

**UTAH E-COMMERCE INTEGRITY ACT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: Bradley G. Last

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**LONG TITLE**

**Committee Note:**

The Public Utilities and Technology Interim Committee recommended this bill.

**General Description:**

This bill contains prohibitions and other provisions concerning Internet-related conduct, including phishing, pharming, spyware, and cybersquatting.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ prohibits a person from facilitating certain types of fraud and injury through use of electronic communications;
- ▶ allows for the removal of domain names and online content by an Internet registrar or Internet service provider under certain circumstances;
- ▶ prohibits contrary laws enacted by a political subdivision of the state;
- ▶ forbids the use of various types of software, commonly called spyware, if used for certain purposes;
- ▶ provides exceptions from spyware provisions for various types of communications and interactions, including authorized diagnostics;

~~§→ [→ provides penalties, both criminal and civil, for violations of the bill's provisions;] ←§~~

- ▶ prohibits the registration of domain names under certain circumstances, commonly referred to as cybersquatting;

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- 28           ▶ provides civil penalties for a violation of cybersquatting provisions; and
- 29           ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           This bill provides an effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

36           **70-3a-402**, as last amended by Laws of Utah 2008, Chapter 258

37 ENACTS:

38           **13-40-103**, Utah Code Annotated 1953

39           **13-40-203**, Utah Code Annotated 1953

40           **13-40-204**, Utah Code Annotated 1953

41           **13-40-303**, Utah Code Annotated 1953

42           **13-40-402**, Utah Code Annotated 1953

43           **70-3a-309**, Utah Code Annotated 1953

44 REPEALS AND REENACTS:

45           **13-40-101**, as enacted by Laws of Utah 2004, Chapter 363

46           **13-40-102**, as last amended by Laws of Utah 2005, Chapter 168

47           **13-40-201**, as last amended by Laws of Utah 2005, Chapter 168

48           **13-40-202**, as enacted by Laws of Utah 2005, Chapter 168

49           **13-40-301**, as last amended by Laws of Utah 2005, Chapter 168

50           **13-40-302**, as last amended by Laws of Utah 2005, Chapter 168

51           **13-40-401**, as enacted by Laws of Utah 2004, Chapter 363



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

54           Section 1. Section **13-40-101** is repealed and reenacted to read:

55                           **CHAPTER 40. UTAH E-COMMERCE INTEGRITY ACT**

56   **Part 1. General Provisions**

57           **13-40-101. Title.**

58           This chapter is known as the "Utah E-Commerce Integrity Act."

59 Section 2. Section **13-40-102** is repealed and reenacted to read:

60 **13-40-102. Definitions.**

61 As used in this chapter:

62 (1) (a) "Cause to be copied" means to distribute or transfer computer software, or any  
63 component of computer software.

64 (b) "Cause to be copied" does not include providing:

65 (i) transmission, routing, intermediate temporary storage, or caching of software;

66 (ii) a storage or hosting medium, such as a compact disk, website, or computer server  
67 through which the software was distributed by a third party; or

68 (iii) an information location tool, such as a directory, index, reference, pointer, or  
69 hypertext link, through which the user of the computer located the software.

70 (2) (a) "Computer software" means a sequence of instructions written in any  
71 programming language that is executed on a computer.

72 (b) "Computer software" does not include a data component of a webpage that is not  
73 executable independently of the webpage.

74 (3) "Computer virus" means a computer program or other set of instructions that is  
75 designed to degrade the performance of or disable a computer or computer network and is  
76 designed to have the ability to replicate itself on another computer or computer network  
77 without the authorization of the owner of the other computer or computer network.

78 (4) "Damage" means any significant impairment to the:

79 (a) performance of a computer; or

80 (b) integrity or availability of data, software, a system, or information.

81 (5) "Execute," when used with respect to computer software, means the performance of  
82 the functions or the carrying out of the instructions of the computer software.

83 (6) "False pretenses" means the representation of a fact or circumstance that is not true  
84 and is calculated to mislead.

