

E-Commerce Integrity

This Act prohibits certain Internet-related conduct, including phishing, pharming, spyware, and cybersquatting. For example, the legislation prohibits a person from using electronic communications to facilitate certain types of fraud and injury and it allows for removing domain names and online content by an Internet registrar or Internet Service Provider under certain circumstances. The legislation also prohibits political subdivisions of the state from enacting conflicting laws.

Submitted as:

Utah

[SB 26 \(Enrolled Copy\)](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “The E-Commerce Integrity Act.”

2

3 Section 2. [*Definitions.*] As used in this Act:

4 (1) (a) “Cause to be copied” means to distribute or transfer computer software, or any
5 component of computer software.

6 (b) “Cause to be copied” does not include providing:

7 (I) transmission, routing, intermediate temporary storage, or caching of
8 software;

9 (II) a storage or hosting medium, such as a compact disk, website, or
10 computer server through which the software was distributed by a third party; or

11 (III) an information location tool, such as a directory, index, reference,
12 pointer, or hypertext link, through which the user of the computer located the software.

13 (2) (a) “Computer software” means a sequence of instructions written in any
14 programming language that is executed on a computer.

15 (b) “Computer software” does not include a data component of a webpage that is
16 not executable independently of the webpage.

17 (3) “Computer virus” means a computer program or other set of instructions that is
18 designed to degrade the performance of or disable a computer or computer network and is
19 designed to have the ability to replicate itself on another computer or computer network without
20 the authorization of the owner of the other computer or computer network.

21 (4) “Damage” means any significant impairment to the performance of a computer or
22 integrity or availability of data, software, a system, or information.

23 (5) “Execute,” when used with respect to computer software, means the performance of
24 the functions or the carrying out of the instructions of the computer software.

25 (6) “False pretenses” means the representation of a fact or circumstance that is not true
26 and is calculated to mislead.

27 (7) (a) “Identifying information” means any information that can be used to access a
28 person’s financial accounts or to obtain goods and services, including the person’s:

29 (I) address;

30 (II) birth date;

- 31 (III) Social Security number;
- 32 (IV) driver license number;
- 33 (V) non-driver governmental identification number;
- 34 (VI) telephone number;
- 35 (VII) bank account number;
- 36 (VIII) student identification number;
- 37 (IX) credit or debit card number;
- 38 (X) personal identification number;
- 39 (XI) unique biometric data;
- 40 (XII) employee or payroll number;
- 41 (XIII) automated or electronic signature;
- 42 (XIV) computer image file;
- 43 (XV) photograph; or
- 44 (XVI) computer screen name or password.

45 (b) "Identifying information" does not include information that is lawfully
46 obtained from publicly available information, or from federal, state, or local government records
47 lawfully made available to the general public.

48 (8) "Intentionally deceptive" means any of the following:

- 49 (a) an intentionally and materially false or fraudulent statement;
- 50 (b) a statement or description that intentionally omits or misrepresents material
51 information in order to deceive an owner or operator of a computer; or
- 52 (c) an intentional and material failure to provide a notice to an owner or operator
53 concerning the installation or execution of computer software, for the purpose of deceiving the
54 owner or operator.

55 (9) "Internet" means the global information system that is logically linked together by a
56 globally unique address space based on the Internet protocol (IP), or its subsequent extensions,
57 and that is able to support communications using the transmission control protocol/Internet
58 protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that
59 provides, uses, or makes accessible, either publicly or privately, high-level services layered on
60 communications and related infrastructure.

61 (10) "Internet service provider" means:

- 62 (a) an Internet service provider, as defined in [insert citation] or a hosting
63 company as defined in [insert citation.]

64 (11) "Message" means a graphical or text communication presented to an authorized user
65 of a computer.

66 (12) (a) "Owner or operator" means the owner or lessee of a computer, or a person
67 using a computer with the owner's or lessee's authorization.

68 (b) "Owner or operator" does not include a person who owned a computer before
69 the first retail sale of the computer.

70 (13) "Person" means any individual, partnership, corporation, limited liability company,
71 or other organization, or any combination thereof.

72 (14) "Personally identifiable information" means any of the following information if it
73 allows the entity holding the information to identify the owner or operator of a computer:

74 (a) the first name or first initial in combination with the last name and a home or
75 other physical address including street name;

76 (b) a personal identification code in conjunction with a password required to
77 access an identified account, other than a password, personal identification number, or other
78 identification number transmitted by an authorized user to the issuer of the account or its agent;

79 (c) a Social Security number, tax identification number, driver license number,
80 passport number, or any other government-issued identification number; or

81 (d) an account balance, overdraft history, or payment history that personally
82 identifies an owner or operator of a computer.

