

Senator Carlene M. Walker proposes the following substitute bill:

**PROTECTION OF INFORMATION IN
CONSUMER CREDIT DATABASES**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carlene M. Walker

House Sponsor: David Clark

LONG TITLE

General Description:

This bill addresses the integrity of consumer credit databases.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a person maintaining personal information in connection with a business to implement procedures to protect personal information;
- ▶ requires destruction of certain records;
- ▶ requires disclosure of breaches of databases containing personal information; and
- ▶ provides for enforcement by the attorney general.

Monies Appropriated in this Bill:

This bill appropriates from the General Fund to the attorney general:

- ▶ as an ongoing appropriation subject to future budget constraints, \$178,800 for fiscal year 2006-07; and
- ▶ \$46,000 for fiscal year 2006-07 only.

Other Special Clauses:

This bill takes effect on January 1, 2007.



26 **Utah Code Sections Affected:**

27 ENACTS:

28 **13-42-101**, Utah Code Annotated 1953

29 **13-42-102**, Utah Code Annotated 1953

30 **13-42-201**, Utah Code Annotated 1953

31 **13-42-202**, Utah Code Annotated 1953

32 **13-42-301**, Utah Code Annotated 1953



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

35 Section 1. Section **13-42-101** is enacted to read:

36 **CHAPTER 42. CONSUMER CREDIT PROTECTION ACT**

37 **Part 1. General Provisions**

38 **13-42-101. Title.**

39 This chapter is known as the "Consumer Credit Protection Act."

40 Section 2. Section **13-42-102** is enacted to read:

41 **13-42-102. Definitions.**

42 As used in this chapter:

43 (1) (a) "Breach of system security" means an unauthorized acquisition of unencrypted
44 computerized data maintained by a person that compromises the security, confidentiality, or
45 integrity of personal information.

46 (b) "Breach of system security" does not include the acquisition of personal
47 information by an employee or agent of the person possessing unencrypted computerized data
48 unless the personal information is used or disclosed in an unauthorized manner.

49 (2) "Consumer" means a natural person.

50 (3) (a) "Personal information" means a person's first name or first initial and last name,
51 combined with any one or more of the following data elements relating to that person when
52 either the name or date element is unencrypted or not protected by another method that renders
53 the data unreadable or unusable:

54 (i) Social Security number;

55 (ii) (A) financial account number, or credit or debit card number; and

56 (B) any required security code, access code, or password that would permit access to

57 the person's account; or

58 (iii) driver license number or state identification card number.

59 (b) "Personal information" does not include information regardless of its source,
60 contained in federal, state, or local government records or in widely distributed media that are
61 lawfully made available to the general public.

62 (4) "Record" includes materials maintained in any form, including paper and
63 electronic.

64 Section 3. Section **13-42-201** is enacted to read:

65 **Part 2. Protection of Personal Information**

66 **13-42-201. Protection of personal information.**

67 (1) Any person who conducts business in the state and maintains personal information
68 shall implement and maintain reasonable procedures to:

69 (a) prevent unlawful use or disclosure of personal information collected or maintained
70 in the regular course of business; and

71 (b) destroy, or arrange for the destruction of, records containing personal information
72 that are not to be retained by the person.

73 (2) The destruction of records under Subsection (1)(b) shall be by:

74 (a) shredding;

75 (b) erasing; or

76 (c) otherwise modifying the personal information to make the information
77 indecipherable.

78 (3) This section does not apply to a financial institution as defined by 15 U.S.C.
79 Section 6809.

80 Section 4. Section **13-42-202** is enacted to read:

81 **13-42-202. Personal information -- Disclosure of system security breach.**

82 (1) (a) A person who owns or licenses computerized data that includes personal
83 information concerning ~~H~~→ [a] more than 5,000 [Utah-resident] persons ←~~H~~ shall, when
83a the person becomes aware of a breach of
84 system security, conduct in good faith a reasonable and prompt investigation to determine the
85 likelihood that personal information has been or will be misused.

86 (b) If an investigation under Subsection (1)(a) reveals that the misuse of personal
87 information has occurred, or is reasonably likely to occur, the person shall provide notification

88 to each affected Utah resident.

88a Ĥ→ (c) A person who owns or licenses computerized data that includes personal
88b information concerning 5,000 or fewer persons shall provide notification of a breach of system
88c security to a Utah resident whose personal information is compromised if the person has actual
88d knowledge that the resident's personal information is compromised. ←Ĥ

89 (2) A person required to provide notification under Subsection (1) shall provide the
90 notification in the most expedient time possible without unreasonable delay:

91 (a) considering legitimate investigative needs of law enforcement, as provided in
92 Subsection (4)(a);

93 (b) after determining the scope of the breach of system security; and

94 (c) after restoring the reasonable integrity of the system.

