

## SB0200S01 compared with SB0200

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inserted text shows text that was not in SB0200 but was inserted into SB0200S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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;

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

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

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This bill provides a special effective date.

### **Utah Code Sections Affected:**

#### AMENDS:

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

**63G-2-305**, as last amended by Laws of Utah 2020, Chapters 112, 198, 339, 349, 382,  
and 393

#### ENACTS:

**13-58-101**, Utah Code Annotated 1953

**13-58-102**, Utah Code Annotated 1953

**13-58-201**, Utah Code Annotated 1953

**13-58-202**, Utah Code Annotated 1953

**13-58-203**, Utah Code Annotated 1953

**13-58-204**, Utah Code Annotated 1953

**13-58-205**, Utah Code Annotated 1953

**13-58-301**, Utah Code Annotated 1953

**13-58-302**, Utah Code Annotated 1953

**13-58-303**, Utah Code Annotated 1953

**13-58-304**, Utah Code Annotated 1953

**13-58-305**, Utah Code Annotated 1953

**13-58-306**, Utah Code Annotated 1953

**13-58-401**, Utah Code Annotated 1953

**13-58-402**, Utah Code Annotated 1953

**13-58-403**, Utah Code Annotated 1953

**13-58-404**, Utah Code Annotated 1953

**13-59-101**, Utah Code Annotated 1953

**13-59-102**, Utah Code Annotated 1953

**13-59-201**, Utah Code Annotated 1953

**13-59-202**, Utah Code Annotated 1953

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

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

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

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

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

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 39, Child Protection Registry;
- (p) Chapter 41, Price Controls During Emergencies Act;
- (q) Chapter 42, Uniform Debt-Management Services Act;
- (r) Chapter 49, Immigration Consultants Registration Act;
- (s) Chapter 51, Transportation Network Company Registration Act;
- (t) Chapter 52, Residential Solar Energy Disclosure Act;
- (u) Chapter 53, Residential, Vocational and Life Skills Program Act;
- (v) Chapter 54, Ticket Website Sales Act;
- (w) Chapter 56, Ticket Transferability Act; [~~and~~]
- (x) Chapter 57, Maintenance Funding Practices Act[?]; and
- (y) Chapter 58, Utah Consumer Privacy Act.

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

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

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## Part 1. General Provisions

### 13-58-101. Title.

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

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

### 13-58-102. Definitions.

As used in this chapter:

(1) (a) "Affiliate" means a person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(b) "Affiliate" includes a subsidiary.

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

(~~12~~3) "Authenticate" means to use reasonable means to determine that a consumer's request to exercise the rights described in Section 13-58-202 is made by the consumer who is entitled to exercise those rights.

(~~13~~4) "Business associate" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(~~14~~5) "Child" means an individual younger than 13 years old.

(~~15~~6) "Consent" means an affirmative act by a consumer that unambiguously indicates the consumer's voluntary and informed agreement to allow a person to process personal data related to the consumer.

(~~16~~7) (a) "Consumer" means an individual who is a resident of the state acting in an individual or household context.

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

(~~17~~8) (a) "Controller" means a person doing business in the state who determines the purposes for which and the means by which personal data is processed, regardless of whether the person makes the determination alone or with others.

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

(~~18~~9) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

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(~~9~~10) "Deidentified data" means data that:

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

(b) are possessed by a controller who:

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

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

(iii) contractually obligates any recipients of the data to comply with the requirements described in Subsections (~~9~~10)(b)(i) and (ii).

(~~10~~11) "Director" means the director of the Division of Consumer Protection.

(~~11~~12) "Division" means the Division of Consumer Protection created in Section 13-2-1.

(~~12~~13) "Health care facility" means the same as that term is defined in Section 26-21-2.

(~~13~~14) "Health care provider" means the same as that term is defined in Section 26-21-2.

(~~14~~15) "Identifiable individual" means an individual who can be readily identified, directly or indirectly.

(~~15~~16) "Local political subdivision" means the same as that term is defined in Section 11-14-102.

(~~16~~17) "Nonprofit corporation" means:

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

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

(~~17~~18) (a) "Personal data" means any information that:

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

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

(b) "Personal data" does not include:

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

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

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(~~18~~19) "Process" means an operation or set of operations performed on personal data, including collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

(~~19~~20) "Processor" means a person who processes personal data on behalf of a controller.

