

**CONSUMER REPORTS - PROTECTION OF
ACCURACY OF INFORMATION**

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Gene Davis

AN ACT RELATING TO COLLECTION AGENCIES; DEFINING TERMS; REQUIRING CERTAIN DISCLOSURES TO CONSUMERS; ADDRESSING PROCESS TO RESOLVE DISPUTES; AND ADDRESSING PENALTIES.

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

ENACTS:

12-2-101, Utah Code Annotated 1953

12-2-102, Utah Code Annotated 1953

12-2-103, Utah Code Annotated 1953

12-2-104, Utah Code Annotated 1953

12-2-105, Utah Code Annotated 1953

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

Section 1. Section **12-2-101** is enacted to read:

CHAPTER 2. CONSUMER REPORT PROTECTION ACT

12-2-101. Title.

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

Section 2. Section **12-2-102** is enacted to read:

12-2-102. Definitions.

As used in this chapter:

(1) "Consumer" means a natural person residing in Utah.

(2) (a) "Consumer report" means any written, oral, or other communication or any information by a consumer reporting agency:

(i) bearing on a consumer's creditworthiness, credit standing, credit capacity, debts,

28 character, general reputation, personal characteristics, or mode of living; and
29 (ii) that is used or expected to be used or collected, in whole or in part:
30 (A) as a factor to establish a consumer's eligibility for credit or insurance to be used for
31 personal, family, or household purposes;
32 (B) employment purposes; or
33 (C) any other purpose authorized pursuant to 15 U.S.C. 1681a and 1681b.
34 (b) "Consumer report" does not mean:
35 (i) a report containing information solely as to a transaction between the consumer and the
36 person making the report;
37 (ii) an authorization or approval of a specific extension of credit directly or indirectly by
38 the issuer of a credit card or similar device; or
39 (iii) a report in which a person who has been requested by a third party to make a specific
40 extension of credit directly or indirectly to a consumer conveys a decision with respect to the
41 request, if:
42 (A) the third party advises the consumer of the name and address of the person to whom
43 the request was made; and
44 (B) the person makes the disclosures that must be made to the consumer pursuant to 15
45 U.S.C. 1681m, in the event of adverse action as defined in 15 U.S.C. 1681a.
46 (3) (a) "Consumer reporting agency" means any person which, for monetary fees, dues,
47 or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of
48 assembling or evaluating consumer credit information or other information on consumers for the
49 purpose of furnishing consumer reports to third parties.
50 (b) "Consumer reporting agency" does not mean any business entity that provides check
51 verification or check guarantee services only.
52 (4) (a) "Creditworthiness" means any entry in a consumer's file that impacts the ability of
53 a consumer to obtain and retain:
54 (i) credit;
55 (ii) employment;
56 (iii) business or professional licenses;
57 (iv) investment opportunities; or
58 (v) insurance.

59 (b) An entry contained in a consumer file or in a consumer report that affects
60 creditworthiness includes:

- 61 (i) payment information;
- 62 (ii) defaults;
- 63 (iii) judgments;
- 64 (iv) liens;
- 65 (v) bankruptcies;
- 66 (vi) collections;
- 67 (vii) records of arrest and indictments; and
- 68 (viii) multiple-credit inquiries.

69 (5) "Disclosure copy" means the information required to be disclosed under 15 U.S.C.
70 1681g.

71 (6) "Employment purposes," when used in connection with a consumer report, means a
72 report used for the purpose of evaluating a consumer for employment, promotion, reassignment,
73 or retention as an employee.

74 (7) "File" means all of the information on the consumer that is recorded and retained by
75 a consumer reporting agency regardless of how the information is stored.

76 Section 3. Section **12-2-103** is enacted to read:

77 **12-2-103. Disclosures to consumers.**

78 (1) (a) At the request of a consumer, a consumer reporting agency shall provide the
79 consumer with a disclosure copy of the consumer's file.

80 (b) A consumer reporting agency may not charge a consumer for providing one disclosure
81 copy of the consumer file in a 12-month period.

82 (c) If the consumer requests more than one disclosure copy of the consumer's file in a
83 12-month period, the consumer reporting agency may charge the consumer for each additional
84 disclosure copy in accordance with 15 U.S.C. 1681j.

85 (2) (a) If an event described in Subsection (2)(b) occurs within a 12-month period, a
86 consumer reporting agency shall notify a consumer in writing sent by first-class mail:

87 (i) that at the request of the consumer the consumer reporting agency shall provide the
88 consumer with a disclosure copy of the consumer's file in accordance with Subsection (1); and

89 (ii) of a toll-free telephone number to call to request a disclosure copy in accordance with

90 Subsection (1).

91 (b) A consumer reporting agency shall comply with Subsection (2)(a) if one of the
92 following events occurs within a 12-month period:

93 (i) the consumer reporting agency has received three credit inquiries pertaining to the
94 consumer; or

95 (ii) the consumer reporting agency has received a report that would add negative
96 information to a consumer's file.

