

**Senator Kirk A. Cullimore** proposes the following substitute bill:

**CONSUMER PRIVACY ACT**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kirk A. Cullimore**

House Sponsor: Brady Brammer

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**LONG TITLE**

**General Description:**

This bill enacts the Utah Consumer Privacy Act and Utah Commercial Email Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides consumers the right to access, correct, and delete certain personal data;
- ▶ gives consumers the right to opt out of the collection and use of personal data for certain purposes;
- ▶ requires certain businesses that control and process personal data of consumers to:
  - safeguard personal data;
  - provide clear information to consumers regarding how the consumer's personal data are used;
  - accept consumer requests to exercise the consumer's rights under this bill;
  - comply with a consumer's request to exercise the consumer's rights under this bill; and
  - maintain data protection assessments;
- ▶ creates a process for a consumer to submit requests and appeal a business's decision regarding the business's processing of the consumer's personal data;



- 26           ▶ allows the Division of Consumer Protection to accept and investigate consumer
- 27 complaints regarding the processing of personal data;
- 28           ▶ empowers the Office of the Attorney General to:
- 29           • obtain and evaluate a business's data protection assessments;
- 30           • take enforcement action against violators; and
- 31           • impose penalties for violations;
- 32           ▶ creates a right for a consumer to know what personal information a business
- 33 collects, how the business uses the personal information, and whether the business
- 34 sells the personal information;
- 35           ▶ allows a consumer to require a business to delete personal information, with
- 36 exceptions, and direct a business that sells personal information to stop selling the
- 37 consumer's personal information;
- 38           ▶ prohibits an advertiser or a person initiating an email from sending unauthorized or
- 39 misleading commercial email from this state or to a Utah email address;
- 40           ▶ creates a cause of action for the Office of the Attorney General, the electronic mail
- 41 service provider, the recipient of the unsolicited commercial email, and any person
- 42 whose brand, trademark, email address, or domain name is used without permission
- 43 to recover damages related to unauthorized or misleading commercial email;
- 44           ▶ permits the prevailing party to recover attorney fees and costs in an action related to
- 45 unauthorized or misleading commercial email; and
- 46           ▶ makes technical changes.

47 **Money Appropriated in this Bill:**

48           None

49 **Other Special Clauses:**

50           This bill provides a special effective date.

51 **Utah Code Sections Affected:**

52 AMENDS:

53           13-2-1, as last amended by Laws of Utah 2020, Chapter 118

54           63G-2-305, as last amended by Laws of Utah 2020, Chapters 112, 198, 339, 349, 382,

55 and 393

56 ENACTS:

- 57 **13-58-101**, Utah Code Annotated 1953
- 58 **13-58-102**, Utah Code Annotated 1953
- 59 **13-58-201**, Utah Code Annotated 1953
- 60 **13-58-202**, Utah Code Annotated 1953
- 61 **13-58-203**, Utah Code Annotated 1953
- 62 **13-58-204**, Utah Code Annotated 1953
- 63 **13-58-205**, Utah Code Annotated 1953
- 64 **13-58-301**, Utah Code Annotated 1953
- 65 **13-58-302**, Utah Code Annotated 1953
- 66 **13-58-303**, Utah Code Annotated 1953
- 67 **13-58-304**, Utah Code Annotated 1953
- 68 **13-58-305**, Utah Code Annotated 1953
- 69 **13-58-306**, Utah Code Annotated 1953
- 70 **13-58-401**, Utah Code Annotated 1953
- 71 **13-58-402**, Utah Code Annotated 1953
- 72 **13-58-403**, Utah Code Annotated 1953
- 73 **13-58-404**, Utah Code Annotated 1953
- 74 **13-59-101**, Utah Code Annotated 1953
- 75 **13-59-102**, Utah Code Annotated 1953
- 76 **13-59-201**, Utah Code Annotated 1953
- 77 **13-59-202**, Utah Code Annotated 1953



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

80 Section 1. Section **13-2-1** is amended to read:

81 **13-2-1. Consumer protection division established -- Functions.**

82 (1) There is established within the Department of Commerce the Division of Consumer  
83 Protection.

84 (2) The division shall administer and enforce the following:

- 85 (a) Chapter 5, Unfair Practices Act;
- 86 (b) Chapter 10a, Music Licensing Practices Act;
- 87 (c) Chapter 11, Utah Consumer Sales Practices Act;

- 88 (d) Chapter 15, Business Opportunity Disclosure Act;
- 89 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 90 (f) Chapter 21, Credit Services Organizations Act;
- 91 (g) Chapter 22, Charitable Solicitations Act;
- 92 (h) Chapter 23, Health Spa Services Protection Act;
- 93 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 94 (j) Chapter 26, Telephone Fraud Prevention Act;
- 95 (k) Chapter 28, Prize Notices Regulation Act;
- 96 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 97 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 98 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 99 (o) Chapter 39, Child Protection Registry;
- 100 (p) Chapter 41, Price Controls During Emergencies Act;
- 101 (q) Chapter 42, Uniform Debt-Management Services Act;
- 102 (r) Chapter 49, Immigration Consultants Registration Act;
- 103 (s) Chapter 51, Transportation Network Company Registration Act;
- 104 (t) Chapter 52, Residential Solar Energy Disclosure Act;
- 105 (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 106 (v) Chapter 54, Ticket Website Sales Act;
- 107 (w) Chapter 56, Ticket Transferability Act; [and]
- 108 (x) Chapter 57, Maintenance Funding Practices Act[-]; and
- 109 (y) Chapter 58, Utah Consumer Privacy Act.

110 Section 2. Section 13-58-101 is enacted to read:

111 **CHAPTER 58. UTAH CONSUMER PRIVACY ACT**

112 **Part 1. General Provisions**

113 **13-58-101. Title.**

114 This chapter is known as the "Utah Consumer Privacy Act."

115 Section 3. Section 13-58-102 is enacted to read:

116 **13-58-102. Definitions.**

117 As used in this chapter:

118 (1) (a) "Affiliate" means a person who directly or indirectly through one or more

119 intermediaries controls, or is controlled by, or is under common control with, the person  
120 specified.

121 (b) "Affiliate" includes a subsidiary.

122 (2) "Air carrier" means the same as that term is defined in 49 U.S.C. Sec. 40102.

123 (3) "Authenticate" means to use reasonable means to determine that a consumer's  
124 request to exercise the rights described in Section 13-58-202 is made by the consumer who is  
125 entitled to exercise those rights.

126 (4) "Business associate" means the same as that term is defined in 45 C.F.R. Sec.  
127 160.103.

128 (5) "Child" means an individual younger than 13 years old.

129 (6) "Consent" means an affirmative act by a consumer that unambiguously indicates  
130 the consumer's voluntary and informed agreement to allow a person to process personal data  
131 related to the consumer.

132 (7) (a) "Consumer" means an individual who is a resident of the state acting in an  
133 individual or household context.

134 (b) "Consumer" does not include an individual acting in an employment or commercial  
135 context.

136 (8) (a) "Controller" means a person doing business in the state who determines the  
137 purposes for which and the means by which personal data is processed, regardless of whether  
138 the person makes the determination alone or with others.

139 (b) "Controller" does not include a person who processes personal data solely for the  
140 purposes described in Subsections 13-58-305(1)(a) through (d), or (f).

141 (9) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

142 (10) "Deidentified data" means data that:

143 (a) cannot reasonably be linked to an identifiable individual; and

144 (b) are possessed by a controller who:

145 (i) takes reasonable measures to ensure that a person cannot associate the data with an  
146 identifiable individual;

147 (ii) publicly commits to maintain and use the data only in deidentified form and not  
148 attempt to reidentify the data; and

149 (iii) contractually obligates any recipients of the data to comply with the requirements

150 described in Subsections (10)(b)(i) and (ii).

151 (11) "Director" means the director of the Division of Consumer Protection.

152 (12) "Division" means the Division of Consumer Protection created in Section 13-2-1.

153 (13) "Health care facility" means the same as that term is defined in Section 26-21-2.

154 (14) "Health care provider" means the same as that term is defined in Section 26-21-2.

155 (15) "Identifiable individual" means an individual who can be readily identified,  
156 directly or indirectly.

157 (16) "Local political subdivision" means the same as that term is defined in Section  
158 11-14-102.

