, to which an express warranty applies; or

(B) To whom a motor vehicle is transferred during the term of an express warranty applicable to the motor vehicle; or

(C) Entitled by the terms of an express warranty applicable to a motor vehicle to enforce it.

(ii) "Motor vehicle" means every vehicle under ten thousand (10,000) pounds unladen weight, sold or registered in the state, which is self-propelled except vehicles moved solely by human power;

(iii) "Reasonable allowance for consumer's use" means an amount directly attributable to use of the motor vehicle prior to the first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the motor vehicle is not out of service due to repair;

(iv) "Manufacturers' express warranty or warranty" means the written warranty, so labeled, of the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under warranty.

(b) If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer within one (1) year following the original delivery of the motor vehicle to the consumer, the manufacturer, its agent or authorized dealer shall make repairs necessary to conform the vehicle to the express warranties. The necessary repairs shall be made even if the one (1) year period has expired.

(c) If the manufacturer, its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and fair market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall:

(i) Replace the motor vehicle with a new or comparable motor vehicle of the same type and similarly equipped; or

(ii) Accept return of the motor vehicle and refund to the consumer and any lienholder as their interest may appear the full purchase price including all collateral charges less a reasonable allowance for consumer's use.

(d) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to express warranty if within one (1) year following the original delivery of the motor vehicle to the consumer, whichever is later:

(i) The same nonconformity has been subject to repair more than three (3) times by the manufacturer, its agents or its authorized dealers and the same nonconformity continues to exist; or

(ii) The vehicle is out of service due to repair for a cumulative total of thirty (30) business days.

(e) Nothing in this section shall be construed to limit the rights or remedies of a consumer under any other statute.

(f) Subsection (c) of this section does not apply to any consumer who has failed to exhaust his remedies under a manufacturer's informal dispute settlement procedure if a procedure exists and is in compliance with applicable federal statute and regulation.

(g) It is an affirmative defense to any claim under this section that:

(i) An alleged nonconformity does not substantially impair the use and fair market value of the motor vehicle; or

(ii) A nonconformity is the result of abuse, neglect or unauthorized modification or alteration of a motor vehicle by a consumer.

(h) In no event shall the presumption herein provided in subsection (d) of this section apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had a reasonable opportunity to cure the alleged defect.

(j) Any period of time provided in subsection (d) of this section shall be extended by any period of time during which the vehicle could not reasonably be repaired due to war, invasion, act of terror, civil unrest, strike, fire, flood or natural disaster.

(k) Any consumer injured by a violation of this section may bring a civil action to enforce this section and may recover reasonable attorney's fees from the manufacturer who issued the express warranty.

40-17-102. Motor carrier indemnity agreements void.

(a) Notwithstanding any other provision of law, any provision, clause, covenant or agreement contained in a motor carrier transportation contract or a related access agreement under which the motor carrier transporter enters on property for the purpose of loading, unloading or transporting property, to the extent that the contract purports to indemnify, defend or hold harmless or has the effect of indemnifying, defending or holding harmless the indemnitee from or against any liability for loss or damage resulting from its own negligence or intentional acts or omissions is against the public policy of this state and is void and unenforceable. For purposes of this section, "motor carrier transportation contract" means a contract, agreement or understanding regarding:

(i) The transportation of property for compensation or hire;

(ii) Entrance on property for the purpose of loading, unloading or transporting property for compensation or hire; or

(iii) A service incidental to activity described in paragraphs (i) and (ii) of this subsection.

(b) Subsection (a) of this section shall not apply to a contract, subcontract or agreement that concerns or affects transportation involving a railroad. As used in this section, "motor carrier transportation contract" shall not include the uniform intermodal interchange and facilities access agreement administered by the intermodal association of North America, or other agreements providing for the interchange, use or possession of intermodal chassis, containers or other intermodal equipment.

CHAPTER 18 - REPURCHASE OF FARM MACHINERY UPON TERMINATION OF CONTRACT

40-18-101. Repealed By Laws 1998, ch. 27, § 2.

40-18-102. Repealed By Laws 1998, ch. 27, § 2.

40-18-103. Repealed By Laws 1998, ch. 27, § 2.

40-18-104. Repealed By Laws 1998, ch. 27, § 2.

40-18-105. Repealed By Laws 1998, ch. 27, § 2.

40-18-106. Repealed By Laws 1998, ch. 27, § 2.

40-18-107. Repealed By Laws 1998, ch. 27, § 2.

CHAPTER 19 - CONSUMER RENTAL PURCHASE AGREEMENT ACT

40-19-101. Short title.

This act shall be known and may be cited as the "Wyoming Consumer Rental-Purchase Agreement Act."

40-19-102. Definitions.

(a) As used in this act:

(i) "Administrator" means the state banking commissioner;

(ii) "Advertisement" means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

(iii) "Business day" means any day other than Sunday or a legal holiday;

(iv) "Cash sale price" means the price stated in a rental-purchase agreement for which the merchant would have sold and the consumer would have bought the property which is the subject matter of a rental-purchase agreement if the transaction had been a sale for cash. The cash sale price may include any applicable taxes to the extent imposed on the cash sale;

(v) "Consumer" means an individual who rents property under a rental-purchase agreement to be used primarily for personal, family or household purposes;

(vi) "Consummation" means the date on which a consumer enters a rental-purchase agreement;

(vii) "Fee" means any payment, charge, fee, cost or expense whether mandatory or optional that a consumer pays in addition to periodic payments in connection with a rental-purchase agreement;

(viii) "Merchant" means a person who regularly provides the use of property under rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement;

(ix) "Periodic payment" means the rent a consumer pays weekly, monthly or otherwise for the use of property pursuant to a rental-purchase agreement;

(x) "Property" means personal property of which a consumer acquires use under a rental-purchase agreement;

(xi) "Rental-purchase agreement" means an agreement between a consumer and merchant for the use of property by the consumer primarily for personal, family or household purposes:

(A) For an initial period of four (4) months or less;

(B) That is automatically renewable with each payment after the initial period;

(C) That does not obligate or require the consumer to continue renting or using the property beyond the initial period; and

(D) That permits the consumer to become the owner of the property.

(xii) "This act" means W.S. 40-19-101 through 40-19-120.

40-19-103. Notices.

Notices required by this act shall be given personally or sent by first class or registered mail to the known residential address of the consumer. Notice, if last by mail, is given when deposited in a mailbox properly addressed and postage prepaid.

40-19-104. Application.

(a) This act applies to rental-purchase agreements and acts, practices or conduct related to a rental-purchase agreement entered into in this state.

(b) For the purposes of this act, the residence of the consumer is the address given by the consumer as the consumer's residence in writing signed by the consumer in connection with the rental-purchase agreement. Unless the consumer notifies the merchant of a new or different residence address, the given residence is presumed to be unchanged.

40-19-105. Inapplicability of other laws; exempt transactions.

(a) Rental-purchase agreements as defined in this act are not governed by laws relating to:

(i) Transactions governed under the Wyoming Uniform Consumer Credit Code; or

(ii) "Security interests" as defined by W.S. 34.1-1-201(a)(xxxvii).

(b) This act does not apply to the following:

(i) Rental-purchase agreements primarily for business, commercial or agricultural purposes or those in which either party is a governmental agency or instrumentality;

(ii) A lease or bailment of personal property which is incidental to the lease of real property and which provides that the consumer has no option to purchase the leased property.

40-19-106. General requirements of rental-purchase agreements.

(a) Each rental-purchase agreement shall be in writing, dated, signed by the consumer and merchant and completed as to all essential provisions as required by this act.

(b) The agreement shall be made clearly and conspicuously with disclosures required by W.S. 40-19-107(a)(i), (v), (vi), (vii) and (viii) grouped together, segregated from all other provisions and not containing any information not directly related to the disclosures. The agreement shall be designated "rental-purchase agreement."

(c) The merchant shall deliver to the consumer a completed copy of the agreement for the consumer to retain at consummation of the transaction.

(d) The rental-purchase agreement shall contain the names and addresses of the merchant and consumer.

(e) The merchant shall disclose to the consumer the information required by W.S. 40-19-107 on the face of the agreement above the line for the consumer's signature. If a

disclosure becomes inaccurate as a result of any act, occurrence or agreement by the consumer after the delivery of the required disclosures, the resulting inaccuracy shall not be considered to be a violation of this act.

(f) A merchant who advertises rental-purchase agreements in any language other than English shall have rental-purchase agreements printed in each language as the merchant advertises and shall make those rental-purchase agreements available to consumers.

40-19-107. Disclosures.

(a) For each rental-purchase agreement, the merchant shall disclose in the agreement the following items as applicable:

(i) Whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the property;

(ii) A statement that the consumer will not own the property until the consumer has paid the total amount necessary to acquire ownership;

(iii) A statement advising the consumer whether the consumer is liable for loss or damage to the property, and, if so, a statement that the liability will not exceed the fair market value of the property as of the time it is lost or damaged;

(iv) A statement specifying any insurance required to be purchased by the consumer to satisfy any liability of the consumer to the merchant for loss or damage to the property;

(v) A brief description of the property, sufficient to identify the property to the consumer and the merchant, including an identification number, if applicable, and a statement indicating whether the property is new or used;

(vi) A statement of the cash sale price of the property. Where one (1) agreement involves a lease of two (2) or more items as a set, a statement of the aggregate cash sale price of all items shall satisfy this requirement;

(vii) The total amount initially payable or required at or before consummation of the agreement or delivery of the property, whichever is later;

(viii) A statement that the total amount of periodic payments necessary to acquire ownership does not include other fees. Any other fee shall be separately disclosed in the agreement along with a statement of the purpose for the fee and whether it is mandatory or optional;

(ix) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option, and the price, formula or method for determining the price at which the property may be purchased;

(x) A statement identifying the merchant as the party responsible for maintaining or servicing the property while it is being rented, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the property at the time the consumer acquires ownership, the warranty shall be transferred to the consumer if allowed by its terms;

(xi) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, reasonable wear and tear excepted, along with any past due rental payments upon expiration of any rental period;

(xii) Notice of the right to reinstate an agreement as provided in this act;

(xiii) The following notice printed or typed in a size equal to or greater than ten (10) point bold type:

NOTICE TO CONSUMER

Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign.

(xiv) If the property is used, a description of any damage to the property beyond ordinary wear and tear that would reasonably be expected on property of similar age and condition; and

(xv) A description of the conditions which constitute default by the consumer.

40-19-108. Prohibited provisions.

(a) A rental-purchase agreement shall not contain a:

(i) Confession of judgment;

(ii) Negotiable instrument;

(iii) Security interest or any other claim of a property interest in any property of the consumer;

(iv) Wage assignment;

(v) Waiver by the consumer of claims or defenses;

(vi) Provision authorizing the merchant or a person acting on the merchant's behalf to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of property;

(vii) Provision requiring the consumer to purchase insurance or a liability damage waiver from the merchant for the property. The merchant may require the consumer to insure the property so as to satisfy any liability of the consumer to the merchant for loss or damage to the property;

(viii) Provision that mere failure to return property constitutes probable cause for a criminal action;

(ix) Provision requiring the consumer to make a final periodic payment in an amount greater than regular periodic payments in order to acquire ownership of the property or a provision requiring the consumer to make periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to W.S. 40-19-107;

(x) Provision requiring a reinstatement fee unless a periodic payment is late more than five (5) days on a monthly agreement or more than two (2) days on an agreement with periodic payments made more frequently than monthly;

(xi) Provision for a reinstatement fee or pickup and redelivery fee in excess of the maximum amount set by rule of

the administrator for property subject to rental-purchase agreements; or

(xii) Provision for a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement other than a reinstatement fee. However, a merchant may use the term "late charge" or a similar term to refer to a reinstatement fee.

40-19-109. Default; notice of default and right to cure.

(a) In any rental-purchase agreement, after a consumer is in default for three (3) business days or more and does not voluntarily surrender possession of the rented property, a merchant may give the consumer the notice provided in this section. Notice may be given to the consumer under this section by the merchant personally delivering the notice to the consumer or by mailing the notice to the consumer's last known residential address.

(b) The notice shall be in writing and conspicuously state the name, address and telephone number of the merchant to whom payment is made, a brief identification of the transaction, the consumer's right to cure any default, the amount of payment and the date the payment shall be made to cure the default. The notice shall be in substantially the form required by rule of the administrator.

(c) With respect to rental-purchase agreements with payments or options to renew more frequently than monthly, after default consisting of failure to renew or return the property, a merchant may not initiate court action to recover rented property until three (3) business days after notice of the consumer's right to cure is given. With respect to all other rental-purchase agreements, after default consisting of failure to renew or return the property, a merchant may not initiate court action to recover rented property until five (5) business days after notice of the consumer's right to cure is given.

(d) After notice is given and until expiration of the minimum applicable period, a consumer may cure all defaults consisting of failure to renew and failure to return the property by tendering the amount of all unpaid sums due and payment of a renewal payment.

(e) This section shall not prohibit a consumer from voluntarily surrendering possession of property that is rented

or a merchant from requesting and accepting surrender of property at any time after default. In any enforcement proceeding, a merchant shall affirmatively plead and prove either that the notice to cure is not required or that the merchant has given the required notice. The failure to plead shall not invalidate any action taken by the merchant that is otherwise lawful and if the merchant had rightfully repossessed the property the repossession shall not constitute conversion.

40-19-110. Reinstatement.

(a) Any consumer whose default consists solely of a failure to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by paying the following charges within seven (7) days of the renewal date of the agreement:

(i) All past due rental charges;

(ii) If the property has been picked-up, the reasonable costs of pickup and redelivery as limited by W.S. 40-19-108(a)(xi); and

(iii) Any applicable reinstatement fee as limited by W.S. 40-19-108(a)(x) and (xi).

(b) In the case of a consumer who has paid less than two-thirds (2/3) of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property within seven (7) days of the renewal date, other than through judicial process, the consumer may reinstate the agreement during a period of not less than twenty-one (21) days after the date of the return of the property.

(c) In the case of a consumer who has paid two-thirds (2/3) or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property within seven (7) days of the renewal date, other than through judicial process, the consumer may reinstate the agreement during a period of not less than thirty (30) days after the date of the return of the property.

(d) Nothing in this section shall prevent a merchant from attempting to repossess the property. Repossession within seven (7) days of the renewal date shall not affect the consumer's right to reinstate. Upon reinstatement, the merchant shall

provide the consumer with the same property, if available, or with substitute property of comparable quality and condition.

40-19-111. Liability damage waivers; fees.

(a) A consumer and merchant may contract for a liability damage waiver. The selling or offering for sale of a liability damage waiver pursuant to this act shall be subject to the following prohibitions and requirements:

(i) A merchant may not sell or offer to sell a liability damage waiver unless all restrictions, conditions and exclusions are printed in an agreement separate from the rental-purchase agreement;

(ii) The liability damage waiver contract shall include a statement of the fee for the liability damage waiver and shall display the following notice printed or typed in a size equal to or greater than ten (10) point bold type:

NOTICE: THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED. THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR HOMEOWNER'S OR CASUALTY INSURANCE, IF ANY, AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE.

40-19-112. Renegotiations and extensions.

(a) A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by W.S. 40-19-107 is changed by agreement between the merchant and consumer. A renegotiation is considered to be a new rental-purchase agreement requiring the merchant to give all the disclosures required by W.S. 40-19-107.

(b) The following acts shall not be considered to be a renegotiation:

(i) Reinstatement of a rental-purchase agreement in accordance with W.S. 40-19-110;

(ii) A merchant's waiver or failure to assert any claim against the consumer;

(iii) A deferral, extension or waiver of a portion of a periodic payment or of one (1) or more periodic payments; or

(iv) A change, made at the consumer's request, of the day of the week or month on which periodic payments are to be made.

40-19-113. Advertising.

(a) An advertisement for a rental-purchase agreement that refers to or states the dollar amount of a periodic payment and the right to acquire ownership of a specific item shall also clearly and conspicuously state the following:

(i) The transaction advertised is a rental-purchase agreement;

(ii) The total number and total amount of periodic payments necessary to acquire ownership of the item; and

(iii) That the consumer acquires no ownership rights in the item unless the total amount necessary to acquire ownership is paid.

(b) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for the requirements in this section.

(c) The provisions of subsection (a) of this section shall not apply to any advertisement which does not refer to or state the amount of any payment.

(d) Every item displayed or offered under a rental-purchase agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:

(i) The cash sale price of the item;

(ii) The amount of the periodic payment; and

(iii) The total number and total amount of periodic payments necessary to acquire ownership.

(e) An advertisement for a rental-purchase agreement in any language other than English shall contain disclosures as required by this section in that language.

40-19-114. License required; application for license; fee; qualifications.

(a) Any person acting as a merchant, as defined by W.S. 40-19-102(a)(viii), in this state shall be licensed to conduct such business under this section.

(b) The administrator shall receive and act on all applications for licenses required under this act. Applications shall be filed in the manner prescribed by the administrator and shall contain the information the administrator requires by rule to make an investigation and evaluation of the financial responsibility, experience and business qualification of the applicant, and of the partners or members if the applicant is a partnership or association, and of the principal officers and directors if the applicant is a corporation, such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act.

(c) The application for one (1) or more licenses shall be accompanied by a processing fee not to exceed five hundred dollars ($500.00) set by rule of the administrator. The fee shall be deposited by the administrator with the state treasurer and credited to the financial institutions administration account. Funds from the account shall be expended to carry out the duties of the administrator. If the expenses of the investigation and evaluation exceed the amount of the fee, the applicant shall reimburse the administrator the excess amount. If the expenses of the investigation and evaluation are less than the amount of the fee, the unexpended amount shall remain within the account. If an application is withdrawn by the applicant at any time prior to the completion of the investigation and evaluation, the unexpended amount shall remain within the account.

(d) Except as otherwise provided, fees collected by the administrator under this act shall be deposited by the administrator with the state treasurer and credited to the financial institutions administration account. Expenditures shall be made from the account by warrants drawn by the state auditor, upon vouchers issued and signed by the administrator. The funds deposited in the account under this act shall be expended only to carry out the duties of the administrator.

(e) The applicant shall be notified when the application is approved. Within twenty (20) days after notification, the

applicant shall pay an initial license fee not to exceed five hundred dollars ($500.00), as set by rule of the administrator.

(f) Each office or place of business shall be licensed separately.

(g) Each license shall state the address of the office from which the business is to be conducted and the name of the licensee. The license shall be prominently displayed at the place of business named in the license. The license shall not be transferable or assignable.

(h) If a licensee wishes to move his office to another location, the licensee shall:

(i) Give written notice to the administrator at least thirty (30) days prior to the move; and

(ii) Pay a license modification fee not to exceed one hundred dollars ($100.00), as set by rule of the administrator.

(j) Each license issued under this section shall expire on July 1. The license shall be renewed annually not less than thirty (30) days before the expiration date. The renewal fee for each license shall not exceed five hundred dollars ($500.00), as set by rule of the administrator.

40-19-115. Revocation or suspension of license.

(a) The administrator may issue to a person licensed under this act an order to show cause why his license should not be revoked or suspended for a period not in excess of six (6) months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten (10) days from the date of the order. After the hearing the administrator shall revoke or suspend the license if he finds that:

(i) The licensee has repeatedly and willfully violated this act or any rule or order lawfully made pursuant to this act; or

(ii) Facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(b) No revocation or suspension of a license is lawful unless prior to institution of proceedings by the administrator notice is given to the licensee of the facts or conduct which warrant the intended action and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the administrator finds that probable cause for revocation of a license exists and that enforcement of this act requires immediate suspension of a license pending investigation, he may, after a hearing upon five (5) days written notice, enter an order suspending the license for not more than thirty (30) days.

(d) Whenever the administrator revokes or suspends a license, he shall enter an order to that effect and immediately notify the licensee of the revocation or suspension. Within five (5) days after the entry of the order he shall deliver to the licensee a copy of the order and the findings supporting the order.

(e) Any person holding a license under this act may relinquish the license by notifying the administrator in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

(f) No revocation, suspension or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

(g) The administrator may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

40-19-116. Record retention.

Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the administrator to determine whether the licensee is complying with the provisions of this act. The record keeping system of a licensee shall be sufficient if he makes the required information reasonably available to the administrator. The records pertaining to any rental-purchase agreement need not be preserved for more than two (2) years after making the final entry relating to the agreement.

40-19-117. Examination and investigation.

(a) Upon complaint the administrator may examine and copy the records of a licensee. The investigation may be made for the purposes of discovering violations of this act or securing information lawfully required. For these purposes he shall have free and reasonable access during normal office hours to the offices, places of business and records of the licensee. Each licensee shall pay to the administrator an amount assessed by the administrator to cover the direct and indirect cost of an investigation under this subsection.

(b) For the purposes of this section, the administrator may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of person having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(c) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court for an order compelling compliance.

40-19-118. Powers and functions of the administrator; enforcement; penalties.

(a) Except as otherwise provided, the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115, shall apply to and govern all administrative actions taken by the administrator pursuant to this act.

(b) The administrator may adopt rules and regulations to implement and administer this act.

(c) After notice and hearing, the administrator may order a merchant or a person acting on his behalf to cease and desist from engaging in violations of this act. Any person aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of his order in the district court.

(d) The administrator may bring a civil action to restrain a merchant from violating the provisions of this act and for other appropriate relief.

