A Report Evaluating the Utah Consumer Privacy Act

By the Utah Attorney General and the Utah Division of Consumer Protection
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Attorney General Derek Brown ("Attorney General") and the Division of Consumer Protection ("Division") submit this report concerning the effectiveness of the Utah Consumer Privacy Act, Utah Code sections 13-61-101 to -404, ("UCPA" or "Act") to the Business and Labor Interim Committee ("Committee") of the Utah State Legislature.

Executive Summary

The UCPA was cutting edge in 2022 when it granted consumers specific privacy rights in their personal data. However, other states' privacy laws have been implemented, and there is now an opportunity for Utah law to be amended to achieve similar protections and benefits to Utah consumers and their privacy. Also, statutory changes could make the UCPA more effective and efficient to administer.

Background

The UCPA was created by 2022 General Session SB0227. It was the fifth consumer privacy bill passed in the nation. The Act establishes consumer rights with respect to personal data, and concurrently puts obligations on businesses that are "controllers" or "processors" of that data. A consumer's rights under the UCPA include rights to:

- Confirm that a business is processing the consumer's personal data and to access that data;
- Have personal data deleted, but only to the extent the consumer provided the data;
- A portable and usable copy of the consumer's personal data;
- Opt out of the processing of the consumer's personal data for targeted advertising or the sale of the personal data.

In addition to responding to consumers' requests to exercise those rights, a business that is a controller is required to:

- Provide consumers with a reasonably accessible and clear privacy notice explaining what personal data the controller has, how it is used, and how consumers can exercise their rights;
- Clearly and conspicuously disclose how consumers can opt out of targeted advertising or the sale of their personal data;
- Maintain good cybersecurity practices to protect the confidentiality of consumers' personal data;
- Present consumers with a clear opt-out procedure when processing "sensitive data" (as defined below); and
- Not discriminate against a consumer for exercising rights under the UCPA.

Although passed in the 2022 General Session, the UCPA did not become effective until December 31, 2023, under Section 17, line 669 of S.B. 227. A core idea behind the delayed effective date was to give businesses time to come into compliance. A provision of the UCPA, Utah Code section 13-61-404, directs the Attorney General and the Division to report to the Committee before July 1, 2025. This report, therefore, reflects approximately eighteen months of experience in enforcing the UCPA.

Analysis

Part 1: Evaluation of the UCPA's liability and enforcement provisions

1A: Enforcement efforts have been limited due to a lack of consumer complaints

Enforcement efforts have been limited so far. The Division has received 32 consumer complaints. One resulted in a referral to the Office of the Attorney General ("OAG") for enforcement. The OAG issued a thirty-day notice under Utah Code section 13-61-402 in May 2025, and it recently commenced litigation against Snap, Inc. for violations of the Act.

The primary reason for the limited enforcement is that the structure of the UCPA anticipated that investigations typically would begin with consumer complaints which would be investigated by the Division and then referred to the OAG for enforcement if appropriate. Complaints have not been as forthcoming as anticipated.

Several factors may contribute to the lack of consumer complaints. First, as discussed in Section 2B, below, the UCPA gives Utah consumers more limited rights than most other states'

consumer privacy bills that have passed subsequent to the UCPA. For example, consumers might be dissuaded from seeking to have the personal data that they provided to the controller deleted when the controller can retain almost the same data on the consumer it obtained from other sources. Second, Utahns may be less inclined to complain to government enforcers than citizens of some other states, like California for example. Utah generally sees fewer consumer complaints *per capi*ta under new laws than some other states, and Utah is a relatively low-population state.

A likely third factor is the lack of sustained publicity about the public's rights under the UCPA. This is in part due to the financial structure of the Act. Rather than providing funding earmarked for enforcement and consumer education, the Legislature chose to create a special Consumer Privacy Restricted Account. The idea was that money from early UCPA enforcement actions would fund the costs associated with later ones, as well as providing money to educate both consumers and businesses about the rights and requirements in the Act. However, the pump has never been primed, and the account remains empty. In contrast, the Connecticut legislature earmarked $250,000 to prepare for enforcement of its consumer privacy law. Instead of the Consumer Privacy Restricted Account, both the OAG and the Division might be allowed to use existing funds that typically have money available from the enforcement of other laws, which could be statutorily modified to allow funding of outreach to both consumers and businesses regarding the UCPA.