159 (17) "Nonprofit corporation" means:

160 (a) the same as that term is defined in Section 16-6a-102; or

161 (b) a foreign nonprofit corporation as defined in Section 16-6a-102.

162 (18) (a) "Personal data" means any information that:

163 (i) identifies, describes, or is linked to an identifiable individual; or

164 (ii) is reasonably capable of identifying, describing, or being linked to an identifiable  
165 individual.

166 (b) "Personal data" does not include:

167 (i) deidentified data, anonymous or pseudonymous data, or publicly available  
168 information; or

169 (ii) data processed by a controller, processor, or third party.

170 (19) "Process" means an operation or set of operations performed on personal data,  
171 including collection, use, storage, disclosure, analysis, deletion, or modification of personal  
172 data.

173 (20) "Processor" means a person who processes personal data on behalf of a controller.

174 (21) "Profiling" means automated processing of personal data to evaluate, analyze, or  
175 predict personal aspects concerning an identifiable individual's:

176 (a) economic situation;

177 (b) health;

178 (c) personal preferences;

179 (d) interests;

180 (e) reliability;

181 (f) behavior;

182 (g) location; or

183 (h) movements.

184 (22) "Protected health information" means the same as that term is defined in 45 C.F.R.

185 Sec. 160.103.

186 (23) "Pseudonymous data" means personal data that cannot be attributed to a specific  
187 individual without the use of additional information, if the additional information is:

188 (a) kept separate from the consumer's personal data; and

189 (b) subject to appropriate technical and organizational measures to ensure that the  
190 personal data are not attributable to an identifiable individual.

191 (24) "Publicly available information" means information that a person:

192 (a) lawfully obtains from a federal, state, or local political subdivision record;

193 (b) reasonably believes a consumer or widely distributed media has lawfully made  
194 available to the general public; or

195 (c) if the consumer has not restricted the information to a specific audience, obtains  
196 from a person to whom the consumer disclosed the information.

197 (25) "Right" means a consumer right described in Section [13-58-202](#).

198 (26) (a) "Sale," "sell," or "sold" means the exchange of personal data for monetary  
199 consideration by a controller to a third party.

200 (b) "Sale" does not include:

201 (i) a controller's disclosure of personal data to a processor who processes the personal  
202 data on behalf of the controller;

203 (ii) a controller's disclosure of personal data to an affiliate of the controller;

204 (iii) considering the context in which the consumer provided the personal data to the  
205 controller, a controller's disclosure of personal data to a third party if the purpose is consistent  
206 with a consumer's reasonable expectations;

207 (iv) a consumer's disclosure of personal data to a third party for the purpose of  
208 providing a product or service requested by the consumer;

209 (v) a consumer's disclosure of information that the consumer:

210 (A) intentionally makes available to the general public via a channel of mass media;

211 and

212 (B) does not restrict to a specific audience; or  
213 (vi) a controller's transfer of personal data to a third party as an asset that is part of a  
214 proposed or actual merger, an acquisition, or a bankruptcy in which the third party assumes  
215 control of all or part of the controller's assets.  
216 (27) (a) "Sensitive data" means:  
217 (i) personal data that reveals an individual's:  
218 (A) racial or ethnic origin;  
219 (B) religious beliefs;  
220 (C) diagnosed mental or physical health condition;  
221 (D) sexual orientation; or  
222 (E) citizenship or immigration status;  
223 (ii) the processing of genetic or biometric personal data for the purpose of identifying  
224 an individual;  
225 (iii) the personal data of a known child; or  
226 (iv) specific geolocation data.  
227 (b) "Sensitive data" does not include personal data that reveals an individual's racial or  
228 ethnic origin, if the personal data is processed by a video communication service.  
229 (28) (a) "Specific geolocation data" means information:  
230 (i) derived from technology; and  
231 (ii) used or intended to be used to identify the specific location of a consumer within a  
232 geographic area with a radius of 1,850 feet or less.  
233 (b) "Specific geolocation data" does not include the content of a communication.  
234 (29) (a) "Targeted advertising" means displaying an advertisement to a consumer  
235 where the advertisement is selected based on personal data obtained from the consumer's  
236 activities over time and across nonaffiliated websites or online applications to predict the  
237 consumer's preferences or interests.  
238 (b) "Targeted advertising" does not include advertising:  
239 (i) based on a consumer's activities within a controller's or an affiliate of the  
240 controller's websites or online applications;  
241 (ii) based on the context of a consumer's current search query or visit to a website or  
242 online application;



243 (iii) directed to a consumer in response to the consumer's request for information,  
244 product, a service, or feedback; or

245 (iv) used solely to measure or report advertising:

246 (A) performance;

247 (B) reach; or

248 (C) frequency.

249 (30) "Third party" means a person other than:

250 (a) the consumer, controller, or processor; or

251 (b) an affiliate or contractor of the controller or the processor.

252 Section 4. Section **13-58-201** is enacted to read:

253 **Part 2. Rights Relating to Personal Information**

254 **13-58-201. Applicability.**

255 (1) This chapter applies to any controller or processor who:

256 (a) (i) conducts business in the state; or

257 (ii) produces a product or service that is targeted to residents of the state;

258 (b) has annual revenue of \$25,000,000 or more; and

259 (c) satisfies one or more of the following thresholds:

260 (i) during a calendar year, controls or processes personal data of 100,000 or more

261 consumers; or

262 (ii) derives over 50% of the entity's gross revenue from the sale of personal data and

263 controls or processes personal data of 25,000 or more consumers.

264 (2) This chapter does not apply to:

265 (a) a government entity;

266 (b) a tribe;

267 (c) a nonprofit corporation;

268 (d) a covered entity;

269 (e) a business associate;

270 (f) information that meets the definition of:

271 (i) protected health information for purposes of the federal Health Insurance Portability  
272 and Accountability Act of 1996, 42 U.S.C. Sec. 1320d et seq., and related regulations;

273 (ii) patient identifying information for purposes of 42 C.F.R. Part 2;

274 (iii) identifiable private information for purposes of the Federal Policy for the  
275 Protection of Human Subjects, 45 C.F.R. Part 46;

276 (iv) identifiable private information or personal data collected as part of human  
277 subjects research pursuant to or under the same standards as:

278 (A) the good clinical practice guidelines issued by the International Council for  
279 Harmonisation; or

280 (B) the Protection of Human Subjects under 21 C.F.R. Part 50 and Institutional Review  
281 Boards under 21 C.F.R. Part 56;

282 (v) personal data used or shared in research conducted in accordance with one or more  
283 of the requirements described in Subsection (2)(e)(iv);

284 (vi) information and documents created specifically for, and collected and maintained  
285 by, a committee listed in Section [26-1-7](#);

286 (vii) information and documents created for purposes of the federal Health Care  
287 Quality Improvement Act of 1986, 42 U.S.C. Sec. 11101 et seq., and related regulations;

288 (viii) patient safety work product for purposes of 42 C.F.R. Part 3; or

289 (ix) information that is:

290 (A) deidentified in accordance with the requirements for deidentification set forth in 45  
291 C.F.R. Part 164; and

292 (B) derived from any of the health care-related information listed in this Subsection  
293 (2)(d);

294 (g) information originating from, and intermingled to be indistinguishable with,  
295 information under Subsection (2)(f) that is maintained by:

296 (i) a health care facility or health care provider; or

297 (ii) a program or a qualified service organization as defined in 42 C.F.R. Sec. 2.11;

298 (h) information used only for public health activities and purposes as described in 45  
299 C.F.R. Sec. 164.512;

300 (i) (i) an activity by:

301 (A) a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a;

302 (B) a furnisher of information, as set forth in 15 U.S.C. Sec. 1681s-2, who provides  
303 information for use in a consumer report, as defined in 15 U.S.C. Sec. 1681a; or

304 (C) a user of a consumer report, as set forth in 15 U.S.C. Sec. 1681b;

305 (ii) subject to regulation under the federal Fair Credit Reporting Act, 15 U.S.C. Sec.  
306 1681 et seq.; and

307 (iii) involving the collection, maintenance, disclosure, sale, communication, or use of  
308 any personal information bearing on a consumer's:

309 (A) credit worthiness;  
310 (B) credit standing;  
311 (C) credit capacity;  
312 (D) character;  
313 (E) general reputation;  
314 (F) personal characteristics; or  
315 (G) mode of living;

316 (j) a financial institution or an affiliate of a financial institution governed by, or  
317 personal data collected, processed, sold, or disclosed in accordance with, the federal  
318 Gramm-Leach-Bliley Act, 15 U.S.C. Sec. 6801 et seq., and related regulations;

319 (k) personal data collected, processed, sold, or disclosed in accordance with the federal  
320 Driver's Privacy Protection Act of 1994, 18 U.S.C. Sec. 2721 et seq.;

321 (l) personal data regulated by the federal Family Education Rights and Privacy Act, 20  
322 U.S.C. Sec. 1232g, and related regulations;

323 (m) personal data collected, processed, sold, or disclosed in accordance with the  
324 federal Farm Credit Act of 1971, 12 U.S.C. Sec. 2001 et seq.;

325 (n) data that are:

326 (i) directly related to an employment record or application; or  
327 (ii) maintained for the purpose of providing employee benefits;

328 (o) an individual's processing of personal data for purely personal or household  
329 purposes; or

330 (p) an air carrier.