(~~20~~21) "Profiling" means automated processing of personal data to evaluate, analyze, or predict personal aspects concerning an identifiable individual's:

- (a) economic situation;
- (b) health;
- (c) personal preferences;
- (d) interests;
- (e) reliability;
- (f) behavior;
- (g) location; or
- (h) movements.

(~~21~~22) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(~~22~~23) "Pseudonymous data" means personal data that cannot be attributed to a specific individual without the use of additional information, if the additional information is:

- (a) kept separate from the consumer's personal data; and
- (b) subject to appropriate technical and organizational measures to ensure that the personal data are not attributable to an identifiable individual.

(~~23~~24) "Publicly available information" means information that a person:

- (a) lawfully obtains from a federal, state, or local political subdivision record;
- (b) reasonably believes a consumer or widely distributed media has lawfully made available to the general public; or
- (c) if the consumer has not restricted the information to a specific audience, obtains from a person to whom the consumer disclosed the information.

(~~24~~25) "Right" means a consumer right described in Section 13-58-202.

(~~25~~26) (a) "Sale," "sell," or "sold" means the exchange of personal data for monetary consideration by a controller to a third party.

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(b) "Sale" does not include:

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

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

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

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

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

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

and

(B) does not restrict to a specific audience; or

(vi) a controller's transfer of personal data to a third party as an asset that is part of a proposed or actual merger, an acquisition, or a bankruptcy in which the third party assumes control of all or part of the controller's assets.

(~~26~~27) (a) "Sensitive data" means:

(i) personal data that reveals an individual's:

(A) racial or ethnic origin;

(B) religious beliefs;

(C) diagnosed mental or physical health condition;

(D) sexual orientation; or

(E) citizenship or immigration status;

(ii) the processing of genetic or biometric personal data for the purpose of identifying an individual;

(iii) the personal data of a known child; or

(iv) specific geolocation data.

(b) "Sensitive data" does not include personal data that reveals an individual's racial or ethnic origin, if the personal data is processed by a video communication service.

(~~27~~28) (a) "Specific geolocation data" means information:

(i) derived from technology; and



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(ii) used or intended to be used to identify the specific location of a consumer within a geographic area with a radius of 1,850 feet or less.

(b) "Specific geolocation data" does not include the content of a communication.

(~~28~~29) (a) "Targeted advertising" means displaying an advertisement to a consumer where the advertisement is selected based on personal data obtained from the consumer's activities over time and across nonaffiliated websites or online applications to predict the consumer's preferences or interests.

(b) "Targeted advertising" does not include advertising:

(i) based on a consumer's activities within a controller's or an affiliate of the controller's websites or online applications;

(ii) based on the context of a consumer's current search query or visit to a website or online application;

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

(iv) used solely to measure or report advertising:

(A) performance;

(B) reach; or

(C) frequency.

(~~29~~30) "Third party" means a person other than:

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

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

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

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

#### **13-58-201. Applicability.**

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

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

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

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

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

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

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(ii) derives over 50% of the entity's gross revenue from the sale of personal data and controls or processes personal data of 25,000 or more consumers.

(2) This chapter does not apply to:

(a) a government entity;

(b) a tribe;

(c) a nonprofit corporation;

(d) a covered entity;

(e) a business associate;

(~~d~~f) information that meets the definition of:

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

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

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

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

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

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

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

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

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

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

(ix) information that is:

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

(B) derived from any of the health care-related information listed in this Subsection

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(2)(d):

(feg) information originating from, and intermingled to be indistinguishable with, information under Subsection (2)(~~fd~~f) that is maintained by:

~~{~~ (i) a covered entity or business associate;

~~†~~ (~~fi~~ii) a health care facility or health care provider; or

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

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

(~~fg~~i) (i) an activity by:

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

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

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

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

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

(A) credit worthiness;

(B) credit standing;

(C) credit capacity;

(D) character;

(E) general reputation;

(F) personal characteristics; or

(G) mode of living;

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

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

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

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

~~(l)n~~ data ~~maintained for~~ that are:

(i) directly related to an employment records purposes;

~~(m)~~ record or application; or

(ii) maintained for the purpose of providing employee benefits;

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

~~(n)p~~ an air carrier.