83 (15) “Webpage” means a location that has a single uniform resource locator (URL) with
84 respect to the World Wide Web or another location that can be accessed on the Internet.

85
86 Section 3. [*Application.*] This Act applies to conduct involving a computer, software, or
87 an advertisement located in, sent to, or displayed in this state.

88
89 Section 4. [*Phishing and Pharming.*]

90 (A) A person is guilty of phishing if, with intent to defraud or injure an individual, or
91 with knowledge that the person is facilitating a fraud or injury to be perpetrated by another, the
92 person makes a communication under false pretenses purporting to be by or on behalf of a
93 legitimate business, without the authority or approval of the legitimate business and the person
94 uses the communication to induce, request, or solicit another person to provide identifying
95 information or property.

96 (B) A person is guilty of pharming if, with intent to defraud or injure another, or with
97 knowledge that the person is facilitating a fraud or injury to be perpetrated by another, the
98 person:

99 (1) creates or operates a webpage that represents itself as belonging to or being
100 associated with a legitimate business, without the authority or approval of the legitimate
101 business, if that webpage may induce any user of the Internet to provide identifying information
102 or property; or

103 (2) alters a setting on a user’s computer or similar device or software program
104 through which the user may search the Internet, causing any user of the Internet to view a
105 communication that represents itself as belonging to or being associated with a legitimate
106 business, if the message has been created or is operated without the authority or approval of the
107 legitimate business and induces, requests, or solicits any user of the Internet to provide
108 identifying information or property.

109 (C) A civil action against a person who violates any provision of this Section may be
110 filed by an Internet service provider that is adversely affected by the violation; an owner of a
111 webpage, computer server, or a trademark that is used without authorization in the violation; or
112 the [attorney general].

113 (D) A person permitted to bring a civil action under Subsection (C) may obtain either
114 actual damages for a violation of this Section or a civil penalty not to exceed [\$150,000] per
115 violation.

116 (E) A violation of this Section by a state-chartered or licensed financial institution is
117 enforceable exclusively by the financial institution’s primary state regulator.

118 (F) This Section applies to the discovery of a phishing or pharming incident that occurs
119 on or after [insert date].

120 (G) This Section does not apply to a telecommunications provider’s or Internet service
121 provider’s good faith transmission or routing of, or intermediate temporary storing or caching of,
122 identifying information.

123 (H) If an Internet registrar or Internet service provider believes in good faith that an
124 Internet domain name controlled or operated by the Internet registrar or Internet service provider,
125 or content residing on an Internet website or other online location controlled or operated by the
126 Internet registrar or Internet service provider, is used to engage in a violation of this Section, the
127 Internet registrar or Internet service provider is not liable under any provision of the laws of this

128 state or of any political subdivision of the state for removing or disabling access to the Internet
129 domain name or other content.

130 (I) The conduct prohibited by this Section is of statewide concern, and this Section's
131 provisions supersede and preempt any provision of law of a political subdivision of the state.

132

133 Section 5. [*Spyware: Prohibitions on The Use of Computer Software.*]

134 (A) A person who is not an owner or operator of a computer may not cause computer
135 software to be copied on the computer knowingly, with conscious avoidance of actual
136 knowledge, or willfully, if the software is used to:

137 (1) modify, through intentionally deceptive means, settings of a computer
138 controlling:

139 (a) the webpage that appears when an owner or operator launches an
140 Internet browser or similar computer software used to access and navigate the Internet;

141 (b) the default provider or web proxy that an owner or operator uses to
142 access or search the Internet; or

143 (c) an owner's or an operator's list of bookmarks used to access webpages;

144 (2) collect, through intentionally deceptive means, personally identifiable
145 information:

146 (a) through the use of a keystroke-logging function that records all or
147 substantially all keystrokes made by an owner or operator of a computer and transfers that
148 information from the computer to another person;

149 (b) in a manner that correlates personally identifiable information with
150 data concerning all or substantially all of the webpages visited by an owner or operator, other
151 than webpages operated by the person providing the software, if the computer software was
152 installed in a manner designed to conceal from all authorized users of the computer the fact that
153 the software is being installed; or

154 (c) by extracting from the hard drive of an owner's or an operator's
155 computer, an owner's or an operator's Social Security number, tax identification number, driver
156 license number, passport number, any other government-issued identification number, an
157 account balance, or overdraft history for a purpose unrelated to any of the purposes of the
158 software or service described to an authorized user;