331 (3) A controller is in compliance with any obligation to obtain parental consent under  
332 this chapter if the controller complies with the verifiable parental consent mechanisms under  
333 the Children's Online Privacy Protection Act, 15 U.S.C. Sec. 6501 et seq., and its implementing  
334 regulations.

335 (4) This chapter does not require a person to take any action in conflict with the federal

336 Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Sec. 1320d et seq., or  
337 related regulations.

338 Section 5. Section **13-58-202** is enacted to read:

339 **13-58-202. Consumer rights -- Access -- Correction -- Deletion -- Portability -- Opt**  
340 **out of certain processing.**

341 (1) A consumer has the right to:

342 (a) confirm whether a controller is processing personal data concerning the consumer;  
343 and

344 (b) obtain information regarding the categories of personal data concerning the  
345 consumer the controller has collected.

346 (2) A consumer has the right to correct inaccurate personal data concerning the  
347 consumer, taking into account the nature of the personal data and the purposes of the  
348 processing of the personal data.

349 (3) A consumer has the right to delete the consumer's personal data that the consumer  
350 provided to the controller.

351 (4) A consumer has the right to obtain a copy of the consumer's personal data, that the  
352 consumer previously provided to the controller, in a format that:

353 (a) to the extent technically feasible, is portable;

354 (b) to the extent practicable, is readily-usable; and

355 (c) allows the consumer to transmit the data to another controller without impediment,  
356 where the processing is carried out by automated means.

357 (5) A consumer has the right to opt out of the processing of the consumer's personal  
358 data for purposes of:

359 (a) targeted advertising;

360 (b) the sale of personal data; or

361 (c) profiling in furtherance of decisions regarding:

362 (i) enrollment in an educational institution;

363 (ii) criminal justice;

364 (iii) employment opportunities;

365 (iv) health care services; or

366 (v) access to basic necessities.

367 Section 6. Section **13-58-203** is enacted to read:

368 **13-58-203. Exercising consumer rights.**

369 (1) A consumer may exercise a right by submitting a request to a controller specifying  
370 the right the consumer intends to exercise.

371 (2) In the case of processing personal data concerning a known child, the parent or  
372 legal guardian of the known child shall exercise a right on the child's behalf.

373 (3) In the case of processing personal data concerning a consumer subject to  
374 guardianship, conservatorship, or other protective arrangement under Title 75, Chapter 5,  
375 Protection of Persons Under Disability and Their Property, the guardian or the conservator of  
376 the consumer shall exercise a right on the consumer's behalf.

377 Section 7. Section **13-58-204** is enacted to read:

378 **13-58-204. Controller's response to requests.**

379 (1) A controller shall comply with a consumer's request to exercise a right.

380 (2) (a) A controller shall provide one or more secure and reliable means for a consumer  
381 to submit a request to exercise a right, including an email address to which a consumer may  
382 submit a request.

383 (b) In providing the means described in Subsection (2)(a), a controller shall consider:

384 (i) the ways in which consumers interact with the controller; and

385 (ii) the need for secure and reliable communication of the requests.

386 (c) A controller may not require a consumer to create a new account to exercise a right.

387 (d) A controller may require a consumer to use an existing account to exercise a right.

388 (3) (a) Within 45 days after the day on which a controller receives a request to exercise  
389 a right, the controller shall:

390 (i) take action on the consumer's request; and

391 (ii) inform the consumer of any action taken on the consumer's request under Section  
392 13-58-203.

393 (b) The controller may extend once the initial 45-day period by an additional 45 days if  
394 reasonably necessary due to the complexity of the request or the volume of the requests  
395 received by the controller.

396 (c) If a controller extends the initial 45-day period, before the initial 45-day period  
397 expires, the controller shall:

- 398 (i) inform the consumer of the extension, including the length of the extension; and
- 399 (ii) provide the reasons the extension is reasonably necessary as described in

400 Subsection (3)(b).

401 (d) If a controller chooses not to take action on a consumer's request, the controller  
402 shall:

403 (i) within 45 days after the day on which the controller receives the request, inform the  
404 consumer of the reasons for not taking action; and

405 (ii) provide instructions for how to appeal the controller's decision in accordance with  
406 Section [13-58-205](#).

407 (e) A controller may not charge a fee for information in response to a request, unless  
408 the request is the consumer's second or subsequent request during the same 12-month period.

409 (f) Notwithstanding Subsection (3)(e), if a request is duplicative, the controller may:

410 (i) charge a reasonable fee to cover the administrative costs of complying with the  
411 request; or

412 (ii) refuse to act on the request.

413 (g) The controller bears the burden of demonstrating the duplicative nature of a  
414 request.

415 (h) If a controller is unable to authenticate a consumer request to exercise a right  
416 described in Section [13-58-202](#) using commercially reasonable efforts, the controller:

417 (i) is not required to comply with the request; and

418 (ii) may request that the consumer provide additional information reasonably necessary  
419 to authenticate the request.

420 Section 8. Section **13-58-205** is enacted to read:

421 **13-58-205. Consumer appeal process.**

422 (1) A controller shall establish an internal process that allows a consumer to appeal the  
423 controller's failure to comply with Section [13-58-204](#).

424 (2) The controller shall ensure that the appeal process described in Subsection (1) is:

425 (a) conspicuously available; and

426 (b) equally easy to use as the process for submitting a request under Section [13-58-203](#).

427 (3) (a) Within 60 days after the day on which a controller receives an appeal, the  
428 controller shall:

- 429 (i) inform the consumer of any action taken in response to the appeal; and  
430 (ii) provide a written explanation of the reasons in support of the controller's action or  
431 inaction.
- 432 (b) The controller may extend once the initial 60-day period by an additional 60 days if  
433 reasonably necessary due to the complexity of the request or number of the requests serving as  
434 the basis for the appeal.
- 435 (c) If a controller extends the initial 60-day period, before the initial 60-day period  
436 expires, the controller shall:
- 437 (i) inform the consumer of the extension, including the length of the extension; and  
438 (ii) provide the reasons the extension is reasonably necessary as described in  
439 Subsection (3)(b).
- 440 (4) When informing a consumer of any action taken or not taken by the controller in  
441 response to an appeal, the controller shall:
- 442 (a) inform the consumer of the consumer's right to contact the division; and  
443 (b) upon request, provide to the consumer the controller's written explanation of the  
444 reasons in support of the controller's action.
- 445 (5) This section does not require a consumer to submit an appeal under this section  
446 before submitting a complaint to the division regarding a controller's failure to comply with  
447 Section [13-58-204](#).
- 448 Section 9. Section **13-58-301** is enacted to read:
- 449 **Part 3. Requirements for Controllers and Processors**
- 450 **13-58-301. Responsibility according to role.**
- 451 (1) A processor shall:
- 452 (a) adhere to the controller's instructions; and  
453 (b) assist the controller to meet the controller's obligations under this chapter by  
454 providing information to the controller that is necessary to enable the controller to conduct and  
455 document any data protection assessments required under Section [13-58-304](#).
- 456 (2) A processor shall:
- 457 (a) taking into account the context in which the personal data are to be processed,  
458 implement and maintain reasonable security procedures and practices to protect personal data;  
459 (b) ensure that each person processing personal data is subject to a duty of

460 confidentiality with respect to the personal data; and

461 (c) engage a subcontractor only pursuant to a written contract that requires the  
462 subcontractor to meet the same obligations as the processor with respect to the personal data.