(e) Any merchant refusing or obstructing access to the administrator or his representative to any account, books, records or papers, refusing to furnish any required information or hindering a full examination or investigation of the accounts, books, records or papers is guilty of a felony punishable by a fine of not less than one thousand dollars ($1,000.00), imprisonment for a period of not less than one (1) year, or both.

(f) Any merchant who wrongfully fails or refuses to comply with an order of the administrator as may be provided under this act is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars ($100.00) per day for each day the order is not obeyed.

40-19-119. Consumer civil actions.

(a) A merchant who fails to comply with a requirement imposed in W.S. 40-19-106 through 40-19-112 or 40-12-104 shall be liable to the consumer damaged thereby in an amount equal to the greater of:

(i) The actual damages sustained by the consumer as a result of the violation, plus the costs of the action and reasonable attorney's fees;

(ii) In the case of an individual action, twenty-five percent (25%) of the total payments necessary to acquire ownership but not less than one hundred dollars ($100.00) nor greater than one thousand dollars ($1,000.00), plus the costs of the action and reasonable attorney's fees; or

(iii) In the case of a class action, the amount the court determines to be appropriate with no minimum recovery as to each member, plus the costs of the action and reasonable attorney's fees. The total recovery in any class action or series of class actions arising out of the same violation shall not be more than the lesser of five hundred thousand dollars ($500,000.00) plus the costs of the action and reasonable attorney's fees or one percent (1%) of the net worth of the merchant plus the costs of the action and reasonable attorney's fees. In determining the amount of any award in a class action, the court shall consider, among other relevant factors, the

amount of actual damages awarded, the frequency and persistence of the violation, the merchant's resources and the extent to which the merchant's violation was intentional.

(b) In the case of an advertisement, any merchant who fails to comply with the requirements of W.S. 40-19-113 with regard to any consumer shall be liable to that consumer for actual damages suffered from the violation, the costs of the action and reasonable attorney's fees.

(c) If there are multiple merchants, liability shall be imposed only on the merchant who made the disclosures. If no disclosures have been given, liability shall be imposed on all merchants.

(d) If there are multiple consumers in a rental-purchase agreement, there shall be only one (1) recovery of damages under subsection (a) of this section.

(e) Multiple violations in connection with a rental-purchase agreement shall entitle the consumer to a single recovery under this section.

(f) An action under this section shall be brought in any court of competent jurisdiction within the greater of the following times:

(i) Within two (2) years after the date the consumer made his last rental payment; or

(ii) Within two (2) years after the date of the occurrence of the violation that is the subject of the suit.

40-19-120. Merchant's defense.

(a) If a merchant establishes by a preponderance of the evidence that a violation of this act was unintentional, no penalty as specified in W.S. 40-19-118 shall be imposed and validity of the transaction shall not be affected.

(b) A merchant shall not be liable under this act for any failure to comply with any requirement imposed under this act if within sixty (60) days after the merchant discovers an error, and prior to the institution of an action under this act or the receipt of written notice of the error from the consumer, the merchant notifies the consumer of the error and within seven (7)

days, makes adjustments in the appropriate account necessary to correct the error.

CHAPTER 20 - WYOMING FAIR PRACTICES OF EQUIPMENT MANUFACTURERS, DISTRIBUTORS, WHOLESALERS AND DEALERS ACT

40-20-101. Short title.

This chapter shall be known and may be cited as the "Wyoming Fair Practices of Equipment Manufacturers, Distributors, Wholesalers and Dealers Act".

40-20-102. Repealed By Laws 2006, Chapter 107, § 2.

40-20-103. Repealed By Laws 2006, Chapter 107, § 2.

40-20-104. Repealed By Laws 2006, Chapter 107, § 2.

40-20-105. Surplus parts inventory; credits.

(a) Unless this section is specifically waived in writing by the dealer, a supplier shall allow a dealer to periodically, but no less than once every twelve (12) months, return a portion of the dealer's surplus parts inventory for credit.

(b) The supplier shall notify the dealer of a time period during which a dealer may submit the dealer's surplus parts list and return inventory. A supplier may stagger return periods for its dealers.

(c) If a supplier has not notified its dealer of a specific time period for returning surplus parts within the preceding twelve (12) month period, it shall allow the dealer to return surplus parts within sixty (60) days of receiving the dealer's request to make such return.

(d) A supplier shall allow surplus parts return on a dollar value of parts equal to ten percent (10%) of the total dollar value of all parts purchased by the dealer from the supplier during either the twelve (12) month period immediately preceding the supplier's notification to the dealer of the supplier's return program or, if subsection (c) of this section applies, the month the dealer makes a return request.

(e) The dealer may elect to return a dollar value of the surplus parts equal to less than ten percent (10%) of the total

dollar value of the parts the dealer purchased during the preceding twelve (12) months.

(f) A dealer may not return obsolete parts. However, a dealer may return a part for credit if such part is found in the supplier's current parts list or any superseded part that is not the subject of the supplier's parts return program as of the date of termination.

(g) A dealer shall return only new and unused parts to the supplier of the parts.

(h) The minimum credit allowed for returned parts shall be ninety-five percent (95%) of the net price as listed in the supplier's current parts list as of the date that the supplier provides notice of its return program or, if subsection (c) of this section applies, the date that the dealer submits a request for return.

(j) A supplier shall issue credit within ninety (90) days after receiving a return part.

(k) Nothing in this section shall be construed to prevent a supplier from charging back to the dealer's account amounts previously paid or credited as a discounted incident to the dealer's purchase of equipment.

40-20-106. Repealed By Laws 2006, Chapter 107, § 2.

40-20-107. Repealed By Laws 2006, Chapter 107, § 2.

40-20-108. Repealed By Laws 2006, Chapter 107, § 2.

40-20-109. Repealed By Laws 2006, Chapter 107, § 2.

40-20-110. Current agreements; effect of law; void provisions.

(a) Effective July 1, 2006, this chapter shall apply to all dealer agreements now in effect which have no expiration date and are a continuing contract and all other dealer agreements entered into, renewed, extended, revised, modified or changed in any manner on or after July 1, 2006.

(b) A provision in any contract or agreement with respect to a supplier that requires jurisdiction or venue outside of this state or requires the application of the laws of another

state or country is void with respect to a claim otherwise enforceable under this chapter. Except as provided in W.S. 40-20-105(a), any attempt to waive a provision of this chapter or application of this chapter shall be void. Any provision in a dealer agreement that requires a dealer to pay attorney fees incurred by a supplier shall be void.

40-20-111. Repealed By Laws 2006, Chapter 107, § 2.

40-20-112. Repealed By Laws 2006, Chapter 107, § 2.

40-20-113. Definitions.

(a) As used in this chapter:

(i) "Current net parts price" means:

(A) For current parts, the price for repair parts listed in the supplier's price list or catalogue in effect at the time the dealer agreement is cancelled or discontinued, or for purposes of W.S. 40-20-119, the price list or catalogue in effect at the time the repair parts were ordered;

(B) For superseded repair parts, the price listed in the supplier's price list or catalogue in effect at the time the dealer agreement is cancelled or discontinued for the part that performs the same function and purpose as the superseded part, but is listed under a different part number.

(ii) "Current net parts cost" means the current net parts price less any trade or cash discounts typically given to the dealer with respect to the dealer's normal, ordinary course orders of repair parts;

(iii) "Dealer" means any person, not including mass retailers, engaged in the business of:

(A) Selling or leasing equipment or repair parts to the consumer; and

(B) Repairing or servicing equipment.

(iv) "Dealer agreement" means either an oral or written agreement or an agreement between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts. If a dealer has more than one (1) business

location covered by the same dealer agreement, the requirements of this chapter shall be applied to the repurchase of a dealer's inventory at a particular location upon the closing of that location;

(v) "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement;

(vi) "Demonstrator" means equipment in a dealer's inventory that has never been sold at retail, but has had its usage demonstrated to potential customers, either without charge or pursuant to a short term rental agreement, with the intent of encouraging the person to purchase the equipment;

(vii) "Equipment" means:

(A) Multipurpose vehicles as defined in W.S. 31-1-101(a)(xv)(M) regardless of how used;

(B) Snowmobiles as defined in W.S. 31-2-401(a)(ii);

(C) Off-road recreational vehicles as defined in W.S. 31-1-101(a)(xv)(K) regardless of how used; and

(D) Other machinery, equipment, implements or attachments used for or in connection with one (1) or more of the following purposes:

(I) Lawn, garden, golf course, landscaping or grounds maintenance;

(II) Planting, cultivating, irrigating, grazing, harvesting and producing of agricultural products;

(III) Raising, feeding, tending to or harvesting products from, livestock or any related activity;

(IV) Industrial, construction, maintenance, or utility activities or applications;

(V) "Equipment" does not include self-propelled vehicles designed primarily for the transportation of persons or property on a street or highway.

(viii) "Family member" means a spouse, child, parent, sibling, stepchild, son-in-law, daughter-in-law or lineal descendant;

(ix) "Good cause" has the meaning set forth in W.S. 40-20-115 or 40-20-116, as applicable;

(x) "Index" means the United States bureau of labor statistics producer price index or industry data, for construction machinery, series identification number pcu333120333120 or any successor index measuring substantially similar information;

(xi) "Inventory" means new equipment, repair parts, data processing hardware or software, and specialized service or repair tools;

(xii) "Net equipment cost" means the price the dealer actually paid to the supplier for equipment, plus:

(A) Freight, at truckload rates in effect as of the effective date of the termination of a dealer agreement, if freight was paid by the dealer from the supplier's location to the dealer's location; and

(B) Reimbursement for labor incurred in preparing the equipment for retail sale or rental, or set up costs, which labor shall be reimbursed at the dealer's standard labor rate charged by the dealer to its customers for nonwarranty repair work. If a supplier has established a reasonable set up time, the labor shall be reimbursed at an amount equal to the reasonable set up time in effect as of the date of delivery multiplied by the dealer's standard labor rate.

(xiii) "New equipment" means, for purposes of determining whether a dealer is a single line dealer, any equipment that could be returned to the supplier upon a termination of a dealer agreement pursuant to W.S. 40-20-120 and 40-20-121;

(xiv) "Person" means a natural person, corporation, partnership, limited liability company, company, trust, or any other form of business enterprise, including any other entity in which the "person" has a majority interest or of which the "person" has control, as well as the individual officers, directors and other persons in active control of the activities of each entity;

(xv) "Repair parts" means all parts related to the repair of equipment, including superseded parts;

(xvi) "Single line dealer" means a dealer that has:

(A) Purchased construction or industrial equipment from a single supplier constituting seventy-five percent (75%) of the dealer's new equipment, calculated on the basis of net cost; and

(B) A total annual average sales volume in excess of twenty million dollars ($20,000,000.00) for the three (3) calendar years immediately preceding the applicable determination date. The twenty million dollar ($20,000,000.00) threshold shall be increased each year by an amount equal to the then current threshold multiplied by the percentage increase in the index from January of the immediately preceding year to January of the current year.

(xvii) "Single line supplier" means the supplier that is selling the single line dealer construction and industrial equipment constituting seventy-five percent (75%) of the dealer's new equipment;

(xviii) "Supplier" means any person engaged in the business of manufacturing, assembly or wholesale distribution of equipment or repair parts. The term "supplier" and the provisions of this chapter shall be interpreted liberally and shall not be limited to traditional doctrines of corporate successor liability or take into account whether:

(A) A successor expressly assumed the liabilities of the supplier; or

(B) There has been one (1) or more intermediate successors to the initial supplier. The obligations of a supplier hereunder shall consequently apply to any actual or effective successor in interest to a supplier, including but not limited to, a purchaser of all or substantially all of the assets of a supplier or all or substantially all of the assets of any division or product line of a supplier, any receiver, trustee, liquidator or assignee of the supplier or any surviving corporation resulting from a merger, liquidation or reorganization of the original or any intermediate successor supplier. Purchasers of all or substantially all of the inventory of a supplier or a supplier's division or product line

shall constitute a purchaser of all or substantially all of the supplier's assets.

(xix) "Terminate" means to terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealer agreement.

40-20-114. Violations of chapter.

(a) It shall be a violation of this chapter for a supplier to take any one (1) or more of the following actions:

(i) To coerce, compel or require any dealer to accept delivery of any equipment or repair parts which the dealer has not voluntarily ordered, except as required by any applicable law or unless the equipment or repair parts are safety features required by a supplier;

(ii) To require any dealer to purchase goods or services as a condition to the sale by the supplier to the dealer of any equipment, repair parts or other goods or services, except that nothing herein shall prohibit a supplier from requiring the dealer to purchase all repair parts, special tools and training reasonably necessary to maintain the safe operation or quality of operation in the field of any equipment offered for sale by the dealer;

(iii) To coerce any dealer into a refusal to purchase equipment manufactured by another supplier. However, it shall not be a violation of this section to require separate facilities, financial statements, or sales staff for major competing lines so long as the dealer is given at least three (3) years notice of such requirement;

(iv) To refuse to deliver in reasonable quantities and within a reasonable time, after receipt of the dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement specifically advertised or represented by the supplier to be available for immediate delivery. The failure to deliver the equipment shall not be considered a violation of this chapter if the failure is due to prudent and reasonable restrictions on extensions of credit by the supplier to the dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over

which the supplier has no control or a business decision by the supplier to limit the production volume of the equipment;

(v) To discriminate, directly or indirectly, in filling an order placed by a dealer for retail sale or lease of new equipment under a dealer agreement as between dealers of the same product line;

(vi) To discriminate, directly or indirectly, in price between different dealers with respect to purchases of equipment or repair parts of like grade and quality and identical brand, where the effect of the discrimination may be to substantially lessen competition, tend to create a monopoly in any line of commerce or injure, destroy or prevent competition with any dealer who either grants or knowingly receives the benefit of the discrimination. Different prices may be charged if:

(A) The differences are due to differences in the cost of manufacture, sale or delivery of the equipment or repair parts;

(B) The supplier can show that the lower price was made in good faith to meet an equally low price of a competitor; or

(C) The differences are related to the volume of equipment purchased by dealers.

(vii) To prevent by contract or otherwise, any dealer, from changing its capital structure, ownership or the means by or through which the dealer finances its operations, so long as the dealer gives prior notice to the supplier and provided the dealer at all times meets any reasonable capital standards agreed to between the dealer and the supplier and imposed on similarly situated dealers and provided the change by the dealer does not result in a change in the person with actual or effective control of a majority of the voting interests of the dealer;

(viii) To require a dealer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this chapter;

(ix) Require as a condition of renewal or extension of a dealer agreement that the dealer complete substantial renovation to the dealer's place of business or to acquire new

or additional space to serve as the dealer's place of business unless the supplier provides:

(A) At least one (1) year written notice of the condition;

(B) All the grounds supporting the condition; and

(C) A reasonable period of time in which to complete the renovation or acquisition after the one (1) year notice period expires.

40-20-115. Termination of dealer agreements.

(a) A dealer may terminate a dealer agreement without cause. The dealer shall give the supplier at least thirty (30) days prior written notice of termination. No supplier may terminate a dealer agreement without good cause. Notice from the supplier to the dealer shall be as provided in W.S. 40-20-116 and 40-20-117. Except as otherwise specifically provided in this chapter, good cause means the failure by a dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealer agreement, provided the requirements are not different from those requirements imposed on other similarly situated dealers either by their terms or in the manner of their enforcement. In addition, good cause shall exist whenever:

(i) The dealer or dealership has transferred a controlling ownership interest in its business without the supplier's consent;

(ii) The dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty (30) days after the filing, there has been a closeout or sale of a substantial part of the dealer's assets related to the business or there has been a commencement of dissolution or liquidation of the dealer;

(iii) There has been a deletion, addition or change in dealer or dealership locations without the prior written approval of the supplier;

(iv) The dealer has defaulted under any chattel mortgage or other security agreement between the dealer and the

supplier or there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier. Good cause shall not exist if a person revokes any guarantee in connection with or following the transfer of the person's entire ownership interest in the dealer unless the supplier requires the new person to execute a new guarantee of the dealer's present or future obligations in connection with the transfer of ownership interest;

(v) The dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business;

(vi) The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and supplier;

(vii) The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare or the representation or reputation of the supplier's product;

(viii) The dealer has consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, so long as the supplier has given the dealer reasonable standards and performance objectives that are based on the manufacturer's experience in other comparable market areas.

(b) The provisions of this section shall not apply to the dealer agreements between a single line dealer and the single line supplier.

40-20-116. Termination of dealer agreements; single line dealers.

(a) This section shall only apply to the dealer agreements between a single line dealer and a single line supplier.

(b) No supplier may terminate a dealer agreement without good cause. For purposes of this section and W.S. 40-20-118 only, good cause means failure by a dealer to comply with requirements imposed upon the dealer by the dealer agreement if the requirements are not different from those imposed on other similarly situated dealers. In addition, good cause exists when:

(i) There has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business or there has been a commencement of a dissolution or liquidation of the dealer;

(ii) The dealer has changed its principal place of business or added additional locations without prior approval of the supplier, which shall not be unreasonably withheld;

(iii) The dealer has substantially defaulted under a chattel mortgage or other security agreement between the dealer and the supplier or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the dealer to the supplier;

(iv) The dealer has failed to operate in the normal course of business for seven (7) consecutive days or has otherwise abandoned its business;

(v) The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the supplier; or

(vi) The dealer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner or major shareholder withdraws from the dealership, dies or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership. Good cause does not exist if the supplier consents to an action described in this paragraph.

(c) Except as otherwise provided in this subsection, a supplier shall provide a dealer with at least ninety (90) days written notice of termination. The notice shall state all reasons constituting good cause for the termination and shall state the dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is cured within sixty (60) days, the notice shall be void. Notwithstanding the foregoing, if the good cause for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice and right to cure provisions under this subsection shall not apply if the reason for termination is for any reason set forth in paragraphs (b)(i) through (vi) of this section.

40-20-117. Notice of termination of dealer agreement; cure of deficiency; approval of dealer ownership transfer; death of dealer.

(a) Except as otherwise provided in this section, a supplier shall provide a dealer at least one hundred eighty (180) days prior written notice of termination of a dealer agreement. The notice shall state all reasons constituting good cause for the termination and shall state the dealer has sixty (60) days in which to cure any claimed deficiency. If the deficiency is cured within sixty (60) days, the notice shall be void. A supplier may not terminate a dealer agreement for the reason set forth in W.S. 40-20-115(a)(viii) unless the supplier gives the dealer notice of the action at least two (2) years before the effective date of the action. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the two (2) year notice period, the notice shall be void and the dealer agreement shall continue in full force and effect. The notice and right to cure provisions under this section shall not apply if the reason for termination is for any reason set forth in W.S. 40-20-115(a)(i) through (vii).

(b) If a supplier has contractual authority to approve or deny a request for a sale or transfer of a dealer's business or an equity ownership interest, the supplier shall approve or deny the request within sixty (60) days after receiving a written request from the dealer. If the supplier has neither approved nor denied the request within the sixty (60) day period, the request shall be deemed approved. The dealer's request shall include reasonable financial, personal background, character references and work history information for the acquiring persons. If a supplier denies a request made pursuant to this subsection, the supplier shall provide the dealer with a written notice of the denial that states the reasons for the denial. A supplier may only deny a request based on the failure of the proposed transferee to meet the reasonable requirements consistently imposed by the supplier in determining approval of the transfer or approval of a new dealer.

(c) If a dealer dies and the supplier has contractual authority to approve or deny a request for a sale or transfer of the dealer's business or his equity ownership interest, the dealer's estate or other person with authority to transfer assets of the dealer, shall have one hundred eighty (180) days to submit to the supplier a written request for a sale or

transfer of the business or equity ownership interest. If the request is timely submitted, the supplier shall approve or deny the request in accordance with subsection (b) of this section. Notwithstanding anything to the contrary contained in this chapter, any attempt by the supplier to terminate the dealer or the dealership as a result of the death of a dealer shall be delayed until there has been compliance with the terms of this subsection or the one hundred eighty (180) day period has expired, as applicable.

(d) If a supplier and dealer have executed an agreement concerning succession rights before the dealer's death and that agreement has not been revoked or otherwise terminated by either party, the agreement shall control the terms of succession even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

(e) The provisions of this section shall not apply to the dealer agreements between a single line dealer and the single line supplier.

40-20-118. Death of single line dealer.

(a) This section shall only apply to the dealer agreements between a single line dealer and a single line supplier.

(b) If a dealer dies, a supplier shall have ninety (90) days in which to consider and make a determination on a request by a family member to enter into a new dealer agreement to operate the dealership. If the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance. This subsection does not entitle an heir, personal representative or family member to operate a dealership without the specific written consent of the supplier.

(c) If a supplier and dealer have executed an agreement concerning succession rights prior to the dealer's death and that agreement is still in effect, the agreement shall control the terms of succession even if it designates someone other than the surviving spouse or heirs of the decedent as the successor.

40-20-119. Reimbursement for warranty work.

(a) If a dealer submits a warranty claim to a supplier while the dealer agreement is in effect or within sixty (60)

days after the termination of the dealer agreement and if the claim is for work performed before the termination or expiration of the dealer agreement, the supplier shall accept or reject the warranty claim by written notice to the dealer within thirty (30) days after the supplier's receipt of the claim. If the supplier does not reject the warranty claim in the time period specified above, the claim shall be deemed accepted. If the supplier accepts the warranty claim, the supplier shall pay or credit to the dealer's account all amounts owed with respect to the claim to the dealer within thirty (30) days after it is accepted. If the supplier rejects a warranty claim, the supplier shall give the dealer written or electronic notice of the grounds for rejection, which reasons shall be consistent with the supplier's reasons for rejecting warranty claims of other dealers, both in their terms and manner of enforcement. If no grounds for rejection are given, the claim shall be deemed accepted.

