

1                   **COMPUTER ABUSE AND DATA RECOVERY ACT**

2                                   2016 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Rebecca Chavez-Houck**

5                                   Senate Sponsor: Todd Weiler

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7   **LONG TITLE**

8   **General Description:**

9           This bill enacts provisions related to unauthorized access to information technology.

10 **Highlighted Provisions:**

11           This bill:

12           ▶ provides civil penalties for an individual who, without authorization from a  
13 protected computer's owner:

14                   • obtains information from the protected computer;  
15                   • causes the transmission of a program, code, or command to the protected  
16 computer; or

17                   • traffics in a technological access barrier that could be used to access the  
18 protected computer;

19           ▶ defines terms; and

20           ▶ provides that the prevailing party in a civil action under this act is entitled to  
21 attorney fees.

22 **Money Appropriated in this Bill:**

23           None

24 **Other Special Clauses:**

25           None

26 **Utah Code Sections Affected:**

27 ENACTS:



- 28 [63D-3-101](#), Utah Code Annotated 1953
- 29 [63D-3-102](#), Utah Code Annotated 1953
- 30 [63D-3-103](#), Utah Code Annotated 1953
- 31 [63D-3-104](#), Utah Code Annotated 1953
- 32 [63D-3-105](#), Utah Code Annotated 1953
- 33 [63D-3-106](#), Utah Code Annotated 1953

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

36 Section 1. Section **63D-3-101** is enacted to read:

37 **CHAPTER 3. UNAUTHORIZED ACCESS TO INFORMATION TECHNOLOGY**

38 **Part 1. Computer Abuse and Data Recovery Act**

39 **63D-3-101. Title.**

40 (1) This chapter is known as "Unauthorized Access to Information Technology."

41 (2) This part is known as "Computer Abuse and Data Recovery Act."

42 Section 2. Section **63D-3-102** is enacted to read:

43 **63D-3-102. Definitions.**

44 As used in this part, the term:

45 (1) "Authorized user" means, for a protected computer:

46 (a) the protected computer's owner; or

47 (b) an individual who has permission to access the protected computer under Section

48 [63D-3-103](#).

49 (2) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other  
50 high-speed data processing device that performs logical, arithmetic, or storage functions.

51 (b) "Computer" includes any data storage device, data storage facility, or  
52 communications facility that is directly related to or that operates in conjunction with the  
53 device described in Subsection (2)(a).

54 (3) (a) "Damage" means, for a protected computer's owner, the cost associated with an  
55 individual's unauthorized access to information stored on a protected computer.

56 (b) "Damage" includes:

57 (i) the cost of repairing or restoring a protected computer;

58 (ii) economic damages;

59 (iii) consequential damages, including interruption of service; and  
60 (iv) profit by the individual from the unauthorized access to the protected computer.

61 (4) "Harm" means any impairment to the integrity, access, or availability of:

62 (a) data;

63 (b) a program;

64 (c) a system; or

65 (d) information.

66 (5) "Owner" means a person who:

67 (a) owns or leases a protected computer; or

68 (b) owns the information stored in a protected computer.

69 (6) (a) "Protected computer" means a computer that:

70 (i) is used in connection with the operation of a business, state government entity, or

71 political subdivision; and

72 (ii) requires a technological access barrier for an individual to access the computer.

73 (b) "Protected computer" does not include a computer that an individual can access

74 using a technological access barrier that does not, to a reasonable degree of security, effectively

75 control access to the information stored in the computer.

76 (7) "Technological access barrier" means a password, security code, token, key fob,

77 access device, or other digital security measure.

78 (8) "Traffic" means to sell, purchase, or deliver.

79 (9) "Unauthorized user" means an individual who, for a protected computer:

80 (a) is not an authorized user of the protected computer; and

81 (b) accesses the protected computer by:

82 (i) obtaining, without an authorized user's permission, the authorized user's

83 technological access barrier; or

84 (ii) circumventing, without the permission of the protected computer's owner, a

85 technological access barrier on the protected computer.