463 (3) Determining whether a person is acting as a controller or processor with respect to  
464 a specific processing of data is a fact-based determination that depends upon the context in  
465 which personal data are to be processed.

466 Section 10. Section **13-58-302** is enacted to read:

467 **13-58-302. Responsibilities of controllers -- Transparency -- Purpose specification**  
468 **and data minimization -- Consent for secondary use -- Security -- Nondiscrimination --**  
469 **Nonretaliation -- Nonwaiver of consumer rights.**

470 (1) (a) A controller shall provide consumers with a reasonably accessible and clear  
471 privacy notice that includes:

472 (i) the categories of personal data processed by the controller;

473 (ii) the purposes for which the categories of personal data are processed;

474 (iii) how and where consumers may exercise a right, including how a consumer may  
475 appeal a controller's action with regard to the consumer's request to exercise a right;

476 (iv) the categories of personal data that the controller shares with third parties, if any;  
477 and

478 (v) the categories of third parties, if any, with whom the controller shares personal data.

479 (b) If a controller sells personal data to one or more third parties or processes personal  
480 data for targeted advertising, the controller shall clearly and conspicuously disclose to the  
481 consumer the manner in which the consumer may exercise the right to opt out of the:

482 (i) sale of the consumer's personal data; or

483 (ii) processing for targeted advertising.

484 (2) A controller may not collect personal data, unless:

485 (a) the collection is:

486 (i) relevant to the purposes for which the controller is processing the personal data; and

487 (ii) as disclosed to the consumer, limited to the personal data reasonably necessary to  
488 achieve the purposes for which the controller is processing the personal data; or

489 (b) the controller obtains the consumer's consent.

490 (3) (a) A controller shall establish, implement, and maintain reasonable administrative,



491 technical, and physical data security practices designed to:

492 (i) protect the confidentiality and integrity of personal data; and

493 (ii) reduce reasonably foreseeable risks of harm to consumers relating to the processing  
494 of personal data.

495 (b) Considering the controller's business size, scope, and type, a controller shall use  
496 data security practices that are appropriate for the volume and nature of the personal data at  
497 issue.

498 (4) Except as otherwise provided in this chapter, a controller may not process sensitive  
499 data concerning a consumer without obtaining:

500 (a) the consumer's consent; or

501 (b) in the case of the processing of personal data concerning a known child, the consent  
502 of the child's parent or lawful guardian in accordance with the federal Children's Online  
503 Privacy Protection Act, 15 U.S.C. Sec. 6501 et seq.

504 (5) (a) A controller may not discriminate against a consumer for exercising a right by:

505 (i) denying a good or service to the consumer;

506 (ii) charging the consumer a different price or rate for a good or service; or

507 (iii) providing the consumer a different level of quality of a good or service.

508 (b) This Subsection (5) does not prohibit a controller from:

509 (i) offering a different price, rate, level, quality, or selection of a good or service to a  
510 consumer, including offering a good or service for no fee or at a discount, as part of the  
511 consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts,  
512 or club card program; or

513 (ii) offering a financial or other incentive to a consumer to allow the controller to  
514 process the consumer's personal data, including offering a product or service for no fee, if the  
515 incentive is reasonably related to the value of the processing to the controller.

516 (6) A controller is not required to provide a product, service, or functionality to a  
517 consumer if:

518 (a) the consumer's personal data are or the processing of the consumer's personal data  
519 is reasonably necessary for the controller to provide the consumer the product, service, or  
520 functionality; and

521 (b) the consumer does not:

- 522 (i) provide the consumer's personal data to the controller; or
- 523 (ii) allow the controller to process the consumer's personal data.
- 524 (7) Any provision of a contract that purports to waive or limit a consumer's right under
- 525 this chapter is void.

526 Section 11. Section **13-58-303** is enacted to read:

527 **13-58-303. Processing deidentified data or pseudonymous data.**

528 (1) The provisions of this chapter do not require a controller or processor to:

- 529 (a) reidentify deidentified data;
- 530 (b) comply with an authenticated consumer request to exercise a right described in
- 531 Subsections [13-58-202](#)(1) through (4), if:

532 (i) (A) the controller is not reasonably capable of associating the request with the

533 personal data; or

534 (B) it would be unreasonably burdensome for the controller to associate the request

535 with the personal data;

536 (ii) the controller does not:

537 (A) use the personal data to recognize or respond to the consumer who is the subject of

538 the personal data; or

539 (B) associate the personal data with other personal data about the consumer; and

540 (iii) the controller does not sell or otherwise disclose the personal data to any third

541 party other than a processor, except as otherwise permitted in this section; or

542 (c) maintain data in identifiable form, or collect, retain, or access any data or

543 technology, in order to be capable of associating an authenticated consumer request with

544 personal data.

545 (2) The rights described in Subsections [13-58-202](#)(1) through (4) do not apply to

546 pseudonymous data if a controller keeps information necessary to identify a consumer:

547 (a) separate from the pseudonymous data; and

548 (b) subject to effective technical and organizational controls that prevent the controller

549 from accessing the information.

550 (3) A controller who uses pseudonymous data or deidentified data shall take reasonable

551 steps to ensure the controller:

552 (a) complies with any contractual obligations to which the pseudonymous data or

553 deidentified data are subject; and

554 (b) promptly addresses any breach of a contractual obligation described in Subsection

555 (3)(a).

556 Section 12. Section **13-58-304** is enacted to read:

557 **13-58-304. Data protection assessments.**

558 (1) In accordance with Subsection (2), a controller shall conduct and document a data  
559 protection assessment of the following processing activities involving personal data:

560 (a) the processing of personal data for purposes of targeted advertising;

561 (b) the sale of personal data;

562 (c) the processing of personal data for purposes of profiling, if the profiling presents a  
563 reasonably foreseeable risk to consumers of:

564 (i) unfair or deceptive treatment;

565 (ii) disparate impact; or

566 (iii) financial, physical, or reputational injury;

567 (d) the processing of sensitive data; and

568 (e) any processing activities involving personal data that present a heightened risk of  
569 harm or substantial injury to a consumer.

570 (2) A controller shall conduct and document a data protection assessment:

571 (a) no later than July 1, 2023; and

572 (b) each time the controller changes the controller's processing activities involving  
573 personal data.

574 (3) A controller shall consider in the controller's data protection assessment:

575 (a) the benefits that may flow, directly or indirectly, from the processing of personal  
576 data to the controller, the consumer, stakeholders, and the public;

577 (b) potential security risks to a consumer's personal data, as mitigated by safeguards  
578 that can be employed by the controller;

579 (c) the use of deidentified data;

580 (d) the reasonable expectations of consumers;

581 (e) the context of the processing; and

582 (f) the relationship between the controller and the consumer whose personal data will  
583 be processed.

584 (4) (a) The division or attorney general may request, in writing, that a controller  
585 disclose any data protection assessment that is relevant to an investigation conducted by the  
586 division or attorney general.

587 (b) A controller shall make a data protection assessment available to the division or  
588 attorney general upon request.

589 (c) A data protection assessment is confidential and is a protected record for purposes  
590 of Title 63G, Chapter 2, Government Records Access and Management Act.

591 (d) The disclosure of a data protection assessment in accordance with a request from  
592 the division or attorney general under this subsection does not constitute a waiver of the  
593 attorney-client privilege or work product protection with respect to the assessment or any  
594 information contained in the assessment.

595 (5) A controller shall retain the controller's data protection assessments for at least  
596 three years.

