

Schwartz & Wright

4

79 LSO - 788

# HOUSE BILL 477

Title:

AN ACT to amend W.S. 40-12-106 relating to consumer protection; empowering courts to grant restitution to injured consumers; and providing for an effective date.

HOUSE BILL 477

Introduced by:

Mary K. Schwartz      William G. Wright

DATE	ACTION	DATE	ACTION
JAN 30 1979	READ FIRST TIME		Stand DL 6/HB 477
	PREFERRED TO COM. NO. 1		
	DELIVERED TO COM. NO. 1		
FEB 3 1979	RETURNED		
	Recommended Amend and Do Pass <i>Unanim.</i>		
	PLACED ON GENERAL FILE		
FEB 9 1979	CONSIDERED IN COM. BY WHOLE		
	Standing Com. Amendment HB 477 H 51/A		
	ADOPTED		
	RECOMMENDED DO. PASS		
FEB 10 1979	READ SECOND TIME		
FEB 12 1979	READ THIRD TIME		
	Amended as follows HB 477 H 31/A		
	ADOPTED		
	Passed Ayes 37, Noes 25, Absent 0		
2-12-79	Sent to Senate L.S.O.		
2-12-79	ENGROSSED		
	Sent to Senate		
2-13-79	Received from House		
	Read for		
	R. Passed 4		
	Delivered to Com. No. 4		
2-19-79	STANDING COMM. REPORT		
	AMEND AND DO PASS		

CONTINUED ON BACK

# WB 477Phur Reading

Date

2/12/79

# Roll Call of the House

## of the FORTY-FIFTH LEGISLATURE

### of Wyoming

	Ayes	Noes	Excused	Absent		Ayes	Noes	Excused	Absent
63 ARNOLD		✓			28 O'NEIL		✓		
62 ASAY	✓	✓			27 ORRISON	✓			
61 BRAGG	✓				26 PERRY		✓		
60 BRYANT	✓				25 PHELAN	✓			
59 BURNETT	✓				24 PROSSER		✓		
58 CHAMBERLAIN	✓				23 ROTH		✓		
57 CROSS	✓				22 SALISBURY	✓			
56 CROWLEY	✓				21 SANDERS	✓			
55 CURRY	✓				20 SCHWOPE	✓			
54 DONLEY	✓				19 C. SCOTT	✓			
53 DUSL	✓				18 D. SCOTT		✓		
52 EDWARDS	✓				17 SHREVE	✓			
51 ESKENS	✓				16 SIDI	✓			
50 GARBER	✓	✓			15 SIMONS		✓		
49 GETTER	✓				14 SMITH	✓			
48 GROPP		✓			13 SPICER	✓			
47 HANSEN	✓				12 STAUFFER	✓			
46 HEMMERT	✓	✓			11 STRAND		✓		
45 HUNTER	✓				10 TARTER	✓			
44 HURSH		✓			9 THORSON	✓			
43 JENNINGS		✓			8 TROWBRIDGE		✓		
42 JENSEN		✓			7 TUGMAN		✓		
41 JONES	✓				6 URBIGKIT	✓	✓		
40 KINNISON	✓				5 VINICH	✓			
39 LARSON	✓				4 WIEDERSPAHN	✓			
38 LUMMIS	✓				3 WILKINS	✓			
37 MacMILLAN		✓			2 WINNINGER	✓			
36 MARTON		✓			1 MR. SPEAKER		✓		
35 McILVAIN	✓	✓			PRESENT _____ <div>             AYES <u>37</u>              NOES <u>25</u>              EXCUSED <u>0</u>              ABSENT _____              TOTAL <u>62</u>              LESS <u>24</u>  <u>3</u> </div>				
34 McMILLAN	✓								
33 MEENAN		✓							
32 MICHELI		✓							
31 MICHIE		✓							
30 MORTON									
29 MURPHY		✓							

ENGROSSED

1979

STATE OF WYOMING

79LS0-788/enq

HOUSE BILL NO. 477

Consumer protection.

Sponsored by: Representatives SCHWOPE and URBIGKIT

A BILL

for

1 AN ACT to amend W.S. 40-12-106 relating to consumer pro-  
2 tection; empowering courts to grant restitution to injured  
3 consumers; and providing for an effective date.

