



77 LSO - 243

SENATE FILE 242

SENATE FILE 242

Robert McDaniel

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1977

STATE OF WYOMING

77LSO-843.01
ATTORNEY GENERALSENATE FILE 242

Wyoming Consumer Protection Act.

Sponsored by: Senator McDANIEL



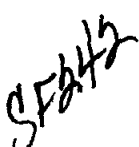
A BILL

for

1 AN ACT to create W.S. 40-113.1 through 40-113.23; and to
2 repeal W.S. 40-102 through 40-113 relating to consumer
3 protection; providing for definitions; declaring certain
4 deceptive acts in the conduct of trade or commerce to be
5 unlawful; empowering the consumer protection division of
6 the attorney general's office to bring certain actions in
7 the name of the state against persons who engage in decep-
8 tive acts; granting a cause of action to consumers who
9 have been adversely affected by deceptive acts or prac-
10 tices; providing for a treatment of unsolicited goods or
11 services and for home solicitation sales; providing for
12 class actions; providing for penalties; providing for
13 severability; and providing an effective date.

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

15 Section 1. W.S. 40-113.1 through 40-113.23 are
16 created to read:



1 40-113.1. Short title. This act may be cited as the
2 Wyoming Consumer Protection Act.

3 40-113.2. Waivers: public policy. Any waiver by a
4 consumer of the provisions of this act is contrary to
5 public policy and is unenforceable and void.

6 40-113.3. Cumulative remedies. The provisions of
7 this act are not exclusive. The remedies provided in this
8 act are in addition to any other procedures or remedies
9 provided for in any other law. The provisions of this act
10 do not in any way preclude other political subdivisions of
11 this state from dealing with deceptive trade practices.

12 40-113.4. Construction and application. This act
13 shall be liberally construed and applied to promote its
14 underlying purposes, which are to protect consumers
15 against false, misleading, and deceptive business prac-
16 tices, unconscionable actions, and breaches of warranty
17 and to provide efficient and economical procedures to
18 secure such protection.

19 40-113.5. Definitions. As used in this act:

20 (a) "Advertising" means attempting by publication,
21 dissemination, solicitation or circulation, whether oral,
22 visual, written or otherwise, and whether in person, by

SP242

1 telephone or by any other means to induce directly or
2 indirectly any person to enter into any obligation or to
3 acquire any title or interest in any goods or receive any
4 services.

5 (b) "Goods" means any property, tangible or intan-
6 gible, real, personal or mixed, or any other object, ware,
7 good, commodity, or article of value wherever situated.

8 (c) "Services" means work, labor, and services for
9 other than commercial or business use, including services
10 furnished in connection with the sale or repair of goods.

11 (d) "Person" means an individual, partnership, cor-
12 poration, association, or other group, however organized.

13 (e) "Consumer" means an individual who seeks or
14 acquires by purchase or lease, any goods or services.

15 (f) "Merchant" means a party to a consumer trans-
16 action other than a consumer.

17 (g) "Trade" and "commerce" mean the advertising,
18 offering for sale, sale, lease, or distribution of any
19 good or service, of any property, tangible or intangible,
20 real, personal, or mixed, and any other article, com-
21 modity, or thing of value, wherever situated, and shall
22 include any trade or commerce directly or indirectly

3F242

1 affecting the people of this state.

2 (h) "Documentary material" includes the original or
3 a copy of any book, record, report, memorandum, paper,
4 communication, tabulation, map, chart, photograph, mechan-
5 ical transcription, or other tangible document or record-
6 ing, wherever situated.

7 (j) "Consumer protection division" means the con-
8 sumer protection division of the attorney general's
9 office.

10 (k) "Knowingly" means actual awareness of the fal-
11 sity or deception, but actual awareness may be inferred
12 where objective manifestations indicate that a person
13 acted with actual awareness.

14 40-113.6. Deceptive trade practices unlawful.

15 (a) False, misleading, or deceptive acts or prac-
16 tices in the conduct of any trade or commerce are hereby
17 declared unlawful.

18 (b) The term "false, misleading, or deceptive acts
19 or practices" includes, but is not limited to, the follow-
20 ing acts:

21 (i) Passing off goods or services as those of

1 another;

2 (ii) Causing confusion or misunderstanding as
3 to the source, sponsorship, approval, or certification of
4 goods or services;

5 (iii) Causing confusion or misunderstanding as
6 to affiliation, connection, or association with, or
7 certification by, another;

8 (iv) Using deceptive representations or design-
9 nations of geographic origin in connection with goods or
10 services;

11 (v) Representing that goods or services have
12 sponsorship, approval, characteristics, ingredients, uses,
13 benefits, or quantities which they do not have or that a
14 person has a sponsorship, approval, status, affiliation,
15 or connection which he does not;

16 (vi) Representing that goods are original or
17 new if he knows that they are deteriorated, damaged,
18 altered, reconditioned, reclaimed, used or secondhand.
19 For purposes of this subsection, the terms "original" or
20 "new" include goods previously sold but returned within a
21 reasonable time by the consumer for full credit if such
22 goods are not damaged or deteriorated.