597 Section 13. Section **13-58-305** is enacted to read:

598 **13-58-305. Limitations.**

599 (1) The requirements described in this chapter do not restrict a controller or processor's  
600 ability to:

601 (a) comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or  
602 summons by a federal, state, local, or other governmental entity;

603 (b) cooperate with a law enforcement agency concerning activity that the controller or  
604 processor reasonably and in good faith believes may violate federal, state, or local laws, rules,  
605 or regulations;

606 (c) investigate, establish, exercise, prepare for, or defend a legal claim;

607 (d) provide a product or service requested by a consumer;

608 (e) perform a contract to which the consumer is a party, or take steps at the request of  
609 the consumer before entering into a contract with the consumer;

610 (f) take immediate steps to protect an interest that is essential for the life or physical  
611 safety of the consumer or of another individual;

612 (g) (i) detect, prevent, or respond to a security incident, identity theft, fraud,  
613 harassment, malicious or deceptive activity, or any illegal activity; and

614 (ii) investigate, report, or prosecute a person responsible for an action described in

615 Subsection (1)(g)(i);

616 (h) preserve the integrity or security of systems;

617 (i) if the controller discloses the processing in a notice described in Section [13-58-302](#),

618 engage in public or peer-reviewed scientific, historical, or statistical research in the public

619 interest that adheres to all other applicable ethics and privacy laws;

620 (j) assist another person with an obligation described in this subsection; or

621 (k) process deidentified and pseudonymous data to:

622 (i) conduct internal analytics or other research solely to develop, improve, or repair a

623 controller or processor's product, service, or technology; or

624 (ii) identify and repair technical errors that impair existing or intended functionality;

625 (l) process personal data to perform a solely internal operation that is:

626 (i) reasonably aligned with the consumer's expectations based on the consumer's

627 existing relationship with the controller; or

628 (ii) otherwise compatible with processing to aid the controller or processor in

629 providing a product or service specifically requested by a consumer or the performance of a

630 contract to which the consumer is a party; or

631 (m) retain a consumer's email address to comply with the consumer's request to

632 exercise a right.

633 (2) This chapter does not apply if a controller or processor's compliance with this

634 chapter:

635 (a) violates an evidentiary privilege under Utah law;

636 (b) as part of a privileged communication, prevents a controller or processor from

637 providing personal data concerning a consumer to a person covered by an evidentiary privilege

638 under Utah law; or

639 (c) adversely affect the rights of any person.

640 (3) A controller or processor is not in violation of this chapter if:

641 (a) the controller or processor discloses personal data to a third party controller or

642 processor in compliance with this chapter;

643 (b) the third party processes the personal data in violation of this chapter; and

644 (c) the disclosing controller or processor did not have actual knowledge of the third

645 party's intent to commit a violation of this chapter.

646 (4) If a controller processes personal data under an exemption described in Subsection  
647 (1), the controller bears the burden of demonstrating that the processing qualifies for the  
648 exemption.

649 Section 14. Section **13-58-306** is enacted to read:

650 **13-58-306. No private cause of action.**

651 There is no private cause of action against a controller or processor for a violation of  
652 this chapter.

653 Section 15. Section **13-58-401** is enacted to read:

654 **Part 4. Enforcement**

655 **13-58-401. Investigative powers of division.**

656 (1) The division shall establish and administer a system to receive consumer  
657 complaints regarding a controller or processor's alleged violation of this chapter.

658 (2) (a) The division may investigate a consumer complaint to determine whether the  
659 controller or processor violated or is violating this chapter.

660 (b) If the director has reasonable cause to believe that substantial evidence exists that a  
661 person identified in a consumer complaint is in violation of this chapter, the director shall refer  
662 the matter to the attorney general.

663 (c) Upon request, the division shall provide consultation and assistance to the attorney  
664 general in enforcing this chapter.

665 Section 16. Section **13-58-402** is enacted to read:

666 **13-58-402. Enforcement powers of the attorney general.**

667 (1) The attorney general has the exclusive authority to enforce this chapter.

668 (2) Upon referral from the division, the attorney general may initiate an enforcement  
669 action against a controller or processor for a violation of this chapter.

670 (3) (a) At least 30 days before the day on which the attorney general initiates an  
671 enforcement action against a controller or processor, the attorney general shall provide the  
672 controller or processor:

673 (i) written notice identifying each provision of this chapter the attorney general alleges  
674 the controller or processor has violated or is violating; and

675 (ii) an explanation of the basis for each allegation.

676 (b) The attorney general may not initiate an action if the controller or processor:

- 677 (i) cures the noticed violation within 30 days after the day on which the controller or  
678 processor receives the written notice described in Subsection (3)(a); and
- 679 (ii) provides the attorney general an express written statement that:  
680 (A) the violation has been cured; and  
681 (B) no further violation will occur.
- 682 (c) The attorney general may initiate an action against a controller or processor who:  
683 (i) fails to cure a violation after receiving the notice described in Subsection (3)(a); or  
684 (ii) after curing a noticed violation and providing a written statement in accordance  
685 with Subsection (3)(b), continues to violate this chapter.
- 686 (d) In an action described in Subsection (3)(c), the attorney general may recover:  
687 (i) actual damages to the consumer; and  
688 (ii) for each violation of this chapter, an amount not to exceed \$1,000 per consumer  
689 affected by the violation.
- 690 (4) All money received from an action under this chapter shall be deposited into the  
691 Consumer Privacy Account established in Section [13-58-403](#).
- 692 (5) If more than one controller or processor are involved in the same processing in  
693 violation of this chapter, the liability for the violation shall be allocated among the controllers  
694 or processors according to the principles of comparative fault.
- 695 Section 17. Section **13-58-403** is enacted to read:
- 696 **13-58-403. Consumer privacy restricted account.**
- 697 (1) There is created a restricted account known as the "Consumer Privacy Account."  
698 (2) The account shall be funded by money received through civil enforcement actions  
699 under this chapter.
- 700 (3) Upon appropriation, the division or the attorney general may use money deposited  
701 into the account for:
- 702 (a) investigation and administrative costs incurred by the division in investigating  
703 consumer complaints alleging violations of this chapter;  
704 (b) recovery of costs and attorney fees accrued by the attorney general in enforcing this  
705 chapter; and
- 706 (c) providing consumer and business education regarding:  
707 (i) consumer rights under this chapter; and

708 (ii) compliance with the provisions of this chapter for controllers and processors.  
709 (4) If the balance in the fund exceeds \$4,000,000 at the close of any fiscal year, the  
710 Division of Finance shall transfer the amount that exceeds \$4,000,000 into the General Fund.

711 Section 18. Section **13-58-404** is enacted to read:

712 **13-58-404. Attorney general report.**

713 (1) The attorney general and the division shall compile a report:

714 (a) evaluating the liability and enforcement provisions of this chapter, including:

715 (i) the effectiveness of the attorney general's and the division's efforts to enforce this  
716 chapter; and

717 (ii) any recommendations for changes to this chapter; and

718 (b) summarizing the data protected and not protected by this chapter including, with  
719 reasonable detail:

720 (i) a list of the types of information that are publicly available from local, state, and  
721 federal government sources; and

722 (ii) an inventory of information to which this chapter does not apply by virtue of a  
723 limitation in Section [13-58-305](#).

724 (2) The attorney general and the division may update the report as new information  
725 becomes available.

726 (3) The attorney general and the division shall submit the report to the Business and  
727 Labor Interim Committee before July 1, 2023.

728 Section 19. Section **13-59-101** is enacted to read:

729 **CHAPTER 59. UTAH COMMERCIAL EMAIL ACT**

730 **Part 1. General Provisions**

731 **13-59-101. Title.**

732 This chapter is known as the "Utah Commercial Email Act."

733 Section 20. Section **13-59-102** is enacted to read:

734 **13-59-102. Definitions.**

735 As used in this chapter:

736 (1) "Advertiser" means a person who advertises the person's product, service, or  
737 website through the use of commercial email.