(b) Any claim which is disapproved by the supplier based upon the dealer's failure to properly follow the procedural or technical requirements for submission of warranty claims may be resubmitted in proper form by the dealer within thirty (30) days of receipt by the dealer of the supplier's notification of the disapproval.

(c) Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions multiplied by the dealer's established customer hourly retail labor rate, which shall have previously been made known to the supplier. Parts used in warranty repair work shall be reimbursed at the current net price plus fifteen percent (15%).

(d) For purposes of this chapter, any repair work or installation of replacement parts performed with respect to the dealer's equipment in inventory or equipment of the dealer's customers at the request of the supplier, including work performed pursuant to a product improvement program, shall be deemed to create a warranty claim for which the dealer shall be paid pursuant to this section.

(e) A supplier may audit warranty claims submitted by its dealers for a period of up to one (1) year following payment of the claims, and may charge back to its dealers any amounts paid based upon claims shown by the audit to be misrepresented. If a warranty claim is misrepresented, then warranty claims submitted

within the three (3) year period ending with the date a claim is shown by the audit to be misrepresented may be audited.

(f) The requirements of subsections (a) through (c) of this section apply to all warranty claims submitted by a dealer to a supplier in which the dealer has complied with the supplier's reasonable policies and procedures for warranty reimbursement. A supplier's warranty reimbursement policies and procedures shall be deemed unreasonable to the extent they conflict with any of the provisions of this section.

(g) A dealer may choose to accept alternate reimbursement terms and conditions in lieu of the requirements of subsections (a) through (c) of this section if there is a written dealer agreement between the supplier and the dealer that requires the supplier to compensate the dealer for warranty labor costs either as:

(i) A discount in the pricing of the equipment to the dealer; or

(ii) A lump sum payment to the dealer that is made to the dealer within ninety (90) days of the sale of the supplier's new equipment.

(h) The discount or lump sum described in subsection (g) of this section shall be no less than five percent (5%) of the suggested retail price of the equipment. If the requirements of subsections (g) and (h) of this section are met and alternate terms and conditions are in place, subsections (a) through (c) of this section do not apply and the alternate terms and conditions are enforceable. Nothing contained in this subsection or subsection (g) of this section shall be deemed to effect the supplier's obligation to reimburse the dealer for parts in accordance with subsection (c) of this section.

40-20-120. Repurchase obligations of supplier on cancellation or discontinuance of dealer agreement.

(a) Whenever any dealer enters into a dealer agreement with a supplier and either the supplier or the dealer desires to cancel, not renew or otherwise discontinue the dealer agreement, the supplier shall pay to the dealer or credit to the dealer's account, if the dealer has outstanding any sums owing the supplier, unless the dealer should desire to keep the equipment or repair parts:

(i) A sum equal to one hundred percent (100%) of the net equipment cost of all new, unsold, undamaged equipment, one hundred percent (100%) of the net equipment cost of all unsold, undamaged demonstrators, less a downward adjustment to reflect a reasonable allowance for depreciation due to usage of the demonstrators, which adjustment shall be based on published industry rental rates to the extent such rates are available and ninety-five percent (95%) of the current net parts prices on new, unsold, undamaged repair parts that had previously been purchased from the supplier and held by the dealer on the date the dealer agreement terminates or expires. Demonstrators with less than fifty (50) hours of use for machines with hour meters, shall be considered new, unsold or undamaged equipment subject to repurchase under this paragraph;

(ii) A sum equal to five percent (5%) of the current net parts price of all repair parts returned to compensate the dealer for the handling, packing and loading of the repair parts for return to the supplier. The five percent (5%) shall not be paid or credited to the dealer if the supplier elects to perform the handling, packing and loading of the repair parts;

(iii) The fair market value of any specific data processing hardware or software the supplier required the dealer to acquire or purchase to satisfy the requirements of the supplier, including computer equipment required and approved by the supplier to communicate with the supplier. Fair market value of property subject to repurchase pursuant to this paragraph shall be deemed to be the acquisition cost, including any shipping, handling and setup fees, less straight line depreciation of the acquisition cost over three (3) years. If the dealer purchased data processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of the data processing hardware or software shall be deemed to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier;

(iv) A supplier shall repurchase specialized repair tools at a price equal to seventy-five percent (75%) of the total invoice amount charged by the supplier to the dealer.

(b) Upon the payment or allowance of credit to the dealer's account of the sums required by this section, the title to all inventory purchased hereunder shall pass to the supplier making the payment and the supplier shall be entitled to the possession of the inventory. All payments or allowances of

credit due dealers shall be paid or credited within ninety (90) days after receipt by the supplier of property required to be repurchased. Any payments or allowances of credit due dealers that are not paid within the ninety (90) day period shall accrue interest at the maximum rate allowed by law. The supplier may withhold payments due under this subsection during the period of time in which the dealer fails to comply with its contractual obligations to remove any signage indicating the dealer is an authorized dealer of the supplier.

(c) If any supplier refuses to repurchase any inventory covered under the provisions of this chapter after cancellation, nonrenewal or discontinuance of the dealer agreement, the supplier shall be civilly liable to the dealer for one hundred ten percent (110%) of the amount that would have been due for the inventory if the supplier had timely complied with this chapter, any freight charges paid by the dealer, interest accrued and the dealer's actual costs of any court or arbitration proceeding, including costs for attorney fees and costs of arbitrators.

(d) The supplier and dealer shall each pay fifty percent (50%) of the costs of freight, at truckload rates, to ship any equipment or repair parts returned to the supplier pursuant to this chapter.

(e) Notwithstanding any provision to the contrary in the uniform commercial code adopted by this state, the dealer shall retain a first and prior lien against all inventory returned by the dealer to the supplier under the provisions of this chapter until the dealer is paid all amounts owed by the supplier for the repurchase of the inventory required under the provisions of this chapter. The dealer's lien under this subsection shall constitute a perfected security interest for a period of six (6) years without the filing of a financing statement.

(f) The provisions of this section shall not be construed to affect in any way any security interest which the supplier may have in the inventory of the dealer, and any repurchase hereunder shall not be subject to the provisions of the bulk sales law or to the claims of any secured or unsecured creditors of the supplier or any assignee of the supplier until the time the dealer has received full payment or credit, as applicable.

40-20-121. Repurchase not required.

(a) The provisions of this chapter shall not require the repurchase from a dealer of:

(i) Any repair part in a broken or damaged package. The supplier shall be required to repurchase a repair part in a broken or damaged package, for a repurchase price that is equal to eighty-five percent (85%) of the current net price for the repair part, if the aggregate current net price for the entire package of repair parts is seventy-five dollars ($75.00) or higher;

(ii) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(iii) Any inventory the dealer is unable to furnish evidence, satisfactory to the supplier, of clear title, free and clear of all claims, liens and encumbrances;

(iv) Any inventory the dealer desires to keep, provided the dealer has a contractual right to do so;

(v) Any equipment or repair parts not in new, unsold, undamaged or complete condition, subject to the provisions of this chapter relating to demonstrators;

(vi) Any equipment delivered to the dealer prior to the beginning of the thirty-six (36) month period immediately preceding the date of notification of termination;

(vii) Any equipment or repair parts ordered by the dealer on or after the date of notification of termination;

(viii) Any equipment or repair parts acquired by the dealer from any source other than the supplier unless the equipment or repair parts were ordered from or invoiced to the dealer by the supplier; or

(ix) Any equipment or repair parts not returned to the supplier within ninety (90) days after the later of:

(A) The effective date of termination of a dealer agreement; and

(B) The date the dealer receives from the supplier all information, documents or supporting materials required by the supplier to comply with the supplier's return

policy. This subparagraph shall not be applicable to a dealer if the supplier did not give the dealer notice of the ninety (90) day deadline at the time the applicable notice of termination was sent to the dealer.

40-20-122. Remedies and enforcement.

If the supplier violates any provision of this chapter, the dealer may bring an action against the supplier in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation, including, but not limited to, damages for lost profits, together with the actual costs of the action, including the attorney fees and costs of arbitrators. The dealer may also be granted injunctive relief against unlawful termination. The remedies set forth in this section shall not be deemed exclusive and shall be in addition to any other remedies permitted by law.

40-20-123. Choice of remedies; exemption from tax.

(a) The provisions of this chapter shall be supplemental to any dealer agreement between the dealer and the supplier which provides the dealer with greater protection. The dealer can elect to pursue its contract remedy or the remedy provided by state law, or both. An election by the dealer to pursue these remedies shall not bar its right to exercise any other remedies that may be granted at law or in equity.

(b) Any repurchase under this chapter is not subject to sales or use tax.

CHAPTER 21 - UNIFORM ELECTRONIC TRANSACTIONS ACT

40-21-101. Short title.

This act may be cited as the "Uniform Electronic Transactions Act."

40-21-102. Definitions.

(a) In this article unless the context otherwise requires:

(i) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;

(ii) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one (1) or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction;

(iii) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result;

(iv) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law;

(v) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(vi) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual;

(vii) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means;

(viii) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(ix) "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state;

(x) "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like;

(xi) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information;

(xii) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity;

(xiii) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(xiv) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures;

(xv) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state;

(xvi) "Transaction" means an action or set of actions occurring between two (2) or more persons relating to the conduct of business, commercial or governmental affairs;

(xvii) "This act" means W.S. 40-21-101 through 40-21-119.

40-21-103. Scope.

(a) Except as otherwise provided in subsection (b) of this section, this act applies to electronic records and electronic signatures relating to a transaction.

(b) This act does not apply to a transaction to the extent it is governed by:

(i) A law governing the creation and execution of wills, codicils or testamentary trusts;

(ii) The Uniform Commercial Code other than W.S. 34.1-1-107 and 34.1-1-206, article 2 and article 2A; and

(iii) The Uniform Computer Information Transactions Act.

(c) This act applies to an electronic record or electronic signature otherwise excluded from the application of this act under subsection (b) of this section to the extent it is governed by a law other than those specified in subsection (b) of this section.

(d) A transaction subject to this act is also subject to other applicable substantive law.

40-21-104. Applicability.

This act applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after July 1, 2001.

[Note: Effective 1/1/2020 this section will read as:]

(a) This act applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after July 1, 2001.

(b) The Financial Technology Sandbox Act shall apply to this act.

40-21-105. Use of electronic records and electronic signatures, variation by agreement.

(a) This act does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) This act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by

electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this act, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this act of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

40-21-106. Construction and application.

(a) This act must be construed and applied:

(i) To facilitate electronic transactions consistent with other applicable law;

(ii) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(iii) To effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

40-21-107. Legal recognition of electronic records, electronic signatures and electronic contracts.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

40-21-108. Provisions of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this act requires a record to be posted or displayed in a certain manner, to be sent, communicated or transmitted by a specified method or to contain information that is formatted in a certain manner, the following rules apply:

(i) The record must be posted or displayed in the manner specified in the other law;

(ii) Except as otherwise provided in paragraph (d)(ii) of this section, the record must be sent, communicated or transmitted by the method specified in the other law;

(iii) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(i) To the extent a law other than this act requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(ii) A requirement under a law other than this act to send, communicate or transmit a record by first-class mail, postage prepaid or regular United States mail, may be varied by agreement to the extent permitted by the other law.

40-21-109. Attribution and effect of electronic record and electronic signature.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) of this section is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

40-21-110. Effect of change or error.

(a) If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(i) If the parties have agreed to use a security procedure to detect changes or errors and one (1) party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record;

(ii) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(iii) If neither paragraph (i) nor (ii) of this subsection applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any;

(iv) Paragraphs (ii) and (iii) of this subsection may not be varied by agreement.

40-21-111. Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

40-21-112. Retention to electronic records, originals.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(i) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(ii) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

(c) A person may satisfy subsection (a) of this section by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is

satisfied by an electronic record retained in accordance with subsection (a) of this section.

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a) of this section.

(f) A record retained as an electronic record in accordance with subsection (a) of this section satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after the effective date of this act specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

40-21-113. Admissibility in evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

40-21-114. Automated transaction.

(a) In an automated transaction, the following rules apply:

(i) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

(ii) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance;

(iii) The terms of the contract are determined by the substantive law applicable to it.

40-21-115. Time and place of sending and receipt.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(i) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(ii) Is in a form capable of being processed by that system; and

(iii) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(i) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(ii) It is in a form capable of being processed by that system.

(c) Subsection (b) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d) of this section.

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(i) If the sender or recipient has more than one (1) place of business, the place of business of that person is the place having the closest relationship to the underlying transaction;

(ii) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a) of this section, or purportedly received under subsection (b) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

40-21-116. Transferable records.

(a) In this section, "transferable record" means an electronic record that:

(i) Would be a note under article 3 of the Uniform Commercial Code or a document under article 7 of the Uniform Commercial Code if the electronic record were in writing; and

(ii) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(i) A single authoritative copy of the transferable record exists which is unique, identifiable and, except as

otherwise provided in paragraphs (iv), (v) and (vi) of this subsection, unalterable;

(ii) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

(iii) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(iv) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(v) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(vi) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in W.S. 34.1-1-201(a)(xx), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under W.S. 34.1-3-302(a), 34.1-7-501 or 34.1-9-308 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

40-21-117. Creation and retention of electronic records and conversion of written records by government agencies.

Each governmental agency shall determine whether, and the extent to which, a governmental agency will create and retain electronic records and convert written records to electronic records.

40-21-118. Acceptance and distribution of electronic records by governmental agencies.

(a) Except as otherwise provided in W.S. 40-21-112(f), each governmental agency of this state shall determine whether, and the extent to which, governmental agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a) of this section, the department of enterprise technology services shall promulgate rules in accordance with the Wyoming Administrative Procedure Act to specify for state agencies:

(i) The manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the systems established for those purposes;

(ii) If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(iii) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity,

security, confidentiality and auditability of electronic records; and

(iv) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in W.S. 40-21-112(f), this act does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

40-21-119. Interoperability.

The department of enterprise technology services in adopting standards pursuant to W.S. 40-21-118 may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

CHAPTER 22 - WYOMING MONEY TRANSMITTERS ACT

40-22-101. Short title.

This act may be cited as the "Wyoming Money Transmitters Act."

40-22-102. Definitions.

(a) As used in this act:

(i) "Applicant" means a person filing an application for a license;

(ii) "Authorized delegate" means an entity designated by the licensee to engage in the business of transmitting money on behalf of a licensee;

(iii) "Commissioner" means the state banking commissioner;

(iv) "Control" means the power to vote or ownership of twenty-five percent (25%) or more of the outstanding voting

securities of a licensee or controlling person. To determine the percentage of a licensee controlled by any person, there shall be aggregated with the person's interest the interest of any other person controlled by such person or by any spouse, parent or child of the person;

(v) "Controlling person" means any person in control of a licensee;

(vi) "Division" means the division of banking;

(vii) "Electronic instrument" means a card or other tangible object for the transmission or payment of money which contains a microprocessor chip, magnetic stripe or other means for the storage of information that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services;

(viii) "Executive officer" means the licensee's president, chairman of the executive committee, senior officer responsible for the licensee's business, chief financial officer and any other person who performs similar functions;

(ix) "Key shareholder" means any person, or group of persons acting in concert, who is the owner of twenty-five percent (25%) or more of any voting class of an applicant's stock;

(x) "Licensee" means a person licensed under this act;

(xi) "Material litigation" means any litigation that according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and is referenced in the applicant's or licensee's annual audited financial statements, report to shareholders or similar documents;

(xii) "Monetary value" means a medium of exchange whether or not redeemable in money;

(xiii) "Money transmission" means to engage in business to sell or issue payment instruments, stored value or receive money or monetary value for transmission to a location within or outside the United States by any and all means,

including but not limited to wire, facsimile or electronic transfer;

(xiv) "Outstanding payment instrument" means any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an authorized delegate or subdelegate of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee;

(xv) "Payment instrument" means any electronic or written check, draft, money order, travelers check or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not the instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services;

(xvi) "Permissible investments" means:

(A) Cash;

(B) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(C) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the federal reserve system;

(D) Any investment securities bearing a rating of one (1) of the four (4) highest grades as defined by a nationally recognized organization that rates securities;

(E) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality or any political subdivision thereof;

(F) Shares in a money market mutual fund, interest bearing bills, notes or bonds, debentures or stock traded on any national securities exchange or on a national over the counter market, or mutual funds primarily composed of such

securities or a fund composed of one (1) or more permissible investments as set forth in this paragraph;

(G) Any demand borrowing agreement made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(H) Receivables which are due to a licensee from its authorized delegates or subdelegates which are not past due or doubtful of collection; or

(J) Any other investments or security device approved by the commissioner.

(xvii) "Remit" means either to make direct payment of the funds to the licensee or its representatives authorized to receive those funds, or to deposit the funds in a bank, credit union or savings and loan association or other similar financial institution in an account specified by the licensee;

(xviii) "Stored value" means monetary value that is evidenced by an electronic record;

(xix) "Channeling agent" means the third party licensing system that gathers the application information and distributes it to Wyoming for review for the approval or denial decision;

(xx) "Registry" means the nationwide licensing system and registry maintained by the State Regulatory Registry, LLC;

(xxi) "Subdelegate" means an entity designated by an authorized delegate by written contract to engage in the business of money transmission on behalf of a licensee;

(xxii) "Virtual currency" means any type of digital representation of value that:

(A) Is used as a medium of exchange, unit of account or store of value; and

(B) Is not recognized as legal tender by the United States government.

40-22-103. License required.

(a) With the exception of those persons exempt pursuant to W.S. 40-22-104, on and after October 1, 2003, no person shall engage in the business of money transmission without a license. The division shall regulate money transmitters and carry out the provisions of this act.

(b) A person is engaged in the business of money transmission if the person advertises, offers or provides services to Wyoming residents, for personal, family or household use, through any medium including, but not limited to, internet or other electronic means.

(c) A licensee with a physical presence in this state may conduct its business at one (1) or more locations, directly or indirectly owned, or through one (1) or more authorized delegates or subdelegates, or both, pursuant to a single license granted to the licensee, provided that for each business name, a separate license shall be required.

(d) Every licensee, authorized delegate and subdelegate shall comply with the Bank Secrecy Act, 12 U.S.C. 1951 et seq.

(e) Authorized delegates or subdelegates of a licensee, acting within the scope of authority conferred by a written contract as described in W.S. 40-22-118 shall not be required to obtain a license.

40-22-104. Exemptions; applicability.

(a) This act shall not apply to:

(i) The United States or any department, agency, or instrumentality thereof;

(ii) The United States post office;

(iii) The state or any political subdivisions thereof;

(iv) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States provided that they do not issue or sell payment instruments through authorized delegates or subdelegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks or mutual banks;

(v) Electronic transfer of government benefits for any federal, state or county governmental agency as defined in Federal Reserve Board Regulation E by a contractor for and on behalf of the United States or any department, agency or instrumentality thereof, or any state or any political subdivisions thereof;

(vi) Buying, selling, issuing, or taking custody of payment instruments or stored value in the form of virtual currency or receiving virtual currency for transmission to a location within or outside the United States by any means;

(vii) Repealed by Laws 2019, ch. 170, § 4.

(b) The Financial Technology Sandbox Act shall apply to this act. [NOTE: This section will be effective 1/1/2020.]

40-22-105. License requirements.

(a) Each licensee shall at all times have a net worth of not less than twenty-five thousand dollars ($25,000.00), as calculated in accordance with generally accepted accounting principles.

(b) Every corporate applicant at the time of filing of an application for a license and at all times after a license is issued, shall be in good standing in the state of its incorporation. All noncorporate applicants shall at the time of the filing of an application for a license and at all times after a license is issued, be registered or qualified to do business in the state.

40-22-106. Bond or other security device.

(a) Each application shall be accompanied by a surety bond, irrevocable letter of credit or other similar security device acceptable to the commissioner in the amount of ten thousand dollars ($10,000.00) or two and one-half (2½) times the outstanding payment instruments, whichever is greater. The commissioner may increase the required amount of the bond or security device to a maximum of five hundred thousand dollars ($500,000.00) upon the basis of the impaired financial condition of a licensee as evidenced by a reduction in net worth, financial losses or other relevant criteria. The security device shall be in a form satisfactory to the commissioner and shall run to the state for the benefit of any claimants against

the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission and payment of money in connection with the sale and issuance of payment instruments or transmission of money. In the case of a bond, the aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may bring suit directly on the security device or the commissioner may bring suit on behalf of the claimants either in one (1) action or in successive actions.

(b) In lieu of a security device or any portion of the principal thereof as required by this section, the licensee may deposit with the commissioner or with banks in this state as the licensee may designate and the commissioner may approve, cash, interest bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state or a political subdivision, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof. The securities or cash shall be deposited and held to secure the same obligations as would the security device. The depositor shall be entitled to receive all interest and dividends and shall have the right with the approval of the commissioner, to substitute other securities for those deposited, and shall be required to do so on written order of the commissioner made for good cause shown.

(c) The security device shall remain in effect until cancellation, which may occur only after written notice to the commissioner thirty (30) days prior to the effective date of cancellation. Cancellation shall not affect any liability incurred or accrued during the thirty (30) day period.