85 (7) (a) "Identifying information" means any information that can be used to access a  
86 person's financial accounts or to obtain goods and services, including the person's:

87 (i) address;

88 (ii) birth date;

89 (iii) Social Security number;

- 90 (iv) driver license number;
- 91 (v) non-driver governmental identification number;
- 92 (vi) telephone number;
- 93 (vii) bank account number;
- 94 (viii) student identification number;
- 95 (ix) credit or debit card number;
- 96 (x) personal identification number;
- 97 (xi) unique biometric data;
- 98 (xii) employee or payroll number;
- 99 (xiii) automated or electronic signature;
- 100 (xiv) computer image file;
- 101 (xv) photograph; or
- 102 (xvi) computer screen name or password.

103 (b) "Identifying information" does not include information that is lawfully obtained  
104 from publicly available information, or from federal, state, or local government records  
105 lawfully made available to the general public.

106 (8) "Intentionally deceptive" means any of the following:

- 107 (a) an intentionally and materially false or fraudulent statement;
- 108 (b) a statement or description that intentionally omits or misrepresents material  
109 information in order to deceive an owner or operator of a computer; or

110 (c) an intentional and material failure to provide a notice to an owner or operator  
111 concerning the installation or execution of computer software, for the purpose of deceiving the  
112 owner or operator.

113 (9) "Internet" means the global information system that is logically linked together by a  
114 globally unique address space based on the Internet protocol (IP), or its subsequent extensions,  
115 and that is able to support communications using the transmission control protocol/Internet  
116 protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and  
117 that provides, uses, or makes accessible, either publicly or privately, high-level services layered  
118 on communications and related infrastructure.

119 (10) "Internet service provider" means:

- 120 (a) an Internet service provider, as defined in Section 76-10-1230; or

121 (b) a hosting company, as defined in Section 76-10-1230.

122 (11) "Message" means a graphical or text communication presented to an authorized  
123 user of a computer.

124 (12) (a) "Owner or operator" means the owner or lessee of a computer, or a person  
125 using a computer with the owner's or lessee's authorization.

126 (b) "Owner or operator" does not include a person who owned a computer before the  
127 first retail sale of the computer.

128 (13) "Person" means any individual, partnership, corporation, limited liability  
129 company, or other organization, or any combination thereof.

130 (14) "Personally identifiable information" means any of the following information if it  
131 allows the entity holding the information to identify the owner or operator of a computer:

132 (a) the first name or first initial in combination with the last name and a home or other  
133 physical address including street name;

134 (b) a personal identification code in conjunction with a password required to access an  
135 identified account, other than a password, personal identification number, or other  
136 identification number transmitted by an authorized user to the issuer of the account or its agent;

137 (c) a Social Security number, tax identification number, driver license number,  
138 passport number, or any other government-issued identification number; or

139 (d) an account balance, overdraft history, or payment history that personally identifies  
140 an owner or operator of a computer.

141 (15) "Webpage" means a location that has a single uniform resource locator (URL)  
142 with respect to the World Wide Web or another location that can be accessed on the Internet.

143 Section 3. Section **13-40-103** is enacted to read:

144 **13-40-103. Application of chapter.**

145 This chapter applies to conduct involving a computer, software, or an advertisement  
146 located in, sent to, or displayed in this state.

147 Section 4. Section **13-40-201** is repealed and reenacted to read:

148 **Part 2. Phishing and Pharming**

149 **13-40-201. Phishing and pharming.**

150 (1) A person is guilty of phishing if, with intent to defraud or injure an individual, or  
151 with knowledge that the person is facilitating a fraud or injury to be perpetrated by another:

152 (a) the person makes a communication under false pretenses purporting to be by or on  
153 behalf of a legitimate business, without the authority or approval of the legitimate business; and

154 (b) the person uses the communication to induce, request, or solicit another person to  
155 provide identifying information or property.