738 (2) (a) "Commercial email" means an email used primarily to:



- 739 (i) advertise or promote a commercial website, product, or service; or  
740 (ii) solicit money, property, or personal information.
- 741 (b) "Commercial email" does not include email sent for the purpose of marketing  
742 research.
- 743 (3) "Domain name" means any alphanumeric designation that is registered with or  
744 assigned by any domain name registrar, domain name registry, or other domain name  
745 registration authority as part of an electronic address on the Internet.
- 746 (4) "Electronic mail service provider" means a company or a service that provides  
747 routing, relaying, handling, storage, or support for email addresses and email inboxes.
- 748 (5) "Header information" means information attached to an email, including:  
749 (a) the originating domain name;  
750 (b) the originating email address;  
751 (c) the destination;  
752 (d) the routing information; and  
753 (e) any other information that appears in the header line identifying, or purporting to  
754 identify, a person initiating the message.
- 755 (6) "Initiate" means an act of:  
756 (a) originating, transmitting, or sending commercial email; or  
757 (b) promising, paying, or providing other consideration for another person to originate,  
758 transmit, or send a commercial email.
- 759 (7) (a) "Initiator" means a person who:  
760 (i) originates, transmits, or sends commercial email; or  
761 (ii) promises, pays, or provides other consideration for another person to originate,  
762 transmit, or send commercial email.
- 763 (b) "Initiator" does not include a person whose activities are a routine conveyance.
- 764 (8) (a) "Marketing research" means the collection, use, maintenance, or transfer of  
765 personal information to investigate the market for the purpose of marketing a product, service,  
766 or idea.
- 767 (b) "Marketing research" does not include:  
768 (i) the collection, use, maintenance, or transfer of personal information that is  
769 integrated into a product or service; or

770 (ii) the use of personal information to:  
771 (A) contact a particular individual or a particular device; or  
772 (B) advertise or market to a particular individual or a particular device.  
773 (9) "Preexisting or current business relationship" means a situation where the recipient

774 has:  
775 (a) made an inquiry and provided an email address; or  
776 (b) made an application, a purchase, or a transaction, with or without consideration,  
777 related to a product or a service offered by the advertiser.

778 (10) "Recipient" means an addressee of an unsolicited email.

779 (11) "Routine conveyance" means the transmission, routing, relaying, handling, or  
780 storing, through an automatic technical process, of an electronic mail message for which  
781 another person has identified the recipients or provided the recipients' addresses.

782 (12) "Unsolicited commercial email" means a commercial email sent by an advertiser  
783 to a recipient that:

784 (a) has not provided direct consent to the advertiser to receive the commercial email;  
785 and

786 (b) does not have a preexisting or current relationship with the advertiser.

787 (13) "Utah email address" means an email address of a resident of this state.

788 Section 21. Section **13-59-201** is enacted to read:

789 **Part 2. Restrictions on Commercial Email**

790 **13-59-201. Prohibited uses of email.**

791 An advertiser or an initiator may not knowingly initiate or advertise in a commercial  
792 email sent from this state or sent to a Utah email address if:

793 (1) the commercial email contains or is accompanied by a third party's domain name  
794 without the permission of the third party;

795 (2) the commercial email contains or is accompanied by false or forged header  
796 information, even if the commercial email contains truthful identifying information for the  
797 advertiser in the body of the email; or

798 (3) the commercial email has a subject line that is likely to mislead a recipient, acting  
799 reasonably under the circumstances, about a material fact regarding the identity of the  
800 advertiser, the contents, or the subject matter of the commercial email.

801 Section 22. Section **13-59-202** is enacted to read:

802 **13-59-202. Cause of action.**

803 (1) (a) The following persons may bring a claim against an advertiser or initiator who  
804 violates Section [13-59-201](#):

805 (i) the attorney general;

806 (ii) an electronic mail service provider;

807 (iii) a recipient of an unsolicited commercial email; or

808 (iv) a person whose brand, trademark, email address, or domain name an advertiser or  
809 initiator uses, without authorization, in the header information.

810 (b) (i) There is a rebuttable presumption that a commercial email that violates Section  
811 [13-59-201](#) is an unsolicited commercial email.

812 (ii) The burden of proving that a commercial email is not an unsolicited commercial  
813 email is on the defendant.

814 (2) (a) A person described in Subsections (1)(a)(i) through (iii) may recover:

815 (i) actual damages; and

816 (ii) except as provided in Subsection (2)(c), liquidated damages of \$1,000 for each  
817 unsolicited commercial email transmitted in violation of Section [13-59-201](#).

818 (b) If an addressee of an unsolicited commercial email has more than one email address  
819 to which an advertiser or an initiator sends an unsolicited commercial email, the addressee is  
820 considered a separate recipient for each email address to which the advertiser or the initiator  
821 sends the unsolicited commercial email.

822 (c) If a court finds that an advertiser or an initiator used due diligence to establish and  
823 implement practices and procedures to effectively prevent unsolicited commercial emails in  
824 violation of this chapter, the court shall reduce the liquidated damages to \$100 for each  
825 unsolicited commercial email transmitted in violation of Section [13-59-201](#).

826 (3) A person described in Subsection (1)(a)(i) or (iv) may recover:

827 (a) actual damages; and

828 (b) liquidated damages in an amount equal to the lesser of:

829 (i) \$1,000 for each commercial email transmitted in violation of this chapter that uses,  
830 without authorization, a person's brand, trademark, email address, or domain name in the  
831 header information; and

832 (ii) \$2,000,000.

833 (4) The prevailing party in an action brought under this section may recover reasonable  
834 attorney fees and costs.

835 (5) (a) Defendants in an action under this section are jointly and severally liable.

836 (b) There is no cause of action under this section against an electronic mail service  
837 provider who is involved only in the routine transmission or conveyance of commercial email  
838 over the email service provider's computer network.

839 Section 23. Section **63G-2-305** is amended to read:

840 **63G-2-305. Protected records.**

841 The following records are protected if properly classified by a governmental entity:

842 (1) trade secrets as defined in Section [13-24-2](#) if the person submitting the trade secret  
843 has provided the governmental entity with the information specified in Section [63G-2-309](#);

844 (2) commercial information or nonindividual financial information obtained from a  
845 person if:

846 (a) disclosure of the information could reasonably be expected to result in unfair  
847 competitive injury to the person submitting the information or would impair the ability of the  
848 governmental entity to obtain necessary information in the future;

849 (b) the person submitting the information has a greater interest in prohibiting access  
850 than the public in obtaining access; and

851 (c) the person submitting the information has provided the governmental entity with  
852 the information specified in Section [63G-2-309](#);

853 (3) commercial or financial information acquired or prepared by a governmental entity  
854 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
855 commodities that will interfere with a planned transaction by the governmental entity or cause  
856 substantial financial injury to the governmental entity or state economy;

857 (4) records, the disclosure of which could cause commercial injury to, or confer a  
858 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
859 defined in Subsection [11-13-103\(4\)](#);

860 (5) test questions and answers to be used in future license, certification, registration,  
861 employment, or academic examinations;

862 (6) records, the disclosure of which would impair governmental procurement

863 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
864 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
865 Subsection (6) does not restrict the right of a person to have access to, after the contract or  
866 grant has been awarded and signed by all parties:

867 (a) a bid, proposal, application, or other information submitted to or by a governmental  
868 entity in response to:

869 (i) an invitation for bids;

870 (ii) a request for proposals;

871 (iii) a request for quotes;

872 (iv) a grant; or

873 (v) other similar document; or

874 (b) an unsolicited proposal, as defined in Section [63G-6a-712](#);

875 (7) information submitted to or by a governmental entity in response to a request for  
876 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict  
877 the right of a person to have access to the information, after:

878 (a) a contract directly relating to the subject of the request for information has been  
879 awarded and signed by all parties; or

880 (b) (i) a final determination is made not to enter into a contract that relates to the  
881 subject of the request for information; and

882 (ii) at least two years have passed after the day on which the request for information is  
883 issued;

884 (8) records that would identify real property or the appraisal or estimated value of real  
885 or personal property, including intellectual property, under consideration for public acquisition  
886 before any rights to the property are acquired unless:

887 (a) public interest in obtaining access to the information is greater than or equal to the  
888 governmental entity's need to acquire the property on the best terms possible;

889 (b) the information has already been disclosed to persons not employed by or under a  
890 duty of confidentiality to the entity;

891 (c) in the case of records that would identify property, potential sellers of the described  
892 property have already learned of the governmental entity's plans to acquire the property;

893 (d) in the case of records that would identify the appraisal or estimated value of

894 property, the potential sellers have already learned of the governmental entity's estimated value  
895 of the property; or

896 (e) the property under consideration for public acquisition is a single family residence  
897 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
898 the property as required under Section 78B-6-505;

899 (9) records prepared in contemplation of sale, exchange, lease, rental, or other  
900 compensated transaction of real or personal property including intellectual property, which, if  
901 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
902 of the subject property, unless:

903 (a) the public interest in access is greater than or equal to the interests in restricting  
904 access, including the governmental entity's interest in maximizing the financial benefit of the  
905 transaction; or

906 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
907 the value of the subject property have already been disclosed to persons not employed by or  
908 under a duty of confidentiality to the entity;