(d) The security device shall remain in place for no longer than five (5) years after the licensee ceases money transmission operations in the state. The commissioner may permit the security device to be reduced or eliminated prior to the five (5) years to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The commissioner may also permit a licensee to substitute a letter of credit or other form of security device acceptable to the commissioner for the security device in place at the time the licensee ceases money transmission operations in the state.

40-22-107. Permissible investments and statutory trust.

(a) Each licensee shall at all times possess permissible investments having an aggregate market value calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment instruments does not exceed the bond or other security devices posted by the licensee pursuant to W.S. 40-22-106.

(b) Permissible investments even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

40-22-108. Application for license.

(a) Each application for a license shall be made in writing and in a form prescribed by the commissioner. Each application shall include the following:

(i) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business and the location of the applicant's business records;

(ii) The applicant's history of material litigation and criminal convictions that relate to the practice of money transmission or to the ability to practice money transmission for the five (5) year period prior to the date of the application;

(iii) A description of the activities conducted by the applicant and a history of operations;

(iv) A description of the business activities in which the applicant seeks to be engaged in the state;

(v) A list identifying the applicant's proposed authorized delegates or subdelegates in the state, if any, at the time of the filing of the license application;

(vi) A sample authorized delegate contract, if applicable;

(vii) A sample form of payment instrument, if applicable;

(viii) The location at which the applicant and its authorized delegates and its subdelegates, if any, propose to conduct the licensed activities in the state; and

(ix) The name and address of the clearing bank on which payment instruments will be drawn or through which the payment instruments will be payable.

(b) If the applicant is a corporation, the applicant shall also provide:

(i) The date of the applicant's incorporation and state of incorporation;

(ii) A certificate of good standing from the state in which the applicant was incorporated;

(iii) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(iv) The name, business and residence address and employment history for the past five (5) years of the applicant's executive officers and the officer or manager who will be in charge of the applicant's licensed activities in this state;

(v) The name, business and residence address, and employment history for the period five (5) years prior to the date of the application of any key shareholder of the applicant;

(vi) The history of material litigation and criminal convictions for the five (5) year period prior to the date of the application of every executive officer or key shareholder of the applicant;

(vii) A copy of the applicant's most recent audited financial statement including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position and if available, the applicant's audited financial statements for the immediately preceding two (2) year period. Provided, if the applicant is a wholly owned subsidiary of another corporation, the applicant

may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two (2) year period or the parent corporation's Form 10K reports filed with the United States securities and exchange commission for the prior three (3) years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non United States regulator may be submitted to satisfy this provision; and

(viii) Copies of all filings, if any, made by the applicant with the United States securities and exchange commission or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

(c) If the applicant is not a corporation, the applicant shall also provide:

(i) The name, business and residence address, personal financial statement and employment history for the past five (5) years, of each principal of the applicant and the name, business and residence address and employment history for the past five (5) years of any other person or persons who will be in charge of the applicant's licensed activities;

(ii) The place and date of the applicant's registration or qualification to do business in this state;

(iii) The history of material litigation and criminal convictions for the five (5) year period prior to the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(iv) Copies of the applicant's audited financial statements including balance sheet, statement of income or loss and statement of changes in financial position for the current year and if available, for the immediately preceding two (2) year period.

(d) The commissioner is authorized for good cause shown, to waive any requirement of this section with respect to any license application or to permit a license applicant to submit

substituted information in its license application in lieu of the information required by this section.

(e) The commissioner may require a licensee under this act or an applicant for a license issued under this act to submit to a background investigation including fingerprint checks for state, national and international criminal history record checks as necessary. While exercising his authority under this subsection, the commissioner may utilize background checks completed by the division of criminal investigation, other government agencies in this state or in other states, the federal bureau of investigation or the registry or any other entity designated by the registry.

(f) The commissioner may determine the content of application forms and the means by which an applicant applies for, renews or amends a license under this act. The administrator may allow applicants to utilize the registry or an entity designated by the registry for the processing of applications and fees.

(g) In order to fulfill the purposes of this act, the administrator may establish relationships or contract with the registry or any other entity designated by the registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this act.

(h) In connection with an application for licensing the applicant shall, at a minimum, furnish the commissioner or the registry information concerning the identity of the applicant, the owners or persons in charge of the applicant and individuals designated in charge of the applicant's places of business, including:

(i) Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(ii) Personal history and experience, including the submission of authorization for the registry or the administrator to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(j) For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of paragraph (h)(i) of this section and subparagraph (h)(ii)(B) of this section, the administrator may use the registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(k) For the purposes of this section and in order to reduce the points of contact which the administrator may have to maintain for purposes of paragraph (h)(ii) of this section, the administrator may use the registry as a channeling agent for requesting and distributing information to and from any source as directed by the administrator.

40-22-109. Application fee.

Each application shall be accompanied by a nonrefundable application fee not to exceed three thousand dollars ($3,000.00) for each license applied for, as set by rule of the commissioner.

40-22-110. Issuance of license.

(a) After the applicant files an application, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The commissioner may conduct an on site investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the commissioner finds that the applicant's business will be conducted honestly, fairly and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by this act and has paid the required application fee, the commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state for a term of one (1) year. If these requirements have not been met, the commissioner shall deny the application in writing setting forth the reasons for the denial.

(b) The commissioner shall approve or deny every application for an original license within one hundred twenty

(120) days from the date a complete application is submitted, provided the time period may be extended with written consent of the applicant. The commissioner shall notify the applicant of the date when the application is deemed complete. In the absence of approval or denial of the application within time period allowed or consented to, the application is deemed approved and the commissioner shall issue the license effective as of the first day after the one hundred twenty (120) day or extended period has elapsed.

(c) Any applicant aggrieved by a denial issued by the commissioner under this section may at any time within thirty (30) days from the date of receipt of written notice of the denial request a hearing before the commissioner.

40-22-111. Renewal of license and annual report.

(a) Each license issued under this act shall expire on December 31. The license shall be renewed annually not later than December 1. Each licensee shall pay an annual renewal fee not to exceed two thousand dollars ($2,000.00), plus not more than one hundred dollars ($100.00) for each authorized delegate and subdelegate not to exceed seven thousand dollars ($7,000.00), as set by rule of the commissioner.

(b) The renewal fee shall be accompanied by a report, in a form approved by the commissioner, which shall include:

(i) A copy of the licensee's most recent audited consolidated annual financial statement including balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes in financial position, or in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(ii) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days prior to the renewal date, the licensee shall provide the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments and the dollar amount of those instruments currently outstanding;

(iii) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the commissioner on any other report required to be filed under this act;

(iv) A list of the licensee's permissible investments;

(v) A list of the locations, if any, within this state at which business regulated by this act is being conducted by either the licensee or its authorized delegates or its subdelegates;

(vi) The commissioner is authorized for good cause shown to waive any requirement of this section with respect to any license renewal application or to permit a license renewal applicant to submit substituted information in its license renewal application in lieu of the information required by this section.

(c) A licensee that has not filed a renewal report or paid its renewal fee by the renewal filing deadline and has not been granted an extension of time to do so by the commissioner, shall have its license suspended on the renewal date. The licensee has thirty (30) days after its license is suspended in which to file a renewal report and pay the renewal fee.

40-22-112. Licensee liability.

A licensee's liability to any person for a money transmission conducted on that person's behalf by the licensee or an authorized delegate or a subdelegate shall be limited to the amount of money transmitted or the face amount of the payment instrument purchased.

40-22-113. Extraordinary reporting requirements.

(a) Within fifteen (15) business days of the occurrence of any one (1) of the events listed in this subsection, a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's activities in the state:

(i) Any material changes in information provided in a licensee's application or renewal report;

(ii) The filing for bankruptcy or reorganization by the licensee;

(iii) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority with regard to the licensee's money transmission activities;

(iv) Any felony indictment or conviction of the licensee or any of its executive officers related to money transmission activities.

40-22-114. Changes in control of a licensee.

(a) A licensee shall give the commissioner written notice of a proposed change of control within fifteen (15) business days after learning of the proposed change of control.

(b) The commissioner may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information shall be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(c) The licensee shall reapply and submit the required fees established by rule, not to exceed three thousand dollars ($3,000.00) for a new license upon a change in the control of the licensee as determined by the commissioner. The license is not transferable nor assignable to the new persons in control of the licensee.

(d) The following persons are exempt from the requirements of subsections (a) through (c) of this section, but the licensee shall notify the commissioner of a change of control:

(i) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;

(ii) A person that acquires control of a licensee by devise or descent;

(iii) A person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or

as an officer appointed by a court of competent jurisdiction or by operation of law; and

(iv) A person that the commissioner by rule or order exempts in the public interest.

(e) Subsection (a) of this section does not apply to public offerings of securities.

(f) Before filing a request for approval to acquire control, a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections (a) through (c) of this section.

40-22-115. Examinations.

(a) The commissioner may conduct examinations of persons licensed under this act at intervals he deems necessary to determine whether violations of this act and other applicable laws, rules and regulations pertaining to money transmissions are occurring and the frequency and seriousness of the violations.

(b) Each licensee or person subject to examination or investigation under this act shall pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect cost of examinations or investigations conducted pursuant to this section.

40-22-116. Maintenance of records.

(a) Each licensee shall make, keep and preserve the following books, accounts and other records for a period of five (5) years and these records shall be open to inspection by the commissioner:

(i) A record of each payment instrument;

(ii) A general ledger, posted at least monthly, containing all assets, liability, capital, income and expense accounts;

(iii) Bank statements and bank reconciliation records;

(iv) Outstanding payment instruments;

(v) Records of each payment instrument paid;

(vi) A list of the names and addresses of all authorized delegates and subdelegates; and

(vii) Any other records the commissioner reasonably requires by rule.

(b) The records required under this section may be maintained in photographic, electronic or other similar form.

(c) Records may be maintained at a location other than within this state so long as they are made accessible to the commissioner upon seven (7) business days written notice.

40-22-117. Confidentiality of records; exception.

(a) Except as provided in subsection (b) of this section, all information or reports obtained by the commissioner from an applicant, licensee or authorized delegate or subdelegate are confidential.

(b) The commissioner may disclose confidential information to officials and examiners in other states or to federal regulatory authorities or to appropriate prosecuting attorneys.

(c) This section does not prohibit the commissioner from disclosing to the public a list of persons licensed under this act or the aggregated financial data on those licensees.

40-22-118. Authorized delegate contracts.

(a) A licensee shall designate an authorized delegate by express written contract including the following:

(i) That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee;

(ii) That an authorized delegate may not authorize subdelegates without the written consent of the commissioner; and

(iii) That authorized delegates are subject to supervision and regulation by the commissioner.

40-22-119. Authorized delegate and subdelegate conduct.

(a) An authorized delegate or subdelegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the commissioner.

(b) All money transmission activities conducted by an authorized delegate or subdelegate shall be in strict accord with the licensee's written procedures provided to the authorized delegate and subdelegate.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(d) An authorized delegate and subdelegate are deemed to consent to the commissioner's inspection with or without prior notice to the licensee, authorized delegate or subdelegate pursuant to W.S. 40-22-115.

(e) A subdelegate shall remit all money owing to the authorized delegate or licensee in accordance with the terms of the contract between the authorized delegate and the subdelegate.

(f) An authorized delegate shall not enter into contracts with subdelegates without the consent of the licensee and the commissioner.

40-22-120. License suspension or revocation.

(a) The commissioner may suspend or revoke a licensee's license if the commissioner finds that:

(i) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application;

(ii) The licensee's net worth becomes inadequate and the licensee after ten (10) business days written notice from the commissioner, fails to remedy the deficiency;

(iii) The licensee knowingly violates any material provision of this act or any rule or order validly promulgated by the commissioner;

(iv) The licensee is conducting its business in an unsafe or unsound manner;

(v) The licensee is insolvent;

(vi) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors or has admitted in writing its inability to pay its debts as they become due;

(vii) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

(viii) The licensee refuses to permit the commissioner to make any examination authorized by this act;

(ix) The licensee willfully fails to make any report required by this act;

(x) The competence, experience, character or general fitness of the licensee indicates that it is not in the public interest to permit the licensee to continue to conduct business.

40-22-121. Suspension or revocation of authorized delegates.

(a) The commissioner may issue an order to the licensee suspending or revoking the designation of an authorized delegate or subdelegate if the commissioner finds that:

(i) The authorized delegate or subdelegate violated this act or a rule adopted or an order issued under this act;

(ii) The authorized delegate or subdelegate has not cooperated with an examination or investigation by the commissioner;

(iii) The authorized delegate or subdelegate has engaged in fraud, intentional misrepresentation or gross negligence;

(iv) The authorized delegate or subdelegate has been convicted of a violation of a state or federal money laundering statute;

(v) The competence, experience, character or general fitness of the authorized delegate or subdelegate or a person in control of the authorized delegate or subdelegate indicates that it is not in the public interest to permit the authorized delegate or subdelegate to provide money transmission services; or

(vi) The authorized delegate or subdelegate has engaged in an unsafe or unsound practice.

(b) In determining whether an authorized delegate or subdelegate has engaged in an unsafe or unsound practice the commissioner may consider the size and condition of the authorized delegate's or subdelegate's provision of money services, the magnitude of the loss, the gravity of the violation of this act and the previous conduct of the authorized delegate or subdelegate.

(c) An authorized delegate or subdelegate may apply for relief from a suspension or revocation designation as an authorized delegate or subdelegate according to procedures prescribed by the commissioner.

40-22-122. Orders to cease and desist.

(a) If the commissioner determines that a violation of this act or of a rule adopted or an order issued under this act by a licensee, authorized delegate or subdelegate is likely to cause immediate and irreparable harm to the licensee, its customers or the public as a result of the violation or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee, authorized delegate or subdelegate to cease and desist from the violation. The order becomes effective upon service upon the licensee, authorized delegate or subdelegate.

(b) The commissioner may issue an order against a licensee to cease and desist from providing money transmission services through an authorized delegate or subdelegate that is the subject of a separate order pursuant to W.S. 40-22-121 by the commissioner.

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Wyoming Administrative Procedure Act.

40-22-123. Consent orders.

The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this act. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this act or a rule adopted or an order issued under this act has been violated.

40-22-124. Civil penalties.

The commissioner may impose a civil penalty upon a person who violates this act or a rule adopted or an order issued under this act in an amount not to exceed five hundred dollars ($500.00) per day for each day the violation is outstanding, plus the state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

40-22-125. Criminal penalties.

(a) A person who intentionally makes a false statement, misrepresentation or false certification in a record filed or required to be maintained under this act or who intentionally makes a false entry or omits a material entry in the record is guilty of a felony, punishable for not less than three (3) years imprisonment or a fine of not less than ten thousand dollars ($10,000.00), or both.

(b) An individual who knowingly engages in any activity for which a license is required under this act without being licensed under this act is guilty of a felony punishable for not less than three (3) years imprisonment or a fine of not less than ten thousand dollars ($10,000.00), or both.

40-22-126. Unlicensed persons; verification authority regarding exemptions.

(a) If the commissioner has reason to believe that a person has violated or is violating W.S. 40-22-103 of this act the commissioner may issue an order to show cause why an order

to cease and desist should not issue requiring that the person cease and desist from the violation of W.S. 40-22-103.

(b) Repealed by Laws 2019, ch. 170, § 4.

(c) In an emergency, the commissioner may petition the district court for the issuance of a temporary restraining order.

(d) An order to cease and desist becomes effective upon service upon the person.

(e) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to W.S. 40-22-127 and 40-22-128.

(f) A person served with an order to cease and desist for violating W.S. 40-22-103 may petition the district court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to W.S. 40-22-127 and 40-22-128.

(g) The commissioner shall commence a contested case proceeding within twenty (20) days after issuing an order to cease and desist.

40-22-127. Administrative procedures.

All administrative proceedings under this act shall be conducted in accordance with the Wyoming Administrative Procedure Act.

40-22-128. Hearings.

Except as otherwise provided in W.S. 40-22-111(c) and 40-22-122(c), the commissioner may not suspend or revoke a license, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate or subdelegate, or assess a civil penalty without notice and an opportunity to be heard. The commissioner shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

40-22-129. Rulemaking and deposit of fees.

(a) The commissioner shall promulgate all necessary rules to implement and administer this act.

(b) All application, renewal, examination and licensing fees, except the amount paid for data processing by the registry or any other entity designated by the registry, shall be deposited by the commissioner with the state treasurer into the financial institutions administration account.

CHAPTER 23 - WYOMING RESIDENTIAL MORTGAGE PRACTICES ACT

40-23-101. Short title.

This act may be cited as the "Wyoming Residential Mortgage Practices Act."

40-23-102. Definitions.

(a) As used in this act:

(i) "Borrower" means a person who has applied to a mortgage lender for a residential mortgage loan or on whose behalf the mortgage lending and mortgage brokering activities are conducted;

(ii) "Commissioner" means the state banking commissioner;

(iii) "Control" means owning twenty-five percent (25%) or more of the voting share of the licensee or having the power to direct the licensee's management or policies;

(iv) "Division" means the division of banking within the department of audit;

(v) "Licensee" means a company licensed under this act as a mortgage broker or a mortgage lender;

(vi) "Mortgage broker" means any company, who for compensation, or in the expectation of compensation, assists a person in obtaining or applying to obtain a residential mortgage loan or holds itself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan;

(vii) "Mortgage brokerage agreement" means a written agreement in which a mortgage broker agrees to assist the borrower in obtaining a residential mortgage loan;

(viii) "Mortgage brokering activities" means for compensation, either directly or indirectly, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans;

(ix) "Mortgage lender" means any company, who makes residential mortgage loans to borrowers or holds itself out as able to make mortgage loans;

(x) "Mortgage lending activities" means for compensation, either directly or indirectly, accepting or offering to accept applications for making residential mortgage loans;

(xi) "Person" means an individual, sole proprietorship, partnership, corporation, limited liability company or other entity, public or private;

(xii) "Real Estate Settlement Procedures Act" means the act set forth in 12 U.S.C. § 2601 et seq., as amended;

(xiii) "Regulation X" means regulation X as promulgated by the consumer financial protection bureau and codified in 12 CFR part 1024 et seq., as amended;

(xiv) "Regulation Z" means regulation Z as promulgated by the consumer financial protection bureau and codified in 12 CFR part 1026 et seq., as amended;

(xv) "Residential mortgage loan" means a first mortgage loan made primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate in Wyoming upon which is constructed or intended to be constructed a dwelling;

(xvi) "Residential real property" means real property improved by a one (1) to four (4) family dwelling;

(xvii) "Truth in Lending Act" means the act set forth in 15 U.S.C. § 1601 et seq., as amended;

(xviii) "Channeling agent" means the third party licensing system that gathers the application information and

distributes it to Wyoming for review for the approval or denial decision;

(xix) "Clerical or support duties" means:

(A) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(xx) "Company" means a sole proprietorship, partnership, corporation, limited liability company or other entity, public or private;

(xxi) "Depository institution" means a company as defined in 12 U.S.C. 1813 of the federal deposit insurance act, and includes any credit union;

(xxii) "Dwelling" means a residential structure that contains one (1) to four (4) units, whether or not that structure is attached to real property. "Dwelling", if it is used as a residence, includes an individual condominium unit, cooperative unit, mobile home and trailer;

(xxiii) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration or the federal deposit insurance corporation;

(xxiv) "Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, stepsibling and any adoptive relationship included in this paragraph;

(xxv) "Individual" means a natural person;

(xxvi) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a licensee, or an exempt person under W.S. 40-23-105;

(xxvii) "Mortgage loan originator":

(A) Means an individual who for compensation or gain or in the expectation of compensation or gain:

(I) Takes a residential mortgage loan application; or

(II) Offers or negotiates the terms of a residential mortgage loan.

(B) Shall not include any individual engaged solely as a loan processor or underwriter except as otherwise described in W.S. 40-23-124(d);

(C) Shall not include a person who only performs real estate brokerage activities and is licensed or registered in accordance with Wyoming law, unless the person is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator; and

(D) Shall not include a person solely involved in extensions of credit relating to timeshare plans.

(xxviii) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage;

(xxix) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(B) Arranging meetings or communicating with any party interested in the sale, purchase, lease, rental or exchange of real property;

(C) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, unless the negotiating relates to the financing of these transactions, which shall then constitute engaging in the business as a mortgage loan originator;

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) Offering to engage in any activity, or act in any capacity, described in subparagraph (A), (B), (C) or (D) of this paragraph.

(xxx) "Registered mortgage loan originator" means any individual who:

(A) Is registered with, and maintains a unique identifier through, the registry; and

(B) Meets the definition of mortgage loan originator and is an employee of:

(I) A depository institution;

(II) A subsidiary that is:

(1) Owned and controlled by a depository institution; and

(2) Regulated by a federal banking agency; or

(III) An institution regulated by the farm credit administration.

(xxxi) "Registry" means the nationwide mortgage licensing system and registry which is a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage lenders, mortgage brokers and mortgage loan originators;

(xxxii) "Timeshare plan" means as defined in 11 U.S.C. § 101(53D);

(xxxiii) "Unique identifier" means a number or other identifier assigned by protocols established by the registry;

(xxxiv) "This act" means W.S. 40-23-101 through 40-23-133.

40-23-103. Powers and duties of commissioner.

