

UNFAIR BUSINESS PRACTICES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Dmitrich

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LONG TITLE

General Description:

This bill enacts provisions within the Commerce and Trade Code related to unfair competition.

Highlighted Provisions:

This bill:

- ▶ defines unfair competition; and
- ▶ provides a private right of action for a person injured by unfair competition.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

13-5a-101, Utah Code Annotated 1953

13-5a-102, Utah Code Annotated 1953

13-5a-103, Utah Code Annotated 1953

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

Section 1. Section **13-5a-101** is enacted to read:

CHAPTER 5a. UNFAIR COMPETITION ACT

13-5a-101. Title.

This chapter is known as the "Unfair Competition Act."

Section 2. Section **13-5a-102** is enacted to read:

13-5a-102. Definitions.

As used in this chapter:

(1) "Control" means:

(a) ownership of more than 5% of the voting shares or ownership interests of an entity;

(b) the power to vote more than 5% of the voting shares of an entity; or

(c) the ability to influence the management of an entity.

(2) "Cyber-terrorism" means:

(a) the unlawful use of computing resources to intimidate or coerce others;

(b) accessing a computer without authorization or exceeding authorized access;

(c) willfully communicating, delivering, or causing the transmission of a program, information, code, or command without authorization or exceeding authorized access;

(d) intentionally or recklessly:

(i) intends to defraud or materially cause damage or disruption to any computing resources or to the owner of any computing resources; or

(ii) intends to materially cause damage or disruption to any computing resources indirectly through another party's computing resources.

(3) "Depository institution" is as defined in Section 7-1-103.

(4) (a) Except as provided in Subsection (4)(b), "unfair competition" means an intentional business act or practice that:

(i) (A) is unlawful, unfair, or fraudulent; and

(B) leads to a material diminution in value of intellectual property; and

(ii) is one of the following:

(A) cyber-terrorism;

(B) infringement of a patent, trademark, or trade name;

(C) a software license violation; or

(D) predatory hiring practices.

(b) Notwithstanding Subsection (4)(a), "unfair competition" does not include the

departure and hiring of an employee by a competitor.

Section 3. Section **13-5a-103** is enacted to read:

13-5a-103. Private action for unfair competition.

(1) (a) Except as provided in Subsection (2), a person injured by unfair competition may bring a private cause of action against a person who engages in unfair competition.

(b) In an action under this Subsection (1), a person injured by unfair competition may recover:

(i) actual damages;

(ii) costs and attorney fees; and

(iii) if the court determines that the circumstances are appropriate, punitive damages.

(2) A person may not bring an action described in Subsection (1) against:

(a) a depository institution; or

(b) an entity that:

(i) controls a depository institution;

(ii) is controlled by an entity that controls a depository institution; or

(iii) is controlled by a depository institution.