156 (2) A person is guilty of pharming if, with intent to defraud or injure another, or with  
157 knowledge that the person is facilitating a fraud or injury to be perpetrated by another, the  
158 person:

159 (a) creates or operates a webpage that represents itself as belonging to or being  
160 associated with a legitimate business, without the authority or approval of the legitimate  
161 business, if that webpage may induce any user of the Internet to provide identifying  
162 information or property; or

163 (b) alters a setting on a user's computer or similar device or software program through  
164 which the user may search the Internet, causing any user of the Internet to view a  
165 communication that represents itself as belonging to or being associated with a legitimate  
166 business, if the message has been created or is operated without the authority or approval of the  
167 legitimate business and induces, requests, or solicits any user of the Internet to provide  
168 identifying information or property.

169 Section 5. Section **13-40-202** is repealed and reenacted to read:

170 **13-40-202. Removal of domain name or content -- Liability.**

171 If an Internet registrar or Internet service provider believes in good faith that an Internet  
172 domain name controlled or operated by the Internet registrar or Internet service provider, or  
173 content residing on an Internet website or other online location controlled or operated by the  
174 Internet registrar or Internet service provider, is used to engage in a violation of this part, the  
175 Internet registrar or Internet service provider is not liable under any provision of the laws of  
176 this state or of any political subdivision of the state for removing or disabling access to the  
177 Internet domain name or other content.

178 Section 6. Section **13-40-203** is enacted to read:

179 **13-40-203. Application of part.**

180 (1) This part applies to the discovery of a phishing or pharming incident that occurs on  
181 or after July 1, 2010.

182 (2) This part does not apply to a telecommunications provider's or Internet service

183 provider's good faith transmission or routing of, or intermediate temporary storing or caching  
184 of, identifying information.

185 Section 7. Section **13-40-204** is enacted to read:

186 **13-40-204. Relation to other law.**

187 The conduct prohibited by this part is of statewide concern, and this part's provisions  
188 supersede and preempt any provision of law of a political subdivision of the state.

189 Section 8. Section **13-40-301** is repealed and reenacted to read:

190 **Part 3. Spyware Protection**

191 **13-40-301. Prohibition on the use of software.**

192 A person who is not an owner or operator of a computer may not cause computer  
193 software to be copied on the computer knowingly, with conscious avoidance of actual  
194 knowledge, or willfully, if the software is used to:

195 (1) modify, through intentionally deceptive means, settings of a computer controlling:

196 (a) the webpage that appears when an owner or operator launches an Internet browser  
197 or similar computer software used to access and navigate the Internet;

198 (b) the default provider or web proxy that an owner or operator uses to access or search  
199 the Internet; or

200 (c) an owner's or an operator's list of bookmarks used to access webpages;

201 (2) collect, through intentionally deceptive means, personally identifiable information:

202 (a) through the use of a keystroke-logging function that records all or substantially all  
203 keystrokes made by an owner or operator of a computer and transfers that information from the  
204 computer to another person;

205 (b) in a manner that correlates personally identifiable information with data concerning  
206 all or substantially all of the webpages visited by an owner or operator, other than webpages  
207 operated by the person providing the software, if the computer software was installed in a  
208 manner designed to conceal from all authorized users of the computer the fact that the software  
209 is being installed; or

210 (c) by extracting from the hard drive of an owner's or an operator's computer, an  
211 owner's or an operator's Social Security number, tax identification number, driver license  
212 number, passport number, any other government-issued identification number, an account  
213 balance, or overdraft history for a purpose unrelated to any of the purposes of the software or

214 service described to an authorized user;

215 (3) prevent, through intentionally deceptive means, an owner's or an operator's  
216 reasonable efforts to block or disable the installation or execution of computer software by  
217 causing computer software that the owner or operator has properly removed or disabled to  
218 automatically reinstall or reactivate on the computer without the authorization of an authorized  
219 user;

220 (4) intentionally misrepresent that computer software will be uninstalled or disabled by  
221 an owner's or an operator's action;

222 (5) through intentionally deceptive means, remove, disable, or render inoperative  
223 security, antispyware, or antivirus computer software installed on an owner's or an operator's  
224 computer;

225 (6) enable use of an owner's or an operator's computer to:

226 (a) access or use a modem or Internet service for the purpose of causing damage to an  
227 owner's or an operator's computer or causing an owner or operator, or a third party affected by  
228 that conduct, to incur financial charges for a service that the owner or operator did not  
229 authorize;