(a) In addition to any other powers and duties imposed upon the commissioner by law, the commissioner shall:

(i) Perform any and all acts necessary to promulgate, administer and enforce the provisions of this act and any rules, regulations, orders, limitations, standards, requirements or licenses issued under this act, and to exercise all incidental powers as necessary to carry out the purposes of this act;

(ii) Order any mortgage broker, mortgage lender or mortgage loan originator to cease any activity or practice which the commissioner deems to be deceptive, dishonest, a violation of state or federal laws or regulations or unduly harmful to the interests of the public;

(iii) Conduct investigations, issue subpoenas, and hold hearings as necessary to determine whether a person has violated any provision of this act;

(iv) Conduct examinations of the books and records of licensees and conduct investigations as necessary and proper for the enforcement of the provisions of this act and the rules promulgated under the authority of this act;

(v) Issue orders that are necessary to execute, enforce and effectuate the purposes of this act;

(vi) Require that all application, renewal, licensing, examination and all other fees included under this act, except the amount paid for data processing by a nationwide mortgage licensing system and database, shall be deposited by the commissioner with the state treasurer into the financial institutions administration account within the earmarked revenue fund;

(vii) Require the mortgage broker to reimburse the borrower for undisclosed or incorrectly disclosed fees pursuant to W.S. 40-23-114(d) and require the mortgage lender to reimburse the borrower for undisclosed or incorrectly disclosed fees pursuant to W.S. 40-23-113(e);

(viii) Require a background investigation including fingerprint checks for state and national criminal history record checks as necessary. The commissioner may utilize

background checks completed by the division of criminal investigation, other government agencies in this state or in other states, the federal bureau of investigation or a nationwide mortgage licensing system;

(ix) Determine the content of application forms and the means by which an applicant applies for, renews or makes changes to a license under this act. The commissioner may require applicants to utilize a nationwide mortgage licensing system and database for the processing of applications and fees.

40-23-104. License requirements.

(a) With the exception of those persons exempt pursuant to W.S. 40-23-105, on and after July 1, 2005, no company shall engage in mortgage lending activities or mortgage brokering activities without first obtaining a license in accordance with this act.

(b) A company engaged in mortgage lending or mortgage brokering activities with any dwelling located in Wyoming shall first obtain a license in accordance with this act.

40-23-105. Exemptions from license requirements.

(a) The provisions of this act do not apply to:

(i) Agencies of the United States and agencies of this state and its political subdivisions;

(ii) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold;

(iii) Any person licensed or chartered under the laws of any state or the United States as a bank, savings and loan association, credit union, or trust company or an operating subsidiary of which the person owns or controls eighty percent (80%) or more of the voting stock;

(iv) An attorney licensed to practice law in Wyoming who is not principally engaged in the business of negotiating residential mortgage loans when the attorney renders services in the course of his practice as an attorney;

(v) Repealed By Laws 2009, Ch. 184, § 3.

(vi) Any person who purchases or otherwise obtains a residential mortgage loan which has been originated, processed and closed with the borrower by a licensee or by an exempt person, who does not directly or indirectly solicit borrowers in Wyoming for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this paragraph, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee or exempt person after the residential mortgage loan has closed.

(b) The Financial Technology Sandbox Act shall apply to this act. [NOTE: This section will be effective 1/1/2020.]

40-23-106. Initial licensing and compliance.

A person conducting mortgage lending or mortgage brokering activities, as of July 1, 2005 shall, not later than September 30, 2005, apply to the commissioner for a license.

40-23-107. Application for license to do business as a mortgage lender or mortgage broker.

(a) The commissioner shall receive and act on all applications for licenses to do business as a mortgage lender or mortgage broker. Applications shall be filed in the manner prescribed by the commissioner, shall contain such information as prescribed by the commissioner, shall be updated as prescribed by the commissioner to keep the information current, and shall be accompanied by an application fee not to exceed one thousand dollars ($1,000.00) for the home office location and an amount not to exceed one hundred dollars ($100.00) for each additional location, as set by rule of the commissioner. When an application for licensure is denied or withdrawn, the commissioner shall retain all fees paid by the applicant.

(b) An application for license may be granted if the commissioner finds:

(i) The financial responsibility and experience, character and fitness of the license applicant, of the owners or persons in charge of the applicant and individuals designated in charge of the applicant's places of business, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act;

(ii) The applicant has not been convicted of, pled guilty or nolo contendere to, a felony in a domestic, foreign or military court during the seven (7) year period preceding the date of the application for licensing, or at any time preceding such date of application if such felony involved an act of fraud, dishonesty, breach of trust or money laundering;

(iii) The applicant has not been the subject of any administrative action or enforcement proceeding by any state or federal government agency involving the revocation of any license or authority substantially equivalent to a license under this act;

(iv) The applicant has not filed an application for a license which is false or misleading with respect to any material fact;

(v) Repealed By Laws 2008, Ch. 76, § 2.

(vi) The applicant has provided information on the application as required by the commissioner pursuant to subsection (a) of this section; and

(vii) The applicant has not been convicted of, pled guilty or nolo contendere to a misdemeanor in a domestic, foreign or military court involving an act of fraud, dishonesty, breach of trust or money laundering.

(c) The commissioner is empowered to conduct investigations as deemed necessary to determine the existence of the requirements in subsection (b) of this section.

(d) Upon written request, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(i) The commissioner has notified the applicant in writing that his application has been denied, or objections to the application have been filed with the commissioner;

(ii) The commissioner has not issued a license within sixty (60) days after a complete application for the license was filed.

(e) If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the commissioner for his reasonable and necessary expenses incurred as a result of the hearing. Notwithstanding any provision under the Wyoming

Administrative Procedure Act, a request for hearing shall not be made more than fifteen (15) days after the applicant has received notification by certified mail that the application has been denied and stating in substance the commissioner's finding supporting denial of the application or that objections have been filed and the substance thereof.

(f) Every licensee shall license and maintain a home office as a principal location for the transaction of mortgage business. A separate license shall be required for each place of business from which mortgage brokering activities or mortgage lending activities are directly or indirectly conducted. The commissioner may issue additional licenses to the same applicant upon compliance with all the provisions of this act governing the issuance of a single license. Each license shall remain in full force and effect unless the licensee does not satisfy the renewal requirements of W.S. 40-23-109, or the license is relinquished, suspended or revoked. Licenses shall be terminated upon the relinquishment or revocation of a home office license.

(g) No licensee shall change the location of any place of business, consolidate two (2) or more locations, open a new location or close any location, without giving the commissioner prior written notice and paying a license modification fee not to exceed one hundred dollars ($100.00) as set by rule of the commissioner.

(h) A licensee shall not engage in the business of making or brokering residential mortgage loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that on the license without the approval of the commissioner.

(j) The commissioner may suspend action upon a license application pending resolution of any criminal charges, before any court of competent jurisdiction, against an applicant which would disqualify that applicant if convicted.

(k) An applicant shall make complete disclosure of all information required in the application, including information concerning officers, directors, partners, members, managers or employees.

40-23-108. Change in control of a licensee.

(a) A licensee shall give the commissioner written notice of a proposed change of control of a licensee within fifteen (15) business days after learning of the proposed change of control.

(b) The commissioner may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information shall be limited to the same information required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(c) The licensee shall reapply and submit the required fees established by rule, not to exceed one thousand dollars ($1,000.00) for a home office location and an amount not to exceed one hundred dollars ($100.00) for each additional location upon a change in the control of the licensee as determined by the commissioner. The license is not transferable nor assignable to the new persons in control of the licensee.

(d) Before filing a request for approval to acquire control, a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall enter an order stating the proposed person and transaction is not subject to the requirements of subsections (a) through (c) of this section.

40-23-109. License renewal and annual report.

(a) Each mortgage broker and mortgage lender license issued under this act shall expire on December 31. The license shall be renewed annually not less than thirty (30) days before the stated expiration date. The renewal fee for each license shall not exceed one thousand dollars ($1,000.00) for the home office location and an amount not to exceed one hundred dollars ($100.00) for each additional location, as set by rule of the commissioner.

(b) The renewal fee shall be accompanied by a report, in a form prescribed by the commissioner, which shall include:

(i) Any material changes to any of the information submitted by the licensee on its original application which have

not been reported previously to the commissioner on any other report required to be filed under this act;

(ii) Any update necessary on the surety bond;

(iii) Any update on civil or criminal proceedings against the licensee or any administrative or enforcement proceedings by any state or federal government agency involving fines, penalties or the revocation or suspension of any business licensee or authority substantially equivalent to a license under this act;

(iv) Any other information as the commissioner may deem necessary.

40-23-110. Surety bonds.

(a) All licensees shall maintain a surety bond to the state of Wyoming in accordance with this section. The surety bond shall be used to cover individual loan originators employed or under contract with a licensee. The bond to be maintained shall be in the amount:

(i) Until December 31, 2009, of twenty-five thousand dollars ($25,000.00). This amount shall be increased by an additional sum of ten thousand dollars ($10,000.00) for each licensed office;

(ii) Effective January 1, 2010, as established by rule of the commissioner based upon the volume of business activity transacted by the licensee under this act.

(b) The surety bond shall be a continuing obligation of the issuing surety. The surety's liability under the bond for any claims made under the bond either individually or in the aggregate shall in no event exceed the face amount of the bond issued. The bond shall be issued by a surety authorized to do business in the state of Wyoming. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the commissioner.

(c) In the event that a licensee or person employed by or under contract with a licensee has violated any of the provisions of this act or of a rule or order lawfully made pursuant to this act, or federal law or regulation pertaining to the mortgage lending or mortgage brokering, and has damaged any person by such violation, then the bond shall be forfeited and

paid by the surety to the state of Wyoming for the benefit of any person so damaged, in an amount sufficient to satisfy the violation or the bond in its entirety if the violation exceeds the amount of the bond.

(d) Surety bonds shall remain effective continuously until released in writing by the commissioner. If a bond has not been previously released by the commissioner, the bond shall expire two (2) years after the date of the surrender, revocation or expiration of the license.

40-23-111. Examinations and investigations.

(a) The commissioner may conduct examinations of any licensee under this act at intervals he deems necessary to determine compliance with this act and other applicable laws, rules and regulations.

(b) The commissioner may at any time investigate the loans or business books and records of any licensee or person engaged in mortgage lending or mortgage brokering activities for the purpose of determining compliance with this act or securing information required under this act. For these purposes, the commissioner shall have free and reasonable access to the offices, places of business, books and records of the licensee.

(c) If a licensee's or person's records are located outside this state, the licensee or person shall have the option to make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(d) Each licensee or person subject to examination or investigation under this act shall pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect cost of examinations or investigations conducted pursuant to this section not to exceed one hundred dollars ($100.00) per hour.

40-23-112. Records; confidentiality of records; exception.

(a) Every licensee shall maintain records in conformity with generally accepted accounting principles in a manner that

will enable the commissioner to determine whether the licensee is complying with the provisions of this act. The recordkeeping system of a licensee shall be sufficient if he makes the required information available. The records need not be kept in the place of business where residential mortgage loans are made, if the commissioner is given free access to the records wherever located. The records pertaining to any loan shall be retained for the period of twenty-five (25) months from the date of loan closing.

(b) Except as provided in subsections (c) through (f) of this section, all information or reports obtained by the commissioner from an applicant or licensee are confidential.

(c) The commissioner may disclose confidential information to mortgage lending or mortgage brokering supervisory agencies in other states or to federal regulatory authorities or to appropriate prosecuting attorneys.

(d) The commissioner may enter into cooperative, coordinating or information sharing agreements with any other supervisory agency or any organization affiliated with or representing one (1) or more mortgage lending or mortgage brokering supervisory agencies with respect to the periodic examination or other supervision of any office in Wyoming of an out-of-state licensee, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his own examinations or investigations.

(e) The commissioner may enter into contracts with any mortgage lending or mortgage brokering supervisory agency having concurrent jurisdiction over a Wyoming licensee pursuant to this act to engage the services of the agency's examiners at a reasonable rate of compensation. Any such contract shall not be subject to the provisions of W.S. 9-2-1016(b).

(f) Except as provided in P.L. 110-289, section 1512, the requirements under any federal law or state law regarding the privacy or confidentiality of any information or material provided to the registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the registry. Such information and any other confidential material obtained by the commissioner may be shared with all state and federal regulatory officials with mortgage industry oversight authority

without the loss of privilege or the loss of confidentiality protections provided by federal law or any state law.

(g) Information or material that is subject to a privilege or confidentiality under subsection (f) of this section shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or agency of the federal government or the respective state; or

(ii) Subpoena, discovery or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the registry with respect to such information or material, the person to whom such information or material pertains waives that privilege, in whole or in part.

(h) Any Wyoming law relating to the disclosure of confidential supervisory information or any information or material described in subsection (f) of this section that is inconsistent with subsection (f) of this section shall be superceded by the requirements of this section.

(j) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, any mortgage loan originator that is included in the registry for access by the public.

(k) This section does not prohibit the commissioner from disclosing to the public a list of persons licensed under this act.

40-23-113. Disclosure of mortgage lender fees.

(a) Within three (3) working days of taking a mortgage loan application and prior to receiving any consideration, other than third party fees, from the borrower, the mortgage lender shall:

(i) Disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Truth-in-Lending Act, its associated regulations, and the federal Real Estate Settlement Procedures Act and its associated

regulations and any other applicable federal and state requirements;

(ii) If a prepayment penalty may be a condition of the residential mortgage loan offered to a borrower, that fact shall be separately disclosed in writing to the borrower and the borrower shall agree in writing to accept that condition. The disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. The written disclosure shall be in a form prescribed by the commissioner and shall initially be delivered along with the good faith estimate of settlement costs within three (3) business days after accepting an application from the borrower. The disclosure shall subsequently be provided by the lender and signed by the borrower at the same time the borrower is given the final federal Truth-in-Lending Act disclosure.

(b) With the exception of a loan cancellation fee, a licensed mortgage lender shall not require a borrower to pay any fees or charges prior to a residential mortgage loan closing, except:

(i) Charges actually incurred by the licensee on behalf of the borrower for services which have been rendered by third parties necessary to process the application. These fees may include, but are not limited to, fees for credit reports, flood insurance certifications, property inspections, title insurance commitments, uniform commercial code article 4 lien searches, and appraisals;

(ii) A rate lock in fee; and

(iii) A commitment fee upon approval of the residential mortgage loan.

(c) A loan cancellation fee may be charged and collected by a licensee at any time either prior to the scheduled closing of a residential mortgage loan transaction or subsequent thereto.

(d) Any fees charged under the authority of this section shall be reasonable and customary as to the type and the amount of the fee charged.

(e) A mortgage lender shall not receive any fee that inures to the benefit of the mortgage lender, either directly or

indirectly, if the fee exceeds the fee disclosed on the most recent good faith estimate unless:

(i) The need to charge the higher fee was not reasonably foreseeable at the time the good faith estimate was written; and

(ii) The mortgage lender has provided to the borrower, no less than three (3) business days prior to the signing of the mortgage loan closing documents, a new good faith estimate of settlement costs, a clear written explanation of the increase in the fee and the reason for charging a fee that exceeds the fee which was previously disclosed.

(f) If the fee was originally disclosed as a percentage of the mortgage loan amount and the dollar amount of the fee increases because the mortgage loan amount increases, but the fee as a percentage of the mortgage loan amount does not change, then no redisclosure shall be required unless the fee increased by more than one thousand dollars ($1,000.00).

40-23-114. Disclosure of mortgage broker fees.

(a) Within three (3) business days of a borrower signing a completed mortgage loan application and before the borrower provides any consideration to the licensee, the licensee shall execute and deliver to the borrower a mortgage brokerage agreement. The mortgage brokerage agreement shall be in writing, signed and dated by both the borrower and the authorized representative of the licensed mortgage broker whose services to the borrower constitute mortgage brokering and shall contain the following information:

(i) That the mortgage broker cannot make mortgage loans or issue loan commitments in the mortgage broker's name;

(ii) That the mortgage broker cannot guarantee acceptance into any particular mortgage loan program or promise any specific mortgage loan terms or conditions;

(iii) A good faith estimate of the fees to be collected, including a credit report fee, property appraisal fee or any other third party fee;

(iv) The terms and conditions for obtaining a refund of any fees or arranging for the transfer of third party service work products to another mortgage lender or mortgage broker, if

any. The amount of any fees collected in excess of the actual cost shall be returned within sixty (60) days after rejection, withdrawal of an application or closing of the loan.

(b) The mortgage brokerage agreement shall be the only agreement between the borrower and licensee with respect to a single mortgage loan transaction, except that the licensed mortgage broker shall also provide to the borrower disclosure statements necessary to comply with the federal Truth-in-Lending Act and its associated regulations, the federal Real Estate Settlement Procedures Act and its associated regulations, and any other applicable federal and state requirements.

(c) A licensed mortgage broker shall not require a borrower to pay any fees or charges prior to the mortgage loan closing, except charges actually incurred by the licensed mortgage broker on behalf of the borrower for services from third parties necessary to process the mortgage loan application, such as credit reports and appraisals.

(d) A mortgage broker shall not receive any fee that inures to the benefit of the mortgage broker, either directly or indirectly if it exceeds the fee disclosed on the most recent good faith estimate unless:

(i) The need to charge the higher fee was not reasonably foreseeable at the time the good faith estimate was written; and

(ii) The mortgage broker has provided to the borrower, no less than three (3) business days prior to the signing of the mortgage loan closing documents, a new good faith estimate of settlement costs, a clear written explanation of the increase in the fee and the reason for charging a fee that exceeds that which was previously disclosed.

(e) If the fee was originally disclosed as a percentage of the mortgage loan amount, and the dollar amount of the fee increases because the mortgage loan amount increases, but the fee as a percentage of the mortgage loan amount does not change, then no redisclosure shall be required unless the fee increased by more than one thousand dollars ($1,000.00).

(f) Any fees charged under the authority of this section shall be reasonable and customary as to the type and the amount of the fee charged.

40-23-115. Loan commitments; prepayment penalty disclosure by mortgage broker.

(a) A mortgage broker may issue a loan commitment and may furnish a lock-in of the interest rate and program on behalf of the mortgage lender when the mortgage broker has obtained a written or electronically transmitted loan commitment or lock-in for the mortgage loan from the mortgage lender on behalf of the borrower. The loan commitment issued by the mortgage broker to the borrower on behalf of the mortgage lender shall be in the same form and substance as issued by the mortgage lender and shall identify the mortgage lender by name.

(i) Repealed By Laws 2008, Ch. 76, § 2.

(ii) Repealed By Laws 2008, Ch. 76, § 2.

(iii) Repealed By Laws 2008, Ch. 76, § 2.

(iv) Repealed By Laws 2008, Ch. 76, § 2.

(b) If a prepayment penalty is a condition of the residential mortgage loan offered to a borrower, that fact shall be separately disclosed in writing to the borrower and the borrower shall agree in writing to accept that condition. The disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the mortgage loan before the date for repayment stated in the loan agreement. The written disclosure shall be in a form prescribed by the commissioner and shall be delivered as soon as the condition is known, but no later than the issuance of a commitment, for the mortgage loan product chosen by the borrower.

40-23-116. Trust accounts.

All monies received from a borrower for payment of third party provider services shall be deemed as held in trust immediately upon receipt. All such trust funds shall be deposited, prior to the end of the third business day following receipt of the funds, in a trust account of a federally insured financial institution. All trust account funds collected under this act shall remain on deposit in a noninterest bearing trust account until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Monies maintained in the trust account shall be exempt from execution, attachment or garnishment. A mortgage lender or mortgage broker shall not in

any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third party provider or for refunds to a borrower.

40-23-117. Prohibited practices.

(a) No licensee or person required to have a license shall:

(i) Pay compensation to, contract with or employ in any manner, any person engaged in mortgage lending or brokering activities who is not properly licensed unless such person is exempt under W.S. 40-23-105;

(ii) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(iii) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees or charges payable by the borrower;

(iv) Accept any fees at closing which were not previously disclosed fully to the borrower;

(v) Obtain any agreement or instrument in which blanks are left to be filled in after execution;

(vi) Engage in any misrepresentation in connection with a residential mortgage loan;

(vii) Directly or indirectly make any statement regarding value, except that a copy of the sales contract for purchase transactions may be provided, or make or provide payment of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;

(viii) Make any false promises likely to influence or persuade, or pursue a course of misrepresentations and false promises through agents, solicitors, advertising or otherwise;

(ix) Misrepresent, circumvent or conceal any of the material particulars or the nature thereof, regarding a transaction to which it is a party;

(x) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is delivered to the borrower.

40-23-118. License suspension or revocation.

(a) The commissioner may suspend, not to exceed six (6) months, or revoke a license if the commissioner finds:

(i) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application;

(ii) The licensee violated any provision of this act or any rule or order validly promulgated by the commissioner;

(iii) The licensee is conducting its business in an unsafe or unsound manner;

(iv) The licensee refuses to permit the commissioner to make any examination authorized by this act;

(v) The licensee willfully fails to make any report required by this act;

(vi) The competence, experience, character or general fitness of the licensee indicates that it is not in the public interest to permit the licensee to continue to conduct business;

(vii) The bond of the licensee has been revoked, cancelled, expired or otherwise is not effective;

(viii) The licensee or any partner, officer, director, manager or employee of the licensee has been convicted of a felony or misdemeanor involving any aspect of the mortgage lending business, breach of trust, or fraudulent or dishonest dealing;

(ix) The licensee or any partner, officer, director, manager or employee of the licensee has had a license substantially equivalent to a license under this act, and issued by another state, denied, revoked or suspended under the laws of that state;

(x) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(b) Notwithstanding any provision of the Wyoming Administrative Procedure Act, if the commissioner finds that probable cause for revocation of a license exists and that enforcement of this act and the public interest require immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days written notice, enter an order suspending the license for not more than thirty (30) days.