SF 242

1 (vii) Representing that goods or services are
2 of a particular standard, quality, condition or grade, or
3 that goods are of a particular style or model, if they are
4 of another;

5 (viii) Disparaging the goods, services, or
6 business of another by false or misleading representation
7 of facts;

8 (ix) Advertising goods or services with intent
9 not to sell them as advertised;

10 (x) Adverstising goods or services with intent
11 not to supply a reasonably expectable public demand,
12 unless the advertisements disclosed a limitation of quan-
13 tity;

14 (xi) Making false or misleading statements of
15 fact concerning the reasons for, existence of, or amount
16 of price reductions;

17 (xii) Representing that an agreement confers
18 or involves rights, remedies, or obligations which it does
19 not have or involve, or which are prohibited by law;

20 (xiii) Representing that goods or services are
21 available to the consumer for a reason that does not

SF242

1 exist;

2 (xiv) Representing that goods or services have
3 been supplied in accordance with a previous representa-
4 tion, if they have not; except that this subsection does
5 not apply to goods or services supplied to the recipient
6 by mistake or to goods or services of equal or greater
7 value supplied as a reasonably equivalent substitute for
8 unavailable goods or services previously ordered by the
9 recipient;

10 (xv) Representing that repairs have been made
11 when such is not a fact;

12 (xvi) Making or charging for repairs which
13 have not been expressly or impliedly authorized by the
14 consumer;

15 (xvii) Charging an amount in excess of 10%
16 above any written estimate without the prior approval of
17 the consumer;

18 (xviii) Knowingly making false or misleading
19 statements of fact concerning the need for parts, replace-
20 ment, or repair service;

21 (xix) Misrepresenting the authority of a
22 salesman, representative or agent to negotiate the final

SP242

1 terms of a consumer transaction;

2 (xx) Disconnecting, turning back, or resetting
3 the odometer of any motor vehicle so as to reduce the
4 number of miles indicated on the odometer gauge;

5 (xxi) Advertising of any sale by fraudulently
6 representing that a person is going out of business;

7 (xxii) Soliciting by telephone or door-to-door
8 as a merchant, unless the merchant, prior to giving any
9 sales presentation or promotion, identifies himself, whom
10 he represents, and the purpose of the call;

11 (xxiii) Using or employing coercive, threaten-
12 ing, unethical or unfair tactics or the use of simulated
13 legal process in collecting or attempting to collect a
14 debt;

15 (xxiv) Employing "bait and switch" advertis-
16 ing, which consists of an attractive but insincere offer
17 to sell goods or services which the seller in truth does
18 not intend or desire to sell, which advertising is accom-
19 panied by one or more of the following practices:

20 (a) Refusal to show the goods adver-
21 tised;

SF242

1 (b) Disparagement in any respect of the
2 advertised goods or the terms of sale;

3 (c) Requiring tie-in sales or other
4 undisclosed conditions to be met prior to selling the
5 advertised goods or services;

6 (d) Refusal to take orders for the goods
7 advertised for delivery within a reasonable time;

8 (e) Showing or demonstrating defective
9 goods which are unusable or impractical for the purposes
10 set forth in the advertisement;

11 (f) Accepting a deposit for goods and
12 subsequently switching the purchase order to a
13 higher-priced item; or

14 (g) Failure to make deliveries of goods
15 within a reasonable time or to make a refund therefor;

16 (xxv) Using or employing in trade or commerce
17 the terms "free", "gift", "bonus", "given without charge",
18 or other similar representations when in fact the merchant
19 will directly and immediately recover in whole or in part
20 the cost of the free goods or services by increasing the
21 price regularly charged for any other goods or services
22 which must be purchased by the consumer in order to avail

37242

1 himself of the free goods or services;

2 (xxvi) Using or employing a chain referral
3 sales plan in connection with the sale or offer to sell of
4 goods or anything of value, which uses the sales tech-
5 nique, plan, arrangement, or agreement in which the buyer
6 or prospective buyer is offered the opportunity to pur-
7 chase goods and in connection with the purchase receives
8 the seller's promise or representation that the buyer
9 shall have the right to receive compensation or consider-
10 ation in any form for furnishing to the seller the names
11 of other prospective buyers if receipt of the compensation
12 or consideration is contingent upon the occurrence of an
13 event subsequent to the time the buyer purchases the
14 goods;

15 (xxvii) Representing that a guarantee or war-
16 ranty confers or involves rights or remedies which it does
17 not have or involve, provided, however, that nothing in
18 this act shall be construed to expand the implied warranty
19 of merchantability as defined in W.S. 34-2-314 through
20 34-2-318 to involve obligations in excess of those which
21 are appropriate to the goods.