230 (b) open multiple, sequential, stand-alone messages in an owner's or an operator's  
231 computer without the authorization of an owner or operator and with knowledge that a  
232 reasonable computer user could not close the messages without turning off the computer or  
233 closing the software application in which the messages appear, unless the communication  
234 originated from the computer's operating system, a software application the user activated, or a  
235 service provider that the user chose to use, or was presented for any of the purposes described  
236 in Section 13-40-303; or

237 (c) transmit or relay commercial electronic mail or a computer virus from the  
238 computer, if the transmission or relay is initiated by a person other than the authorized user  
239 without the authorization of an authorized user;

240 (7) modify, without the authorization of an owner or operator, any of the following  
241 settings related the computer's access to, or use of, the Internet:

242 (a) settings that protect information about an owner or operator for the purpose of  
243 taking personally identifiable information of the owner or operator;

244 (b) security settings, for the purpose of causing damage to a computer; or



245 (c) settings that protect the computer from the uses identified in Subsection (6); or  
246 (8) prevent, without the authorization of an owner or operator, an owner's or an  
247 operator's reasonable efforts to block the installation of, or to disable, computer software by:  
248 (a) presenting the owner or operator with an option to decline installation of computer  
249 software with knowledge that, when the option is selected by the authorized user, the  
250 installation nevertheless proceeds;  
251 (b) falsely representing that computer software has been disabled;  
252 (c) requiring in an intentionally deceptive manner the user to access the Internet to  
253 remove the software with knowledge or reckless disregard of the fact that the software  
254 frequently operates in a manner that prevents the user from accessing the Internet;  
255 (d) changing the name, location, or other designation information of the software for  
256 the purpose of preventing an authorized user from locating the software to remove it;  
257 (e) using randomized or intentionally deceptive filenames, directory folders, formats,  
258 or registry entries for the purpose of avoiding detection and removal of the software by an  
259 authorized user;  
260 (f) causing the installation of software in a particular computer directory or in computer  
261 memory for the purpose of evading an authorized user's attempt to remove the software from  
262 the computer; or  
263 (g) requiring, without the authority of the owner of the computer, that an authorized  
264 user obtain a special code or download software from a third party to uninstall the software.

265 Section 9. Section **13-40-302** is repealed and reenacted to read:

266 **13-40-302. Other prohibited conduct.**

267 A person who is not an owner or operator of a computer may not, with regard to the  
268 computer:

269 (1) induce an owner or operator to install a computer software component onto the  
270 owner's or the operator's computer by intentionally misrepresenting that installing the computer  
271 software is necessary for security or privacy reasons or in order to open, view, or play a  
272 particular type of content; or

273 (2) use intentionally deceptive means to cause the execution of a computer software  
274 component with the intent of causing the computer to use the computer software component in  
275 a manner that violates any other provision of this chapter.

276 Section 10. Section **13-40-303** is enacted to read:

277 **13-40-303. Exceptions.**

278 Sections 13-40-301 and 13-40-302 do not apply to the monitoring of, or interaction  
 279 with, an owner's or an operator's Internet or other network connection, service, or computer, by  
 280 a telecommunications carrier, cable operator, computer hardware or software provider, or  
 281 provider of information service or interactive computer service for network or computer  
 282 security purposes, diagnostics, technical support, maintenance, repair, network management,  
 283 authorized updates of computer software or system firmware, authorized remote system  
 284 management, or detection or prevention of the unauthorized use of or fraudulent or other illegal  
 285 activities in connection with a network, service, or computer software, including scanning for  
 286 and removing computer software prescribed under this chapter.

287 Section 11. Section **13-40-401** is repealed and reenacted to read:

288 **Part 4. Enforcement**

289 **13-40-401. Phishing and pharming violations.**

290 (1) ~~§→ [A person who violates Part 2, Phishing and Pharming, is guilty of a third degree~~  
 291 ~~felony;~~

292 ~~——(2) ←§~~ A civil action against a person who violates any provision of Part 2, Phishing and  
 293 Pharming, may be filed by:

294 (a) an Internet service provider that is adversely affected by the violation;

295 (b) an owner of a webpage, computer server, or a trademark that is used without  
 296 authorization in the violation; or

297 (c) the attorney general.