95 (3) (a) A person who maintains computerized data that includes personal information
96 that the person does not own or license shall notify and cooperate with the owner or licensee of
97 the information of any breach of system security immediately following the person's discovery
98 of the breach if misuse of the personal information occurs or is reasonably likely to occur.

99 (b) Cooperation under Subsection (3)(a) includes sharing information relevant to the
100 breach with the owner or licensee of the information.

101 (4) (a) Notwithstanding Subsection (2), a person may delay providing notification
102 under Subsection (1) at the request of a law enforcement agency that determines that
103 notification may impede a criminal investigation.

104 (b) A person who delays providing notification under Subsection (4)(a) shall provide
105 notification in good faith without unreasonable delay in the most expedient time possible after
106 the law enforcement agency informs the person that notification will no longer impede the
107 criminal investigation.

108 (5) (a) A notification required by this section may be provided:

109 (i) in writing by first-class mail; or

110 (ii) electronically, if provided in accordance with the consumer disclosure provisions of
111 15 U.S.C. Section 7001.

112 (b) Notwithstanding Subsection (5)(a), if the cost of providing notification will exceed
113 \$150,000, the number of affected persons exceeds 100,000, or the person does not have
114 sufficient contact information for affected persons, the notice may be provided by:

115 (i) electronic mail, if the person has an electronic mail address for the affected person;

116 (ii) conspicuous posting on the person's Internet website; or

117 (iii) publishing and broadcasting notice in major, statewide media.

118 (c) If a person maintains the person's own notification procedures as part of an

119 information security policy for the treatment of personal information the person is considered
120 to be in compliance with this chapter's notification requirements if the procedures are otherwise
121 consistent with this chapter's timing requirements and the person notifies each affected Utah
122 resident in accordance with the person's information security policy in the event of a breach.

123 (d) A person who is regulated by state or federal law and maintains procedures for a
124 breach of system security under applicable law established by the primary state or federal
125 regulator is considered to be in compliance with this part if the person notifies each affected
126 Utah resident in accordance with the other applicable law in the event of a breach.

127 (6) A waiver of this section is contrary to public policy and is void and unenforceable.
128 Section 5. Section **13-42-301** is enacted to read:

129 **Part 3. Enforcement**

130 **13-42-301. Enforcement.**

131 (1) The attorney general may enforce this chapter's provisions.

132 (2) Nothing in this chapter affects any private right of action under other law, including
133 contract or tort.

134 (3) (a) A person who violates this chapter's provisions is subject to a civil fine of:

135 (i) no greater than \$2,500 for a violation or series of violations concerning a specific
136 consumer; and

137 (ii) no greater than \$100,000 in the aggregate for related violations concerning more
138 than one consumer.

139 (b) A person subject to a civil fine under Subsection (3)(a) is also liable for attorney
140 fees and costs, including investigatory costs, incurred by the attorney general.

141 (4) In addition to the penalties provided in Subsection (3), the attorney general may
142 seek injunctive relief to prevent future violations of this chapter in:

143 (a) the district court located in Salt Lake City; or

144 (b) the district court for the district in which resides a consumer who is affected by the
145 violation.

146 Section 6. **Appropriation.**

147 (1) There is appropriated from the General Fund to the attorney general:

148 (a) as an ongoing appropriation, subject to future budget constraints, \$178,800 for
149 fiscal year 2006-07; and

150 (b) \$46,000 for fiscal year 2006-07 only.

151 (2) It is the intent of the Legislature that:

152 (a) the monies appropriated under Subsection (1)(a) be used to fund investigatory

153 activities that may lead to an enforcement action by the attorney general under Section

154 13-42-301; and

155 (b) the monies appropriated under Subsection (1)(b) be used to purchase equipment

156 required for investigatory activities that may lead to an enforcement action by the attorney

157 general under Section 13-42-301.

158 Section 7. **Effective date.**

159 This bill takes effect on January 1, 2007.

State Impact

The bill provides a one-time General Fund appropriation of \$46,000 for FY 2007 and an ongoing General Fund appropriation of \$178,800 beginning FY 2007 to the Attorney General to implement provisions of the bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$224,800	\$178,800	\$0	\$0
TOTAL	\$224,800	\$178,800	\$0	\$0

Individual and Business Impact

Violators of the bill's provisions could face significant financial fines and penalties.
