

Representative Jackie Biskupski proposes to substitute the following bill:

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1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Jackie Biskupski

AN ACT RELATING TO CONTRACTS AND OBLIGATIONS IN GENERAL; CREATING
THE CONSUMER REPORT ACCESS ACT; PROVIDING DEFINITIONS; AND
PROHIBITING CERTAIN ACTS.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

15-9-101, Utah Code Annotated 1953

15-9-102, Utah Code Annotated 1953

15-9-103, Utah Code Annotated 1953

15-9-104, Utah Code Annotated 1953

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

Section 1. Section **15-9-101** is enacted to read:

CHAPTER 9. CONSUMER REPORT ACCESS ACT

15-9-101. Title.

This chapter is known as the "Consumer Report Access Act."

Section 2. Section **15-9-102** is enacted to read:

15-9-102. Definitions.

As used in this chapter:

(1) "Adverse action" is as defined in 15 U.S.C. Sec. 1681a.

(2) "Consumer report" is as defined in 15 U.S.C. Sec. 1681a.

(3) "Consumer reporting agency" is as defined in 15 U.S.C. Sec. 1681a.

(4) "Subject of the report" means a person who is the subject of a consumer report.

- 26 (5) "User" means the person that requests a consumer report for:
- 27 (a) the purpose of establishing the eligibility of the subject of a report for:
- 28 (i) credit or insurance to be used primarily for personal, family, or household purposes;
- 29 or
- 30 (ii) employment; or
- 31 (b) purposes permitted under 15 U.S.C. Sec. 1681b.

32 Section 3. Section **15-9-103** is enacted to read:

33 **15-9-103. Access to consumer reports.**

34 (1) If a user takes adverse action against the subject of the report based in whole or in part
35 on the report, the user shall comply with 15 U.S.C. Sec. 1681m.

36 (2) (a) A user shall comply with Subsection (2)(b), if:

- 37 (i) the subject of the report is charged by the user for the user obtaining a consumer report;
- 38 and
- 39 h [(i)] (ii) h the subject of the report requests the report.

40 (b) If the conditions of Subsection (2)(a) are met, the user shall provide the subject of the
41 report:

42 (i) the name, address, and telephone number of the consumer reporting agency that
43 furnished the user the report; and

44 (ii) notice that the subject of the report may have the right to obtain a free copy of the
45 consumer report in accordance with Subsection (3).

46 (3) (a) Except as provided in Subsection (3)(b), a consumer reporting agency shall provide
47 the subject of a report a free copy of a consumer report h [if] h :

48 (i) in accordance with 15 U.S.C. Sec. 1681m; or

49 (ii) if the subject of the report:

50 (A) is charged by a user for the user obtaining a report; and

51 (B) requests a copy of the report from the consumer reporting agency.

52 (b) A consumer reporting agency is required to provide the subject of a report only one free
53 copy of a consumer report in a 12-month period based on a request under Subsection (3)(a)(ii).

54 (4) A consumer reporting agency may not prohibit a user of a consumer report that is
55 furnished by the consumer reporting agency from disclosing the contents of the consumer report
56 to the subject of the report if:

57 (a) adverse action against the subject of the report is taken by the user based in whole or
58 in part on the report; or

59 (b) the subject of the report was charged by the user for the user obtaining the consumer
60 report.

61 Section 4. Section **15-9-104** is enacted to read:

62 **15-9-104. Liability.**

63 (1) In addition to any liability under federal law, a user or consumer reporting agency who
64 violates this chapter is liable to the subject of the report for:

65 (a) the amount charged the subject of the consumer report by the user for the user
66 obtaining a consumer report; and

67 (b) the costs incurred by the subject of the consumer report in obtaining the report,
68 including attorneys fees and court costs.

69 (2) Any person who wilfully violates this chapter is guilty of a class B misdemeanor.

Legislative Review Note
as of 2-15-99 2:26 PM

This legislation raises the following constitutional or statutory concerns:

The federal Fair Credit Reporting Act addresses disclosure of a consumer report to a consumer if the user takes an adverse action against the consumer based on the report. The federal act generally preempts state law to the extent that state law is inconsistent with the federal act. Because this bill requires a consumer reporting agency to allow disclosure in circumstances not addressed by the federal act, a court would have to determine whether this bill is inconsistent with the federal act and therefore preempted. In some circumstances courts have upheld state laws that provide greater protection to consumers than the federal act which this bill arguably does.

Office of Legislative Research and General Counsel