298 ~~§→ [(3)] (2) ←§~~ A person permitted to bring a civil action under Subsection (2) may obtain  
 298a either

299 actual damages for a violation of this chapter or a civil penalty not to exceed \$150,000 per  
 300 violation of Part 2, Phishing and Pharming.

301 ~~§→ [(4)] (3) ←§~~ A violation of Part 2, Phishing and Pharming, by a state-chartered or  
 301a licensed

302 financial institution is enforceable exclusively by the financial institution's primary state  
 303 regulator.

304 Section 12. Section **13-40-402** is enacted to read:

305 **13-40-402. Spyware protection violations.**

306 (1) The attorney general, an Internet service provider, or a software company that

307 expends resources in good faith assisting authorized users harmed by a violation of Part 3,  
308 Spyware Protection, or a trademark owner whose mark is used to deceive authorized users in  
309 violation of Part 3, Spyware Protection, may bring a civil action against a person who violates  
310 Part 3, Spyware Protection, to recover:

311 (a) actual damages and liquidated damages of at least \$1,000 per violation of Part 3,  
312 Spyware Protection, not to exceed \$1,000,000 for a pattern or practice of violations; and

313 (b) attorney fees and costs.

314 (2) The court may increase a damage award to an amount equal to not more than three  
315 times the amount otherwise recoverable under Subsection (1) if the court determines that the  
316 defendant committed the violation willfully and knowingly.

317 (3) The court may reduce liquidated damages recoverable under Subsection (1) to a  
318 minimum of \$100, not to exceed \$100,000 for each violation, if the court finds that the  
319 defendant established and implemented practices and procedures reasonably designed to  
320 prevent a violation of Part 3, Spyware Protection.

321 (4) In the case of a violation of Subsection 13-40-301(6)(a) that causes a  
322 telecommunications carrier or provider of voice over Internet protocol service to incur costs for  
323 the origination, transport, or termination of a call triggered using the modem or  
324 Internet-capable device of a customer of the telecommunications carrier or provider of voice  
325 over Internet protocol as a result of the violation, the telecommunications carrier or provider of  
326 voice over Internet protocol may bring a civil action against the violator:

327 (a) to recover the charges the telecommunications carrier or provider of voice over  
328 Internet protocol is required to pay to another carrier or to an information service provider as a  
329 result of the violation, including charges for the origination, transport, or termination of the  
330 call;

331 (b) to recover the costs of handling customer inquiries or complaints with respect to  
332 amounts billed for the calls;

333 (c) to recover reasonable attorney fees and costs; and

334 (d) for injunctive relief.

335 (5) For purposes of a civil action under Subsections (1), (2), and (3), a single action or  
336 conduct that violates more than one provision of Part 3, Spyware Protection, shall be  
337 considered as multiple violations based on the number of provisions violated.

338 Section 13. Section **70-3a-309** is enacted to read:

339 **70-3a-309. Cybersquatting.**

340 (1) (a) A person is liable in a civil action by the owner of a mark, including a personal  
341 name, which is a mark for purposes of this section, if, without regard to the goods or services  
342 of the person or the mark's owner, the person:

343 (i) has a bad faith intent to profit from the mark, including a personal name; and

344 (ii) for any length of time registers, acquires, traffics in, or uses a domain name in, or  
345 belonging to, any person in this state that:

346 (A) in the case of a mark that is distinctive at the time of registration of the domain  
347 name, is identical or confusingly similar to the mark;

348 (B) in the case of a famous mark that is famous at the time of registration of the  
349 domain name, is identical or confusingly similar to or dilutive of the mark; or

350 (C) is a trademark, word, or name protected by reason of 18 U.S.C. 706 or 36 U.S.C.  
351 220506.