159 (3) prevent, through intentionally deceptive means, an owner's or an operator's
160 reasonable efforts to block or disable the installation or execution of computer software by
161 causing computer software that the owner or operator has properly removed or disabled to
162 automatically reinstall or reactivate on the computer without the authorization of an authorized
163 user;

164 (4) intentionally misrepresent that computer software will be uninstalled or
165 disabled by an owner's or an operator's action;

166 (5) through intentionally deceptive means, remove, disable, or render inoperative
167 security, antispyware, or antivirus computer software installed on an owner's or an operator's
168 computer;

169 (6) enable use of an owner's or an operator's computer to:

170 (a) access or use a modem or Internet service for the purpose of causing
171 damage to an owner's or an operator's computer or causing an owner or operator, or a third party
172 affected by that conduct, to incur financial charges for a service that the owner or operator did
173 not authorize;

174 (b) open multiple, sequential, stand-alone messages in an owner's or an
175 operator's computer without the authorization of an owner or operator and with knowledge that a
176 reasonable computer user could not close the messages without turning off the computer or

177 closing the software application in which the messages appear, unless the communication
178 originated from the computer's operating system, a software application the user activated, or a
179 service provider that the user chose to use, or was presented for any of the purposes described in
180 Section 6 of this Act; or

181 (c) transmit or relay commercial electronic mail or a computer virus from
182 the computer, if the transmission or relay is initiated by a person other than the authorized user
183 without the authorization of an authorized user;

184 (7) modify, without the authorization of an owner or operator, any of the
185 following settings related the computer's access to, or use of, the Internet:

186 (a) settings that protect information about an owner or operator for the
187 purpose of taking personally identifiable information of the owner or operator;

188 (b) security settings, for the purpose of causing damage to a computer; or

189 (c) settings that protect the computer from the uses identified in
190 Subsection (A)(6); or

191 (8) prevent, without the authorization of an owner or operator, an owner's or an
192 operator's reasonable efforts to block the installation of, or to disable, computer software by:

193 (a) presenting the owner or operator with an option to decline installation
194 of computer software with knowledge that, when the option is selected by the authorized user,
195 the installation nevertheless proceeds;

196 (b) falsely representing that computer software has been disabled;

197 (c) requiring in an intentionally deceptive manner the user to access the
198 Internet to remove the software with knowledge or reckless disregard of the fact that the software
199 frequently operates in a manner that prevents the user from accessing the Internet;

200 (d) changing the name, location, or other designation information of the
201 software for the purpose of preventing an authorized user from locating the software to remove
202 it;

203 (e) using randomized or intentionally deceptive filenames, directory
204 folders, formats, or registry entries for the purpose of avoiding detection and removal of the
205 software by an authorized user;

206 (f) causing the installation of software in a particular computer directory
207 or in computer memory for the purpose of evading an authorized user's attempt to remove the
208 software from the computer; or

209 (g) requiring, without the authority of the owner of the computer, that an
210 authorized user obtain a special code or download software from a third party to uninstall the
211 software.

212 (B) (1) The attorney general, an Internet service provider, or a software company that
213 expends resources in good faith assisting authorized users harmed by a violation of this Section
214 or a trademark owner whose mark is used to deceive authorized users in violation of this Section,
215 may bring a civil action against a person who violates this Section to recover actual damages and
216 liquidated damages of at least [\$1,000] per violation of this Section not to exceed [\$1,000,000]
217 for a pattern or practice of violations and attorney fees and costs.

218 (2) The court may increase a damage award to an amount equal to not more than
219 [three] times the amount otherwise recoverable under Subsection (1) if the court determines that
220 the defendant committed the violation willfully and knowingly.

221 (3) The court may reduce liquidated damages recoverable under Subsection (1) to
222 a minimum of [\$100, not to exceed \$100,000] for each violation, if the court finds that the
223 defendant established and implemented practices and procedures reasonably designed to prevent
224 a violation of this Section.

225 (4) In the case of a violation of Subsection (A)(6) that causes a
226 telecommunications carrier or provider of voice over Internet protocol service to incur costs for
227 the origination, transport, or termination of a call triggered using the modem or Internet-capable
228 device of a customer of the telecommunications carrier or provider of voice over Internet
229 protocol as a result of the violation, the telecommunications carrier or provider of voice over
230 Internet protocol may bring a civil action against the violator:

231 (a) to recover the charges the telecommunications carrier or provider of
232 voice over Internet protocol is required to pay to another carrier or to an information service
233 provider as a result of the violation, including charges for the origination, transport, or
234 termination of the call;

235 (b) to recover the costs of handling customer inquiries or complaints with
236 respect to amounts billed for the calls;

237 (c) to recover reasonable attorney fees and costs; and

238 (d) for injunctive relief.