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

5 Section 1. W.S. 40-12-106 is amended to read:

6 40-12-106. Restraining unlawful practices. Whenever  
7 the enforcing authority has reasonable cause to believe  
8 that any person has engaged in, OR is engaging in, ~~or is~~  
9 ~~about to engage~~ in any practice which is unlawful under  
10 ~~section 40-106 of the statutes~~ W.S. 40-12-105, and that  
11 proceedings would be in the public interest, he may bring

1 an action in the name of this state against ~~such~~ THE  
2 person to restrain by temporary restraining order or pre-  
3 liminary or permanent injunction the use of ~~such~~ THE prac-  
4 tice, upon the giving of appropriate notice to that  
5 person. The notice ~~must~~ SHALL state generally the relief  
6 sought and ~~must~~ SHALL be served in accordance with the  
7 Wyoming Rules of Civil Procedure. Before commencing any  
8 action, the enforcing authority shall give the person  
9 against whom proceedings are contemplated a reasonable  
10 opportunity to show why proceedings should not be insti-  
11 tuted. The action may be brought in the district court of  
12 the county in which the person resides or has his prin-  
13 cipal place of business or in the district court of  
14 Laramie county, Wyoming. The district court ~~is--authorized~~  
15 ~~to~~ MAY issue temporary restraining orders or preliminary  
16 or permanent injunctions, in accordance with the prin-  
17 ciples of equity, to restrain and prevent violations of  
18 this act. THE COURT MAY MAKE ADDITIONAL ORDERS OR JUDG-  
19 MENTS AS ARE NECESSARY TO COMPENSATE IDENTIFIABLE PERSONS  
20 FOR ACTUAL DAMAGES OR RESTORATION OF MONEY OR PROPERTY,  
21 REAL OR PERSONAL, WHICH MAY HAVE BEEN ACQUIRED BY MEANS OF  
22 ANY ACT OR PRACTICE RESTRAINED. The remedies provided by  
23 this section, ~~sections-40-109-and-40-112-of--the--statutes~~  
24 W.S. 40-12-108 AND 40-12-111 shall be the exclusive reme-  
25 dies for violations of this act.

1979

STATE OF WYOMING

79LSD-788

1       Section 2. This act is effective May 25, 1979.

2 (END)



In reply refer to:

*Attorney General*

CHEYENNE, WYOMING 82002

JOHN D. TROUGHTON  
ATTORNEY GENERAL

February 2, 1979

M E M O R A N D U M

TO : Representative Walter C. Urbigkit, Jr.  
Representative Mary K. Schwope

FROM: Jim Gusea *JG*  
Assistant Attorney General

RE : House Bill 477 - Consumer Protection

There are several reasons for the amendment to the Wyoming Consumer Protection Act proposed by H.B. 477.

The first is judicial economy. The Attorney General's office currently has the power to seek injunctive remedies to halt deceptive business practices. In such proceedings, the witnesses called and the evidence introduced is substantially the same as would be introduced in private actions by individuals seeking to recover damages caused by deceptive practices. It simply makes good sense to combine such actions into a single proceeding rather than requiring multiple suits.

*A.G.'s*  
Another problem is that this office has no effective power if a business simply ceases operations. An injunction stopping an individual or business from engaging in deceptive practices is relatively useless if the company is no longer in operation.

Finally, and I believe most importantly, the proposed amendment would close a gap which now exists. I think this can best be explained by example.

*A.G.*  
Recently, this office sought an injunction and restitution involving an out-of-state franchising operation. It was the determination of the court to grant an injunction but restitution was not ordered. The reasoning was that the

Memorandum  
Representatives Urbigkit & Schwope  
February 2, 1979  
Page Two

act provided for private actions, was silent as to the matter of restitution in an injunctive proceeding, and indicated the remedies mentioned were the exclusive remedies in actions brought pursuant to the act. Therefore, the individuals involved will be forced to enter into a private action.

The problem is that one individual has already contacted several attorneys, none of whom was interested in pursuing the matter. Her damages are approximately \$5,000 and since she cannot afford legal fees, a contingency arrangement would have to be worked out. Since the chances of recovery are slim due to the financial condition of the firm, attorneys have not been willing to take the case. As a result, it is unlikely that either individual will be able to take any further action to recover their losses.

For these reasons, I believe the amendment proposed by H.B. 477 would benefit Wyoming citizens and aid in the proper enforcement of the Wyoming Consumer Protection Act.

JG:gmv

House of Intro  
To Com No. \_\_\_\_\_  
Stand Report Do \_\_\_\_\_ Amd \_\_\_\_\_ Not \_\_\_\_\_  
Com Whole Do \_\_\_\_\_ Amd \_\_\_\_\_ Not \_\_\_\_\_  
2nd Reading Amd \_\_\_\_\_  
3rd Reading Amd \_\_\_\_\_ Pass \_\_\_\_\_ Fail \_\_\_\_\_

Second House  
To Com No. \_\_\_\_\_  
Stand Report Do \_\_\_\_\_ Amd \_\_\_\_\_ Not \_\_\_\_\_  
Com Whole Do \_\_\_\_\_ Amd \_\_\_\_\_ Not \_\_\_\_\_  
2nd Reading Amd \_\_\_\_\_  
3rd Reading Amd \_\_\_\_\_ Pass \_\_\_\_\_ Fail \_\_\_\_\_

## INTRODUCED

1979

STATE OF WYOMING

79LSO-788.01

HOUSE BILL NO. 477

Consumer protection.

