

INTERNET PRIVACY ACT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies Commerce and Trade provisions to enact the Internet Privacy Act.

Highlighted Provisions:

This bill:

- ▶ enacts provisions governing the disclosure of personally identifiable information by an Internet business;
- ▶ requires an Internet business to provide privacy notices; and
- ▶ enacts remedies for violations.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

13-39-101, Utah Code Annotated 1953

13-39-102, Utah Code Annotated 1953

13-39-103, Utah Code Annotated 1953

13-39-201, Utah Code Annotated 1953

13-39-202, Utah Code Annotated 1953

13-39-203, Utah Code Annotated 1953

13-39-301, Utah Code Annotated 1953



- 59 (B) authenticated presence on the Internet; and
- 60 (ii) provides the access or presence described in Subsection (4)(a)(i) by providing
- 61 transit routing of Internet protocol packets for and on behalf of the consumer.
- 62 (b) "Internet service provider" does not include a person that offers on a common
- 63 carrier basis:
- 64 (i) access to telecommunications facilities; or
- 65 (ii) telecommunication services by means of telecommunications facilities.
- 66 (5) "Ordinary course of business" means activities related to an Internet business:
- 67 (a) collecting debts owed to the Internet business;
- 68 (b) processing a request for materials or services to be provided by the Internet
- 69 business; or
- 70 (c) transferring ownership.
- 71 (6) (a) "Personally identifiable information" means information that identifies:
- 72 (i) a consumer by:
- 73 (A) name;
- 74 (B) account number;
- 75 (C) physical address;
- 76 (D) email address;
- 77 (E) telephone number;
- 78 (F) Social Security number;
- 79 (G) credit card information; or
- 80 (H) bank account information;
- 81 (ii) a consumer as having requested or obtained specific materials or services from an
- 82 Internet business;
- 83 (iii) an Internet site visited by a consumer; or
- 84 (iv) any of the contents of a consumer's data-storage device.
- 85 (b) "Personally identifiable information" does not include:
- 86 (i) information:
- 87 (A) in aggregate or summary form; and
- 88 (B) from which the identity of an individual consumer is not ascertainable; or
- 89 (ii) information:

90 (A) from which all information identifying an individual consumer has been removed;
91 and

92 (B) that cannot be combined with other information to identify an individual consumer.

93 (7) "Website operator" means a person who:

94 (a) (i) is domiciled in the state; or

95 (ii) knowingly transacts business with residents of the state;

96 (b) operates a website on the Internet for a commercial purpose; and

97 (c) collects or maintains personally identifiable information about a consumer.

98 Section 3. Section **13-39-103** is enacted to read:

99 **13-39-103. Other law.**

100 (1) Except as provided in Subsection (2), this chapter does not limit any greater
101 protection of the privacy of personally identifiable information under other law.

102 (2) This chapter does not limit the authority under:

103 (a) other state law under which a peace officer or prosecuting authority may obtain
104 information; or

105 (b) federal law to obtain information including any federal law under which a peace
106 officer or prosecuting authority may obtain information.

107 Section 4. Section **13-39-201** is enacted to read:

108 **Part 2. Disclosure of Personally Identifiable Information**

109 **13-39-201. Disclosure of personally identifiable information.**

110 Except as provided in Section 13-39-202 or 13-39-203, an Internet business may not
111 knowingly disclose to any person the personally identifiable information concerning a
112 consumer of the Internet business.

113 Section 5. Section **13-39-202** is enacted to read:

114 **13-39-202. When disclosure of personally identifiable information is required.**

115 Notwithstanding Section 13-39-201, an Internet business shall disclose personally
116 identifiable information concerning a consumer:

117 (1) to the extent not otherwise prohibited by law, pursuant to:

118 (a) a subpoena;

119 (b) a warrant; or

120 (c) subject to the requirements of Subsections (2) and (3), a court order;

121 (2) pursuant to a court order in a civil proceeding if the person seeking the personally
122 identifiable information shows:

123 (a) a compelling need for the information; and

124 (b) that the compelling need described in Subsection (2)(a) cannot be accommodated
125 by other means;

126 (3) only to the extent necessary to establish a fact described in Subsection (3)(b), to a
127 court in a civil action if:

128 (a) the civil action is:

129 (i) commenced by the Internet business; and

130 (ii) brought:

131 (A) for conversion; or

132 (B) to enforce collection of the following that are unpaid:

133 (I) subscription fees; or

134 (II) purchase amounts;

135 (b) disclosure of the personally identifiable information is necessary to establish the
136 fact of:

137 (i) conversion; or

138 (ii) the failure to pay an amount described in Subsection (3)(a)(ii)(B); and

139 (c) the court finds that there are appropriate safeguards against unauthorized disclosure
140 of the personally identifiable information; or

141 (4) to the consumer who is the subject of the personally identifiable information upon
142 written or electronic request by the consumer.

143 Section 6. Section **13-39-203** is enacted to read:

144 **13-39-203. When disclosure of personally identifiable information is permitted --**

145 **Authorization -- Contract requirements.**

146 (1) Notwithstanding Section 13-39-201, an Internet business may disclose personally
147 identifiable information concerning a consumer to:

148 (a) any person, if the Internet business obtains the authorization of the consumer in
149 accordance with Subsection (2); or

150 (b) any person to the extent authorized under Title 77, Chapter 23a, Interception of
151 Communications Act.