(c) The commissioner may, in his discretion, reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would justify the commissioner in refusing to grant a license.

(d) For purposes of this section, "licensee" shall also mean a licensed mortgage loan originator pursuant to W.S. 40-23-124.

40-23-119. Orders to cease and desist.

(a) If the commissioner determines that a violation of this act or of a rule adopted or an order issued under this act by a licensee is likely to cause immediate and irreparable harm to the licensee, its customers or the public as a result of the violation or cause insolvency of the licensee, the commissioner may issue an order requiring the licensee to cease and desist from the violation. The order becomes effective upon service upon the licensee.

(b) If the commissioner determines that a person is conducting mortgage lending or mortgage brokering activities governed under this act without a valid license, the commissioner may issue an order requiring the unlicensed person to cease and desist from mortgage lending or mortgage brokering activities. The order becomes effective upon service upon the unlicensed person.

(c) Before issuing a final cease and desist order under subsections (a) and (b) of this section, the commissioner shall serve notice of intent to issue the order upon the person being

ordered to cease and desist. The notice shall be in writing and shall direct the person to discontinue the violations of law and cease and desist mortgage lending or mortgage brokering activities. The notice shall be served by certified mail return receipt requested to the last known address of the person or shall be served as provided by the Wyoming Rules of Civil Procedure. Notice of the order shall include:

(i) A statement of the grounds for issuing the proposed order, including a citation to the statute or rule involved;

(ii) A statement of the facts in support of the allegations;

(iii) A statement informing the person of the right to a hearing on the order.

(d) In an emergency, the commissioner may petition the district court for the issuance of a temporary restraining order.

(e) An order to cease and desist becomes effective upon service upon the person.

(f) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to the Wyoming Administrative Procedure Act.

(g) A person served with an order to cease and desist for violating this act may petition the district court for a judicial order setting aside, limiting or suspending the enforcement, operation or effectiveness of the order pending the completion of an administrative proceeding pursuant to the Wyoming Administrative Procedure Act.

(h) The commissioner shall commence a contested case proceeding within twenty (20) days after issuing an order to cease and desist.

40-23-120. Consent orders.

The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this act. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent

order may provide that it does not constitute an admission by a person that this act or a rule adopted or an order issued under this act has been violated.

40-23-121. Civil penalties.

The commissioner may impose a civil penalty upon a person who violates this act or a rule adopted or an order issued under this act in an amount not to exceed five hundred dollars ($500.00) per day for each day the violation is outstanding, plus the state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees. Any penalties collected pursuant to this section shall be deposited in the public school fund of the appropriate county as required by article 7, section 5 of the Wyoming constitution.

40-23-122. Criminal penalties.

(a) A person who intentionally makes a false statement, misrepresentation or false certification in a record filed or required to be maintained under this act or who intentionally makes a false entry or omits a material entry in the record is guilty of a felony, punishable by not less than three (3) years imprisonment or a fine of not less than ten thousand dollars ($10,000.00), or both.

(b) An individual who knowingly engages in any activity for which a license is required under this act, without being licensed under this act is guilty of a felony punishable by not less than three (3) years imprisonment or a fine of not less than ten thousand dollars ($10,000.00), or both.

(c) A person, except an individual, who knowingly engages in any activity for which a license is required under this act, without being licensed under this act is guilty of a misdemeanor punishable by a fine of not less than twenty-five thousand dollars ($25,000.00).

40-23-123. Hearings.

Except as otherwise provided in W.S. 40-23-103(a)(vii), 40-23-108(c) and 40-23-109, the commissioner shall not suspend or revoke a license, issue an order to cease and desist or assess a civil penalty without notice and an opportunity to be heard.

40-23-124. Loan originator licensing; registration; rulemaking.

(a) An individual, unless specifically exempted under subsection (c) of this section, shall not engage in the business of a mortgage loan originator for any dwelling located in Wyoming without first obtaining and maintaining annually a license in accordance with this act. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the registry.

(b) In order to facilitate an orderly transition to licensing and minimize disruption in the marketplace, the effective date for subsection (a) of this section shall be July 1, 2010.

(c) An individual is exempt from subsection (a) of this section if he is:

(i) A registered mortgage loan originator, when acting for an entity described in W.S. 40-23-102(a)(xxx)(B)(I), (II) or (III);

(ii) An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(iii) An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(iv) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator;

(v) An individual engaging solely in loan processor or underwriter activities, who does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless the independent contractor, loan processor or underwriter obtains and maintains a license pursuant to subsection (a) of this section. Each independent contractor, loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the registry.

(e) For the purposes of implementing an orderly and efficient licensing process the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications.

40-23-125. Loan originator application; processing.

(a) Applicants for a mortgage loan originator license shall apply in a form prescribed by the commissioner. Each application form shall contain content as set forth by rule of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this act.

(b) In order to fulfill the purposes of this act, the commissioner may establish relationships or contracts with the registry or other entities designated by the registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this act.

(c) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the registry information concerning the applicant's identity, including:

(i) Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(ii) Personal history and experience, including the submission of authorization for the registry and the commissioner to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(B) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(d) For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of paragraph (c)(i) of this section and subparagraph (c)(ii)(B) of this section, the commissioner may use the registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(e) For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subparagraphs (c)(ii)(A) and (B) of this section, the commissioner may use the registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(f) Each application submitted under subsection (a) of this section shall be accompanied by an application fee not to exceed three hundred dollars ($300.00), as established by rule of the commissioner. When an application for licensure is denied or withdrawn, the commissioner shall retain all fees paid by the applicant.

40-23-126. Issuance of loan originator license.

(a) The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(i) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(ii) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court:

(A) During the seven (7) year period preceding the date of the application for licensing and registration; or

(B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(C) A pardon of a conviction shall not be a conviction for the purposes of this paragraph.

(iii) The applicant has demonstrated financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of this act;

(iv) The applicant has completed the prelicensing education requirement pursuant to W.S. 40-23-127;

(v) The applicant has passed a written test that meets the test requirement of W.S. 40-23-128.

(b) For purposes of paragraph (a)(iii) of this section, a person has shown that he is not financially responsible when he has shown a disregard in the management of his own financial condition. A determination that an individual has not shown financial responsibility shall include, but not be limited to:

(i) Having any outstanding judgment, except a judgment solely as a result of medical expenses;

(ii) Having any outstanding tax lien or other government lien;

(iii) Having any foreclosure within the past three (3) years;

(iv) Having a pattern of seriously delinquent accounts within the past three (3) years.

(c) Upon written request, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(i) The commissioner has notified the applicant in writing that his application has been denied, or objections to the application have been filed with the commissioner;

(ii) The commissioner has not issued a license within sixty (60) days after a complete application for the license was filed.

(d) If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the commissioner for his

reasonable and necessary expenses incurred as a result of the hearing. Notwithstanding any provision under the Wyoming Administrative Procedure Act, a request for hearing shall not be made more than fifteen (15) days after the applicant has received notification by certified mail that the application has been denied and stating in substance the commissioner's finding supporting denial of the application or that objections have been filed and the substance thereof.

40-23-127. Prelicensing and relicensing education of loan originators.

(a) In order to meet the prelicensing education requirement referred to in W.S. 40-23-126(a)(iv), a person shall complete at least twenty (20) hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(i) Three (3) hours of federal law and regulations related to mortgage origination;

(ii) Three (3) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues; and

(iii) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the registry. The review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, as approved by the registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online or by any other means approved by the registry.

(e) The prelicensing education requirements approved by the registry in paragraphs (a)(i), (ii) and (iii) of this

section for any state shall be accepted as credit towards completion of prelicensing education requirements in Wyoming.

(f) An individual licensed under W.S. 40-23-124 after July 1, 2009 and who subsequently applies to be licensed again:

(i) Shall not have to complete prelicensing education requirements;

(ii) Shall have completed all the continuing education requirements pursuant to W.S. 40-23-130.

40-23-128. Testing of mortgage loan originators.

(a) In order to meet the written test requirement under W.S. 40-23-126(a)(v), an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the registry and administered by a test provider approved by the registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(i) Ethics;

(ii) Federal law and regulation pertaining to mortgage origination;

(iii) Wyoming law and regulation pertaining to mortgage origination; and

(iv) Federal and Wyoming law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(c) Nothing in the section shall prohibit a test provider from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test

score of not less than seventy-five percent (75%) correct answers to questions.

(e) An individual may retake a test three (3) times with each test taking occurring at least thirty (30) days after the preceding test.

(f) After failing three (3) tests, an individual shall wait at least six (6) months before taking the test again.

(g) A licensed mortgage loan originator who fails to maintain a valid license for at least five (5) years shall retake the written test. Any time the individual spends working as a registered mortgage loan originator shall not be counted against this five (5) year period.

40-23-129. Standards for loan originator license renewal; rulemaking.

(a) The minimum standards for license renewal for mortgage loan originators shall include the following:

(i) The mortgage loan originator continues to meet the minimum standards for license issuance under W.S. 40-23-126(a)(i) through (v);

(ii) The mortgage loan originator has satisfied the annual continuing education requirements described in W.S. 40-23-130;

(iii) The mortgage loan originator has paid the license renewal fee not to exceed three hundred dollars ($300.00), as established by rule of the commissioner.

(b) Each mortgage loan originator license shall expire on December 31. The license shall be renewed annually by satisfying the minimum standards for license renewal under subsection (a) of this section not less than thirty (30) days before the stated expiration date. The commissioner may establish rules for the reinstatement of expired licenses consistent with the standards established by the registry.

40-23-130. Continuing education for mortgage loan originators; rulemaking.

(a) In order to meet the annual continuing education requirements referred to in W.S. 40-23-129(a)(ii), a licensed

mortgage loan originator shall complete at least eight (8) hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(i) Three (3) hours of federal law and regulations relating to mortgage origination;

(ii) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues; and

(iii) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of section (a) of this section, continuing education courses shall be reviewed and approved by the registry. The review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the registry.

(e) A licensed mortgage loan originator:

(i) Except as provided in W.S. 40-23-129(b), shall only receive credit for a continuing education course in the year in which the course is taken; and

(ii) Shall not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two (2) hours of credit for every one (1) hour taught.

(g) An individual having successfully completed the education requirements approved by the registry in paragraphs (a)(i), (ii) and (iii) of this section for any state shall be accepted as credit towards completion of continuing education requirements in Wyoming.

(h) An individual meeting the requirements of W.S. 40-23-129(a)(i) and (iii) may make up any deficiency in continuing education as established by rule of the commissioner.

(j) An individual licensed under W.S. 40-23-124 after July 1, 2009 and who subsequently applies to be licensed again shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

40-23-131. Mortgage call reports.

Each licensee shall submit to the registry reports of condition, which shall be in such form and shall contain all information as required by the registry.

40-23-132. Report to the registry.

The commissioner shall regularly report violations of this act, as well as enforcement actions and other relevant information, to the registry subject to the provisions contained in W.S. 40-23-112. The commissioner shall establish by rule a process where a mortgage loan originator may challenge information entered into the registry by the commissioner.

40-23-133. Unique identifier; rulemaking.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan applications forms, solicitations or advertisements, including business cards or websites and any other documents as established by rule of the commissioner.

CHAPTER 24 - UNIFORM TRADE SECRETS ACT

40-24-101. Definitions.

(a) As used in this act, unless the context requires otherwise:

(i) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain secrecy or espionage through electronic or other means;

(ii) "Misappropriation" means:

(A) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(I) Used improper means to acquire knowledge of the trade secret;

(II) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake; or

(III) At the time of disclosure or use knew or had reason to know that his knowledge of the trade secret was:

(1) Derived from or through a person who has utilized improper means to acquire it;

(2) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(3) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

(iii) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity;

(iv) "Trade secret" means information, including a formula, pattern, compilation, program device, method, technique or process that:

(A) Derives independent economic value, actual or potential, from not being generally known to and not being

readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(v) "This act" means W.S. 40-24-101 through 40-24-110.

40-24-102. Injunctive relief.

(a) Actual or threatened misappropriation may be enjoined. Upon application to the court an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

40-24-103. Damages.

(a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If willful and malicious misappropriation exists, the court may award exemplary damages in the amount not exceeding twice any award made under subsection (a) of this section.

40-24-104. Attorney's fees.

(a) A court may award reasonable attorney's fees to the prevailing party if:

(i) A claim of misappropriation is made in bad faith;

(ii) A motion to terminate an injunction is made or resisted in bad faith; or

(iii) Willful and malicious misappropriation exists.

40-24-105. Preservation of secrecy.

In any action under this act, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

40-24-106. Statute of limitations.

An action for misappropriation must be brought within four (4) years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

40-24-107. Effect on other law.

(a) Except as provided in subsection (b) of this section, this act displaces conflicting tort, restitutionary and other law of this state providing civil remedies for misappropriation of a trade secret.

(b) This act does not affect:

(i) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(ii) Other civil remedies that are not based upon misappropriation of a trade secret; or

(iii) Criminal remedies, whether or not based upon misappropriation of a trade secret.

40-24-108. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

40-24-109. Short title.

This act may be cited as the Uniform Trade Secrets Act.

40-24-110. Time of taking effect.

This act does not apply to misappropriation occurring prior to July 1, 2006. With respect to a continuing misappropriation that began prior to July 1, 2006, the act does not apply to the continuing misappropriation that occurs after July 1, 2006.

CHAPTER 25 - COMPUTER TRESPASS

40-25-101. Computer trespass.

(a) A person commits a civil trespass if he, with intent to damage or cause the malfunction of the operation of a computer, computer system or computer network, transfers or sends electronically into a computer, computer system or computer network of another or causes to be transferred or sent electronically into a computer, computer system or computer network of another any data, program or other information which alters, damages or causes the malfunction of the operation of the computer, computer system or computer network and the act was done without authority of the owner or lawful possessor of the computer, computer system or computer network.

(b) A person who suffers damage or loss by reason of a trespass under this section shall have a cause of action against the trespasser for all damages incurred, including any damages to the person's computer, computer system or computer network and any costs incurred by the person for services that could not be utilized as a result of the trespass. In a civil action brought under this section, in addition to damages, the injured claimant may be awarded the costs of litigation together with the reasonably necessary cost of identifying the trespasser, of obtaining effective service of process on the trespasser and of successfully effecting collection of the award from the person

who perpetrated the trespass and from the person who caused the trespass.

(c) The definitions provided in W.S. 6-3-501 shall be applicable to this section.

(d) Common carriers, internet service providers or other persons who supply the internet services over which the content is delivered shall not be liable for damages or losses under this section resulting from the acts of another.

CHAPTER 26 - FAIR HOUSING ACT

40-26-101. Short title.

This act may be cited as the "Wyoming Fair Housing Act."

40-26-102. Definitions.

(a) As used in this act:

(i) "Aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice or believes that the person will be injured by a discriminatory housing practice that is about to occur;

(ii) "Complainant" means a person, including the enforcing authority that files a complaint under W.S. 40-26-118;

(iii) "Conciliation" means the informal negotiations among an aggrieved person, the respondent, and the enforcing authority to resolve issues raised by a complaint or by the investigation of the complaint;

(iv) "Conciliation agreement" means a written agreement resolving the issues in conciliation;

(v) "Disability" means a mental or physical impairment that substantially limits at least one (1) major life activity, a record of this impairment, or being regarded as having this impairment. The term does not include current illegal use or addiction to any drug or illegal or federally controlled substance and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite;

(vi) "Discriminatory housing practice" means an act prohibited by W.S. 40-26-103 through 40-26-109 or conduct that is an offense under W.S. 40-26-145;

(vii) "Dwelling" means any structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families or vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure as previously described. "Dwelling" includes a lot leased for the purpose of placing on the lot a transportable home as defined in W.S. 31-1-101(a)(xxiv);

(viii) "Enforcing authority" means a Wyoming state agency or nonprofit incorporated in Wyoming that has been accepted as an enforcing authority for Wyoming by the department of housing and urban development;

(ix) "Familial status" means one (1) or more minors being domiciled with a parent or another person having legal custody of the minor or minors, or the designee of the parent or other person having such custody with the written permission of the parent or other person. The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any minor;

(x) "Family" includes a single individual;

(xi) "Respondent" means a person accused of a violation of this chapter in a complaint of discriminatory housing practice or a person identified as an additional or substitute respondent under W.S. 40-26-121 or an agent of an additional or substitute respondent;

(xii) "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant.

40-26-103. Sale or rental.

(a) A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to an individual because of race, color, religion, sex, disability, familial status, or national origin.

(b) A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, disability, familial status or national origin.

(c) This section does not prohibit discrimination against an individual because the individual has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

40-26-104. Publication.

A person may not make, print or publish or effect the making, printing or publishing of a notice, statement or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation or discrimination or the intention to make a preference, limitation or discrimination because of race, color, religion, sex, disability, familial status or national origin.

40-26-105. Inspection.

A person may not represent to an individual because of race, color, religion, sex, disability, familial status or national origin that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

40-26-106. Entry into neighborhood.

A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of an individual of a particular race, color, religion, sex, disability, familial status or national origin.

40-26-107. Disability.

(a) A person may not discriminate in the sale or rental of, or make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(i) The buyer or renter;

(ii) An individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(iii) Any individual associated with the buyer or renter.

(b) A person may not discriminate against an individual in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

(i) That individual;

(ii) An individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(iii) Any individual associated with that individual.

(c) In this section, discrimination includes:

(i) A refusal to permit, at the expense of the individual having a disability, a reasonable modification of existing premises occupied or to be occupied by the individual if the modification may be necessary to afford the individual full enjoyment of the premises, except that, in the case of a rental, the landlord may condition, when it is reasonable to do so, permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(ii) A refusal to make a reasonable accommodation in rules, policies, practices or services if the accommodation may be necessary to afford the individual equal opportunity to use and enjoy a dwelling; or

(iii) The failure to design and construct a covered multifamily dwelling in a manner that allows the public use and common use portions of the dwellings to be readily accessible to and usable by individuals having a disability, that allows all doors designed to allow passage into and within all premises within the dwellings to be sufficiently wide to allow passage by an individual who has a disability and who is in a wheelchair, and that provides all premises within the dwellings contain the following features of adaptive design:

(A) An accessible route into and throughout the dwelling;

(B) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(C) Reinforcements in bathroom walls to allow later installation of grab bars; and

(D) Kitchens and bathrooms that are usable and have sufficient space in which an individual in a wheelchair can maneuver.

(d) Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for individuals having physical disabilities, as that standard exists on July 1, 2015, satisfies the requirements of adaptive design in paragraph (c)(iii) of this section.

(e) The adaptive design requirements of subparagraph (c)(iii)(A) of this section do not apply to a building the first occupancy of which occurred on or before March 13, 1991.

(f) This section does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals whose tenancy would result in substantial physical damage to the property of others.

(g) Covered multifamily dwellings are buildings consisting of four (4) or more units if the buildings have one (1) or more elevators and ground floor units in other buildings consisting of four (4) or more units.

40-26-108. Residential real estate related transaction.

A person whose business includes engaging in residential real estate related transactions may not discriminate against an individual in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, disability, familial status or national origin. A residential real estate related transaction is the selling, brokering or appraising of residential real property or the making or purchasing of loans or the provision of other financial assistance to purchase, construct, improve, repair, maintain a dwelling, or to secure residential real estate. Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real

property to take into consideration factors other than race, color, religion, sex, disability, familial status or national origin.

40-26-109. Brokerage services.

A person may not deny an individual access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against an individual in the terms or conditions of access, membership or participation in the organization, service or facility because of race, color, religion, sex, disability, familial status or national origin.

40-26-110. Sales and rentals exempted.

(a) W.S. 40-26-103 through 40-26-109 do not apply to the sale or rental of a single family house sold or rented by the owner if the owner does not own more than three (3) single family houses at any one (1) time or own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three (3) single family houses at any one (1) time. In addition, the house must be sold or rented without the use of the sales or rental facilities or services of a licensed real estate broker, agent or of a person in the business of selling or renting dwellings, or of an employee or agent of any such broker, agent, or person; or the publication, posting or mailing of a notice, statement or advertisement prohibited by W.S. 40-26-104. The exemption provided in this subsection applies only to one (1) sale or rental in a twenty-four (24) month period, if the owner was not the most recent resident of the house at the time of the sale or rental. For the purposes of this subsection, a person is in the business of selling or renting dwellings if the person:

(i) Within the preceding twelve (12) months, has participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest in a dwelling; or

(ii) Within the preceding twelve (12) months, has participated as agent, other than in the sale of the person's own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions

involving the sale or rental of any dwelling or any interest in a dwelling; or

(iii) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.

(b) W.S. 40-26-103 and 40-26-105 through 40-26-109 do not apply to the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four (4) families living independently of each other, if the owner maintains and occupies one (1) of the living quarters as the owner's residence.

40-26-111. Religious organization, private club, and appraisal exemption.

(a) This chapter does not prohibit a religious organization, association or society or a nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting the sale, rental or occupancy of dwellings that it owns or operates for other than a commercial purpose to individuals of the same religion or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color or national origin.

(b) This chapter does not prohibit a private club that is not in fact open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or from giving preference to its members, unless membership in the club is restricted because of race, color or national origin.

(c) This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, familial status or national origin.

40-26-112. Housing for elderly exempted.