Sponsored by: Representatives SCHWOPE and URBIGKIT

### A BILL

for

1 AN ACT to amend W.S. 40-12-106 relating to consumer pro-  
2 tection; empowering courts to grant restitution to injured  
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4 Be It Enacted by the Legislature of the State of Wyoming:

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7 the enforcing authority has reasonable cause to believe  
8 that any person has engaged in, is engaging in, or is  
9 about to engage in any practice which is unlawful under  
10 ~~section-40-106-of-the-statutes~~ W.S. 40-12-105, and that  
11 proceedings would be in the public interest, he may bring



1 an action in the name of this state against such person to  
2 restrain by temporary restraining order or preliminary or  
3 permanent injunction the use of such practice, upon the  
4 giving of appropriate notice to that person. The notice  
5 must state generally the relief sought and must be served  
6 in accordance with the Wyoming Rules of Civil Procedure.  
7 Before commencing any action, the enforcing authority  
8 shall give the person against whom proceedings are contem-  
9 plated a reasonable opportunity to show why proceedings  
10 should not be instituted. The action may be brought in the  
11 district court of the county in which the person resides  
12 or has his principal place of business or in the district  
13 court of Laramie county, Wyoming. The district court ~~is~~  
14 ~~authorized to~~ MAY issue temporary restraining orders or  
15 preliminary or permanent injunctions, in accordance with  
16 the principles of equity, to restrain and prevent viola-  
17 tions of this act. THE COURT MAY MAKE SUCH ADDITIONAL  
18 ORDERS OR JUDGMENTS AS ARE NECESSARY TO COMPENSATE IDEN-  
19 TIFIABLE PERSONS FOR ACTUAL DAMAGES OR RESTORATION OF  
20 MONEY OR PROPERTY, REAL OR PERSONAL, WHICH MAY HAVE BEEN  
21 ACQUIRED BY MEANS OF ANY ACT OR PRACTICE RESTRAINED. The  
22 remedies provided by this section, ~~sections--40-109--and~~  
23 ~~40-112--of-the-statutes~~ W.S. 40-12-108 AND 40-12-111 shall  
24 be the exclusive remedies for violations of this act.

1           Section 2. This act is effective May 25, 1979.

2 (END)

FISCAL NOTE

Anticipated <u>REVENUE</u> to:	Fiscal Year 19	Fiscal Year 19
TOTAL ESTIMATED REVENUE		
Anticipated <u>COST</u> to:	Fiscal Year 19	Fiscal Year 19
TOTAL ESTIMATED COST		

With less than 45 minutes to go until sponsor approval deadline, this bill cannot be reviewed for fiscal impact.

Legislative Service Office  
Audit Division  
January 29, 1979

# THE LEGISLATURE OF THE STATE OF WYOMING

## Senate

Cheyenne, ..February..17....., 19..79.

Mr. President:

Your Committee No. 4 ..... on Education, Health & Welfare .....  
to whom was referred ..... HB ..... No. 477 .....

respectfully reports same back to the Senate with the recommendation that it ~~DO~~ PASS with  
the following amendment:

HB477SS1 TO ENGROSSED COPY

Page 1-lines 8 and 9 Restore stricken language. -NORTHROP,  
CHAIRMAN

AYES: Senators Northrup, Murray, Bussart, Downing and  
McDaniel.

Stored: HB477SS1:0

*not a conference*

*L. Donald Northrup*  
L. Donald Northrup, Chairman

HB477

DC 79

- ✓ HB477HS1/A
- ✓ Page 2-line 1 Strike "such" insert "THE".
- ✓ Page 2-line 3 Strike "such" insert "THE".
- ✓ Page 2-line 5 Strike first "must" insert "SHALL"; strike second "must" insert "SHALL".
- ✓ Page 2-line 17 Delete "SUCH".  
-CROWLEY, CHAIRMAN

ADOPTED

*J*

LC 2/12/79

- ✓ HB477H31/A
- ✓ Page 1-line 6 After the first "in" strike the comma "7" insert "OR"; strike the second "in-ex-is".
- ✓ Page 1-line 9 Strike "about-to-engage".  
-GILSON

*J*

## THE LEGISLATURE OF THE STATE OF WYOMING

## House of Representatives

HB 477 H 51 / Cheyenne, February 3, 1979

Mr. Speaker:

Your Committee No. 1 on Judiciary

to whom was referred House Bill No. 477

respectfully reports same back to the House with the recommendation that it DO PASS with the following amendments:

Page 2-line 1 Strike "such" insert "THE".

Page 2-line 3 Strike "such" insert "THE".

Page 2-line 5 Strike first "must" insert "SHALL"; strike second "must" insert "SHALL".

Page 2-line 17 Delete "SUCH".

AYESNAYS

Unanimous

Ellen Crowley  
Ellen Crowley

Chairman