22 (c) It is the intent of the legislature
23 that in construing subsection (a) of this section the

SF 242

1 courts to the extent possible will be guided by subsection
2 (b) of this section, the guides, trade practice rules and
3 trade regulation rules promulgated by the federal trade
4 commission and the interpretations given by the federal
5 trade commission and federal courts to Section 5(a)(1) of
6 the Federal Trade Commission Act (15 U.S.C.A. 45 (a)(1)).

7 40-113.7. Restraining orders.

8 (a) Whenever the consumer protection division has
9 reason to believe that any person is engaging in, has
10 engaged in, or is about to engage in any act or practice
11 declared to be unlawful by this act, and that proceedings
12 would be in the public interest, the division may bring an
13 action in the name of the state against the person to
14 restrain by temporary or permanent injunction the use of
15 such method, act, or practice.

16 Nothing herein shall require the consumer protection
17 division to notify such person that court action is or may
18 be under consideration. Provided, however, the consumer
19 protection division shall, at least seven days prior to
20 instituting such court action, make a reasonable attempt
21 to contact such person to inform him in general of the
22 alleged unlawful conduct. Cessation of unlawful conduct
23 after such prior contact shall not render such court

1 action moot under any circumstances, and such injunctive
2 relief shall lie even if such person has ceased such
3 unlawful conduct after such prior contact. Such prior
4 contact shall not be required if, in the opinion of the
5 consumer protection division, there is good cause to
6 believe that such person would evade service of process if
7 prior contact were made or that such person would destroy
8 relevant records if prior contact were made.

9 (b) An action brought under subsection (a) of this
10 section may be commenced in the district court of the
11 county in which the person against whom it is brought
12 resides, has his principal place of business, is doing
13 business, or in the district court of the county where the
14 transaction occurred, or in the district court of Laramie
15 County, Wyoming. The court may issue temporary restrain-
16 ing orders, or preliminary or permanent injunctions to
17 restrain and prevent violations of this act and such
18 orders and injunctions shall be issued without bond.

19 (c) In addition to the request for a temporary
20 restraining order or preliminary or permanent injunction
21 in a proceeding brought under subsection (a) of this
22 section, the consumer protection division, on a finding by
23 the court that the defendant has engaged or is engaging in
24 a practice declared to be unlawful by this act may request

SF242

1 a civil penalty of not more than two thousand dollars
2 (\$2,000.00) per violation, not to exceed a total of ten
3 thousand dollars (\$10,000.00), to be paid to the state.

4 (d) the court may make such additional orders or
5 judgments as are necessary to compensate identifiable per-
6 sons for actual damages or restoration of money or prop-
7 erty, real or personal, which may have been acquired by
8 means of any act or practice restrained. Damages may not
9 include any damages incurred beyond a point two years
10 prior to the institution of the action by the consumer
11 protection division. Orders of the court may also include
12 the appointment of a receiver or a sequestration of assets
13 if a person who has been ordered by a court to make resti-
14 tution under this section has failed to do so within three
15 months after the order to make restitution has become
16 final and nonappealable.

17 (e) Any person who violates the terms of an injunc-
18 tion under this section shall forfeit and pay to the state
19 a civil penalty of not more than ten thousand dollars
20 (\$10,000.00) per violation, not to exceed fifty thousand
21 dollars (\$50,000.00). In determining whether or not an
22 injunction has been violated the court shall take into
23 consideration the maintenance of procedures reasonably
24 adapted to insure compliance with the injunction. For the

SF242

1 purposes of this section, the district court issuing the
2 injunction shall retain jurisdiction, and the cause shall
3 be continued, and in these cases, the consumer protection
4 division, or the county attorney with prior notice to the
5 consumer protection division, acting in the name of the
6 state, may petition for recovery of civil penalties under
7 this section.

8 (f) An order of the court awarding civil penalties
9 under subsection (e) of this section applies only to
10 violations of the injunction incurred prior to the award-
11 ing of the penalty order. Second or subsequent violations
12 of an injunction issued under this section are subject to
13 the same penalties set out in subsection (e) of this
14 section.

15 40-113.8. Duty of county attorney.

16 (a) It is the duty of the county attorneys to lend
17 to the consumer protection division any assistance
18 requested in the commencement and prosecutions of action
19 under this act.

20 (b) A county attorney, with prior written notice to
21 the consumer protection division, may institute and prose-
22 cute actions seeking injunctive relief under this act,
23 after complying with the prior contact provisions of sub-

SF242

1 section (a) of section 7 of this act. The consumer pro-
2 tection division may assist the county attorney in any
3 action taken under this act if so requested. If an action
4 is prosecuted by a county attorney alone, he shall make a
5 full report to the consumer protection division including
6 the final disposition of the matter.

7 40-113.9. Exemptions.

8 (a) Nothing in this act shall apply to acts or prac-
9 tices required or permitted by state or federal law, rule
10 or regulation or judicial or administrative decision.