While the Division and OAG have received relatively few complaints, UCPA violations are likely occurring. For example, a controller must provide Utah consumers "a reasonably accessible and clear privacy notice" that sets forth the consumers' rights. Failure to do so would violate Utah Code subsection 13-61-302(1). With respect to processing "sensitive data" the controller must go further and must present the consumer "with clear notice and an opportunity to opt out of the processing." Many companies have privacy policies that violate those or other requirements of the Act, and thus appear on their face to violate the statute. We have even observed privacy policies that give rights to citizens of other states (e.g., California) but not to Utah's citizens because of the different state-law protections. *E.g., compare For California Residents California Privacy Rights*, N.Y. Post (Jan. 7, 2025), https://nypost.com/ca-privacy-

rights/#menu_link_9, *with For Other US State Residents Privacy Rights*, N.Y. Post (Jan. 7, 2025), https://nypost.com/for-other-us-state-residents-privacy-rights; *see also Legal Information,* Assurity Group, Inc., https://www.assurity.com/legal-information (last visited June 23, 2025). Currently, if the OAG learns of a non-compliant company, it must refer the matter to the Division for investigation, and then the Division must refer it back to the OAG for enforcement. Then, before the OAG can file a case it must issue a thirty-day cure letter to spur a controller to come into compliance. This process must be followed even if the Attorney General learns that there is an active multistate investigation into a company's privacy policies; the OAG cannot simply join that multistate investigation and enforcement effort. That is true even if other states with substantially similar laws have issued cure letters and the company has refused to come into compliance. Enforcement could be streamlined if the Act explicitly allowed the OAG to simply send a thirty-day cure letter as soon as it learns of a potential violation, and/or waive that requirement where another law-enforcement entity already sent a cure letter that did not resolve the potential violation.

1B: Other similar states have received many more consumer complaints

Connecticut and Oregon are two states with laws similar to Utah's (but more protective of consumer privacy rights) that have published reports about their enforcement efforts. *See* Office of the Connecticut Attorney General, *Updated Enforcement Report* (Apr. 17, 2025); Oregon Department of Justice, *Enforcement Report: The Oregon Consumer Privacy Act (2024), The First Six Months* (Mar. 2025). Connecticut received 30 complaints in the first six months of their statute's effective date, although many were not actionable under that statute. In the same timespan, Connecticut issued ten cure notices based upon deficient privacy policies. Within the first six months of Oregon's law their attorney general's office received 110 consumer complaints (about 57% of which fell within the terms of their new law) and issued 21 cure letters based upon deficiencies in posted privacy policies.

In addition to reviewing published reports, the Utah OAG confers regularly with other state attorney generals' offices regarding their experiences in enforcing similar laws. Two common themes emerge: First, most states have made a concerted effort at public outreach.

Second, most enforcement efforts are not a result of individual consumer complaints, but rather result from reviews of companies' posted privacy policies.

Part 2: Summarization of the limits of data protection under the UCPA

2A: Limitations on types of data protected under UCPA

The UCPA covers a wide range of consumer data, broadly classified as "personal data," meaning "information that is linked or reasonably linkable to and identified or identifiable individual." Utah Code section 13-61-101(24). Certain data is treated as "sensitive data," including an individual's race or ethnic origin, religious beliefs, sexual orientation, citizenship or immigration status, medical and health (physical or mental) information, genetic/biometric information used to identify a person, and specific geolocation data (although some of these categories are subject to specific exclusions). As noted above, before a business can process this type of sensitive data, it must give the consumer clear notice and an opportunity to opt-out. Many other states require an affirmative consumer opt-in instead, which is more protective of consumer privacy rights.

The UCPA is limited in its coverage in two important ways. First, some core consumer rights, like the right to require that a controller delete data, is limited to data the consumer provided. That limitation does not exist in any other state's analogous statute. Second, there are many carveouts for data covered by the Health Insurance Portability and Accountability Act ("HIPAA"), collected by governmental entities, nonprofits, financial institutions, and others. Utah Code section 13-61-102.

The UCPA should be seen as part of a broader set of interrelated privacy laws, each of which has its own unique definitions of covered data. These include The Utah Protection of Personal Information Act, Utah Code chapter 13-44, Government Data Privacy Act, Utah Code chapter 63A-19, Genetic Information Privacy Act, Utah Code part 13-60-1, Genetic Testing and Procedure Privacy Act, Utah Code part 13-60-2 and Digital Choice Act, Utah Code chapter 13-81. In addition, numerous federal laws address privacy, perhaps most notably HIPAA and the Family Educational Rights and Privacy Act ("FERPA"). The Children's Online Privacy Protection Act and associated Children's Online Privacy Protection Rule (collectively

"COPPA") protects children under 13 by requiring verifiable parental consent before a company collecting the child's personal information.