352 (b) (i) In determining whether a person has a bad faith intent described in Subsection  
353 (1)(a), a court may consider all relevant factors, including:

354 (A) the trademark or other intellectual property rights of the person, if any, in the  
355 domain name;

356 (B) the extent to which the domain name consists of the legal name of the person or a  
357 name that is otherwise commonly used to identify that person;

358 (C) the person's prior use, if any, of the domain name in connection with the bona fide  
359 offering of any goods or services;

360 (D) the person's bona fide noncommercial or fair use of the mark in a site accessible  
361 under the domain name;

362 (E) the person's intent to divert consumers from the mark owner's online location to a  
363 site accessible under the domain name that could harm the goodwill represented by the mark,  
364 either for commercial gain or with the intent to tarnish or disparage the mark, by creating a  
365 likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

366 (F) the person's offer to transfer, sell, or otherwise assign, or solicitation of the  
367 purchase, transfer, or assignment of the domain name to the mark owner or any third party for  
368 financial gain without having used, or having an intent to use, the domain name in the bona

369 vide offering of any goods or services, or the person's prior conduct indicating a pattern of such  
 370 conduct;

371 (G) the person's provision of material and misleading false contact information when  
 372 applying for the registration of the domain name, the person's intentional failure to maintain  
 373 accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

374 (H) the person's registration or acquisition of multiple domain names that the person  
 375 knows are identical or confusingly similar to another's mark that is distinctive at the time of  
 376 registration of the domain names, or is dilutive of another's famous mark that is famous at the  
 377 time of registration of the domain names, without regard to the goods or services of the person  
 378 or the mark owner; and

379 (I) the extent to which the mark incorporated in the person's domain name registration  
 380 is or is not distinctive and famous.

381 (ii) Bad faith intent described in Subsection (1)(a) may not be found in any case in  
 382 which the court determines that the person believed and had reasonable grounds to believe that  
 383 the use of the domain name was a fair use or otherwise lawful.

384 (c) In a civil action involving the registration, trafficking, or use of a domain name  
 385 under this section, a court may order the forfeiture or cancellation of the domain name or the  
 386 transfer of the domain name to the owner of the mark.

387 (d) (i) A person is liable for using a domain name under Subsection (1)(a) only if that  
 388 person is the domain name registrant or that registrant's authorized licensee, ~~§~~→ [agent,] ←~~§~~ affiliate,  
 389 ~~§~~→ [representative,] ←~~§~~ domain name registrar, domain name registry, or other domain name  
 390 registration authority that knowingly ~~§~~→ [and actively] ←~~§~~ assists a violation of this chapter by the  
 391 registrant.

392 (ii) A person may not be held liable under this section absent a showing of bad faith  
 393 intent to profit from the registration or maintenance of the domain name.

394 (iii) For purposes of this section, a "showing of bad faith intent to profit" shall be  
 395 interpreted in the same manner as under 15 U.S.C. Sec. 1114(2)(D)(iii).

396 (e) As used in this section, the term "traffics in" refers to transactions that include  
 397 sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for  
 398 consideration or receipt in exchange for consideration.

399 (2) (a) The owner of a mark registered with the U.S. Patent and Trademark Office or

400 under this chapter may file an in rem civil action against a domain name in the district court if  
401 the owner is located in the state and if:

402 (i) the domain name violates any right of the owner of a mark registered in the Patent  
403 and Trademark Office or registered under this chapter; and

404 (ii) the court finds that the owner:

405 (A) is not able to obtain personal jurisdiction over a person who would be a defendant  
406 in a civil action under Subsection (1); or

407 (B) through due diligence was not able to find a person who would be a defendant in a  
408 civil action under Subsection (1) by:

409 (I) sending a notice of the alleged violation and intent to proceed under this Subsection  
410 (2)(a) to the registrant of the domain name at the postal and e-mail address provided by the  
411 registrant to the registrar; and

412 (II) publishing notice of the action as the court may direct promptly after filing the  
413 action.

414 (b) Completion of the actions required by Subsection (2)(a)(ii) constitute service of  
415 process.