909 (10) records created or maintained for civil, criminal, or administrative enforcement  
910 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
911 release of the records:

912 (a) reasonably could be expected to interfere with investigations undertaken for  
913 enforcement, discipline, licensing, certification, or registration purposes;

914 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
915 proceedings;

916 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
917 hearing;

918 (d) reasonably could be expected to disclose the identity of a source who is not  
919 generally known outside of government and, in the case of a record compiled in the course of  
920 an investigation, disclose information furnished by a source not generally known outside of  
921 government if disclosure would compromise the source; or

922 (e) reasonably could be expected to disclose investigative or audit techniques,  
923 procedures, policies, or orders not generally known outside of government if disclosure would  
924 interfere with enforcement or audit efforts;

925 (11) records the disclosure of which would jeopardize the life or safety of an  
926 individual;

927 (12) records the disclosure of which would jeopardize the security of governmental  
928 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
929 or other appropriation or use contrary to law or public policy;

930 (13) records that, if disclosed, would jeopardize the security or safety of a correctional  
931 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
932 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

933 (14) records that, if disclosed, would reveal recommendations made to the Board of  
934 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
935 Board of Pardons and Parole, or the Department of Human Services that are based on the  
936 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
937 jurisdiction;

938 (15) records and audit workpapers that identify audit, collection, and operational  
939 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
940 audits or collections;

941 (16) records of a governmental audit agency relating to an ongoing or planned audit  
942 until the final audit is released;

943 (17) records that are subject to the attorney client privilege;

944 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,  
945 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,  
946 quasi-judicial, or administrative proceeding;

947 (19) (a) (i) personal files of a state legislator, including personal correspondence to or  
948 from a member of the Legislature; and

949 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
950 legislative action or policy may not be classified as protected under this section; and

951 (b) (i) an internal communication that is part of the deliberative process in connection  
952 with the preparation of legislation between:

953 (A) members of a legislative body;

954 (B) a member of a legislative body and a member of the legislative body's staff; or

955 (C) members of a legislative body's staff; and

956 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
957 legislative action or policy may not be classified as protected under this section;

958 (20) (a) records in the custody or control of the Office of Legislative Research and  
959 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
960 legislation or contemplated course of action before the legislator has elected to support the  
961 legislation or course of action, or made the legislation or course of action public; and

962 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
963 Office of Legislative Research and General Counsel is a public document unless a legislator  
964 asks that the records requesting the legislation be maintained as protected records until such  
965 time as the legislator elects to make the legislation or course of action public;

966 (21) research requests from legislators to the Office of Legislative Research and  
967 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
968 in response to these requests;

969 (22) drafts, unless otherwise classified as public;

970 (23) records concerning a governmental entity's strategy about:

971 (a) collective bargaining; or

972 (b) imminent or pending litigation;

973 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
974 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
975 Uninsured Employers' Fund, or similar divisions in other governmental entities;

976 (25) records, other than personnel evaluations, that contain a personal recommendation  
977 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
978 personal privacy, or disclosure is not in the public interest;

979 (26) records that reveal the location of historic, prehistoric, paleontological, or  
980 biological resources that if known would jeopardize the security of those resources or of  
981 valuable historic, scientific, educational, or cultural information;

982 (27) records of independent state agencies if the disclosure of the records would  
983 conflict with the fiduciary obligations of the agency;

984 (28) records of an institution within the state system of higher education defined in  
985 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,  
986 retention decisions, and promotions, which could be properly discussed in a meeting closed in



987 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
988 the final decisions about tenure, appointments, retention, promotions, or those students  
989 admitted, may not be classified as protected under this section;

990 (29) records of the governor's office, including budget recommendations, legislative  
991 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
992 policies or contemplated courses of action before the governor has implemented or rejected  
993 those policies or courses of action or made them public;

994 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
995 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
996 recommendations in these areas;

997 (31) records provided by the United States or by a government entity outside the state  
998 that are given to the governmental entity with a requirement that they be managed as protected  
999 records if the providing entity certifies that the record would not be subject to public disclosure  
1000 if retained by it;

1001 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a  
1002 public body except as provided in Section [52-4-206](#);

1003 (33) records that would reveal the contents of settlement negotiations but not including  
1004 final settlements or empirical data to the extent that they are not otherwise exempt from  
1005 disclosure;

1006 (34) memoranda prepared by staff and used in the decision-making process by an  
1007 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
1008 other body charged by law with performing a quasi-judicial function;

1009 (35) records that would reveal negotiations regarding assistance or incentives offered  
1010 by or requested from a governmental entity for the purpose of encouraging a person to expand  
1011 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
1012 person or place the governmental entity at a competitive disadvantage, but this section may not  
1013 be used to restrict access to a record evidencing a final contract;

1014 (36) materials to which access must be limited for purposes of securing or maintaining  
1015 the governmental entity's proprietary protection of intellectual property rights including patents,  
1016 copyrights, and trade secrets;

1017 (37) the name of a donor or a prospective donor to a governmental entity, including an

1018 institution within the state system of higher education defined in Section 53B-1-102, and other  
1019 information concerning the donation that could reasonably be expected to reveal the identity of  
1020 the donor, provided that:

1021 (a) the donor requests anonymity in writing;

1022 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
1023 classified protected by the governmental entity under this Subsection (37); and

1024 (c) except for an institution within the state system of higher education defined in  
1025 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
1026 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
1027 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
1028 by the donor or the donor's immediate family;

1029 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
1030 73-18-13;

1031 (39) a notification of workers' compensation insurance coverage described in Section  
1032 34A-2-205;

1033 (40) (a) the following records of an institution within the state system of higher  
1034 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
1035 or received by or on behalf of faculty, staff, employees, or students of the institution:

1036 (i) unpublished lecture notes;

1037 (ii) unpublished notes, data, and information:

1038 (A) relating to research; and

1039 (B) of:

1040 (I) the institution within the state system of higher education defined in Section  
1041 53B-1-102; or

1042 (II) a sponsor of sponsored research;

1043 (iii) unpublished manuscripts;

1044 (iv) creative works in process;

1045 (v) scholarly correspondence; and

1046 (vi) confidential information contained in research proposals;

1047 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
1048 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

1049 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;  
1050 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
1051 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
1052 date that audit is completed and made public; and  
1053 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
1054 Office of the Legislative Auditor General is a public document unless the legislator asks that  
1055 the records in the custody or control of the Office of Legislative Auditor General that would  
1056 reveal the name of a particular legislator who requests a legislative audit be maintained as  
1057 protected records until the audit is completed and made public;  
1058 (42) records that provide detail as to the location of an explosive, including a map or  
1059 other document that indicates the location of:  
1060 (a) a production facility; or  
1061 (b) a magazine;  
1062 (43) information:  
1063 (a) contained in the statewide database of the Division of Aging and Adult Services  
1064 created by Section [62A-3-311.1](#); or  
1065 (b) received or maintained in relation to the Identity Theft Reporting Information  
1066 System (IRIS) established under Section [67-5-22](#);  
1067 (44) information contained in the Management Information System and Licensing  
1068 Information System described in Title 62A, Chapter 4a, Child and Family Services;  
1069 (45) information regarding National Guard operations or activities in support of the  
1070 National Guard's federal mission;  
1071 (46) records provided by any pawn or secondhand business to a law enforcement  
1072 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
1073 Secondhand Merchandise Transaction Information Act;  
1074 (47) information regarding food security, risk, and vulnerability assessments performed  
1075 by the Department of Agriculture and Food;  
1076 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
1077 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or  
1078 prepared or maintained by the Division of Emergency Management, and the disclosure of  
1079 which would jeopardize:

- 1080 (a) the safety of the general public; or  
1081 (b) the security of:  
1082 (i) governmental property;  
1083 (ii) governmental programs; or  
1084 (iii) the property of a private person who provides the Division of Emergency  
1085 Management information;  
1086 (49) records of the Department of Agriculture and Food that provides for the  
1087 identification, tracing, or control of livestock diseases, including any program established under  
1088 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control  
1089 of Animal Disease;  
1090 (50) as provided in Section [26-39-501](#):  
1091 (a) information or records held by the Department of Health related to a complaint  
1092 regarding a child care program or residential child care which the department is unable to  
1093 substantiate; and  
1094 (b) information or records related to a complaint received by the Department of Health  
1095 from an anonymous complainant regarding a child care program or residential child care;  
1096 (51) unless otherwise classified as public under Section [63G-2-301](#) and except as  
1097 provided under Section [41-1a-116](#), an individual's home address, home telephone number, or  
1098 personal mobile phone number, if:  
1099 (a) the individual is required to provide the information in order to comply with a law,  
1100 ordinance, rule, or order of a government entity; and  
1101 (b) the subject of the record has a reasonable expectation that this information will be  
1102 kept confidential due to:  
1103 (i) the nature of the law, ordinance, rule, or order; and  
1104 (ii) the individual complying with the law, ordinance, rule, or order;  
1105 (52) the portion of the following documents that contains a candidate's residential or  
1106 mailing address, if the candidate provides to the filing officer another address or phone number  
1107 where the candidate may be contacted:  
1108 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,  
1109 described in Section [20A-9-201](#), [20A-9-202](#), [20A-9-203](#), [20A-9-404](#), [20A-9-405](#), [20A-9-408](#),  
1110 [20A-9-408.5](#), [20A-9-502](#), or [20A-9-601](#);

- 1111 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or
- 1112 (c) a notice of intent to gather signatures for candidacy, described in Section
- 1113 20A-9-408;
- 1114 (53) the name, home address, work addresses, and telephone numbers of an individual
- 1115 that is engaged in, or that provides goods or services for, medical or scientific research that is:
- 1116 (a) conducted within the state system of higher education, as defined in Section
- 1117 53B-1-102; and
- 1118 (b) conducted using animals;
- 1119 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
- 1120 Evaluation Commission concerning an individual commissioner's vote on whether or not to
- 1121 recommend that the voters retain a judge including information disclosed under Subsection
- 1122 78A-12-203(5)(e);
- 1123 (55) information collected and a report prepared by the Judicial Performance
- 1124 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
- 1125 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
- 1126 the information or report;
- 1127 (56) records contained in the Management Information System created in Section
- 1128 62A-4a-1003;
- 1129 (57) records provided or received by the Public Lands Policy Coordinating Office in
- 1130 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
- 1131 (58) information requested by and provided to the 911 Division under Section
- 1132 63H-7a-302;
- 1133 (59) in accordance with Section 73-10-33:
- 1134 (a) a management plan for a water conveyance facility in the possession of the Division
- 1135 of Water Resources or the Board of Water Resources; or
- 1136 (b) an outline of an emergency response plan in possession of the state or a county or
- 1137 municipality;
- 1138 (60) the following records in the custody or control of the Office of Inspector General
- 1139 of Medicaid Services, created in Section 63A-13-201:
- 1140 (a) records that would disclose information relating to allegations of personal
- 1141 misconduct, gross mismanagement, or illegal activity of a person if the information or

1142 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services  
1143 through other documents or evidence, and the records relating to the allegation are not relied  
1144 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation  
1145 report or final audit report;

1146 (b) records and audit workpapers to the extent they would disclose the identity of a  
1147 person who, during the course of an investigation or audit, communicated the existence of any  
1148 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or  
1149 regulation adopted under the laws of this state, a political subdivision of the state, or any  
1150 recognized entity of the United States, if the information was disclosed on the condition that  
1151 the identity of the person be protected;

1152 (c) before the time that an investigation or audit is completed and the final  
1153 investigation or final audit report is released, records or drafts circulated to a person who is not  
1154 an employee or head of a governmental entity for the person's response or information;

1155 (d) records that would disclose an outline or part of any investigation, audit survey  
1156 plan, or audit program; or

1157 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
1158 investigation or audit;

1159 (61) records that reveal methods used by the Office of Inspector General of Medicaid  
1160 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or  
1161 abuse;

1162 (62) information provided to the Department of Health or the Division of Occupational  
1163 and Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections  
1164 58-68-304(3) and (4);

1165 (63) a record described in Section 63G-12-210;

1166 (64) captured plate data that is obtained through an automatic license plate reader  
1167 system used by a governmental entity as authorized in Section 41-6a-2003;

1168 (65) any record in the custody of the Utah Office for Victims of Crime relating to a  
1169 victim, including:

1170 (a) a victim's application or request for benefits;

1171 (b) a victim's receipt or denial of benefits; and

1172 (c) any administrative notes or records made or created for the purpose of, or used to,

1173 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim  
1174 Reparations Fund;

1175 (66) an audio or video recording created by a body-worn camera, as that term is  
1176 defined in Section 77-7a-103, that records sound or images inside a hospital or health care  
1177 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care  
1178 provider, as that term is defined in Section 78B-3-403, or inside a human service program as  
1179 that term is defined in Section 62A-2-101, except for recordings that:

1180 (a) depict the commission of an alleged crime;

1181 (b) record any encounter between a law enforcement officer and a person that results in  
1182 death or bodily injury, or includes an instance when an officer fires a weapon;

1183 (c) record any encounter that is the subject of a complaint or a legal proceeding against  
1184 a law enforcement officer or law enforcement agency;

1185 (d) contain an officer involved critical incident as defined in Subsection  
1186 76-2-408(1)(f); or

1187 (e) have been requested for reclassification as a public record by a subject or  
1188 authorized agent of a subject featured in the recording;

1189 (67) a record pertaining to the search process for a president of an institution of higher  
1190 education described in Section 53B-2-102, except for application materials for a publicly  
1191 announced finalist;

1192 (68) an audio recording that is:

1193 (a) produced by an audio recording device that is used in conjunction with a device or  
1194 piece of equipment designed or intended for resuscitating an individual or for treating an  
1195 individual with a life-threatening condition;

1196 (b) produced during an emergency event when an individual employed to provide law  
1197 enforcement, fire protection, paramedic, emergency medical, or other first responder service:

1198 (i) is responding to an individual needing resuscitation or with a life-threatening  
1199 condition; and

1200 (ii) uses a device or piece of equipment designed or intended for resuscitating an  
1201 individual or for treating an individual with a life-threatening condition; and

1202 (c) intended and used for purposes of training emergency responders how to improve  
1203 their response to an emergency situation;

- 1204 (69) records submitted by or prepared in relation to an applicant seeking a  
1205 recommendation by the Research and General Counsel Subcommittee, the Budget  
1206 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an  
1207 employment position with the Legislature;
- 1208 (70) work papers as defined in Section 31A-2-204;
- 1209 (71) a record made available to Adult Protective Services or a law enforcement agency  
1210 under Section 61-1-206;
- 1211 (72) a record submitted to the Insurance Department in accordance with Section  
1212 31A-37-201 or 31A-22-653;
- 1213 (73) a record described in Section 31A-37-503[-];
- 1214 (74) any record created by the Division of Occupational and Professional Licensing as  
1215 a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);
- 1216 (75) a record described in Section 72-16-306 that relates to the reporting of an injury  
1217 involving an amusement ride;
- 1218 (76) except as provided in Subsection 63G-2-305.5(1), the signature of an individual  
1219 on a political petition, or on a request to withdraw a signature from a political petition,  
1220 including a petition or request described in the following titles:
- 1221 (a) Title 10, Utah Municipal Code;
- 1222 (b) Title 17, Counties;
- 1223 (c) Title 17B, Limited Purpose Local Government Entities - Local Districts;
- 1224 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
- 1225 (e) Title 20A, Election Code;
- 1226 (77) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in  
1227 a voter registration record;
- 1228 (78) except as provided in Subsection 63G-2-305.5(3), any signature, other than a  
1229 signature described in Subsection (76) or (77), in the custody of the lieutenant governor or a  
1230 local political subdivision collected or held under, or in relation to, Title 20A, Election Code;
- 1231 (79) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part  
1232 5, Victims Guidelines for Prosecutors Act;
- 1233 (80) a record submitted to the Insurance Department under Subsection  
1234 31A-47-103(1)(b); [and]



1235 (81) personal information, as defined in Section [63G-26-102](#), to the extent disclosure is  
1236 prohibited under Section [63G-26-103](#)~~[-]~~; and

1237 (82) data protection assessments submitted by a controller to the Division of Consumer  
1238 Protection or attorney general under Section [13-58-304](#).

1239 Section 24. **Effective date.**

1240 This bill takes effect on January 1, 2023.