2B: Limitations on consumers' rights under the UCPA compared to other states

The UCPA was only the fifth consumer data privacy law passed in the country. At the time, there was reasonable concern over the burden that certain proposed provisions might place on businesses. It is presumed that this is why the right to delete was limited to data provided by the consumer, for example. That is also why the original statute did not give consumers the right to correct inaccurate information in a company's database. To date, a total of 19 states now have consumer data privacy laws, and most of the ones passed after Utah's are significantly more protective of consumers' privacy. International Association of Privacy Professionals (IAPP), *US State Privacy Legislation Tracker 2025* (2025).

The newly enacted Digital Choice Act (Utah Code 13-81) provides consumers with the right to ask that personal data be corrected in the limited context of Social Media platforms. However, this right to correct and several other essential consumer rights are not included in the UCPA. Notably, more recently passed state consumer privacy laws typically contain the right to correct as well as the following:

- A right to delete all the personal data about a consumer that a business possesses, not just the personal data provided by that consumer. Only Utah limits this right to delete in this way.
- A right to opt-out of wholly automated decision making, or to require that these decisions be reviewed by a human being. With the growth of AI, the risk that people will be denied credit, have insurance rates increased, or suffer other adverse consequences without meaningful human review is growing greater all the time. This was barely a consideration when the UCPA was originally passed.
- Changing the right to opt-out of sensitive data processing to a requirement that the consumer affirmatively opt-in to allowing this type of processing.
- Requiring controllers to apply principles of purpose limitation (only using data for defined and disclosed purposes) and data minimization (only collecting and retaining what is necessary for those purposes).

- Requiring Data Protection Impact Assessments ("DPIAs") and/or Privacy Impact Assessments ("PIAs") before collecting personal data.
- Requiring that controllers comply with Universal Opt-Out Mechanisms. These are browser extensions that automatically signal an opt-out to sale of personal data and/or online tracking.

Recommendations

The Office of AI Policy intends to examine the intersection of consumer data collection and usage with artificial intelligence as part of its 2026 learning agenda. It is highly probable that subsequent research will yield additional recommendations pertaining to the UCPA in advance of the 2027 Legislative session. That said, the Attorney General and the Division recommend the following modifications of the UCPA for the upcoming 2026 legislative session:

1. The Consumer Privacy Account could be terminated, and money received from enforcement should be deposited into the Attorney General Litigation Fund, Utah Code section 67-5-40, and/or the Division's Consumer Protection Education and Training Fund, Utah Code section 13-2-8. Those funds should be authorized for uses related to UCPA enforcement and education of consumers about the UCPA.

2. The Legislature could consider updating the UCPA to give consumers these additional rights, which are typically included in other states' consumer privacy statutes:

- The right to delete all personal data, rather than just the data provided by the consumer;
- The right to require review of wholly automatic decision making that adversely affects the consumer;
- Requiring a consumer's opt-in for processing sensitive data;
- Requiring that controllers state purpose limitations and practice data minimization;
- Require DPIAs and/or PIAs; and
- Authorizing Universal Opt-Out Mechanisms.

3. Utah Code section 13-61-402 could be amended to allow the Attorney General and the Division to investigate potential violations of the UCPA that are not based upon consumer complaints, and to give the Attorney General the same investigative rights as under the Utah Protection of Personal Information Act, Utah Code section 13-44-301, provided that these amendments would not limit the Division's investigation under Utah Code section 13-61-401.

5. The thirty-day cure notice provision of Utah Code section 13-61-402(3) could be satisfied if another state with a substantially similar provision has already sent a cure letter and at least 45 days have passed without the controller or processor curing the alleged violation. In this instance, the Attorney General should be authorized to initiate an action without delay, and if the alleged violation is cured before a response is due from the defendant, the statute should require that the case would be dismissed without prejudice, each party to bear their own costs and attorneys' fees.

6. Utah Code section 13-61-404 could be replaced with a provision requiring the Attorney General and the Division to submit a report providing appropriate statistical information on enforcement efforts and recommendations for updates to the UCPA.

7. Clarify that Utah Code section 13-61-401 does not limit remedies under other laws, such as the Utah Consumer Sales Practices Act, Utah Code 13-11.

Conclusion

The OAG and the Division would be pleased to discuss this report and these recommendations with the Committee during an interim session later this summer or in the fall.

/s/ Katie Hass
Katie Hass
Director, Division of Consumer Protection
Utah Department of Commerce

/s/ Douglas Crapo
Douglas Crapo
Consumer Protection Deputy Attorney General
Utah Attorney General's Office