11 (b) Nothing in this act shall apply to the owner or
12 employees of a regularly published newspaper, magazine, or
13 telephone directory, or broadcast station, or billboard,
14 wherein any advertisement in violation of this act is pub-
15 lished or disseminated, unless it is established that the
16 owner or employees of the advertising medium have knowl-
17 edge of the false, deceptive, or misleading acts or prac-
18 tices declared to be unlawful by this act, or had a direct
19 or substantial financial interest in the sale or distri-
20 bution of the unlawfully advertised good or service.
21 Financial interest as used in this section relates to an
22 expectation which would be the direct result of such
23 advertisement.

SF242

1 (c) Nothing in this act shall apply to acts or prac-
2 tices authorized under specific rules or regulations
3 promulgated by the federal trade commission under section
4 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.A.
5 45 (a)(1)). The provisions of this act do apply to any
6 act or practice prohibited or not specifically authorized
7 by a rule or regulation of the federal trade commission.
8 An act or practice is not specifically authorized if no
9 rule or regulation has been issued on the act or practice.

10 40-113.10. Relief for consumers.

11 (a) A consumer may maintain an action if he has been
12 adversely affected by any of the following:

13 (i) The use or employment by any person of an
14 act or practice declared to be unlawful by W.S. 6 of this
15 act;

16 (ii) A failure by any person to comply with an
17 express or implied warranty; or

18 (iii) Any unconscionable action or course of
19 action by any person.

20 (b) In a suit filed under this section each consumer
21 who prevails shall be entitled to:

1 (i) Three times the amount of actual damages
2 plus court costs and attorneys' fees reasonable in rela-
3 tion to the amount of work expended;

4 (ii) An order enjoining such acts or failure
5 to act;

6 (iii) Orders necessary to restore to any party
7 to the suit any money or property, real or personal, which
8 may have been acquired in violation of this act; and

9 (iv) Any other relief which the court deems
10 proper, including the appointment of a receiver or the
11 revocation of a license or certificate authorizing a
12 person to engage in business in this state if the judgment
13 has not been satisfied within three months of the date of
14 the final judgment. The court may not revoke or suspend a
15 license to do business in this state or appoint a receiver
16 to take over the affairs of a person who has failed to
17 satisfy a judgment if the person is a licensee of or regu-
18 lated by a state agency which has statutory authority to
19 revoke or suspend a license or to appoint a receiver or
20 trustee.

21 (c) On a finding by the court that an action under
22 this section was groundless and brought in bad faith or

5F242

1 for the purpose of harrassment, the court may award to the
2 defendant reasonable attorneys' fees in relation to the
3 amount of work expended, and court costs.

4 40-113.11. Unsolicited goods or services. Unless
5 otherwise agreed, when unsolicited goods or services are
6 delivered to a person, he has a right to refuse such goods
7 or services and is not obligated to return such to the
8 sender. Such unsolicited goods or services are deemed an
9 unconditional gift to the recipient, who may use such in
10 any manner without obligation to the sender. This section
11 does not apply if there is evidence that the goods or
12 services were misdelivered, or if the delivered goods or
13 services were offered as a good faith substitute for goods
14 or services previously solicited by the recipient.

15 40-113.12. Home solicitation sales.

16 (a) For the purposes of this act, "home solicitation
17 sale" means the sale or lease of goods or services, except
18 primarily for an agricultural purpose, for cash when the
19 cash sales price, whether under a single sale or multiple
20 sales, exceeds twenty-five dollars (\$25.00) and in which
21 the seller or a person acting for him engages in a per-
22 sonal solicitation of the sale, including face-to-face
23 confrontation or telephone solicitation, at a place other

5F242

1 than the place of business of the seller and the buyer's
2 agreement or offer to purchase is there given to the
3 seller or a person acting for him. It does not include a
4 sale made pursuant to a preexisting revolving charge
5 account, a sale made pursuant to prior negotiations
6 between the parties at a business establishment at a fixed
7 location where goods or services are offered or exhibited
8 for sale or a sale consummated entirely by telephone or
9 mail, if initiated by the buyer.

10 (b) Except as provided in subsection (e) of this
11 section the buyer has the right to cancel a home solici-
12 tion sale until midnight of the third business day after
13 the day on which the following requirements have been com-
14 pleted:

15 (i) The buyer is furnished a copy of the com-
16 pleted, approved and accepted contract;

17 (ii) The buyer is provided with a written
18 statement of the buyer's right to cancel and a notice of
19 cancellation form, both of which shall comply with the
20 requirements of such under W.S. 40-2-503; and

21 (iii) The buyer is given the name and address
22 to which the notice of cancellation should be sent.

SF 242

1 (c) Until the seller has complied with subsection
2 (b) of this section the buyer may cancel the home solic-
3 itation sale by notifying the seller in any manner and by
4 any means of his intention to cancel.

5 (d) Cancellation occurs when the buyer gives written
6 notice of cancellation to the seller at the address stated
7 in the notice of cancellation form. Notice of cancel-
8 lation, if given by mail, is given when it is deposited in
9 a mailbox properly addressed and postage prepaid. Notice
10 of cancellation given by the buyer need not take a partic-
11 ular form and is sufficient if it indicates by any form of
12 written expression the intention of the buyer not to be
13 bound by the home solicitation sale.