(a) The provisions of this chapter relating to familial status and age do not apply to housing that the secretary of housing and urban development determines is specifically designed and operated to assist elderly individuals under a federal program; the enforcing authority determines is

specifically designed and operated to assist elderly individuals under a state program; is intended for, and solely occupied by, individuals sixty-two (62) years of age or older; or is intended and operated for occupancy by at least one (1) individual fifty-five (55) years of age or older for each unit as determined by enforcing authority rules. In determining whether housing qualifies as housing for elderly because it is intended and operated for occupancy by at least one (1) individual fifty-five (55) years of age or older for each unit, the enforcing authority shall adopt rules that require at least the following factors:

(i) That at least eighty percent (80%) of the units are occupied by at least one (1) individual fifty-five (55) years of age or older per unit; and

(ii) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for individuals fifty-five (55) years of age or older.

(b) Housing may not be considered to be in violation of the requirements for housing for elderly under this section by reason of:

(i) Individuals residing in the housing as of July 1, 2015, who do not meet the age requirements of this section, provided that new occupants of the housing meet the age requirements; or

(ii) Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.

40-26-113. Effect on other law.

(a) This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards.

(b) This chapter does not affect a requirement of nondiscrimination in any other state or federal law.

40-26-114. Duties and powers of enforcing authority.

The enforcing authority shall administer this chapter. The enforcing authority may adopt rules necessary to implement this chapter, but substantive rules adopted by the enforcing authority shall impose obligations, rights and remedies that are the same as are provided in federal fair housing regulations. Within the limits of legislative appropriations, the enforcing authority shall foster prevention of discrimination under this chapter through education for the public, landlords, publishers, real estate licensees, lenders and sellers on the rights and responsibilities provided under this chapter and ways to respect those protected rights. The enforcing authority shall emphasize conciliation to resolve complaints.

40-26-115. Complaints.

As provided by W.S. 40-26-118 through 40-26-135, the enforcing authority shall receive, investigate, seek to conciliate and act on complaints alleging violations of this chapter.

40-26-116. Cooperation with other entities.

The enforcing authority shall cooperate with and may provide technical and other assistance to federal, state, local and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

40-26-117. Gifts and grants; fair housing fund; continuing appropriation.

The enforcing authority may accept grants from the federal government for administering this chapter. Grants received shall be deposited with the state treasurer in an account created for the fair housing act. Monies deposited into the account are to be appropriated to the enforcing authority on a continuing basis for the purposes of administering this chapter.

40-26-118. Complaint.

(a) The enforcing authority shall investigate complaints of alleged discriminatory housing practices. An aggrieved person may file a complaint with the enforcing authority alleging the discriminatory housing practice. The enforcing authority may file a complaint. A complaint shall be in writing and shall contain such information and be in such form as prescribed by the enforcing authority. A complaint shall be

filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later. A complaint may be amended at any time.

(b) On the filing of a complaint, the enforcing authority shall give the aggrieved person notice that the complaint has been received, advise the aggrieved person of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of the filing of the complaint or the identification of an additional or substitute respondent under W.S. 40-26-121, serve on each respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter and a copy of the original complaint.

40-26-119. Answer.

(a) Not later than the tenth day after the date of receipt of the notice and copy of the complaint under W.S. 40-26-118(b), a respondent may file an answer to the complaint. An answer shall be in writing, under oath, and in the form prescribed by the enforcing authority.

(b) An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

40-26-120. Investigation.

(a) If the federal government has referred a complaint to the enforcing authority or has deferred jurisdiction over the subject matter of the complaint to the enforcing authority, the enforcing authority shall investigate the allegations set forth in the complaint.

(b) The enforcing authority shall investigate all complaints and, except as provided by subsection (c) of this section, shall complete an investigation not later than the hundredth day after the date the complaint is filed or, if it is impracticable to complete the investigation within the one hundred (100) day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.

(c) If the enforcing authority is unable to complete an investigation within the time periods prescribed by subsection (b) of this section, the enforcing authority shall notify the

complainant and the respondent in writing of the reasons for the delay.

40-26-121. Additional or substitute respondent.

The enforcing authority may join a person not named in the complaint as an additional or substitute respondent if during the investigation the enforcing authority determines that the person is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based. In addition to the information required in the notice under W.S. 40-26-118(b), the enforcing authority shall include in a notice to a respondent joined under this section the reasons for the determination that the person is properly joined as a respondent.

40-26-122. Conciliation.

The enforcing authority shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the enforcing authority, to the extent feasible, engage in conciliation with respect to the complaint. A conciliation agreement between a respondent and the complainant is subject to enforcing authority approval. A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.

40-26-123. Temporary or preliminary relief.

The enforcing authority may authorize a claim for relief for temporary or preliminary relief pending the final disposition of a complaint, if the enforcing authority concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable statutes and the Wyoming Rules of Civil Procedure. The filing of a claim for relief under this section does not affect the initiation or continuation of administrative proceedings under W.S. 40-26-131.

40-26-124. Investigative report.

The enforcing authority shall prepare a final investigative report, including the names of and dates of contacts with

witnesses, a summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts, a summary description of other pertinent records, a summary of witness statements, and answers to interrogatories. A final report under this section may be amended if additional evidence is discovered.

40-26-125. Reasonable cause determination.

(a) The enforcing authority shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The enforcing authority shall make this determination not later than the one hundredth day after the date a complaint is filed unless making the determination is impracticable, or the enforcing authority approves a conciliation agreement relating to the complaint.

(b) If making the determination within the period is impracticable, the enforcing authority shall give in writing to the complainant and the respondent the reasons for the delay. If the enforcing authority determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the enforcing authority shall, except as provided by W.S. 40-26-127, immediately issue a charge on behalf of the aggrieved person.

40-26-126. Charge.

(a) A charge issued under W.S. 40-26-125 shall consist of a short and plain statement of the facts on which the enforcing authority finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, shall be based on the final investigative report, and is not limited to the facts or grounds alleged in the complaint.

(b) Within three (3) days after issuing a charge, the enforcing authority shall send a copy of the charge with information about the election under W.S. 40-26-130 to each respondent and each aggrieved person on whose behalf the complaint was filed.

(c) The enforcing authority shall include with a charge sent to a respondent a notice of the opportunity for a hearing under W.S. 40-26-131.

40-26-127. Land use law.

If the enforcing authority determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the enforcing authority may issue a charge and proceed with the appropriate action.

40-26-128. Dismissal.

If the enforcing authority determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the enforcing authority shall promptly dismiss the complaint. The enforcing authority shall make public disclosure of each dismissal.

40-26-129. Pending civil trial.

The enforcing authority may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

40-26-130. Election of judicial determination.

A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by W.S. 40-26-136. The election shall be made not later than the twentieth day after the date the person having the election receives service under W.S. 40-26-126(b) or, in the case of the enforcing authority, not later than the twentieth day after the date the charge is issued. The person making the election shall give notice to the enforcing authority and to all other complainants and respondents to whom the charge relates.

40-26-131. Administrative hearing.

If a timely election is not made under W.S. 40-26-130, the enforcing authority shall provide for a hearing on the charge. A hearing under this section on an alleged discriminatory housing practice may not continue after the beginning of the trial of a claim for relief commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.

40-26-132. Administrative penalties.

(a) If the enforcing authority determines at a hearing under W.S. 40-26-131 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the enforcing authority may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs and other injunctive or equitable relief.

(b) To vindicate the public's interest, the enforcing authority may assess a civil penalty against the respondent in an amount that does not exceed:

(i) Eleven thousand dollars ($11,000.00) if the respondent has been found by order of the enforcing authority or a court to have committed a prior discriminatory housing practice; or

(ii) Except as provided by subsection (c) of this section, twenty-seven thousand dollars ($27,000.00) if the respondent has been found by order of the enforcing authority or a court to have committed one (1) other discriminatory housing practice during the five (5) year period ending on the date of the filing of the charges and fifty-five thousand dollars ($55,000.00) if the respondent has been found by the enforcing authority or a court to have committed two (2) or more discriminatory housing practices during the seven (7) year period ending on the date of filing of the charge.

(c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in subsection (b) of this section may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

(d) The enforcing agency shall sue to recover a civil penalty due under this section. Funds collected under this section shall be paid to the state treasurer for deposit in the common school fund in the county in which the offense occurred.

40-26-133. Effect of enforcing authority order.

An enforcing authority order under W.S. 40-26-132 does not affect a contract, sale, encumbrance or lease that is consummated before the enforcing authority issues the order and

involves a bona fide purchaser, encumbrancer or tenant who did not have actual notice of the charge filed under this chapter.

40-26-134. Licensed or regulated business.

If the enforcing authority issues an order with respect to a discriminatory housing practice that occurs in the course of a business subject to a licensing or regulation by a governmental agency, the enforcing authority, not later than the thirtieth day after the date the order is issued, shall send copies of the findings and the order to the governmental agency and recommend to the governmental agency appropriate disciplinary action.

40-26-135. Order in preceding five years.

If the enforcing authority issues an order against a respondent against whom another order was issued within the preceding five (5) years under W.S. 40-26-133, the enforcing authority shall send a copy of each order to the attorney general.

40-26-136. Attorney general action for enforcement.

If a timely election is made under W.S. 40-26-130, the attorney general may file not later than the thirtieth day after the date of the election a claim for relief in a district court. Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur. An aggrieved person may intervene in the action. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under W.S. 40-26-129 through 40-26-143. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the court.

40-26-137. Pattern or practice case; penalties.

(a) The attorney general may file a claim for relief in district court for appropriate relief if the enforcing authority has reasonable cause to believe that a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter or a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.

(b) In an action under this section, the court may:

(i) Award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter;

(ii) Award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs; and

(iii) To vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed fifty thousand dollars ($50,000.00) for a first violation and one hundred thousand dollars ($100,000.00) for a second or subsequent violation.

(c) A person may intervene in an action under this section if the person is a person aggrieved by the discriminatory housing practice or a party to a conciliation agreement concerning the discriminatory housing practice.

40-26-138. Subpoena enforcement.

The enforcing authority or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

40-26-139. Civil action.

(a) An aggrieved person may file a civil action in district court not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.

(b) The two (2) year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.

(c) An aggrieved person may file a claim for relief whether a complaint has been filed under W.S. 40-26-118 and

without regard to the status of any complaint filed under that section.

(d) If the enforcing authority has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file a claim for relief with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.

(e) An aggrieved person may not file a claim for relief with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the enforcing authority if the enforcing authority has begun a hearing on the record under this chapter with respect to the charge.

40-26-140. Relief granted.

If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, reasonable attorney's fees, court costs, and subject to W.S. 40-26-142, a permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

40-26-141. Effect of relief granted.

Relief granted under W.S. 40-26-139 through 40-26-143 does not affect a contract, sale, encumbrance or lease that is consummated before the granting of the relief and involves a bona fide purchaser, encumbrancer or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter.

40-26-142. Intervention by attorney general.

The attorney general may intervene in an action under W.S. 40-26-139 through 40-26-143 if the attorney general certifies that the case is of general public importance. The attorney general may obtain the same relief as is available to the attorney general under W.S. 40-26-137(b).

40-26-143. Prevailing party.

A court in an action brought under this chapter or the enforcing authority in an administrative hearing under W.S. 40-26-131 may

award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

40-26-144. Intimidation or interference; penalty.

(a) A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:

(i) Because of the individual's race, color, religion, sex, disability, age, familial status, national origin or status with respect to marriage or public assistance and because the individual is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling or applying for or participating in a service, organization or facility relating to the business of selling or renting dwellings; or

(ii) Because the individual is or has been or to intimidate the individual from:

(A) Participating, without discrimination because of race, color, religion, sex, disability, familial status or national origin in an activity, service, organization or facility described by paragraph (i) of this subsection;

(B) Affording another individual opportunity or protection to so participate; or

(C) Lawfully aiding or encouraging other individuals to participate, without discrimination because of race, color, religion, sex, disability, familial status or national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described in paragraph (i) of this subsection.

(b) It is a discriminatory practice to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of the individual having exercised or enjoyed, or on account of the individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) An offense under subsection (a) or (b) of this section is a misdemeanor.

40-26-145. Records exempt.

A complaint filed with the enforcing authority under W.S. 40-26-118 is an open record. Information obtained during an investigation conducted by the enforcing authority under this chapter can be used in any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the enforcing authority. The enforcing authority may disclose to the complainant or the respondent, or representatives of the complainant or respondent, information obtained during an investigation if deemed necessary by the enforcing authority for securing an appropriate resolution of a complaint. The enforcing authority may disclose information obtained during an investigation to a federal agency if necessary for the processing of complaints under an agreement with the agency. Individually identifiable health information obtained during an investigation may not be disclosed by the enforcing authority except to a federal agency if necessary for the processing of complaints under an agreement with the agency. Statements made or actions taken during conciliation efforts relating to a complaint under this chapter may not be disclosed by the enforcing authority, except to a federal agency if necessary for the processing of complaints under an agreement with the agency, and may not be used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation. A conciliation agreement is an open record unless the complainant and respondent agree that it is not and the enforcing authority determines that disclosure is not necessary to further the purposes of this chapter.

CHAPTER 27 - trespass to unlawfully collect resource data

40-27-101. Trespass to unlawfully collect resource data; unlawful collection of resource data.

(a) A person commits a civil trespass to unlawfully collect resource data from private land if he:

(i) Enters onto private land for the purpose of collecting resource data; and

(ii) Does not have:

(A) An ownership interest in the real property or statutory, contractual or other legal authorization to enter the private land to collect the specified resource data; or

(B) Written or verbal permission of the owner, lessee or agent of the owner to enter the private land to collect the specified resource data.

(b) A person commits a civil trespass of unlawfully collecting resource data if he enters onto private land and collects resource data from private land without:

(i) An ownership interest in the real property or, statutory, contractual or other legal authorization to enter the private land to collect the specified resource data; or

(ii) Written or verbal permission of the owner, lessee or agent of the owner to enter the private land to collect the specified resource data.

(c) A person commits a civil trespass to access adjacent or proximate land if he:

(i) Crosses private land to access adjacent or proximate land where he collects resource data; and

(ii) Does not have:

(A) An ownership interest in the real property or, statutory, contractual or other legal authorization to cross the private land; or

(B) Written or verbal permission of the owner, lessee or agent of the owner to cross the private land.

(d) A person who trespasses to unlawfully collect resource data, a person who unlawfully collects resource data or a person who trespasses to access adjacent or proximate land under this section shall be liable in a civil action by the owner or lessee of the land for all consequential and economic damages proximately caused by the trespass. In a civil action brought under this section, in addition to damages, a successful claimant shall be awarded litigation costs. For purposes of this subsection, "litigation costs" shall include, but is not limited to, court costs, expert witness fees, other witness fees, costs associated with depositions and discovery, reasonable attorney fees and the reasonably necessary costs of

identifying the trespasser, of obtaining effective service of process on the trespasser and of successfully effecting the collection of any judgment against the trespasser.

(e) Repealed by Laws 2016, ch. 115, § 2.

(f) Resource data unlawfully collected on private land under this section is not admissible in evidence in any civil, criminal or administrative proceeding, other than a civil action for trespassing under this section or a criminal prosecution for trespassing under W.S. 6-3-414.

(g) Resource data unlawfully collected on private land under this section in the possession of any governmental entity as defined by W.S. 1-39-103(a)(i) shall be expunged by the entity from all files and data bases, and it shall not be considered in determining any agency action.

(h) As used in this section:

(i) "Collect" means to take a sample of material, acquire, gather, photograph or otherwise preserve information in any form and the recording of a legal description or geographical coordinates of the location of the collection;

(ii) "Peace officer" means as defined by W.S. 7-2-101;

(iii) "Resource data" means data relating to land or land use, including but not limited to data regarding agriculture, minerals, geology, history, cultural artifacts, archeology, air, water, soil, conservation, habitat, vegetation or animal species. "Resource data" does not include data:

(A) For surveying to determine property boundaries or the location of survey monuments;

(B) Used by a state or local governmental entity to assess property values;

(C) Collected or intended to be collected by a peace officer while engaged in the lawful performance of his official duties.

CHAPTER 28 - MEDICAL DIGITAL INNOVATION SANDBOX ACT

40-28-101. Short title; definitions. Note: this is effective as of 1/1/2020.

(a) This act may be cited as the "Medical Digital Innovation Sandbox Act".

(b) As used in this act:

(i) "Department" means the department of health;

(ii) "Sandbox" means a time limited test environment or program in which innovative technologies, products or services may be developed or explored and made available to consumers prior to general authorized use or deployment;

(iii) "Sandbox period" means the period of time, initially not longer than twenty-four (24) months, in which the department or the appropriate licensing board or authority has authorized an innovative medical digital assessment product or service to be made available to consumers. The sandbox period shall also encompass any extension granted under W.S. 40-28-107;

(iv) "This act" means W.S. 40-28-101 through 40-28-108.

40-28-102. Medical digital innovation sandbox waiver; applicability of criminal statutes; referrals; civil liability. Note: this is effective as of 1/1/2020.

(a) Notwithstanding any other provision of law, a person who makes an innovative medical digital assessment product or service available to consumers in the medical digital innovation sandbox may be granted a waiver from specified requirements imposed by statute or rule, or portions thereof, if these statutes or rules do not currently permit the product or service to be made available to consumers. A waiver under this subsection shall be no broader than necessary to accomplish the purposes and standards set forth in this act, as determined by the department or the appropriate licensing board or authority under the chapters listed in this subsection. The statutes within the following chapters of title 33 of the Wyoming statutes, and the rules adopted under them, or portions thereof, may be waived by the department and the appropriate licensing boards or authorities, upon receipt and approval of an application made to the department pursuant to W.S. 40-28-103:

(i) Chapter 1, licensing generally;

(ii) Chapter 9, podiatrists;

(iii) Chapter 10, chiropractors;

(iv) Chapter 15, dentists and dental hygienists;

(v) Chapter 21, nurses;

(vi) Chapter 23, optometrists;

(vii) Chapter 25, physical therapists;

(viii) Chapter 26, physicians and surgeons;

(ix) Chapter 27, psychologists;

(x) Chapter 32, eye care practitioners;

(xi) Chapter 33, speech language pathologists and audiologists;

(xii) Chapter 34, clinical laboratories and blood banks;

(xiii) Chapter 35, hearing aid specialists;

(xiv) Chapter 36, emergency medical services;

(xv) Chapter 37, radiologic technologists;

(xvi) Chapter 40, occupational therapy;

(xvii) Chapter 43, respiratory care practitioners;

(xviii) Chapter 46, midwives;

(xix) Chapter 47, dietetics.

(b) A person who makes an innovative medical digital assessment product or service available to consumers in the medical digital innovation sandbox is:

(i) Not immune from civil damages for acts and omissions relating to this act; and

(ii) Subject to all criminal laws.

(c) The department may refer suspected violations of law relating to this act to appropriate state or federal agencies for investigation, prosecution, civil penalties and other appropriate enforcement actions.

40-28-103. Medical digital innovation sandbox application; standards for approval; consumer protection bond. Note: this is effective as of 1/1/2020.

(a) A person shall apply to the department to make an innovative medical digital assessment product or service available to consumers in the medical digital innovation sandbox, based on the licensing board or authority that administers the statute or rule, or portion thereof, for which a waiver is sought. If an application is filed with a licensing board or authority that does not administer the statute or rule for which a waiver is sought, the receiving board or authority shall forward the application to the correct board or authority. The person shall specify in an application the statutory or rule requirements for which a waiver is sought and the reasons why these requirements prohibit the innovative medical digital assessment product or service from being made available to consumers. The application shall also contain the elements required for authorization which are set forth in subsection (f) of this section. The department shall, by rule, prescribe a method of application.

(b) A business entity making an application under this section shall be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent, in Wyoming.

(c) Before an employee applies on behalf of an institution, firm or other entity intending to make an innovative medical digital assessment product or service available through the medical digital innovation sandbox, the employee shall obtain the consent of the institution, firm or entity before filing an application under this section.

(d) The individual filing an application under this section and the individuals who are substantially involved in the development, operation or management of the innovative medical digital assessment product or service shall, if requested by the department as a condition of the application, submit to a criminal history background check pursuant to W.S. 7-19-201.

(e) An application made under this section shall be accompanied by a fee of five hundred dollars ($500.00). The fee shall be deposited into the medical digital innovation account as provided in W.S. 40-28-104.

(f) The department shall authorize or deny a medical digital innovation sandbox application in writing within ninety (90) days of receiving the application. The department and the person who has made an application may jointly agree to extend the time beyond ninety (90) days. The department may impose conditions on any authorization, consistent with this act. In deciding to authorize or deny an application under this subsection, the department shall consider each of the following:

(i) The nature of the innovative medical digital assessment product or service proposed to be made available to consumers in the sandbox, including all relevant technical details;

(ii) The potential risk to consumers and methods which will be used to protect consumers and resolve complaints during the sandbox period;

(iii) A prototyping, use case or scaling plan proposed by the person, including a statement of arranged capital;

(iv) Whether the person has the necessary personnel, adequate medical digital and technical expertise and a sufficient plan to test, monitor and assess the innovative medical digital assessment product or service;

(v) Whether any person substantially involved in the development, operation or management of the innovative medical digital assessment product or service has:

(A) Been convicted of or is currently under investigation for federal or state crimes;

(B) Had any professional license revoked or suspended.