239 (5) For purposes of a civil action under Subsections (1), (2), and (3), a single
240 action or conduct that violates more than one provision of this Section, shall be considered as
241 multiple violations based on the number of provisions violated.

242
243 Section 6. [*Other Prohibited Conduct.*] A person who is not an owner or operator of a
244 computer may not, with regard to the computer induce an owner or operator to install a computer
245 software component onto the owner's or the operator's computer by intentionally
246 misrepresenting that installing the computer software is necessary for security or privacy reasons
247 or in order to open, view, or play a particular type of content or use intentionally deceptive
248 means to cause the execution of a computer software component with the intent of causing the
249 computer to use the computer software component in a manner that violates any other provision
250 of this [Act].

251
252 Section 7. [*Exceptions.*] Sections 5 and 6 of this Act do not apply to the monitoring of, or
253 interaction with, an owner's or an operator's Internet or other network connection, service, or
254 computer, by a telecommunications carrier, cable operator, computer hardware or software
255 provider, or provider of information service or interactive computer service for network or
256 computer security purposes, diagnostics, technical support, maintenance, repair, network
257 management, authorized updates of computer software or system firmware, authorized remote
258 system management, or detection or prevention of the unauthorized use of or fraudulent or other
259 illegal activities in connection with a network, service, or computer software, including scanning
260 for and removing computer software prescribed under [insert citation].

261
262 Section 8. [*Cybersquatting.*]

263 (A) A person is liable in a civil action by the owner of a mark, including a personal name,
264 which is a mark for purposes of this Section, if, without regard to the goods or services of the
265 person or the mark's owner, the person has a bad faith intent to profit from the mark, including a
266 personal name and for any length of time registers, acquires, traffics in, or uses a domain name
267 in, or belonging to any person in, this state that:

268 (1) in the case of a mark that is distinctive at the time of registration of the domain
269 name, is identical or confusingly similar to the mark;

270 (2) in the case of a famous mark that is famous at the time of registration of the
271 domain name, is identical or confusingly similar to or dilutive of the mark; or

272 (3) is a trademark, word, or name protected by reason of 18 U.S.C. Sec. 706 or 36
273 348 U.S.C. Sec. 220506.

274 (B) In determining whether a person has a bad faith intent described in Subsection (A), a
275 court may consider all relevant factors, including:

276 (1) the trademark or other intellectual property rights of the person, if any, in the
277 domain name;

278 (2) the extent to which the domain name consists of the legal name of the person
279 or a name that is otherwise commonly used to identify that person;

280 (3) the person's prior use, if any, of the domain name in connection with the bona
281 fide offering of any goods or services;

282 (4) the person's bona fide noncommercial or fair use of the mark in a site
283 accessible under the domain name;

284 (5) the person's intent to divert consumers from the mark owner's online location
285 to a site accessible under the domain name that could harm the goodwill represented by the
286 mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a
287 likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

288 (6) the person's offer to transfer, sell, or otherwise assign, or solicitation of the
289 purchase, transfer, or assignment of the domain name to the mark owner or any third party for
290 financial gain without having used, or having an intent to use, the domain name in the bonafide
291 offering of any goods or services, or the person's prior conduct indicating a pattern of such
292 conduct;

293 (7) the person's provision of material and misleading false contact information
294 when applying for the registration of the domain name, the person's intentional failure to
295 maintain accurate contact information, or the person's prior conduct indicating a pattern of such
296 conduct;

297 (8) the person's registration or acquisition of multiple domain names that the
298 person knows are identical or confusingly similar to another's mark that is distinctive at the time
299 of registration of the domain names, or is dilutive of another's famous mark that is famous at the
300 time of registration of the domain names, without regard to the goods or services of the person or
301 the mark owner; and

302 (9) the extent to which the mark incorporated in the person's domain name
303 registration is or is not distinctive and famous.

304 (C) Bad faith intent described in Subsection (A) may not be found in any case in which
305 the court determines that the person believed and had reasonable grounds to believe that the use
306 of the domain name was a fair use or otherwise lawful.

307 (D) In a civil action involving the registration, trafficking, or use of a domain name under
308 this section, a court may order the forfeiture or cancellation of the domain name or the transfer of
309 the domain name to the owner of the mark.

310 (E) A person is liable for using a domain name under Subsection (A) only if that person
311 is the domain name registrant or that registrant's authorized licensee, affiliate, domain name
312 registrar, domain name registry, or other domain name registration authority that knowingly
313 assists a violation of this Act by the registrant.