152 (2) (a) An Internet business may obtain a consumer's authorization of the disclosure of
153 personally identifiable information related to the consumer only if:

154 (i) the contract between the Internet business and the consumer complies with
155 Subsection (3); and

156 (ii) the authorization is obtained in accordance with the contract described in
157 Subsection (2)(a)(i).

158 (b) An Internet business's requests from a consumer for authorization to disclose
159 personally identifiable information related to the consumer shall reasonably describe:

160 (i) the types of persons to whom personally identifiable information may be disclosed;
161 and

162 (ii) the anticipated uses of the personally identifiable information that is disclosed.

163 (3) (a) A contract between an Internet business and a consumer shall notify the
164 consumer as to whether the contract requires that for an authorization described in Subsection
165 (2) to be effective the consumer must:

166 (i) affirmatively respond to a request by the Internet business for authorization:

167 (A) in writing; or

168 (B) by electronic means; or

169 (ii) fail to respond to a request by the Internet business for authorization in the time
170 period specified in the request for authorization.

171 (b) The notice required by this Subsection (3) shall be:

172 (i) conspicuous; and

173 (ii) written so that a consumer without technical knowledge of the Internet can
174 understand the notice.

175 Section 7. Section **13-39-301** is enacted to read:

176 **Part 3. Security and Privacy Measures**

177 **13-39-301. Security of information.**

178 An Internet business shall take reasonable steps to maintain the security and privacy of
179 a consumer's personally identifiable information.

180 Section 8. Section **13-39-302** is enacted to read:

181 **13-39-302. Privacy notices.**

182 (1) An Internet business shall provide consumers notice of:

- 183 (a) the privacy policy of the Internet business;
- 184 (b) subject to Section 13-39-203, the procedure followed by the Internet business to
- 185 obtain authorization from the consumer for disclosure of personally identifiable information;
- 186 and
- 187 (c) the services provided by the Internet business that allow a consumer to increase the
- 188 privacy of the consumer's personally identifiable information.

189 (2) The notice required by Subsection (1) shall be:

- 190 (a) conspicuous; and
- 191 (b) written so that a consumer without technical knowledge of the Internet can
- 192 understand the notice.

193 Section 9. Section **13-39-401** is enacted to read:

194 **Part 4. Remedies**

195 **13-39-401. Civil liability -- Prohibition of class action.**

196 (1) A consumer may bring a civil action in a court of competent jurisdiction against an

197 Internet business for a violation of this chapter.

198 (2) (a) If an Internet business is found to have violated this chapter in a civil action

199 brought under Subsection (1), the Internet business is liable to the consumer for the greater of:

- 200 (i) \$500 for each violation of this chapter; or
- 201 (ii) actual damages.
- 202 (b) In addition to amounts described in Subsection (2)(a), the court may award a
- 203 consumer:

- 204 (i) reasonable attorney fees; and
- 205 (ii) court costs.

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

207 Section 10. Section **13-39-402** is enacted to read:

208 **13-39-402. Defenses.**

209 In an action under this chapter, it is a defense that the Internet business has established

210 and implemented reasonable practices and procedures to prevent a violation of this chapter.

211 Section 11. Section **13-39-403** is enacted to read:

212 **13-39-403. Administrative remedies.**

213 (1) A consumer whose personally identifiable information is disclosed in violation of

214 this chapter may file a complaint with the division.

215 (2) If the division receives a complaint described in Subsection (1), the division may
216 investigate and assess the administrative fines described in Subsection (3) for violations of this
217 chapter.

218 (3) Any person who violates this chapter is subject to:

219 (a) a cease and desist order; and

220 (b) an administrative fine of not less than \$100 or more than \$1,000 for each separate
221 violation.

222 (4) All administrative fines collected under this chapter shall be deposited in the
223 Consumer Protection Education and Training Fund created in Section 13-2-8.

224 (5) Upon referral from the division, the attorney general or any district or county
225 attorney may bring an action in any court of competent jurisdiction for the collection of
226 administrative fines assessed by the division under this section.

Legislative Review Note
as of 10-6-03 2:17 PM

This bill regulates Internet businesses who provide services to Utah residents. Case law surrounding regulation of Internet activities is evolving. State regulations of Internet activities have been challenged for violating principles such as the Commerce Clause of the United States Constitution. Some courts have indicated that the need for national uniformity might limit a state's ability to regulate Internet activities. Other court rulings indicate that regulations like those contained in this bill could be upheld because the regulations do not impose a greater burden on out of state Internet businesses than is imposed on in state Internet businesses and regulate only service that is provided to Utah residents.

Office of Legislative Research and General Counsel

State Impact

Enforcement of this bill will need an appropriation of \$84,800 in FY 05 and \$71,000 in FY 06. Spending from the Commerce Service Fund could affect the revenues available to the General Fund. This bill has a Legislative Review Note. If the bill is challenged in court there could be additional costs to the state.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Commerce Service Fund	\$84,800	\$71,000	\$0	\$0
TOTAL	\$84,800	\$71,000	\$0	\$0

Individual and Business Impact

Internet Service Providers may be subject to increased hardware and software costs for compliance and liability related insurance costs.

Office of the Legislative Fiscal Analyst