416 (c) In an in rem action under this Subsection (2), a domain name is considered to be  
417 located in the judicial district in which:

418 (i) the domain name registrar, registry, or other domain name authority that registered  
419 or assigned the domain name is located; or

420 (ii) documents sufficient to establish control and authority regarding the disposition of  
421 the registration and use of the domain name are deposited with the court.

422 (d) (i) The remedies in an in rem action under this Subsection (2) are limited to a court  
423 order for the forfeiture or cancellation of the domain name or the transfer of the domain name  
424 to the owner of the mark.

425 (ii) Upon receipt of written notification of a filed, stamped copy of a complaint filed by  
426 the owner of a mark in the district court under this Subsection (2), the domain name registrar,  
427 domain name registry, or other domain name authority shall:

428 (A) expeditiously deposit with the court documents sufficient to establish the court's  
429 control and authority regarding the disposition of the registration and use of the domain name  
430 to the court; and

431 (B) not transfer, suspend, or otherwise modify the domain name during the pendency  
432 of the action, except upon order of the court.

433 (iii) The domain name registrar or registry or other domain name authority is not liable  
434 for injunctive or monetary relief under this section, except in the case of bad faith or reckless  
435 disregard, which includes a willful failure to comply with a court order.

436 (3) The civil actions and remedies established by Subsection (1) and the in rem action  
437 established in Subsection (2) do not preclude any other applicable civil action or remedy.

438 (4) The in rem jurisdiction established under Subsection (2) does not preclude any  
439 other jurisdiction, whether in rem or personal.

440 Section 14. Section **70-3a-402** is amended to read:

441 **70-3a-402. Infringement.**

442 (1) Subject to Section 70-3a-104 and Subsection (2), any person is liable in a civil  
443 action brought by the registrant for any and all of the remedies provided in Section 70-3a-404,  
444 if that person:

445 (a) uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered  
446 under this chapter:

447 (i) without the consent of the registrant; and

448 (ii) in connection with the sale, distribution, offering for sale, or advertising of any  
449 goods or services on or in connection with which that use is likely to cause confusion, mistake,  
450 or to deceive as to the source of origin, nature, or quality of those goods or services; or

451 (b) reproduces, counterfeits, copies, or colorably imitates any mark and applies the  
452 reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages,  
453 wrappers, receptacles, or advertisements intended to be used upon or in connection with the  
454 sale or other distribution in this state of goods or services.

455 (2) Under Subsection (1)(b), the registrant is not entitled to recover profits or damages  
456 unless the act described in Subsection (1)(b) has been committed with the intent:

457 (a) to cause confusion or mistake; or

458 (b) to deceive.

459 (3) In a civil action for a violation of Section 70-3a-309:

460 (a) the plaintiff may recover court costs and reasonable attorney fees; and

461 (b) the plaintiff may elect, at any time before final judgment is entered by the district

462 court, to recover, instead of actual damages and profits, an award of statutory damages in the  
463 amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court  
464 considers just.

465 (4) Statutory damages awarded under Subsection (3)(b) are presumed to be \$100,000  
466 per domain name if there is a pattern and practice of infringements committed willfully for  
467 commercial gain.

468 Section 15. **Effective date.**

469 This bill takes effect on July 1, 2010, except that Sections 70-3a-309 and 70-3a-402  
470 take effect on May 11, 2010.

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**Legislative Review Note**  
**as of 11-18-09 5:19 PM**

**Office of Legislative Research and General Counsel**



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**S.B. 26 - Utah E-commerce Integrity Act - As Amended**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Assuming 250 cases are filed under the provisions of this legislation, Courts would require an appropriation of \$86,200 from the General Fund. Off-setting filing fee revenue is estimated at \$64,000 for a net impact of \$22,200.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$86,200	\$86,200	\$0	\$64,000	\$64,000
<b>Total</b>	<b>\$0</b>	<b>\$86,200</b>	<b>\$86,200</b>	<b>\$0</b>	<b>\$64,000</b>	<b>\$64,000</b>

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**Individual, Business and/or Local Impact**

Individuals and businesses may benefit from civil penalties authorized by this bill.

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