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

(4) This chapter does not require a person to take any action in conflict with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Sec. 1320d et seq., or related regulations.

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

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

(1) A consumer has the right to:

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

and

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

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

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

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

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- (a) to the extent technically feasible, is portable;
- (b) to the extent practicable, is readily-usable; and
- (c) allows the consumer to transmit the data to another controller without impediment,

where the processing is carried out by automated means.

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

- (a) targeted advertising;
- (b) the sale of personal data; or
- (c) profiling in furtherance of decisions regarding:
  - (i) enrollment in an educational institution;
  - (ii) criminal justice;
  - (iii) employment opportunities;
  - (iv) health care services; or
  - (v) access to basic necessities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) inform the consumer of the extension, including the length of the extension; and

(ii) provide the reasons the extension is reasonably necessary as described in Subsection (3)(b).

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

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

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

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

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

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

(ii) refuse to act on the request.

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

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

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

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

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

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

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

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

(a) conspicuously available; and

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

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

(i) inform the consumer of any action taken in response to the appeal; and

(ii) provide a written explanation of the reasons in support of the controller's action or inaction.

(b) The controller may extend once the initial 60-day period by an additional 60 days if reasonably necessary due to the complexity of the request or number of the requests serving as the basis for the appeal.

(c) If a controller extends the initial 60-day period, before the initial 60-day period expires, the controller shall:

(i) inform the consumer of the extension, including the length of the extension; and

(ii) provide the reasons the extension is reasonably necessary as described in Subsection (3)(b).

(4) When informing a consumer of any action taken or not taken by the controller in response to an appeal, the controller shall:

(a) inform the consumer of the consumer's right to ~~appeal the decision to~~**contact** the division; and

(b) upon request, provide to the consumer the controller's written explanation of the reasons in support of the controller's action.

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(5) This section does not require a consumer to submit an appeal under this section before submitting a complaint to the division regarding a controller's failure to comply with Section 13-58-204.

Section 9. Section 13-58-301 is enacted to read:

### **Part 3. Requirements for Controllers and Processors**

#### **13-58-301. Responsibility according to role.**

(1) A processor shall:

(a) adhere to the controller's instructions; and

(b) assist the controller to meet the controller's obligations under this chapter by providing information to the controller that is necessary to enable the controller to conduct and document any data protection assessments required under Section 13-58-304.

(2) A processor shall:

(a) taking into account the context in which the personal data are to be processed, implement and maintain reasonable security procedures and practices to protect personal data;

(b) ensure that each person processing personal data is subject to a duty of confidentiality with respect to the personal data; and

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

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

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

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

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

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

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

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



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

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

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

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

(ii) processing for targeted advertising.

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

(a) the collection is:

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

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

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

(3) (a) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices designed to:

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

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

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

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

(a) the consumer's consent; or

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

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

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

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

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

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

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

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

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

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

(b) the consumer does not:

(i) provide the consumer's personal data to the controller; or

(ii) allow the controller to process the consumer's personal data.

(7) Any provision of a contract that purports to waive or limit a consumer's right under this chapter is void.

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

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

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

(a) reidentify deidentified data;

(b) comply with an authenticated consumer request to exercise a right described in Subsections 13-58-202(1) through (4), if:

(i) (A) the controller is not reasonably capable of associating the request with the personal data; or

(B) it would be unreasonably burdensome for the controller to associate the request with the personal data;

(ii) the controller does not:

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

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the personal data; or

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

(iii) the controller does not sell or otherwise disclose the personal data to any third party other than a processor, except as otherwise permitted in this section; or

(c) maintain data in identifiable form, or collect, retain, or access any data or technology, in order to be capable of associating an authenticated consumer request with personal data.

(2) The rights described in Subsections 13-58-202(1) through (4) do not apply to pseudonymous data if a controller keeps information necessary to identify a consumer:

(a) separate from the pseudonymous data; and

(b) subject to effective technical and organizational controls that prevent the controller from accessing the information.

(3) A controller who uses pseudonymous data or deidentified data shall take reasonable steps to ensure the controller:

(a) complies with any contractual obligations to which the pseudonymous data or deidentified data are subject; and

(b) promptly addresses any breach of a contractual obligation described in Subsection (3)(a).