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

17 (i) The seller in good faith makes a substan-
18 tial beginning of performance of the contract before the
19 buyer gives notice of cancellation; and

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

SF 242

1 (f) Within ten (10) business days after a home
2 solicitation sale has been cancelled, the seller must
3 tender to the buyer any goods traded in, any payments made
4 by the buyer and any note or other evidence of indebted-
5 ness. If the payment includes any goods traded in, the
6 goods must be tendered in substantially as good condition
7 as when received by the seller. If the seller fails to
8 tender the goods as provided by this section, the buyer
9 may elect to recover an amount equal to the trade-in
10 allowance stated in the agreement. Until the seller has
11 complied with the obligations imposed by this section the
12 buyer may retain possession of goods delivered to him by
13 the seller and has a lien on the goods in his possession
14 or control for any recovery to which he is entitled.

15 (g) Except as provided under subsection (f) of this
16 section, within a reasonable time after a home solicita-
17 tion sale has been cancelled or an offer to purchase
18 revoked, the buyer upon demand must tender to the seller
19 any goods delivered by the seller pursuant to the sale but
20 he is not obligated to tender at any place other than his
21 residence. If the buyer fails to make the goods available
22 to the seller, or if the buyer agrees to return the goods
23 to the seller at the seller's expense and risk and fails
24 to do so, then the buyer remains liable for performance of

SF 242

1 all obligations under the contract. If the seller fails
2 to demand possession of the goods within a reasonable time
3 after cancellation or revocation, the goods become the
4 property of the buyer with no obligation to pay for them.
5 For the purposes of this section, twenty (20) days is pre-
6 sumed to be a reasonable time.

7 (h) The buyer has a duty to take reasonable care of
8 the goods in his possession before cancellation or revoca-
9 tion and for twenty (20) days thereafter, during which
10 time the goods are otherwise at the seller's risk.

11 (j) If the seller has performed any services pur-
12 suant to a home solicitation sale prior to its cancel-
13 lation, the seller is entitled to no compensation.

14 40-113.13. Class actions.

15 (a) If a consumer has been damaged in an amount in
16 excess of ten dollars (\$10.00) by an unlawful method, act,
17 or practice contained in subsection (b) of W.S. 6 of this
18 act, or by an act or practice or type of act or practice
19 occurring subsequent to the time the act or practice or
20 type of act or practice was declared unlawful or deceptive
21 to the consumer by a final judgment of an appellate court
22 of proper jurisdiction and venue of this state that was
23 reported officially, a consumer may bring an action on

SP 242

1 behalf of himself and other consumers if the unlawful act
2 or practice has caused damage to the other consumers who
3 are similarly situated, to recover damages and relief as
4 provided in this act.

5 (b) A plaintiff who prevails in a class action under
6 this act shall be entitled to:

7 (i) Three times the amount of actual damages
8 plus court costs and attorneys' fees reasonable in rela-
9 tion to the amount of work expended;

10 (ii) Court costs and attorneys' fees reason-
11 able in relation to the amount of work expended in addi-
12 tion to actual damages;

13 (iii) An order enjoining the act or failure to
14 act;

15 (iv) Any orders which may be necessary to
16 restore to any party to the suit any money or property,
17 real or personal, which may have been acquired in viola-
18 tion of this act; and

19 (v) Any other relief which the court deems
20 proper including the appointment of a receiver or revoca-
21 tion of a license or certificate to engage in business in
22 this state if the judgment has not been satisfied within

5F242

1 six (6) months of the date of issuance of the final judg-
2 ment. The court may not revoke or suspend a license to do
3 business in this state or appoint a receiver to take over
4 the affairs of a person who has failed to satisfy a judg-
5 ment if the person is a licensee of or regulated by a
6 state agency which has statutory authority to revoke or
7 suspend a license or to appoint a receiver or trustee.

8 (c) On a finding by the court that an action under
9 this section was brought in bad faith or for purposes of
10 harassment, the court may award to the defendant reason-
11 able attorneys' fees in relation to the work expended, and
12 court costs.

13 (d) Any class action maintained under this section
14 shall be brought pursuant to rule 23 of the Wyoming Rules
15 of Civil Procedure, except as herein expressly provided.

16 (e) Any monies or property recovered in a class
17 action under this section which cannot, with due
18 dilligence, be restored to consumers within one (1) year
19 after judgment becomes final shall be returned to the
20 party depositing the same.

21 (f) The filing of a suit under this section tolls
22 the statute of limitations for bringing a suit by an indi-
23 vidual under W.S. 10 of this act. An order of the court

SF 242

1 denying the bringing of a suit as a class action does not
2 affect the ability of an individual to bring the same or a
3 similar suit under W.S. 10 of this act.

4 40-113, 14. Preliminary notice.

