

1 **h [PROTECTION OF] NOTICE OF INTENT TO SELL h NONPUBLIC PERSONAL**
2 **INFORMATION**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Douglas C. Aagard**

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

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

11 ENACTS:

12 **13-37-101**, Utah Code Annotated 1953

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

14 **13-37-201**, Utah Code Annotated 1953

15 **13-37-202**, Utah Code Annotated 1953

16 **13-37-203**, Utah Code Annotated 1953

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

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

19 **CHAPTER 37. h [PROTECTION OF] NOTICE OF INTENT TO SELL h NONPUBLIC**
19a **PERSONAL INFORMATION ACT**

20 **Part 1. General Provisions**

21 **13-37-101. Title.**

22 This chapter is known as the " h [Protection of] NOTICE OF INTENT TO SELL h Nonpublic
22a Personal Information Act."

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

24 **13-37-102. Definitions.**

25 As used in this chapter:

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



28 (a) a commercial entity; and

29 (b) (i) directly; or

30 (ii) indirectly through one or more intermediaries.

31 (2) ^h [~~Commercial~~] (a) **SUBJECT TO SUBSECTION (2)(b), "COMMERCIAL ^h entity" means a**

31a person that in the ordinary course of business

32 transacts a consumer transaction in this state.

32a ^h (b) "COMMERCIAL ENTITY" DOES NOT INCLUDE:

32b (i) A GOVERNMENTAL ENTITY; OR

32c (ii) AN ENTITY PROVIDING SERVICES ON BEHALF OF A GOVERNMENTAL ENTITY. ^h

33 (3) "Compensation" means anything of economic value that is paid or transferred to a

34 commercial entity for or in direct consideration of the disclosure of nonpublic personal

35 information.

36 (4) (a) "Consumer transaction" means:

37 (i) a sale, lease, assignment, award by chance, or other written or oral transfer or

38 disposition:

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

40 (B) of:

41 (I) goods;

42 (II) services; or

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

44 (ii) a transaction:

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

46 (B) constitutes credit offered or extended by a commercial entity to a person primarily

47 for personal, family, or household purposes.

48 (b) "Consumer transaction" includes:

49 (i) the use of nonpublic personal information in relation to a transaction with a person

50 if the transaction is for primarily personal, family, or household purposes; and

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

52 (A) an offer or solicitation;

53 (B) an agreement;

54 (C) the performance of an agreement; or

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

55a ^h (c) "CONSUMER TRANSACTION" DOES NOT INCLUDE A TRANSACTION RELATED TO

55b REAL PROPERTY. ^h

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

57 (i) is not public information; and

58 (ii) either alone or in conjunction with public information, identifies a person in

59 distinction from other persons.

60 (b) "Nonpublic personal information" includes:

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

62 (ii) information used to determine a person's credit worthiness including a person's:

63 (A) income; or

64 (B) employment history;

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

66 (iv) the personal preferences of a person.

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

68 (a) name;

69 (b) telephone number; or

70 (c) street address.

71 (7) (a) Subject to Subsection (7)(b), "third party" means a person other than the
72 commercial entity that obtains nonpublic personal information.

73 (b) "Third party" does not include an affiliate of the commercial entity that obtains
74 nonpublic personal information.

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

76 **Part 2. Notice of Disclosure**

77 **13-37-201. Required notice.**

78 (1) (a) In accordance with this section, a commercial entity shall provide the notice
79 described in this section to a person if:

80 (i) the commercial entity enters into a consumer transaction with that person;

81 (ii) as a result of the consumer transaction described in this 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 the primary consideration for the commercial entity disclosing the nonpublic
89 personal information;

90 (B) is directly related to the commercial entity disclosing the nonpublic personal
 91 information; and

92 ~~h [(C) if the disclosure of the nonpublic personal information is related to the third party~~
 93 ~~providing to the commercial entity any of the following, is not received by the commercial~~
 94 ~~entity for or in consideration of the third party providing to the commercial entity the:~~

95 ~~—— (I) services;~~

96 ~~—— (II) personal or real property; or~~

97 ~~—— (III) other thing of value.]~~

97a **(C) IS NOT COMPENSATION RECEIVED BY THE COMMERCIAL ENTITY IN CONSIDERATION**
 97b **OF A TRANSACTION DESCRIBED IN SUBSECTION (5). h**

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

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

101 (A) at any time during the consumer transaction; and

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

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

104 (B) but for the consumer transaction, the commercial entity would not obtain the
 105 information.