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

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

(1) ~~{A}~~In accordance with Subsection (2), a controller shall conduct and document ~~{an annual}~~a data protection assessment of the following processing activities involving personal data:

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

(b) the sale of personal data;

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

(i) unfair or deceptive treatment;

(ii) disparate impact; or

(iii) financial, physical, or reputational injury;

(d) the processing of sensitive data; and

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

(2) A controller shall ~~consider in the controller's~~ conduct and document a data protection assessment:

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

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

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

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

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

(c) the use of deidentified data;

(d) the reasonable expectations of consumers;

(e) the context of the processing; and

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

~~(3)4~~ (a) The division or attorney general may request, in writing, that a controller disclose any data protection assessment that is relevant to an investigation conducted by the division or attorney general.

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

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

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

~~(4)5~~ (4)5) A controller shall retain the controller's data protection assessments for at least three years.

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

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### 13-58-305. Limitations.

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

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

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

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

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

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

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

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

(ii) investigate, report, or prosecute a person responsible for an action described in Subsection (1)(g)(i);

(h) preserve the integrity or security of systems ~~{, books, and records}~~;

(i) if the controller discloses the processing in a notice described in Section 13-58-302, engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws;

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

(k) process ~~{personal}~~ ~~deidentified and pseudonymous~~ data to:

(i) conduct internal analytics or other research solely to develop, improve, or repair a controller or processor's product, service, or technology; ~~or~~

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

~~{iii}~~ ~~l~~ ~~process personal data to~~ perform a solely internal operation that is:

~~{A}~~ ~~i~~ reasonably aligned with the consumer's expectations based on the consumer's existing relationship with the controller; or

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(B)ii) otherwise compatible with processing to aid the controller or processor in providing a product or service specifically requested by a consumer or the performance of a contract to which the consumer is a party; or

(m) retain a consumer's email address to comply with the consumer's request to exercise a right.

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

(a) violates an evidentiary privilege under Utah law;

(b) as part of a privileged communication, prevents a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under Utah law; or

(c) adversely affect the rights of any person.

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

(a) the controller or processor discloses personal data to a third party controller or processor in compliance with this chapter;

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

(c) the disclosing controller or processor did not have actual knowledge of the third party's intent to commit a violation of this chapter.

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

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

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

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

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

### **Part 4. Enforcement**

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

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

(2) (a) The division may investigate a consumer complaint to determine whether the

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controller or processor violated ~~(,)~~ or is violating ~~(, or is about to violate)~~ this chapter.

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

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

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

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

(1) ~~{Except as otherwise provided in this chapter, the}~~ **The** attorney general has the exclusive authority to enforce this chapter.

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

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

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

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

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

(i) cures the noticed violation within 30 days after the day on which the controller or processor receives the written notice described in Subsection (3)(a); and

(ii) provides the attorney general an express written statement that:

(A) the violation has been cured; and

(B) no further violation will occur.

(c) The attorney general may initiate an action against a controller or processor who:

(i) fails to cure a violation after receiving the notice described in Subsection (3)(a); or

(ii) after curing a noticed violation and providing a written statement in accordance with Subsection (3)(b), continues to violate this chapter.

(d) In an action described in Subsection (3)(c), the attorney general may recover:

(i) actual damages to the consumer; and

(ii) for each violation of this chapter, an amount not to exceed \$1,000 per consumer

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affected by the violation.

(4) All money received from an action under this chapter shall be deposited into the Consumer Privacy Account established in Section 13-58-403.

(5) If more than one controller or processor are involved in the same processing in violation of this chapter, the liability for the violation shall be allocated among the controllers or processors according to the principles of comparative fault.

Section 17. Section **13-58-403** is enacted to read:

### **13-58-403. Consumer privacy restricted account.**

(1) There is created a restricted account known as the "Consumer Privacy Account."

(2) The account shall be funded by money received through civil enforcement actions under this chapter.

(3) Upon appropriation, the division or the attorney general may use money deposited into the account for:

(a) investigation and administrative costs incurred by the division in investigating consumer complaints alleging violations of this chapter;

(b) recovery of costs and attorney fees accrued by the attorney general in enforcing this chapter; and

(c) providing consumer and business education regarding:

(i) consumer rights under this chapter; and

(ii) compliance with the provisions of this chapter for controllers and processors.

(4) If the balance in the fund exceeds \$4,000,000 at the close of any fiscal year, the Division of Finance shall transfer the amount that exceeds \$4,000,000 into the General Fund.