(g) If an application is authorized under subsection (f) of this section, the department shall specify the statutory or rule requirements, or portions thereof, for which a waiver is granted and the length of the initial sandbox period. The

department shall also post notice of the approval of a sandbox application under this subsection, a summary of the innovative medical digital assessment product or service and the contact information of the person making the product or service available through the sandbox on the internet website of the department.

(h) A person authorized under subsection (f) of this section to enter into the medical digital innovation sandbox shall post a consumer protection bond with the department as security for potential losses suffered by consumers who use an innovative medical digital assessment product or service offered by the person. The bond amount shall be determined by the department in an amount not less than ten thousand dollars ($10,000.00) and shall be commensurate with the risk profile of the innovative medical digital assessment product or service. The department may require that a bond under this subsection be increased or decreased at any time based on risk profile. Unless a bond is enforced under W.S. 40-28-108(b)(ii), the department shall cancel or allow the bond to expire two (2) years after the date of the conclusion of the sandbox period.

(j) Authorization under subsection (f) of this section shall not be construed to create a property right.

40-28-104. Medical digital innovation account. Note: this is effective as of 1/1/2020.

(a) There is created the medical digital innovation account. Funds within the account shall only be expended by legislative appropriation. All funds within the account shall be invested by the state treasurer and all investment earnings from the account shall be credited to the general fund.

(b) Subject to legislative appropriation, application fees remitted to the account pursuant to W.S. 40-28-103(e), and any additional funds appropriated by the legislature, shall be used by the department only for the purposes of administering this act, including processing of sandbox applications and monitoring, examination and enforcement activities relating to this act.

40-28-105. Operation of medical digital innovation sandbox. Note: this is effective as of 1/1/2020.

(a) Except as otherwise provided by W.S. 40-28-107, a person authorized under W.S. 40-28-103(f) to enter into the

medical digital innovation sandbox may make an innovative medical digital assessment product or service available to consumers during the sandbox period.

(b) Before a consumer purchases or enters into an agreement to receive an innovative medical digital assessment product or service through the medical digital innovation sandbox, the person making the product or service available shall provide a written statement of the following to the consumer:

(i) The name and contact information of the person making the product or service available to consumers;

(ii) That the product or service has been authorized to be made available to consumers for a temporary period by the department and the appropriate licensing board or authority, as applicable, under the laws of Wyoming;

(iii) That the state of Wyoming does not endorse the product or service and is not subject to liability for losses or damages caused by the product or service;

(iv) That the product or service is undergoing testing, may not function as intended and may entail medical assessment risk;

(v) That the person making the product or service available to consumers is not immune from civil liability for any losses or damages caused by the product or service;

(vi) The expected end date of the sandbox period;

(vii) The name and contact information of the department and board or authority, as applicable, and notification that suspected legal violations, complaints or other comments related to the product or service may be submitted to the department;

(viii) Any other statements or disclosures required by rule of the department which are necessary to further the purposes of this act.

(c) A person authorized to make an innovative medical digital assessment product or service available to consumers in the medical digital innovation sandbox shall maintain comprehensive records relating to the innovative medical digital

assessment product or service. The person shall keep these records for not less than five (5) years after the conclusion of the sandbox period. The department may specify further records requirements under this subsection by rule.

(d) The department or licensing board or authority, as applicable, may examine the records maintained under subsection (c) of this section at any time, with or without notice. All direct and indirect costs of an examination conducted under this subsection shall be paid by the person making the innovative medical digital assessment product or service available in the medical digital innovation sandbox. Records made available under this subsection shall be confidential and shall not be subject to disclosure under the Wyoming Public Records Act but may be released to appropriate state and federal agencies for the purposes of investigation.

(e) Unless granted an extension pursuant to W.S. 40-28-107, not less than thirty (30) days before the conclusion of the sandbox period, a person who makes an innovative medical digital assessment product or service available in the medical digital innovation sandbox shall provide written notification to consumers regarding the conclusion of the sandbox period and shall not make the product or service available to any new consumers after the conclusion of the sandbox period until legal authority outside of the sandbox exists to make the product or service available to consumers. The person shall wind down operations with existing consumers within sixty (60) days after the conclusion of the sandbox period, except that, after the sixtieth day, the person may:

(i) Collect and receive money owed to the person, based on agreements with consumers made before the conclusion of the sandbox period;

(ii) Take necessary legal action; and

(iii) Take other actions authorized by the department by rule which are not inconsistent with this subsection.

(f) The department may enter into agreements with state, federal or foreign regulatory agencies to allow persons who make an innovative medical digital assessment product or service available in Wyoming through the medical digital innovation sandbox to make their products or services available in other jurisdictions and to allow persons operating in similar medical digital innovation sandboxes in other jurisdictions to make

innovative medical digital assessment products and services available in Wyoming under the standards of this act.

40-28-106. Revocation or suspension of medical digital innovation sandbox authorization. Note: this is effective as of 1/1/2020.

(a) The department may, by order, revoke or suspend authorization granted to a person under W.S. 40-28-103(f) if:

(i) The person has violated or refused to comply with this act or any lawful rule, order or decision adopted by the department;

(ii) A fact or condition exists that, if it had existed or become known at the time of the medical digital innovation sandbox application, would have warranted denial of the application or the imposition of material conditions;

(iii) A material error, false statement, misrepresentation or material omission was made in the medical digital innovation sandbox application; or

(iv) After consultation with the person, continued testing of the innovative medical digital assessment product or service would:

(A) Be likely to harm consumers; or

(B) No longer serve the purposes of this act because of the medical digital or operational failure of the product or service.

(b) Written notification of a revocation or suspension order made under subsection (a) of this section shall be served using any means authorized by law, and if the notice relates to a suspension, include any conditions or remedial action which shall be completed before the suspension will be lifted by the department.

40-28-107. Extension of sandbox period. Note: this is effective as of 1/1/2020.

(a) A person granted authorization under W.S. 40-28-103(f) may apply for an extension of the initial sandbox period for not more than twelve (12) additional months. An application for an extension shall be made not later than sixty (60) days before

the conclusion of the initial sandbox period specified by the department. The department shall approve or deny the application for extension in writing not later than thirty-five (35) days before the conclusion of the initial sandbox period. An application for extension by a person shall cite one (1) of the following reasons as the basis for the application and provide all relevant supporting information that:

(i) Statutory or rule amendments are necessary to conduct business in Wyoming on a permanent basis;

(ii) An application for a license or other authorization required to conduct business in Wyoming on a permanent basis has been filed with the appropriate office and approval is currently pending.

40-28-108. Rules and orders; enforcement of bond; restitution; applicability of Wyoming Administrative Procedure Act. Note: this is effective as of 1/1/2020.

(a) The department shall adopt rules to implement this act.

(b) The department may issue:

(i) All necessary orders to enforce this act, including ordering the payment of restitution, and enforce these orders in any court of competent jurisdiction;

(ii) An order under paragraph (i) of this subsection to enforce the bond posted under W.S. 40-28-103(h), or a portion of this bond, and use proceeds from the bond to offset losses suffered by consumers as a result of an innovative medical digital assessment product or service.

(c) All actions of the department under this act shall be subject to the Wyoming Administrative Procedure Act.

CHAPTER 29 - FINANCIAL TECHNOLOGY SANDBOX ACT

40-29-101. Short title. Note: this is effective as of 1/1/2020.

This act may be cited as the "Financial Technology Sandbox Act."

40-29-102. Definitions. Note: this is effective as of 1/1/2020.

(a) As used in this act:

(i) "Blockchain" means a digital ledger or database which is chronological, consensus-based, decentralized and mathematically verified in nature;

(ii) "Commissioner" means the state banking commissioner;

(iii) "Consumer" means a person, whether a natural person or a legal entity, in Wyoming who purchases or enters into an agreement to receive an innovative financial product or service made available through the financial technology sandbox;

(iv) "Financial product or service" means a product or service related to finance, including banking, securities, consumer credit or money transmission, which is subject to statutory or rule requirements identified in W.S. 40-29-103(a) and is under the jurisdiction of the commissioner or secretary;

(v) "Financial technology sandbox" means the program created by this act which allows a person to make an innovative financial product or service available to consumers during a sandbox period through a waiver of existing statutory and rule requirements, or portions thereof, by the commissioner or secretary;

(vi) "Innovative" means new or emerging technology, or new uses of existing technology, that provides a product, service, business model or delivery mechanism to the public and has no substantially comparable, widely available analogue in Wyoming, including blockchain technology;

(vii) "Sandbox period" means the period of time, initially not longer than twenty-four (24) months, in which the commissioner or secretary has authorized an innovative financial product or service to be made available to consumers, which shall also encompass any extension granted under W.S. 40-29-108;

(viii) "Secretary" means the secretary of state;

(ix) "This act" means W.S. 40-29-101 through 40-29-109.

40-29-103. Financial technology sandbox waiver; applicability of criminal and consumer protection statutes;

referral to investigatory agencies; civil liability. Note: this is effective as of 1/1/2020.

(a) Notwithstanding any other provision of law, a person who makes an innovative financial product or service available to consumers in the financial technology sandbox may be granted a waiver of specified requirements imposed by statute or rule, or portions thereof, if these statutes or rules do not currently permit the product or service to be made available to consumers. A waiver under this subsection shall be no broader than necessary to accomplish the purposes and standards set forth in this act, as determined by the commissioner or secretary. The following statutes, and the rules adopted under them, or portions of these statutes and rules, may be waived by the commissioner or secretary for the sandbox period, upon receipt and approval of an application made pursuant to W.S. 40-29-104:

(i) W.S. 13-1-101 through 13-2-904;

(ii) W.S. 13-5-301 through 13-5-703;

(iii) W.S. 17-4-201 through 17-4-412;

(iv) W.S. 17-16-101 through 17-16-1810, provided that no provisions relating to the liability of incorporators, directors and officers shall be eligible for a waiver;

(v) W.S. 17-28-101 through 17-28-111;

(vi) W.S. 17-29-101 through 17-29-1105, provided that no provisions relating to the liability of organizers, managers and members shall be eligible for a waiver;

(vii) W.S. 40-14-101 through 40-14-702;

(viii) W.S. 40-21-101 through 40-21-119;

(ix) W.S. 40-22-101 through 40-22-129;

(x) W.S. 40-23-101 through 40-23-133.

(b) A person who makes an innovative financial product or service available to consumers in the financial technology sandbox is:

(i) Not immune from civil damages for acts and omissions relating to this act; and

(ii) Subject to all criminal and consumer protection laws, including W.S. 40-12-101 through 40-12-114.

(c) The commissioner or secretary may refer suspected violations of law relating to this act to appropriate state or federal agencies for investigation, prosecution, civil penalties and other appropriate enforcement actions.

(d) If service of process on a person making an innovative financial product or service available to consumers in the financial technology sandbox is not feasible, service on the secretary of state shall be deemed service on the person.

40-29-104. Financial technology sandbox application; standards for approval; consumer protection bond. Note: this is effective as of 1/1/2020.

(a) A person shall apply to the commissioner or secretary to make an innovative financial product or service available to consumers in the financial technology sandbox, based on the office that administers the statute or rule, or portion thereof, for which a waiver is sought. If both the commissioner and the secretary jointly administer a statute or rule, or if the appropriate office is not known, an application may be filed with either the commissioner or the secretary. If an application is filed with an office that does not administer the statute or rule for which a waiver is sought, the receiving office shall forward the application to the correct office. The person shall specify in an application the statutory or rule requirements for which a waiver is sought, and the reasons why these requirements prohibit the innovative financial product or service from being made available to consumers. The application shall also contain the elements required for authorization which are set forth in subsection (f) of this section. The commissioner and secretary shall each, by rule, prescribe a method of application.

(b) A business entity making an application under this section shall be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent, in Wyoming.

(c) Before an employee applies on behalf of an institution, firm or other entity intending to make an innovative financial product or service available through the financial technology sandbox, the employee shall obtain the

consent of the institution, firm or entity before filing an application under this section.

(d) The individual filing an application under this section and the individuals who are substantially involved in the development, operation or management of the innovative financial product or service shall, as a condition of an application, submit to a criminal history background check pursuant to W.S. 7-19-201.

(e) An application made under this section shall be accompanied by a fee of five hundred dollars ($500.00). The fee shall be deposited into the financial technology innovation account as provided in W.S. 40-29-105.

(f) The commissioner or secretary, as applicable, shall authorize or deny a financial technology sandbox application in writing within ninety (90) days of receiving the application. The commissioner or secretary and the person who has made an application may jointly agree to extend the time beyond ninety (90) days. The commissioner or secretary may impose conditions on any authorization, consistent with this act. In deciding to authorize or deny an application under this subsection, the commissioner or secretary shall consider each of the following:

(i) The nature of the innovative financial product or service proposed to be made available to consumers in the sandbox, including all relevant technical details, which may include whether the product or service utilizes blockchain technology;

(ii) The potential risk to consumers and methods which will be used to protect consumers and resolve complaints during the sandbox period;

(iii) A business plan proposed by the person, including a statement of arranged capital;

(iv) Whether the person has the necessary personnel, adequate financial and technical expertise and a sufficient plan to test, monitor and assess the innovative financial product or service;

(v) Whether any person substantially involved in the development, operation or management of the innovative financial product or service has been convicted of, or is currently under

investigation for, fraud, state or federal securities violations or any property based offense;

(vi) A copy of the disclosures required under W.S. 40-29-106(c) that will be provided to consumers;

(vii) Any other factor that the commissioner or secretary determines to be relevant.

(g) If an application is authorized under subsection (f) of this section, the commissioner or secretary shall specify the statutory or rule requirements, or portions thereof, for which a waiver is granted and the length of the initial sandbox period, consistent with W.S. 40-29-102(a)(vii). The commissioner or secretary shall also post notice of the approval of a sandbox application under this subsection, a summary of the innovative financial product or service and the contact information of the person making the product or service available through the sandbox on the internet website of the commissioner or secretary.

(h) A person authorized under subsection (f) of this section to enter into the financial technology sandbox shall post a consumer protection bond with the commissioner or secretary as security for potential losses suffered by consumers. The bond amount shall be determined by the commissioner or secretary in an amount not less than ten thousand dollars ($10,000.00) and shall be commensurate with the risk profile of the innovative financial product or service. The commissioner or secretary may require that a bond under this subsection be increased or decreased at any time based on risk profile. Unless a bond is enforced under W.S. 40-29-109(b)(ii), the commissioner or secretary shall cancel or allow the bond to expire two (2) years after the date of the conclusion of the sandbox period.

(j) A person authorized under subsection (f) of this section to enter into the financial technology sandbox shall be deemed to possess an appropriate license for the purposes of federal law requiring state licensure or authorization.

(k) Authorization under subsection (f) of this section shall not be construed to create a property right.

40-29-105. Financial technology innovation account. Note: this is effective as of 1/1/2020.

(a) There is created the financial technology innovation account. Funds within the account shall only be expended by legislative appropriation. All funds within the account shall be invested by the state treasurer and all investment earnings from the account shall be credited to the general fund. The account shall be divided into two (2) subaccounts controlled by the commissioner and secretary, respectively, for the purposes of administrative management. For the purposes of accounting and investing only, the subaccounts shall be treated as separate accounts.

(b) Subject to legislative appropriation, application fees remitted to the account pursuant to W.S. 40-29-104(e) shall be deposited into the subaccount controlled by the commissioner or secretary, as applicable, based on the receiving official. These funds, and any additional funds appropriated by the legislature, shall be used only for the purposes of administering this act, including processing of sandbox applications and monitoring, examination and enforcement activities relating to this act.

40-29-106. Operation of financial technology sandbox. Note: this is effective as of 1/1/2020.

(a) Except as otherwise provided by W.S. 40-29-108, a person authorized under W.S. 40-29-104(f) to enter into the financial technology sandbox may make an innovative financial product or service available to consumers during the sandbox period.

(b) The commissioner or secretary may, on a case by case basis, specify the maximum number of consumers permitted to receive an innovative financial product or service, after consultation with the person authorized under W.S. 40-29-104(f) to make the product or service available in the financial technology sandbox.

(c) Before a consumer purchases or enters into an agreement to receive an innovative financial product or service through the financial technology sandbox, the person making the product or service available shall provide a written statement of the following to the consumer:

(i) The name and contact information of the person making the product or service available to consumers;

(ii) That the product or service has been authorized to be made available to consumers for a temporary period by the

commissioner or secretary, as applicable, under the laws of Wyoming;

(iii) That the state of Wyoming does not endorse the product or service and is not subject to liability for losses or damages caused by the product or service;

(iv) That the product or service is undergoing testing, may not function as intended and may entail financial risk;

(v) That the person making the product or service available to consumers is not immune from civil liability for any losses or damages caused by the product or service;

(vi) The expected end date of the sandbox period;

(vii) The name and contact information of the commissioner or secretary, as applicable, and notification that suspected legal violations, complaints or other comments related to the product or service may be submitted to the commissioner or secretary;

(viii) Any other statements or disclosures required by rule of the commissioner or secretary which are necessary to further the purposes of this act.

(d) A person authorized to make an innovative financial product or service available to consumers in the financial technology sandbox shall maintain comprehensive records relating to the innovative financial product or service. The person shall keep these records for not less than five (5) years after the conclusion of the sandbox period. The commissioner and secretary may specify further records requirements under this subsection by rule.

(e) The commissioner or secretary, as applicable, may examine the records maintained under subsection (d) of this section at any time, with or without notice. All direct and indirect costs of an examination conducted under this subsection shall be paid by the person making the innovative financial product or service available in the financial technology sandbox. Records made available to the commissioner or secretary under this subsection shall be confidential and shall not be subject to disclosure under the Wyoming Public Records Act but may be released to appropriate state and federal agencies for the purposes of investigation.

(f) Unless granted an extension pursuant to W.S. 40-29-108, not less than thirty (30) days before the conclusion of the sandbox period, a person who makes an innovative financial product or service available in the financial technology sandbox shall provide written notification to consumers regarding the conclusion of the sandbox period and shall not make the product or service available to any new consumers after the conclusion of the sandbox period until legal authority outside of the sandbox exists to make the product or service available to consumers. The person shall wind down operations with existing consumers within sixty (60) days after the conclusion of the sandbox period, except that, after the sixtieth day, the person may:

(i) Collect and receive money owed to the person and service loans made by the person, based on agreements with consumers made before the conclusion of the sandbox period;

(ii) Take necessary legal action; and

(iii) Take other actions authorized by the commissioner or secretary by rule which are not inconsistent with this subsection.

(g) The commissioner and the secretary may, jointly or separately, enter into agreements with state, federal or foreign regulatory agencies to allow persons who make an innovative financial product or service available in Wyoming through the financial technology sandbox to make their products or services available in other jurisdictions and to allow persons operating in similar financial technology sandboxes in other jurisdictions to make innovative financial products and services available in Wyoming under the standards of this chapter.

40-29-107. Revocation or suspension of financial technology sandbox authorization. Note: this is effective as of 1/1/2020.

(a) The commissioner or secretary may, by order, revoke or suspend authorization granted to a person under W.S. 40-29-104(f) if:

(i) The person has violated or refused to comply with this act or any lawful rule, order or decision adopted by the commissioner or secretary;

(ii) A fact or condition exists that, if it had existed or become known at the time of the financial technology sandbox application, would have warranted denial of the application or the imposition of material conditions;

(iii) A material error, false statement, misrepresentation or material omission was made in the financial technology sandbox application; or

(iv) After consultation with the person, continued testing of the innovative financial product or service would:

(A) Be likely to harm consumers; or

(B) No longer serve the purposes of this act because of the financial or operational failure of the product or service.

(b) Written notification of a revocation or suspension order made under subsection (a) of this section shall be served using any means authorized by law, and if the notice relates to a suspension, include any conditions or remedial action which shall be completed before the suspension will be lifted by the commissioner or secretary.

40-29-108. Extension of sandbox period. Note: this is effective as of 1/1/2020.

(a) A person granted authorization under W.S. 40-29-104(f) may apply for an extension of the initial sandbox period for not more than twelve (12) additional months. An application for an extension shall be made not later than sixty (60) days before the conclusion of the initial sandbox period specified by the commissioner or secretary. The commissioner or secretary shall approve or deny the application for extension in writing not later than thirty-five (35) days before the conclusion of the initial sandbox period. An application for extension by a person shall cite one (1) of the following reasons as the basis for the application and provide all relevant supporting information that:

(i) Statutory or rule amendments are necessary to conduct business in Wyoming on a permanent basis; or

(ii) An application for a license or other authorization required to conduct business in Wyoming on a

permanent basis has been filed with the appropriate office and approval is currently pending.

40-29-109. Rules and orders; enforcement of bond; restitution; applicability of Wyoming Administrative Procedure Act. Note: this is effective as of 1/1/2020.

(a) The commissioner and secretary shall each adopt rules to implement this act. The rules adopted by the commissioner and secretary under this subsection shall be as consistent as reasonably possible, but shall account for differences in the statutes and programs administered by the commissioner and secretary.

(b) The commissioner or secretary may issue:

(i) All necessary orders to enforce this act, including ordering the payment of restitution, and enforce these orders in any court of competent jurisdiction;

(ii) An order under paragraph (i) of this subsection to enforce the bond posted under W.S. 40-29-104(h), or a portion of this bond, and use proceeds from the bond to offset losses suffered by consumers as a result of an innovative financial product or service.

(c) All actions of the commissioner or secretary under this act shall be subject to the Wyoming Administrative Procedure Act.