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

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

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

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

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

114 (b) may be made:

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

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

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

119 ~~h [(4) Notwithstanding the other provisions of this section, a commercial entity is~~
 120 ~~considered to have complied with this section if:] h~~

121 ~~h [(a) a federal law or regulation imposes on the commercial entity any requirement~~
 122 ~~regarding the disclosure of nonpublic personal information; and~~
 123 ~~— (b) the commercial entity complies with all federal requirements;~~
 124 ~~— (i) regarding the disclosure of nonpublic personal information; and~~
 125 ~~— (ii) that are applicable to the commercial entity.]~~

125a **(4) THIS CHAPTER DOES NOT APPLY IF:**

125b **(a) A COMMERCIAL ENTITY DISCLOSES NONPUBLIC PERSONAL INFORMATION TO A THIRD**
 125c **PARTY;**

125d **(b) THE COMMERCIAL ENTITY IS SUBJECT TO A FEDERAL LAW OR REGULATION THAT**
 125e **GOVERNS THE DISCLOSURE OF NONPUBLIC INFORMATION TO A THIRD PARTY; AND**

125f **(c) THE DISCLOSURE OF NONPUBLIC INFORMATION TO A THIRD PARTY COMPLIES WITH**
 125g **OR IS AUTHORIZED BY THE FEDERAL LAW OR REGULATION DESCRIBED IN SUBSECTION (4)(b).**

125h **(5) NOTWITHSTANDING THE OTHER PROVISIONS OF THIS SECTION, A COMMERCIAL**
 125i **ENTITY IS NOT REQUIRED TO PROVIDE NOTICE UNDER THIS SECTION IF:**

125j **(a) THE DISCLOSURE OF THE NONPUBLIC PERSONAL INFORMATION IS RELATED TO THE**
 125k **THIRD PARTY PROVIDING TO THE COMMERCIAL ENTITY:**

125l **(i) SERVICES;**

125m **(ii) PERSONAL OR REAL PROPERTY; OR**

125n **(iii) OTHER THING OF VALUE; AND**

125o **(b) COMPENSATION RECEIVED BY THE COMMERCIAL ENTITY AS PART OF THE**
 125p **TRANSACTION IS RECEIVED BY THE COMMERCIAL ENTITY FOR OR IN CONSIDERATION OF THE**
 125q **TRANSACTION DESCRIBED IN SUBSECTION (5)(a).** h

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

127 **13-37-202. Disclosure of nonpublic personal information prohibited without**
 128 **notice.**

129 A commercial entity may not disclose nonpublic personal information that the
 130 commercial entity obtained h ON OR AFTER MAY 5, 2003, h as a result of a consumer transaction if
 130a the commercial entity fails
 131 to comply with Section 13-37-201.

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

133 **13-37-203. Liability.**

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

136 (a) the commercial entity enters into a consumer transaction with that person;

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

139 (c) the commercial entity violates this chapter.

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

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

144 (b) court costs.

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

Legislative Review Note
as of 11-26-02 7:05 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

12-16-02 3:32 PM

H.B. 40

**Interim Committee Note
as of 12-12-02 4:45 PM**

The Public Utilities and Technology Interim Committee recommended this bill.

Fiscal Note
Bill Number HB0040

Protection of Nonpublic Personal Information

08-Jan-03

11:33 AM

State Impact

No fiscal impact

Individual and Business Impact

Some companies now selling this information may see a reduction in sales.

Office of the Legislative Fiscal Analyst