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

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

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

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

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

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

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



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

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

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

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

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

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

#### **Part 1. General Provisions**

#### **13-59-101. Title.**

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

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

#### **13-59-102. Definitions.**

As used in this chapter:

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

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

(i) advertise or promote a commercial website, product, or service; or

(ii) solicit money, property, or personal information.

(b) "Commercial email" does not include email sent for the purpose of marketing research.

(3) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(4) "Electronic mail service provider" means a company or a service that provides routing, relaying, handling, storage, or support for email addresses and email inboxes.

(5) "Header information" means information attached to an email, including:

(a) the originating domain name;

(b) the originating email address;

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(c) the destination;

(d) the routing information; and

(e) any other information that appears in the header line identifying, or purporting to identify, a person initiating the message.

(6) "Initiate" means an act of:

(a) originating, transmitting, or sending commercial email; or

(b) promising, paying, or providing other consideration for another person to originate, transmit, or send a commercial email.

(7) (a) "Initiator" means a person who:

(i) originates, transmits, or sends commercial email; or

(ii) promises, pays, or provides other consideration for another person to originate, transmit, or send commercial email.

(b) "Initiator" does not include a person whose activities are a routine conveyance.

(8) (a) "Marketing research" means the collection, use, maintenance, or transfer of personal information to investigate the market for the purpose of marketing a product, service, or idea.

(b) "Marketing research" does not include:

(i) the collection, use, maintenance, or transfer of personal information that is integrated into a product or service; or

(ii) the use of personal information to:

(A) contact a particular individual or a particular device; or

(B) advertise or market to a particular individual or a particular device.

(9) "Preexisting or current business relationship" means a situation where the recipient has:

(a) made an inquiry and provided an email address; or

(b) made an application, a purchase, or a transaction, with or without consideration, related to a product or a service offered by the advertiser.

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

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

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

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

and

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

(13) "Utah email address" means an email address ~~that is:~~

~~(a) provided by an electronic mail service provider that sends bills for providing and maintaining that email address to a mailing address in this state;~~

~~(b) ordinarily accessed from a computer located in this state; or~~

~~(c) provided to an individual who is currently} of a resident of this state.~~

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

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

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

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

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

(2) the commercial email contains or is accompanied by false ~~{, misrepresented,}~~ or forged header information, even if the commercial email contains truthful identifying information for the advertiser in the body of the email; or

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

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

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

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

(i) the attorney general;

(ii) an electronic mail service provider;

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

(iv) a person whose brand, trademark, email address, or domain name an advertiser or

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initiator uses, without authorization, in the header information.

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

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

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

(i) actual damages; and

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

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

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

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

(a) actual damages; and

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

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

(ii) \$2,000,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) an invitation for bids;

(ii) a request for proposals;

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(iii) a request for quotes;

(iv) a grant; or

(v) other similar document; or

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

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

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

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

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

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

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

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

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

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

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

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

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of the subject property, unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) members of a legislative body;

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

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

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

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

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator



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asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

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

(22) drafts, unless otherwise classified as public;

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

(a) collective bargaining; or

(b) imminent or pending litigation;

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

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

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

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

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

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

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,

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revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

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

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

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

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

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

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

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

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

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged

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in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

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

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

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

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

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as

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protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under

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Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

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(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge including information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the 911 Division under Section 63H-7a-302;

(59) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any

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recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

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

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

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

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

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

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

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

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

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

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

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

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

(a) depict the commission of an alleged crime;

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

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

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

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

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

(68) an audio recording that is:

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

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

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

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

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

(69) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(70) work papers as defined in Section 31A-2-204;

(71) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(72) a record submitted to the Insurance Department in accordance with Section



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31A-37-201 or 31A-22-653;

(73) a record described in Section 31A-37-503[-];

(74) any record created by the Division of Occupational and Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

(75) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;

(76) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

(c) Title 17B, Limited Purpose Local Government Entities - Local Districts;

(d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

(e) Title 20A, Election Code;

(77) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;

(78) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (76) or (77), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

(79) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

(80) a record submitted to the Insurance Department under Subsection 31A-47-103(1)(b); [~~and~~]

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

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

Section 24. **Effective date.**

This bill takes effect on January 1, ~~2022~~2023.