

1 **INTERNET PRIVACY AND SECURITY**

2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Wayne A. Harper**

6 **This act modifies Commerce and Trade Provisions to enact the Internet Privacy Act and**
7 **modifies the Information Technology Act to enact the Governmental Internet**
8 **Information Privacy Act.**

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

10 ENACTS:

11 **13-37-101**, Utah Code Annotated 1953

12 **13-37-102**, Utah Code Annotated 1953

13 **13-37-103**, 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 **13-37-301**, Utah Code Annotated 1953

18 **13-37-302**, Utah Code Annotated 1953

19 **13-37-401**, Utah Code Annotated 1953

20 **13-37-402**, Utah Code Annotated 1953

21 **63D-1-401**, Utah Code Annotated 1953

22 **63D-1-402**, Utah Code Annotated 1953

23 **63D-1-403**, Utah Code Annotated 1953

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

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

26 **CHAPTER 37. INTERNET PRIVACY ACT**

27 **Part 1. General Provisions**



28 **13-37-101. Title.**

29 This chapter is known as the "Internet Privacy Act."

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

31 **13-37-102. Definitions.**

32 As used in this chapter:

33 (1) (a) Except as provided in Subsection (1)(b), "consumer" means a person who:

34 (i) is a resident of the state;

35 (ii) enters into a contract with an Internet service provider for access to the Internet for

36 personal, family, or household purposes; and

37 (iii) receives the access described in Subsection (1)(a)(ii).

38 (b) "Consumer" does not include a person that resells the access described in

39 Subsection (1)(a)(ii).

40 (2) (a) Except as provided in Subsection (2)(b), "Internet service provider" means a

41 person who:

42 (i) provides a consumer:

43 (A) authenticated access to the Internet; or

44 (B) authenticated presence on the Internet; and

45 (ii) provides the access or presence described in Subsection (2)(a)(i) by providing

46 transit routing of Internet protocol packets for and on behalf of the consumer.

47 (b) "Internet service provider" does not include a person that offers on a common

48 carrier basis:

49 (i) access to telecommunications facilities; or

50 (ii) telecommunication services by means of telecommunications facilities.

51 (3) "Ordinary course of business" means activities related to an Internet service

52 provider:

53 (a) collecting debts owed to the Internet service provider;

54 (b) processing a request for materials or services to be provided by the Internet service

55 provider; or

56 (c) transferring ownership.

57 (4) "Personally identifiable information" means information that identifies:

58 (a) a consumer by:

- 59 (i) name;
- 60 (ii) account number;
- 61 (iii) physical address;
- 62 (iv) electronic address;
- 63 (v) telephone number; or
- 64 (vi) Social Security number;
- 65 (b) a consumer as having requested or obtained specific materials or services from an
- 66 Internet service provider;
- 67 (c) an Internet site visited by a consumer; or
- 68 (d) any of the contents of a consumer's data-storage device.

69 Section 3. Section **13-37-103** is enacted to read:

70 **13-37-103. Other law.**

71 (1) Except as provided in Subsection (2), this chapter does not limit any greater

72 protection of the privacy of personally identifiable information under other law.

73 (2) This chapter may not be interpreted as limiting the authority under \hat{h} :

73a (a) \hat{h} other state \hat{h} ~~or~~

74 federal] \hat{h} law under which a peace officer or prosecuting authority may obtain information \hat{h} ; OR

74a (b) FEDERAL LAW TO OBTAIN INFORMATION INCLUDING ANY FEDERAL LAW UNDER

74b WHICH A PEACE OFFICER OR PROSECUTING AUTHORITY MAY OBTAIN INFORMATION \hat{h} .

75 Section 4. Section **13-37-201** is enacted to read:

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

77 **13-37-201. Disclosure of personally identifiable information.**

78 Except as provided in Section 13-37-202 or 13-37-203, an Internet service provider

79 may not knowingly disclose to any person the personally identifiable information concerning a

80 consumer of the Internet service provider.

81 Section 5. Section **13-37-202** is enacted to read:

82 **13-37-202. When disclosure of personally identifiable information is required.**

83 Notwithstanding Section 13-37-201, an Internet service provider shall disclose

84 personally identifiable information concerning a consumer:

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

86 (a) a subpoena;

87 (b) a warrant; or

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

89 (2) pursuant to a court order in a civil proceeding if the person seeking the personally

90 identifiable information shows:

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

92 (b) that the compelling need described in Subsection (2)(a) cannot be accommodated

93 by other means;

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

96 (a) the civil action is:

97 (i) commenced by the Internet service provider; and

98 (ii) brought:

99 (A) for conversion; or

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

101 (I) subscription fees; or

102 (II) purchase amounts;

103 (b) disclosure of the personally identifiable information is necessary to establish the
104 fact of:

105 (i) conversion; or

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

107 (c) if the court finds that there is appropriate safeguards against unauthorized

108 disclosure of the personally identifiable information; or

109 (4) to the consumer who is the subject of the personally identifiable information upon:

110 (a) written or electronic request by the consumer; and

111 (b) payment of a fee:

112 (i) if the Internet service provider charges a fee; and

113 (ii) only to the extent that the fee does not exceed the actual costs of retrieving the

114 personally identifiable information.

