

ORIGINAL SENATE
FILE NO. SF0124

ENROLLED ACT NO. 32, SENATE

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

AN ACT relating to trade and commerce; amending prohibitions against unfair trade or commerce discrimination; authorizing investigatory powers for the attorney general for antitrust claims; providing for civil penalties and additional civil remedies relating to antitrust violations as specified; amending criminal penalties for antitrust violations as specified; clarifying the applicability of manufacturing requirements to discrimination provisions; amending and repealing provisions related to the authority and duties of enforcing authorities; and providing for an effective date.

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

Section 1. W.S. 40-4-114.1 and 40-4-114.2 are created to read:

40-4-114.1. Civil investigations by the attorney general.

(a) Whenever the attorney general has probable cause to believe that any person, firm, corporation or other entity, whether foreign or domestic, has engaged in or is engaging in a violation of any provision of this act or of any provision of federal antitrust law that may be enforced by the attorney general, the attorney general may initiate an investigation. As part of any investigation under this section, the attorney general may administer oaths and affirmations, subpoena witnesses, documents or other matters, propound interrogatories to be answered in writing under oath and collect evidence. Any interrogatory or subpoena served under this subsection shall inform the party served of the right to file a petition as provided by subsection (b) of this section.

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(b) Not later than five (5) business days after the service of any interrogatory or subpoena or at any time before the return date specified in the interrogatory or subpoena, the party served under this section may file in the district court in the county in which the party resides, the district court in the county where the party transacts business or the district court in Laramie county a petition for an order modifying or setting aside the interrogatory or subpoena. Any petition filed under this subsection shall be served upon the attorney general. The petitioner may raise any objection or privilege that would be available under this act or upon service of a subpoena in a civil action.

(c) If any matter that the attorney general seeks to obtain by subpoena is not located within Wyoming and is not reducible to electronic reproduction and transmission, the party subpoenaed may make the matter available to the attorney general to examine the matter at the place where it is located. The attorney general may designate representatives, including officials of the state in which the matter is located, to inspect the matter on the attorney general's behalf. The attorney general may respond to similar requests from officials of other states and may inspect a matter on their behalf.

(d) The attorney general may apply to the district court for an order compelling compliance of any party who fails to obey a subpoena or answer an interrogatory issued under this section without lawful excuse and upon reasonable notice to all persons affected by the subpoena or interrogatory.

(e) The attorney general may request that an individual who refuses to comply with a subpoena or answer

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an interrogatory on the grounds that the testimony or matter may incriminate the individual be ordered by the court to provide the testimony or matter. Except for 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 provided, or evidence derived therefrom, or received against the individual used in any criminal investigation or proceeding.

(f) Any person, firm, corporation or other entity, whether foreign or domestic, upon whom an interrogatory or subpoena is served pursuant to this section shall comply with the terms of the interrogatory or subpoena unless otherwise provided by this section or by order of the district court.

(g) 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, destroys or by any other means falsifies any matter or documentary material in the possession, custody or control of any person subject to the request or subpoena, or who knowingly conceals any relevant information with the intent to avoid, evade or prevent compliance shall be liable for a civil penalty as provided in this subsection. The attorney general may, upon petition to the court, recover a civil penalty not to exceed twenty-five thousand dollars (\$25,000.00). If civil penalties are assessed in or as the result of any litigation, the attorney general is entitled to reasonable attorney fees and costs.

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(h) Whenever criminal or civil intelligence, records of investigations, investigative information or any other information held by any state or federal agency is available to the attorney general on a confidential or restricted basis, the attorney general may obtain and use the information unless otherwise prohibited by law. Any records of investigations or intelligence or investigative information that are exempt from disclosure under the Public Records Act shall remain confidential and exempt from disclosure under that act.

(j) Any written response, testimony or document obtained by the attorney general under this section or any information derived directly or indirectly from any written response, testimony or document obtained by the attorney general shall be deemed records of investigations and shall be exempt from disclosure under the Public Records Act.

40-4-114.2. Civil enforcement by the attorney general.