86 Section 3. Section **63D-3-103** is enacted to read:

87 **63D-3-103. Permission to access a protected computer -- Revocation.**

88 (1) Subject to Subsections (2) and (3), an individual has permission to access a

89 protected computer if:

90 (a) the individual is a director, officer, employee, agent, or contractor from the  
91 protected computer's owner; and

92 (b) the protected computer's owner gave the individual express permission to access  
93 the protected computer through a technological access barrier.

94 (2) If a protected computer's owner gives an individual permission to access the  
95 protected computer, the permission is valid only to the extent or for the specific purpose the  
96 protected computer's owner authorizes.

97 (3) An individual's permission to access a protected computer is revoked if:

98 (a) the protected computer's owner expressly revokes the individual's permission to  
99 access the protected computer; or

100 (b) the individual ceases to be a director, officer, employee, agent, or contractor of the  
101 protected computer's owner.

102 Section 4. Section **63D-3-104** is enacted to read:

103 **63D-3-104. Prohibited acts.**

104 (1) An unauthorized user of a protected computer may not, knowingly and with intent  
105 to cause harm or damage:

106 (a) obtain information from the protected computer and, as a result, cause harm or  
107 damage;

108 (b) cause the transmission of a program, code, or command to the protected computer,  
109 and, as a result of the transmission, cause harm or loss; or

110 (c) traffic in any technological access barrier that an unauthorized user could use to  
111 access the protected computer.

112 (2) An individual who violates Subsection (1) is liable to a protected computer's owner  
113 in a civil action for the remedies described in Section [63D-3-105](#).

114 Section 5. Section **63D-3-105** is enacted to read:

115 **63D-3-105. Remedies.**

116 (1) A person who brings a civil action against an individual for a violation of Section  
117 [63D-3-104](#) may:

118 (a) recover actual damages, including the person's:

119 (i) lost profits;

120 (ii) economic damages; and

- 121 (iii) the reasonable cost of remediation efforts related to the violation;
  - 122 (b) recover consequential damages, including for interruption of service;
  - 123 (c) recover, from the individual, the individual's profit obtained through trafficking in
  - 124 anything obtained by the individual through the violation;
  - 125 (d) obtain injunctive or other equitable relief to prevent a future violation of Section
  - 126 63D-3-104; and
  - 127 (e) recover anything the individual obtained through the violation, including:
  - 128 (i) misappropriated information or code;
  - 129 (ii) a misappropriated program; and
  - 130 (iii) any copies of the information, code, or program described in Subsections (1)(e)(i)
  - 131 and (1)(e)(ii).
  - 132 (2) A court shall award reasonable attorney fees to the prevailing party in any action
  - 133 arising under this part.
  - 134 (3) The remedies available for a violation of Section 63D-3-104 are in addition to
  - 135 remedies otherwise available for the same conduct under federal or state law.
  - 136 (4) A person may not file a civil action under Section 63D-3-104 later than three years
  - 137 after the day on which:
  - 138 (a) the violation occurred; or
  - 139 (b) (i) the person discovers the violation; or
  - 140 (ii) the person should have discovered the violation if the person acted with reasonable
  - 141 diligence to discover the violation.
- 142 Section 6. Section **63D-3-106** is enacted to read:
- 143 **63D-3-106. Exclusions.**
- 144 (1) This section does not prohibit a lawfully authorized investigative, protective, or
  - 145 intelligence activity of a law enforcement agency, regulatory agency, or political subdivision of
  - 146 this state, another state, the United States, or a foreign country.
  - 147 (2) This part does not apply to a provider of:
  - 148 (a) an interactive computer service as defined in 47 U.S.C. Sec. 230(f); or
  - 149 (b) an information service as defined in 47 U.S.C. Sec. 153.

**Legislative Review Note  
Office of Legislative Research and General Counsel**