115 Section 6. Section **13-37-203** is enacted to read:

116 **13-37-203. When disclosure of personally identifiable information is permitted --**

117 **Authorization -- Contract requirements.**

118 (1) Notwithstanding Section 13-37-201, an Internet service provider may disclose
119 personally identifiable information concerning a consumer to:

120 (a) any person if the disclosure is incident to the ordinary course of business of the

121 Internet service provider;

122 (b) another Internet service provider if:

123 (i) the Internet service provider that discloses the information has reason to believe that

124 a person is violating any of the following of the Internet service provider that discloses the

125 personally identifiable information:

126 (A) a published acceptable use policy; or

127 (B) customer service agreement;

128 (ii) the Internet service provider that discloses the personally identifiable information

129 discloses only the personally identifiable information necessary to report a violation of a policy

130 or agreement described in Subsection (1)(b)(i); and

131 (iii) the Internet service provider that receives the personally identifiable information

132 discloses the personally identifiable information only as provided by this chapter;

133 (c) any person, if the Internet service provider obtains the authorization of the

134 consumer in accordance with Subsection (2); or

135 (d) any person to the extent authorized under Title 77, Chapter 23a, Interception of

136 Communications.

137 (2) (a) In accordance with this Subsection (2), an Internet service provider may obtain a

138 consumer's authorization of the disclosure of personally identifiable information related to the

139 consumer:

140 (i) only if the contract between the Internet service provider and the consumer complies

141 with Subsection (3); and

142 (ii) the authorization is obtained in accordance with the contract described in

143 Subsection (2)(a)(i).

144 (b) An Internet service provider's requests from a customer for authorization to disclose

145 personally identifiable information related to the consumer shall reasonably describe:

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

147 and

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

149 (c) Subject to the requirements of this section, authorization may be obtained:

150 (i) in a manner consistent with self-regulating guidelines generally followed by the

151 industry of Internet service providers; or

152 (ii) in any other manner reasonably designed to comply with this section.

153 (3) (a) A contract between an Internet service provider and a consumer shall notify the
154 consumer as to whether the contract requires that for an authorization described in Subsection
155 (2) to be effective the customer must:

156 (i) affirmatively respond to a request by the Internet service provider for authorization:

157 (A) in writing; or

158 (B) by electronic means; or

159 (ii) fail to respond to a request by the Internet service provider for authorization in the
160 time period specified in the request for authorization.

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

162 (i) conspicuous; and

163 (ii) written such that a consumer without technical knowledge of the Internet can
164 understand the notice.

165 Section 7. Section **13-37-301** is enacted to read:

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

167 **13-37-301. Security of information.**

168 An Internet service provider that provides access to consumers shall take reasonable
169 steps to maintain the security and privacy of a consumer's personally identifiable information.

170 Section 8. Section **13-37-302** is enacted to read:

171 **13-37-302. Privacy notices.**

172 (1) An Internet service provider that provides access to the Internet to a consumer shall
173 provide the consumer notice of:

174 (a) the privacy policy of the Internet service provider;

175 (b) subject to Section 13-37-203, the procedure followed by the Internet service
176 provider to obtain authorization from the consumer for disclosure of personally identifiable
177 information; and

178 (c) the services provided by the Internet service provider to a consumer that a consumer
179 can use to increase the privacy of the consumer's personally identifiable information that is
180 available through the Internet service provider.

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

182 (a) conspicuous; and

183 (b) written such that a consumer without technical knowledge of the Internet can
184 understand the notice.

185 Section 9. Section **13-37-401** is enacted to read:

186 **Part 4. Remedies**

187 **13-37-401. Civil liability -- Prohibit class action.**

188 (1) A consumer may bring a civil action in a court of competent jurisdiction against an
189 Internet service provider for a violation of this chapter.

190 (2) (a) If an Internet service provider is found to have violated this chapter in a civil
191 action brought under Subsection (1), the Internet service provider is liable to the consumer for
192 the greater of:

193 (i) \$500; or

194 (ii) actual damages.

195 (b) In addition to amounts described in Subsection (2)(a), the court may award a
196 customer:

197 (i) reasonable attorney fees; and

198 (ii) court costs.

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

200 Section 10. Section **13-37-402** is enacted to read:

201 **13-37-402. Defenses.**

202 In an action under this chapter, it is a defense that the Internet service provider has
203 established and implemented reasonable practices and procedures to prevent a violation of this
204 chapter.

205 Section 11. Section **63D-1-401** is enacted to read:

206 **Part 4. Governmental Internet Information Privacy Act**

207 **63D-1-401. Title.**

208 This part is known as the "Governmental Internet Information Privacy Act."

209 Section 12. Section **63D-1-402** is enacted to read:

210 **63D-1-402. Definitions.**

211 As used in this part:

212 (1) (a) "Collect" means the gathering of personally identifiable information:

213 (i) from a user of a governmental website; or

214 (ii) about a user of the governmental website.
215 (b) "Collect" includes use of any identifying code linked to a user of a governmental
216 website.

217 (2) Subject to Subsection (6), "governmental entity" means:

218 (a) a state agency; or

219 (b) a political subdivision of the state:

220 (i) as defined in Section 17B-2-101; and

221 (ii) including a school district.

222 (3) "Governmental website" means a website that is operated by or on behalf of a
223 governmental entity.

224 (4) "Governmental website operator" means a governmental entity or person acting on
225 behalf of the governmental entity that:

226 (a) operates a governmental website located on the Internet; and

227 (b) collects or maintains personally identifiable information from or about a user of
228 that website.

229 (5) "Personally identifiable information" means information that identifies:

230 (a) a user by:

231 (i) name;

232 (ii) account number;

233 (iii) physical address;

234 (iv) electronic address;

235 (v) telephone number; or

236 (vi) Social Security number;

237 (b) a user as having requested or obtained specific materials or services from a
238 governmental website;

239 (c) Internet sites visited by a user; or

240 (d) any of the contents of a user's data-storage device.

241 (6) Notwithstanding Section 63D-1-104, "state agency" includes:

242 (a) the legislative branch;

243 (b) the judicial branch;

244 (c) the State Board of Education;

245 (d) the Board of Regents; and

246 (e) institutions of higher education.

247 (7) "User" means a person who accesses a governmental website.

248 Section 13. Section **63D-1-403** is enacted to read:

249 **63D-1-403. Collection of personally identifiable information.**

250 (1) A government entity may not collect personally identifiable information related to a
251 user of the governmental entity's governmental website unless the governmental entity has
252 taken reasonable steps to ensure that on the day on which the personally identifiable
253 information is collected the governmental entity's governmental website complies with
254 Subsection (2).

255 (2) A government website shall contain a privacy policy statement that discloses:

256 (a) (i) the identity of the governmental website operator; and

257 (ii) how the governmental website operator may be contacted:

258 (A) by telephone; or

259 (B) electronically;

260 (b) (i) the personally identifiable information collected by the governmental entity;

261 (ii) the means by which personally identifiable information is collected;

262 (iii) whether the personally identifiable information collected by the governmental
263 entity is retained by the governmental entity; and

264 (iv) if personally identifiable information collected by the governmental entity is
265 retained, the time period for which the personally identifiable information is retained;

266 (c) a summary of how the personally identifiable information is used by:

267 (i) the governmental entity; or

268 (ii) the governmental website operator;

269 (d) the practices of the following related to disclosure of personally identifiable
270 information collected:

271 (i) the governmental entity; or

272 (ii) the governmental website operator;

273 (e) the options, if any, available to a person who wants to obtain services from the
274 governmental entity but chooses not to provide personally identifiable information through a
275 governmental website;

276 (f) the procedures, if any, by which a user of a governmental entity may request:
277 (i) access to the user's personally identifiable information; and
278 (ii) to correct the user's personally identifiable information; and
279 (g) without compromising the integrity of the security measures, a general description
280 of the security measures in place to protect a user's personally identifiable information from
281 unintended disclosure.

Legislative Review Note
as of 1-24-03 12:10 PM

This bill regulates Internet service providers who provide Internet access to consumers in the state. Case law surrounding state regulation of Internet activities is evolving. State regulation of Internet activities have been challenged as violating constitutional principles such as the Commerce Clause of the Constitution of the United States. At least one court has indicated that in considering state laws that directly regulate Internet activities, the need for national uniformity might limit a state's ability to regulate those activities. If the regulation of Internet activities is incidental to the regulation of other activities and no distinction is made between in state and out of state providers, some courts have upheld the constitutionality of the regulation. It would be for a court to decide whether the bill is unconstitutional as the bill does not impose a greater burden on out of state Internet service providers than is imposed on in state Internet service providers and regulates only service that is to residents of the state.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0105

Internet Privacy and Security Amendments

05-Feb-03

10:49 AM

State Impact

No significant direct fiscal impact to the State. However, according to the Legislative Review Note, this bill may be subject to judicial challenge which would subject the state to court costs.

Individual and Business Impact

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

Office of the Legislative Fiscal Analyst