(a) Whenever the attorney general has reasonable cause to believe that any person, firm, corporation or other entity, foreign or domestic, has engaged in, is engaging in or is about to engage in any action or practice that is unlawful under this act, the attorney general may bring an action in the name of the state of Wyoming against that person, firm, corporation or entity to:

(i) Obtain a declaratory judgment that the action or practice violates the provisions of this act;

(ii) Enjoin any action or practice that violates the provisions of this act by issuing a temporary

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restraining order, an ex parte temporary restraining order or a preliminary or permanent injunction, without bond;

(iii) Recover a civil penalty not to exceed fifty thousand dollars (\$50,000.00) for each violation of this act or of any injunction, judgment or consent agreement issued or entered into under this act;

(iv) Obtain an order requiring divestiture of any assets:

(A) Acquired in violation of W.S. 40-4-101 and after the court determines that divestiture is necessary to avoid the creation or continuation of a monopoly or to avoid any likely substantial lessening of competition that results from a transaction found to be in violation of W.S. 40-4-101; or

(B) To restore competition to any line of Wyoming commerce that has been eliminated by a violation of W.S. 40-4-101.

(v) Recover actual damages or restitution on behalf of the state and its agencies that are injured either directly or indirectly by reason of any violation of this act.

(b) The attorney general may bring a civil action in the name of the state of Wyoming as parens patriae on behalf of any person residing within Wyoming to secure damages or restitution for losses incurred directly or indirectly because of any violation of this act. For any action to be initiated under this subsection, the attorney general shall give notice to all persons on whose behalf the action would be initiated by publication or other means

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specified by the court. Any person on whose behalf a civil action would be brought may elect to have their claims excluded from the civil action by filing a notice of election with the court within the time specified in the notice by the attorney general. Any person who is represented by the attorney general in a civil action under this subsection who fails to submit a timely notice of election and for which a final judgment has been issued shall be precluded from asserting any claim or initiating any civil action that could have been brought based on the facts alleged or proven in the attorney general's action under this subsection.

(c) The attorney general shall recover the costs of any investigation, expert costs and reasonable attorney fees and costs if successful in any civil action initiated under this section.

(d) In lieu of initiating or continuing an investigation or civil action, the attorney general may accept and enter into a consent agreement with respect to any action or practice alleged to violate this act. Any consent agreement may include a stipulation for the payment of civil penalties as authorized in this act, reimbursement of the attorney general's reasonable expenses, costs and attorney fees, the payment of restitution and actual damages for Wyoming residents with an interest in the consent agreement or an agreement to abide by any injunctive provisions or prohibitions.

(e) Any civil action brought under this section may be brought in the district court of the county in which any party resides or has a principal place of business or in the district court of Laramie county.

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(f) In addition to any action authorized by state law, the attorney general may proceed under any provision of federal antitrust law to enforce the provisions of this act.

(g) This section shall apply only to actions initiated by the attorney general.

Section 2. W.S. 40-4-101(a)(intro), (i), by creating a new paragraph (iv) and (d), 40-4-104, 40-4-122 and 40-4-123 are amended to read:

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

(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, conspiracy, asset acquisition, consolidation, merger or combination of any kind whatsoever to prevent or substantially lessen competition, create a monopoly or to control or influence production or prices thereof;~~;- or~~

(iv) Monopolize, attempt to monopolize or combine or conspire to monopolize any part of trade or commerce.

(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~~ 40-4-123.

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40-4-104. Criminal enforcement and penalties.

(a) Any person, firm, or corporation or other entity violating any of the provisions of this chapter-act shall be fined in any sum not more than ~~five thousand dollars (\$5,000.00)~~ fifty thousand dollars (\$50,000.00) per violation of this act, or by imprisonment in the county jail not exceeding one (1) year, or both. ~~such fine and imprisonment.~~

(b) The district attorney may enforce criminal violations of this act against any person, firm, corporation or entity.

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~~ punishable as provided by this act.

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

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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~~ punishable as provided by this act.

Section 3. W.S. 40-4-102 and 40-4-103 are repealed.

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Section 4. This act is effective July 1, 2021.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk