

**Representative Douglas C. Aagard** proposes the following substitute bill:

**NOTICE OF INTENT TO SELL NONPUBLIC**

**PERSONAL INFORMATION**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Douglas C. Aagard**

**This act modifies the Commerce and Trade title to enact the Notice of Intent to Sell Nonpublic Personal Information Act. This act defines terms, requires a notice be given by a commercial entity under certain circumstances, and establishes the liability of a commercial entity for violating the act. <sup>h</sup> THIS ACT TAKES EFFECT ON JANUARY 1, 2004. <sup>h</sup>**

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

ENACTS:

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

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

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

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

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

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

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

**CHAPTER 37. NOTICE OF INTENT TO SELL NONPUBLIC**

**PERSONAL INFORMATION ACT**

**Part 1. General Provisions**

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

This chapter is known as the "Notice of Intent to Sell Nonpublic Personal Information Act."

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



26 **13-37-102. Definitions.**

27 As used in this chapter:

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

30 (a) a commercial entity; and

31 (b) (i) directly; or

32 (ii) indirectly through one or more intermediaries.

33 (2) (a) Subject to Subsection (2)(b), "commercial entity" means a person that **h** :

33a **(i) HAS AN OFFICE OR OTHER PLACE OF BUSINESS LOCATED IN THE STATE; AND**

33b **(ii) h** in the

34 ordinary course of business transacts a consumer transaction in this state.

35 (b) "Commercial entity" does not include:

36 (i) a governmental entity; or

37 (ii) an entity providing services on behalf of a governmental entity.

38 (3) "Compensation" means anything of economic value that is paid or transferred to a  
39 commercial entity for or in direct consideration of the disclosure of nonpublic personal  
40 information.

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

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

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

45 (B) of:

46 (I) goods;

47 (II) services; or

48 (III) other tangible or intangible property, except securities and insurance **§ OR SERVICES**

48a **RELATED THERETO § ; or**

49 (ii) a transaction:

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

51 (B) **h THAT h** constitutes credit offered or extended by a commercial entity to a person  
51a primarily

52 for personal, family, or household purposes.

53 (b) "Consumer transaction" includes:

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

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

- 57 (A) an offer or solicitation;  
 58 (B) an agreement;  
 59 (C) the performance of an agreement; or  
 60 (D) a charitable solicitation as defined in Section 13-11-3.  
 61 (c) "Consumer transaction" does not include a transaction related to real property.  
 62 (5) (a) "Nonpublic personal information" means information that:  
 63 (i) is not public information; and  
 64 (ii) either alone or in conjunction with public information, identifies a person in  
 65 distinction from other persons.  
 66 (b) "Nonpublic personal information" includes:  
 67 (i) a person's Social Security number;  
 68 (ii) information used to determine a person's credit worthiness including a person's:  
 69 (A) income; or  
 70 (B) employment history;  
 71 (iii) the purchasing patterns of a person; or  
 72 (iv) the personal preferences of a person.  
 73 (6) "Public information" means a person's:  
 74 (a) name;  
 75 (b) telephone number; or  
 76 (c) street address.  
 77 (7) (a) Subject to Subsection (7)(b), "third party" means a person other than the  
 78 commercial entity that obtains nonpublic personal information.  
 79 (b) "Third party" does not include an affiliate § OR AGENT § of the commercial entity that  
 79a obtains  
 80 nonpublic personal information.  
 81 Section 3. Section **13-37-201** is enacted to read:  
 82 **Part 2. Notice of Disclosure**  
 83 **13-37-201. Required notice.**  
 84 (1) (a) In accordance with this section, a commercial entity shall provide the notice  
 85 described in this section to a person if:  
 86 (i) the commercial entity enters into a consumer transaction with that person;  
 87 (ii) as a result of the consumer transaction described in this Subsection (1)(a), the

88 commercial entity obtains nonpublic personal information concerning that person; and  
89 (iii) the commercial entity intends to or wants the ability to disclose the nonpublic  
90 personal information:  
91 (A) to a third party; and  
92 (B) for compensation; and  
93 (iv) the compensation described in Subsection (1)(a)(iii)(B):  
94 (A) is the primary consideration for the commercial entity disclosing the nonpublic  
95 personal information;  
96 (B) is directly related to the commercial entity disclosing the nonpublic personal  
97 information; and  
98 (C) is not compensation received by the commercial entity in consideration of a  
99 transaction described in Subsection (5).  
100 (b) For purposes of this chapter, a commercial entity is considered to have obtained  
101 information as a result of a consumer transaction if:  
102 (i) the person provides the information to the commercial entity:  
103 (A) at any time during the consumer transaction; and  
104 (B) at the request of the commercial entity; or  
105 (ii) (A) the commercial entity otherwise obtains the information; and  
106 (B) but for the consumer transaction, the commercial entity would not obtain the  
107 information.  
108 (2) The notice required by Subsection (1) shall be given before the earlier of:  
109 (a) the point at which the person is requested to provide the nonpublic personal  
110 information; or  
111 (b) the commercial entity otherwise obtains the nonpublic personal information as a  
112 result of the consumer transaction described in Subsection (1)(a).  
113 (3) The notice required by Subsection (1):  
114 (a) shall read substantially as follows: "We may choose to disclose nonpublic personal  
115 information about you, the consumer, to a third party for compensation.";  
116 (b) may be made:  
117 (i) orally, if the consumer transaction itself is entirely conducted orally; or  
118 (ii) in writing, if the notice is written in dark bold; and

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

121 h [(4) This chapter does not apply if:

122 — (a) a commercial entity discloses nonpublic personal information to a third party;

123 — (b) the commercial entity is subject to a federal law or regulation that governs the  
 124 disclosure of nonpublic information to a third party; and

125 — (c) the disclosure of nonpublic information to a third party complies with or is  
 126 authorized by the federal law or regulation described in Subsection (4)(b).]

126a (4) THIS CHAPTER DOES NOT APPLY TO § : (a) § A COMMERCIAL ENTITY THAT IS SUBJECT TO A  
 126b FEDERAL LAW OR REGULATION THAT GOVERNS THE DISCLOSURE OF NONPUBLIC INFORMATION  
 126c TO A THIRD PARTY § ; OR (b) A COVERED ENTITY AS DEFINED IN 45 C.F.R. PARTS 160 AND 164 § . h

127 (5) Notwithstanding the other provisions of this section, a commercial entity is not  
 128 required to provide notice under this section if:

129 (a) the disclosure of the nonpublic personal information is related to the third party  
 130 providing to the commercial entity:

131 (i) services § , INCLUDING BUSINESS OUTSOURCE SERVICES § ;

132 (ii) personal or real property; or

133 (iii) other thing of value; and

134 (b) compensation received by the commercial entity as part of the transaction is  
 135 received by the commercial entity for or in consideration of the transaction described in  
 136 Subsection (5)(a).

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

138 **13-37-202. Disclosure of nonpublic personal information prohibited without**  
 139 **notice.**

140 h (1) h A commercial entity may not disclose nonpublic personal information that the  
 141 commercial entity obtained on or after h [May 5, 2003,] JANUARY 1, 2004, h as a result of a  
 141a consumer transaction if the  
 142 commercial entity fails to comply with Section 13-37-201.

142a **h (2) THIS CHAPTER MAY NOT BE INTERPRETED AS AUTHORIZING A COMMERCIAL ENTITY**  
 142b **TO DISCLOSE NONPUBLIC PERSONAL INFORMATION TO A GREATER EXTENT THAN THE**  
 142c **COMMERCIAL ENTITY IS OTHERWISE PERMITTED TO DISCLOSE NONPUBLIC PERSONAL**  
 142d **INFORMATION. h**

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

144 **13-37-203. Liability.**

145 (1) A person may bring an action against a commercial entity in a court of competent

146 jurisdiction in this state if:

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

148 (b) as a result of the consumer transaction described in Subsection (1)(a), the

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

150 (c) the commercial entity violates this chapter.

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

153 (a) \$500 for each <sup>h</sup> [~~violation of this chapter that relates~~] **TIME THE COMMERCIAL ENTITY**

153a **FAILS TO PROVIDE THE NOTICE REQUIRED BY THIS SECTION IN RELATION <sup>h</sup> to the nonpublic**  
153b **personal**

154 **information of the person who brings the action; and**

155 (b) court costs.

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

156a **<sup>h</sup> Section 5. Effective date.**

156b **THIS ACT TAKES EFFECT ON JANUARY 1, 2004. <sup>h</sup>**