

1                   **PROTECTION OF NONPUBLIC PERSONAL INFORMATION**

2   2003 GENERAL SESSION

3   STATE OF UTAH

4 **This act modifies the Commerce and Trade title to enact the Protection of Nonpublic**  
5 **Personal Information Act. This act defines terms, requires a notice be given by a**  
6 **commercial entity under certain circumstances, and establishes the liability of a**  
7 **commercial entity for violating the act.**

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 ENACTS:

10           **13-37-101**, Utah Code Annotated 1953

11           **13-37-102**, Utah Code Annotated 1953

12           **13-37-201**, Utah Code Annotated 1953

13           **13-37-202**, Utah Code Annotated 1953

14           **13-37-203**, Utah Code Annotated 1953

15 *Be it enacted by the Legislature of the state of Utah:*

16           Section 1. Section **13-37-101** is enacted to read:

17           **CHAPTER 37. PROTECTION OF NONPUBLIC PERSONAL INFORMATION ACT**

18   **Part 1. General Provisions**

19           **13-37-101. Title.**

20           This chapter is known as the "Protection of Nonpublic Information Act."

21           Section 2. Section **13-37-102** is enacted to read:

22           **13-37-102. Definitions.**

23           As used in this chapter:

24           (1) "Affiliate" means a person that controls, is controlled by, or is under common  
25 control with:

26           (a) a commercial entity; and

27           (b) (i) directly; or

28           (ii) indirectly through one or more intermediaries.

29           (2) "Commercial entity" means a person that in the ordinary course of business  
30 transacts a consumer transaction in this state.

31           (3) "Compensation" means anything of economic value that is paid, loaned, granted,  
32 given, donated, or transferred to a commercial entity for or in consideration of the disclosure of

33 nonpublic personal information.

34 (4) (a) "Consumer transaction in this state" means:

35 (i) a sale, lease, assignment, award by chance, or other written or oral transfer or  
36 disposition:

37 (A) that is initiated or completed in this state; and

38 (B) of:

39 (I) goods;

40 (II) services; or

41 (III) other tangible or intangible property, except securities and insurance; or

42 (ii) a transaction:

43 (A) that is initiated or completed in this state; and

44 (B) constitutes credit offered or extended by a commercial entity to a person primarily  
45 for personal, family, or household purposes.

46 (b) "Consumer transaction" includes:

47 (i) the use of nonpublic personal information in relation to a transaction with a person  
48 if the transaction is for primarily personal, family, or household purposes; and

49 (ii) with respect to any transaction described in Subsection (4)(a):

50 (A) an offer or solicitation;

51 (B) an agreement;

52 (C) the performance of an agreement; or

53 (D) a charitable solicitation as defined in Section 13-11-3.

54 (5) (a) "Nonpublic personal information" means information that:

55 (i) is not public information; and

56 (ii) either alone or in conjunction with public information, identifies a person in  
57 distinction from other persons.

58 (b) "Nonpublic personal information" includes:

59 (i) a person's Social Security number;

60 (ii) information used to determine a person's ability to obtain credit, including a  
61 person's:

62 (A) income; or

63 (B) employment history;

64 (iii) the purchasing patterns of a person; or

65 (iv) the personal preferences of a person.

66 (6) "Public information" means a person's:

67 (a) name;

68 (b) telephone number; or

69 (c) street address.

70 (7) (a) "Third party" means a person other than the commercial entity that obtains

71 nonpublic personal information.

72 (b) "Third party" includes an affiliate of the commercial entity that obtains nonpublic

73 personal information.

74 Section 3. Section **13-37-201** is enacted to read:

75 **Part 2. Notice of Disclosure**

76 **13-37-201. Required notice.**

77 (1) (a) In accordance with this section, a commercial entity shall provide the notice

78 described in this section to a person if:

79 (i) the commercial entity enters into a consumer transaction in this state with that

80 person;

81 (ii) as a result of the consumer transaction described in Subsection (1)(a), the

82 commercial entity obtains nonpublic personal information concerning that person; and

83 (iii) the commercial entity intends to or wants the ability to disclose the nonpublic

84 personal information:

85 (A) to a third party; and

86 (B) for compensation; and

87 (iv) the compensation described in Subsection (1)(a)(iii)(B):

88 (A) is directly related to the commercial entity disclosing the nonpublic personal

89 information; and

90 (B) if the disclosure of the nonpublic personal information is related to the third party

91 providing to the commercial entity any of the following, is received by the commercial entity

92 for or in consideration of the third party providing to the commercial entity the:

93 (I) services;

94 (II) personal or real property; or

95 (III) other thing of value.

96 (b) For purposes of this chapter, a commercial entity is considered to have obtained  
97 information as a result of a transaction if:

98 (i) the person provides the information to the commercial entity:

99 (A) at any time during the transaction; and

100 (B) at the request of the commercial entity; or

101 (ii) (A) the commercial entity otherwise obtains the information; and

102 (B) but for the transaction, the commercial entity would not obtain the information.

103 (2) The notice required by Subsection (1) shall be given before the earlier of:

104 (a) the point at which the person is requested to provide the nonpublic personal  
105 information; or

106 (b) the commercial entity otherwise obtains the nonpublic personal information as a  
107 result of the commercial transaction described in Subsection (1)(a).

108 (3) The notice required by Subsection (1):

109 (a) shall read substantially as follows: "We may choose to disclose nonpublic personal  
110 information about you, the consumer, to a third party for compensation.";

111 (b) may be made:

112 (i) orally, if the consumer transaction itself is entirely conducted orally; or

113 (ii) in writing, if the notice is written in dark bold; and

114 (c) shall be sufficiently conspicuous so that a reasonable person would perceive the  
115 notice before providing the nonpublic personal information.

116 (4) Notwithstanding the other provisions of this section, a commercial entity is  
117 considered to have complied with this section if:

118 (a) a federal law or regulation imposes on the commercial entity a notice requirement  
119 regarding the disclosure of nonpublic personal information; and

120 (b) the commercial entity complies with all federal requirements:

121 (i) regarding notice of the disclosure of nonpublic personal information; and

122 (ii) that are applicable to the commercial entity.

123 Section 4. Section **13-37-202** is enacted to read:

124 **13-37-202. Disclosure of nonpublic personal information prohibited without**  
125 **notice.**

126 A commercial entity may not disclose nonpublic personal information that the  
127 commercial entity obtained as a result of a consumer transaction in this state if the commercial  
128 entity fails to comply with Section 13-37-201.

129 Section 5. Section **13-37-203** is enacted to read:

130 **13-37-203. Liability.**

131 (1) A person may bring an action against a commercial entity in a court of competent  
132 jurisdiction in this state if:

133 (a) the commercial entity enters into a consumer transaction in this state with that  
134 person;

135 (b) as a result of the consumer transaction described in Subsection (1)(a), the  
136 commercial entity obtains nonpublic personal information concerning that person; and

137 (c) the commercial entity violates this chapter.

138 (2) In an action brought under Subsection (1), a commercial entity that violates this  
139 chapter is liable to the person who brings the action for:

140 (a) \$500 for each violation of this chapter that relates to the nonpublic personal  
141 information of the person who brings the action; and

142 (b) court costs.

143 (3) A person may not bring a class action under this chapter.