5 (a) At least thirty (30) days prior to the commence-
6 ment of a suit for damages under W.S. 13 of this act, the
7 consumer must notify the intended defendant of his com-
8 plaint and make demand that the defendant provide relief
9 to the consumer and others similarly situated.

10 (b) The notice must be in writing and sent by certi-
11 fied or registered mail, return receipt requested, to the
12 place where the transaction occurred, the intended
13 defendant's principal place of business in this state, or
14 if neither will effect notice, to the office of the secre-
15 tary of state of Wyoming.

16 (c) An action for injunctive relief under W.S. 13 of
17 this act may be commenced without compliance with subsec-
18 tion (a) of this section. Not less than thirty (30) days
19 after the commencement of an action for injunctive relief,
20 and after compliance with the provisions of subsection (a)
21 of this section, the consumer may amend his complaint
22 without leave of court to include a request for damages.

23 (d) No damages may be awarded to a consumer class

SF242

1 under this section if within thirty (30) days of receipt
2 of the notice the intended defendant furnishes the con-
3 sumer, by certified or registered mail, return receipt
4 requested, a written offer of settlement. The offer of
5 settlement must include a statement that:

6 (i) All consumers similarly situated have been
7 adequately identified or a reasonable effort to identify
8 such other consumers has been made, and a description of
9 the class so identified and the method employed to iden-
10 tify them;

11 (ii) All consumers so identified have been
12 notified that upon their request the intended defendant
13 will provide relief to the consumer and all other simi-
14 larly situated, and a complete explanation of the relief
15 being afforded and a copy of the notice or communication
16 which the intended defendant is providing to the members
17 of the class;

18 (iii) The relief being afforded the consumer
19 has been, or if said offer is accepted by the consumer,
20 will be given within a stated reasonable period of time;
21 and

22 (iv) The practice complained of has ceased.

SF242

1 (e) Attempts to comply with the provisions of this
2 section by a person receiving a demand shall be an offer
3 to compromise and shall be inadmissible as evidence.
4 Attempts to comply with a demand shall not be considered
5 an admission of engaging in an unlawful act or practice.
6 Evidence of compliance or attempts to comply with the
7 provisions of this section may be introduced by a defend-
8 ant for the purpose of establishing good faith or to show
9 compliance with the provisions of this section.

10 ~~40-113.15. Damages; defense.~~ No award of damages
11 may be given in any action filed under W.S. 13 of this
12 act if the defendant:

13 (a) Proves that the action complained of resulted
14 from a bona fide error notwithstanding the use of reason-
15 able procedures adopted to avoid any error; and

16 (b) Has made restitution to all identifiable members
17 of the class.

18 ~~40-113.16. Promotional material.~~ If damages or
19 civil penalties are assessed against the seller of goods
20 or services for advertisements or promotional material in
21 a suit filed under W.S. 7, 8, 10 or 13, the seller of the
22 goods or services has a cause of action against a third
23 party for the amount of damages or civil penalties

3F242

1 assessed against the seller plus attorneys' fees on a
2 showing that:

3 (a) The seller received the advertisements or pro-
4 motional material from the third party;

5 (b) The seller's only action with regard to the
6 advertisements or promotional material was to disseminate
7 the material; and

8 (c) The seller has ceased disseminating the mate-
9 rial.

10 40-113.17. Venue. An action brought under W.S. 10
11 or W.S. 13 may be commenced in the county in which the
12 person against whom the suit is brought resides, has his
13 principal place of business or is doing business.

14 40-113.18. Subpoenas. Any party to an action
15 brought under this act may request that subpoenas be
16 issued in accordance with rule 45, Wyoming Rules of Civil
17 Procedure.

18 40-113.19. Voluntary compliance.

19 (a) In the administration of this act the consumer
20 protection division may accept an assurance of voluntary
21 compliance with respect to any act or practice which vio-

1 lates this act from any person who is engaging in, has
2 engaged in, or is about to engage in the act or practice.
3 The assurance shall be in writing and shall be filed with
4 the district court in the county in which the alleged vio-
5 lator resides or does business or in the district court of
6 Laramie County.

7 (b) The acceptance of an assurance of voluntary
8 compliance may be conditioned on the stipulation that the
9 person in violation of this act restore to any person in
10 interest any money or property, real or personal, which
11 may have been acquired by means of acts or practices which
12 violate this act.

13 (c) An assurance of voluntary compliance shall not
14 be considered an admission of prior violation of this act.
15 However, unless an assurance has been rescinded by agree-
16 ment of the parties or voided by a court for good cause,
17 subsequent failure to comply with the terms of an assur-
18 ance is prima facie evidence of a violation of this act.

19 (d) Matters closed by the filing of an assurance of
20 voluntary compliance may be reopened at any time. Assur-
21 ances of voluntary compliance shall in no way affect indi-
22 vidual rights of action under this act, except that the
23 rights of individuals with regard to money or property

1 received pursuant to a stipulation in the voluntary
2 compliance under subsection (b) of this section are gov-
3 erned by the terms of the voluntary compliance.