314 (F) A person may not be held liable under this Section absent a showing of bad faith
315 intent to profit from the registration or maintenance of the domain name.

316 (G) For purposes of this section, a "showing of bad faith intent to profit" shall be
317 interpreted in the same manner as under 15 U.S.C. Sec. 1114(2)(D)(iii).

318 (H) As used in this Section, the term "traffics in" refers to transactions that include sales,
319 purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for
320 consideration or receipt in exchange for consideration.

321 (I) The owner of a mark registered with the U.S. Patent and Trademark Office or under
322 this Act may file an in rem civil action against a domain name in the district court if the owner is
323 located in the state and if:

324 (1) the domain name violates any right of the owner of a mark registered in the
325 Patent and Trademark Office or registered under this Act; and

326 (2) the court finds that the owner:

327 (a) is not able to obtain personal jurisdiction over a person who would be a
328 defendant in a civil action under Subsection (A); or

329 (b) through due diligence was not able to find a person who would be a
330 defendant in a civil action under Subsection (A) by:

331 (I) sending a notice of the alleged violation and intent to proceed
332 under this Subsection to the registrant of the domain name at the postal and e-mail address
333 provided by the registrant to the registrar; and

334 (III) publishing notice of the action as the court may direct
335 promptly after filing the action.

336 (J) Completion of the actions required by Subsection (I) (2) (b) constitutes service of
337 process.

338 (K) In an in rem action under this Subsection (I), a domain name is considered to be
339 located in the judicial district in which the domain name registrar, registry, or other domain name
340 authority that registered or assigned the domain name is located or documents sufficient to
341 establish control and authority regarding the disposition of the registration and use of the domain
342 name are deposited with the court.

343 (L) The remedies in an in rem action under this Subsection (I) are limited to a court order
344 for the forfeiture or cancellation of the domain name or the transfer of the domain name to the
345 owner of the mark.

346 (M) Upon receipt of written notification of a filed, stamped copy of a complaint filed by
347 the owner of a mark in the district court under this Subsection (I), the domain name registrar,
348 domain name registry, or other domain name authority shall expeditiously deposit with the court
349 documents sufficient to establish the court's control and authority regarding the disposition of
350 the registration and use of the domain name to the court and not transfer, suspend, or otherwise
351 modify the domain name during the pendency of the action, except upon order of the court.

352 (N) The domain name registrar or registry or other domain name authority is not liable
353 for injunctive or monetary relief under this section, except in the case of bad faith or reckless
354 disregard, which includes a willful failure to comply with a court order.

355 (O) The civil actions and remedies established by Subsection (A) and the in rem action
356 established in Subsection (I) do not preclude any other applicable civil action or remedy.

357 (P) The in rem jurisdiction established under Subsection (I) does not preclude any other
358 jurisdiction, whether in rem or personal.

359

360 Section 9. [*Infringement.*]

361 (A) Subject to [insert citation] and Subsection (B), any person is liable in a civil action
362 brought by the registrant for any and all of the remedies provided in [insert citation], if that
363 person:

364 (1) uses a reproduction, counterfeit, copy, or colorable imitation of a mark
365 registered under this Act without the consent of the registrant and in connection with the sale,
366 distribution, offering for sale, or advertising of any goods or services on or in connection with
367 which that use is likely to cause confusion, mistake, or to deceive as to the source of origin,
368 nature, or quality of those goods or services; or

369 (2) reproduces, counterfeits, copies, or colorably imitates any mark and applies
370 the reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages,
371 wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale
372 or other distribution in this state of goods or services.

373 (B) Under Subsection (A)(1), the registrant is not entitled to recover profits or damages
374 unless the act described in Subsection (A)(1) has been committed with the intent to cause
375 confusion or mistake or to deceive.

376 (C) In a civil action for a violation of Section 8 of this Act, the plaintiff may recover
377 court costs and reasonable attorney fees and the plaintiff may elect, at any time before final
378 judgment is entered by the district court, to recover, instead of actual damages and profits, an
379 award of statutory damages in the amount of not less than [\$1,000] and not more than [\$100,000]
380 per domain name, as the court considers just. Statutory damages awarded under this Subsection
381 are presumed to be [\$100,000] per domain name if there is a pattern and practice of
382 infringements committed willfully for commercial gain.

383
384 Section 10. [*Severability.*] [Insert severability clause.]

385
386 Section 11. [*Repealer.*] [Insert repealer clause.]

387
388 Section 12. [*Effective Date.*] [Insert effective date.]