

Representative Keven J. Stratton proposes the following substitute bill:

DATA PRIVACY AMENDMENTS

2020 FIFTH SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: Keith Grover

LONG TITLE

General Description:

This bill enacts provisions relating to the collection, storage, use, and retention of certain electronic information or data related to COVID-19.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates requirements for the collection, storage, use, and retention of certain electronic information or data by a government entity to investigate or control COVID-19;
- ▶ prohibits the collection of location information without clear and affirmative consent from the individual;
- ▶ requires a government entity to submit a contract to collect certain electronic information or data to the attorney general to certify that the contract meets the requirements in this bill;
- ▶ prohibits a government entity from collecting certain location information for the purpose of investigating or controlling COVID-19 unless the collection of location information is approved by the Legislature and the governor by concurrent resolution;



26 ▶ requires a government entity with an existing contract to collect certain location
27 information to terminate collection of that location information and destroy certain
28 location information that has been collected; and

29 ▶ makes it a felony to willfully and knowingly violate an injunction or court order to
30 enforce the requirements in this bill.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill provides a special effective date.

35 This bill provides revisor instructions.

36 **Utah Code Sections Affected:**

37 ENACTS:

38 13-44-203, Utah Code Annotated 1953

39 **Utah Code Sections Affected by Revisor Instructions:**

40 13-44-203, Utah Code Annotated 1953



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

43 Section 1. Section 13-44-203 is enacted to read:

44 **13-44-203. COVID-19 data privacy requirements - Willful violation of an**
45 **injunction a felony.**

46 (1) As used in this section:

47 (a) "Covered data" means electronic information or data that:

48 (i) is collected by a government entity or under a contract between a third party and a
49 government entity;

50 (ii) is collected for the purpose of investigating or controlling COVID-19; and

51 (iii) (A) is identifiable health data as defined in Section 26-3-1;

52 (B) is location information; or

53 (C) otherwise makes the individual supplying or described in the electronic
54 information or data identifiable.

55 (b) "Covered location information" means location information that is collected for the
56 purpose of investigating or controlling COVID-19;

- 57 (i) by a government entity; or
- 58 (ii) under a contract between a government entity and a person who is not a
- 59 government entity.
- 60 (c) "COVID-19" means the same as that term is defined in Section [78B-4-517](#).
- 61 (d) "Electronic information or data" means the same as that term is defined in Section
- 62 [77-23c-101.2](#).
- 63 (e) "Government entity" means the same as that term is defined in Section [77-23d-102](#).
- 64 (f) "Location information" means the same as that term is defined in Section
- 65 [77-23c-101.2](#).
- 66 (2) A person who enters into a contract with a government entity to collect or provide
- 67 covered data:
- 68 (a) may not sell, offer for sale, or otherwise provide the covered data collected under
- 69 the contract to any person other than:
- 70 (i) the government entity;
- 71 (ii) a subcontractor for the purpose of carrying out the provisions of the contract; or
- 72 (iii) at the request and with clear and affirmative consent by the individual described in
- 73 the covered data.
- 74 (b) shall implement and maintain reasonable procedures to:
- 75 (i) prevent unlawful use or disclosure of covered data collected or maintained in the
- 76 regular course of business; and
- 77 (ii) destroy, or arrange for the destruction of, records containing covered data that are
- 78 not to be retained by the person by:
- 79 (A) shredding;
- 80 (B) erasing; or
- 81 (C) otherwise modifying the covered data to make the electronic information or data
- 82 indecipherable; and
- 83 (c) may not collect location information without clear and affirmative consent by the
- 84 individual about which the location information is being collected.
- 85 (3) Before entering into a contract to collect covered data, a government entity shall
- 86 submit the contract to the attorney general to certify that the contract complies with the
- 87 provisions of Subsection (2).

88 (4) (a) Beginning the effective date of this bill, a government entity may not collect
89 covered data that is location information unless the collection of covered data that is location
90 information receives approval of the Legislature and the governor through concurrent
91 resolution that specifies:

- 92 (i) the type of covered data will be collected;
- 93 (ii) how long the collection of the covered data will occur; and
- 94 (iii) how the covered data will be used.

95 (b) Within five days after the effective date of this bill, a government entity with an
96 existing contract to collect covered location information shall:

- 97 (i) terminate or direct the termination of the collection of any covered location
98 information under the contract;
- 99 (ii) direct the person with which the government entered into the contract to destroy
100 any covered location information collected under the contract in accordance with the
101 requirements described in Subsection (2)(b)(ii); and
- 102 (iii) require the person with which the government entered into the contract to certify
103 that the person has satisfied the requirement described in Subsection (4)(b)(ii).

104 (c) This Subsection (4):

- 105 (i) does not impair a government entity's obligations to pay money under a contract
106 entered into before the effective date of this bill; and
- 107 (ii) may not be waived or suspended under Title 53, Chapter 2a, Emergency
108 Management Act.

109 (5) In addition to the penalties described in Section [13-44-301](#), a person who willfully
110 and knowingly violates an injunction or court order issued under Section [13-44-301](#) to enforce
111 a requirement in this section is guilty of a felony of the third degree.

112 **Section 2. Effective date.**

113 If approved by two-thirds of all the members elected to each house, this bill takes effect
114 upon approval by the governor, or the day following the constitutional time limit of Utah
115 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
116 the date of veto override.

117 **Section 3. Revisor instructions.**

118 The Legislature intends that the Office of Legislative Research and General Counsel, in

119 preparing the Utah Code database for publication, replace the reference in Section [13-44-203](#)
120 "the effective date of this bill" to the bill's actual effective date.