4 40-113.20. Powers of receiver.

5 (a) When a receiver is appointed by the court under
6 this act, he shall have the power to sue for, collect,
7 receive, and take into his possession all the goods and
8 chattels, rights and credits, money, and effects, lands,
9 tenements, books, records, documents, papers, choses in
10 action, bills, notes, and property of every description,
11 derived by means of any practice declared to be illegal
12 and prohibited by this act, including property with which
13 such property has been mingled if it cannot be identified
14 in kind because of the commingling, and to sell, convey,
15 and assign the property and hold and dispose of the pro-
16 ceeds under the direction of the court. Any person who
17 has suffered damages as a result of use or employment of
18 any unlawful practices and submits proof to the satisfac-
19 tion of the court that he has in fact been damaged, may
20 participate with general creditors in the distribution of
21 the assets to the extent he has sustained out-of-pocket
22 losses. In the case of a partnership or business entity,
23 the receiver shall settle the estate and distribute the
24 assets under the direction of the court. The court shall

SF242

1 have jurisdiction of all questions arising in the proceed-
2 ings and may make any orders or judgments required.

3 (b) If the claims of consumers remain unsatisfied
4 after distribution of the assets, the court may order that
5 all persons who knowingly participated in the unlawful
6 enterprise be held jointly and severally liable to the
7 extent of the unsatisfied consumer claims if such person:

8 (i) Contributed substantial personal services,
9 money, credit, real, personal, or mixed property, or any
10 other thing of substantial value with the expectation of
11 sharing in the profits of the enterprise; and

12 (ii) Had knowledge or should have had knowl-
13 edge of the unlawful purpose of the enterprise at the time
14 such things of value were contributed, or freely continued
15 in the association or other relationship after gaining
16 knowledge of the unlawful purpose of the enterprise.

17 40-113.21. Reports and examinations. Whenever the
18 consumer protection division has reason to believe that a
19 person is engaging in, has engaged in, or is about to
20 engage in any act or practice declared to be unlawful by
21 this act, or when it reasonably believes it to be in the
22 public interest to conduct an investigation to ascertain
23 whether any person is engaging in, has engaged in, or is

SF242

1 about to engage in any such act or practice, an authorized
2 member of the division may:

3 (a) Require the person to file on the prescribed
4 forms a statement or report in writing, under oath or
5 otherwise, as to all the facts and circumstances concern-
6 ing the alleged violation and such other data and informa-
7 tion as the consumer protection division deems necessary;

8 (b) Examine under oath any person in connection with
9 this alleged violation;

10 (c) Examine any goods or sample of goods deemed
11 necessary and proper; and

12 (d) Pursuant to an order of the appropriate court,
13 impound any sample of goods that are produced in accord-
14 ance with this act and retain it in the possession of the
15 division until the completion of all proceedings in
16 connection with which the goods are produced.

17 40-113.22. Civil investigative demand.

18 (a) Whenever the consumer protection division
19 believes that any person may be in possession, custody, or
20 control of the original copy of any documentary material
21 relevant to the subject matter of an investigation of a
22 possible violation of this act, an authorized agent of the

SF242

1 division may execute in writing and serve on the person a
2 civil investigative demand requiring the person to produce
3 the documentary material and permit inspection and copy-
4 ing.

5 (b) Each demand shall:

6 (i) State the statute and section under which
7 the alleged violation is being investigated, and the gen-
8 eral subject matter of the investigation;

9 (ii) Describe the class or classes of documen-
10 tary material to be produced with reasonable specificity
11 so as to fairly indicate the material demanded;

12 (iii) Prescribe a return date within which the
13 documentary material is to be produced; and

14 (iv) Identify the members of the consumer pro-
15 tection division to whom the documentary material is to be
16 made available for inspection and copying.

17 (c) A civil investigative demand may contain a
18 requirement or disclosure of documentary material which
19 would be discoverable under the Wyoming Rules of Civil
20 Procedure.

21 (d) Service of any demand may be made by:

SF242

1 (i) Delivering a duly executed copy of the
2 demand to the person to be served or to a partner or to
3 any officer or agent authorized by appointment or by law
4 to receive service of process on behalf of that person;

5 (ii) Delivering a duly executed copy of the
6 demand to the principal place of business in the state of
7 the person to be served;

8 (iii) Mailing by registered mail or certified
9 mail a duly executed copy of the demand addressed to the
10 person to be served at the principal place of business in
11 this state, or if the person has no place of business in
12 this state, to his principal office or place of business.

13 (e) Documentary material demanded pursuant to this
14 section shall be produced for inspection and copying
15 during normal business hours at the principal office or
16 place of business of the person served, or at other times
17 and places as may be agreed on by the person served and
18 the consumer protection division.

19 (f) No documentary material produced pursuant to a
20 demand under this section, unless otherwise ordered by a
21 court for good cause shown, shall be produced for inspec-
22 tion or copying by, nor shall its contents be disclosed to

SF242

1 any person other than the authorized employee of the con-
2 sumer protection division without the consent of the
3 person who produced the material. The consumer protection
4 division shall prescribe reasonable terms and conditions
5 allowing the documentary material to be available for
6 inspection and copying by the person who produced the
7 material or any duly authorized representative of that
8 person. The consumer protection division may use the
9 documentary material or copies of it as it determines
10 necessary in the enforcement of this act including pre-
11 sentation before any court. Any material which contains
12 trade secrets shall not be presented except with the
13 approval of the court in which the action is pending after
14 adequate notice to the person furnishing the material.

15 (g) At any time before the return date specified in
16 the demand, or within twenty (20) days after the demand
17 has been served, whichever period is shorter, a petition
18 to extend the return date for or to modify or set aside
19 the demand, stating good cause, may be filed in the dis-
20 trict court in the county where the parties reside, or the
21 district court of Laramie County.

22 (h) A person on whom a demand is served under this
23 section shall comply with the terms of the demand unless
24 otherwise provided by a court order.

SF242

1 (j) Personal service of a similar investigative
2 demand under this section may be made on any person out-
3 side of this state if the person has engaged in conduct in
4 violation of this act. Such persons shall be deemed to
5 have submitted themselves to the jurisdiction of this
6 state within the meaning of this section.

7 40-113.23. Penalties.

8 (a) Any person who, with intent to avoid, evade, or
9 prevent compliance, in whole or in part, with W.S. 21 or
10 22 of this act, removes from any place, conceals,
11 withholds, or destroys, mutilates, alters, or by any other
12 means falsifies any documentary material or goods or
13 sample of goods is guilty of a misdemeanor and on convic-
14 tion is punishable by a fine of not more than one thousand
15 dollars (\$1,000) or by confinement in the county jail for
16 not more than one (1) year, or both.

17 (b) If a person fails to comply with a directive of
18 the consumer protection division under W.S. 21 of this act
19 or with a civil investigative demand for documentary mate-
20 rial served on him under W.S. 22 of this act or if satis-
21 factory copying or reproduction of the material cannot be
22 done and the person refuses to surrender the material, the
23 consumer protection division may file in the district

SF 242

1 court in the county in which the person resides, is found,
2 or transacts business, and serve on the person, a petition
3 for an order of the court for enforcement of W.S. 21 and
4 22 of this act. If the person transacts business in more
5 than one county, the petition shall be filed in the county
6 in which the person maintains his principal place of busi-
7 ness, or in another county agreed on by the parties to the
8 petition.

9 (c) When a petition is filed in the district court
10 in any county under this section, the court shall have
11 jurisdiction to hear and determine the matter presented
12 and to enter any order required to carry into effect the
13 provisions of W.S. 21 and 22 of this act. Any final order
14 entered is subject to appeal to the Wyoming supreme court.
15 Failure to comply with any final order entered under this
16 section is punishable by contempt.

17 Section 2. If any provision of this act or its
18 application to any person or circumstance is held invalid,
19 the invalidity does not affect other provisions or appli-
20 cations of the act which can be given effect without the
21 invalid provision or application, and to this end the
22 provisions of this act are severable.

23 Section 3. W.S. 40-102 through 4-113 are repealed.

5F242

STATE OF WYOMING

77LSO-843
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1 Section 4. This act is effective May 28, 1977.

2 (END)

SF242

FISCAL NOTE

Fiscal Note No. 766
 Requester Senator McDaniel

L.S.O.	<u>843</u>	Draft	<u>01</u>
Bill No.		Jt. Res. No.	

Part I. Fiscal Data:

SHORT TITLE OF BILL: Wyoming Consumer Protection Act

STATUTORY REFERENCE
Nos.

W.S. 30-113 et al

NAME OF FUND

Not applicable

AGENCY TITLE:

SOURCE OF APPROPRIATION/REVENUE

Not applicable

New Program ☐
 Change in Existing Program ☒
 Local Government Impact ☐

If more than one appropriation is involved, show overall effect below, but show breakdown by appropriation and fiscal year on a separate page. Round to nearest hundred dollars.

EFFECT OF PROPOSAL	FISCAL PERIODS		
	BIENNIAL INCREASE OR (-) DECREASE		
	First Biennial	Second Biennial	Third Biennial
Salaries & Number of Personnel	\$		
Supporting Expenses			
Permanent Property			
Aids to Localities			
Other			
ESTIMATED TOTAL COST	\$		
GENERAL FUND			
FEDERAL FUND			
OTHER			
ESTIMATED TOTAL REVENUE	\$		

Part II. Explain in a clear and concise manner what effect this measure will have on the costs and revenues of state government. Specify the source of funds for appropriations. Include effect on the current biennium and also the long-range fiscal effect, if any. Show how you arrived at the estimate. Use attached sheet and any additional sheets which you may need.

NO FISCAL IMPACT.

Date <u>1/31/77</u>	Agency _____	Authorized Representative _____
Date _____	Legislative Auditor Clearance _____	

SF242