97 (c) Notwithstanding Subsection (1)(a), if more than one event described in Subsection
98 (1)(b) occurs in a 12-month period, the consumer reporting agency is only required to send one
99 letter to the consumer within that 12-month period.

100 (3) A written notification sent to a consumer in accordance with Subsection (2):

101 (a) may not contain any identifying information particular to that consumer including:

102 (i) social security number;

103 (ii) place of employment;

104 (iii) date of birth; or

105 (iv) mother's maiden name; and

106 (b) may be a form notification except that it shall state the type of event that occurred
107 under Subsection (2)(b) relating to the consumer.

108 Section 4. Section **12-2-104** is enacted to read:

109 **12-2-104. Disputed information.**

110 (1) If the consumer directly notifies a consumer reporting agency that the consumer
111 disputes the completeness or accuracy of any item of information contained in the consumer's file,
112 in addition to any requirement under 15 U.S.C. 1681 through 1681t, the consumer reporting
113 agency shall:

114 (a) provide the consumer with the option of speaking directly to a representative of the
115 consumer reporting agency to notify the consumer reporting agency of disputed information
116 contained in the consumer's file; and

117 (b) advise the consumer that if the consumer reporting agency revises the consumer file
118 because of the dispute, the consumer may require the consumer reporting agency to send
119 notification that a consumer's file has been revised to any person that:

120 (i) is specified by the consumer; and

121 (ii) requested the disputed information within 12 months before the date the consumer
122 notified the consumer reporting agency of the dispute.

123 (2) A consumer reporting agency shall provide the notice described in Subsection (1)(c)
124 if requested by the consumer in accordance with Subsection (1)(c).

125 (3) (a) If inaccurate information is reported by a person providing credit information to a
126 consumer reporting agency, the consumer reporting agency shall permit that person to:

127 (i) speak directly with a representative of the consumer reporting agency; or

128 (ii) submit corrections to previously reported information by facsimile or other automated
129 means.

130 (b) Within five business days from the day the consumer reporting agency receives a
131 correction by fax or automated information from the person who provided the credit information,
132 the consumer reporting agency shall:

133 (i) correct the information in the consumer's file; and

134 (ii) if requested by the person who submitted the initial request for a correction, notify the
135 person who submitted the initial request for a correction of the correction.

136 (c) The credit information provider's community shall include information established by
137 the consumer reporting agency that identifies the credit information provider as the credit
138 information provider who provided the original inaccurate information.

139 (d) This Subsection (3) does not prohibit a consumer reporting agency from correcting
140 inaccurate information in a consumer's file or a consumer report at any time.

141 (4) Nothing in this section shall be construed to require a person who obtains a consumer
142 report for resale to alter or correct any inaccuracy in the consumer report if the consumer report
143 was not assembled or prepared by that person.

144 Section 5. Section **12-2-105** is enacted to read:

145 **12-2-105. Violations.**

146 (1) A consumer reporting agency that willfully violates this chapter or 15 U.S.C. 1681c
147 is liable for:

148 (a) the greater of:

149 (i) three times the amount of actual damages; or

150 (ii) \$1,000 for each inaccurate entry in the consumer's file that is disputed by the
151 consumer;

152 (b) reasonable attorney fees; and
153 (c) costs.
154 (2) (a) A consumer reporting agency is liable under Subsection (2)(b) if:
155 (i) the consumer credit agency negligently violates:
156 (A) this chapter; or
157 (B) 15 U.S.C. 1681c; and
158 (ii) within 30 days after receiving notice of the dispute from a consumer in accordance
159 with Section 12-2-104, the consumer reporting agency does not:
160 (A) correct any inaccurate entry that is disputed; and
161 (B) at the request of the consumer send written notice of the correction in accordance with
162 Subsection 12-2-104(2).
163 (b) A consumer reporting agency described in Subsection (2)(b) is liable for:
164 (i) the greater of:
165 (A) actual damages; or
166 (B) (I) if an inaccurate entry that is disputed by the consumer affects the consumer's
167 creditworthiness, \$1,000 for each inaccurate entry that is disputed by the consumer and affects the
168 consumer's creditworthiness; or
169 (II) if no inaccurate entry that is disputed by the consumer affects the consumer's
170 creditworthiness, \$1,000;
171 (ii) reasonable attorney fees; and
172 (iii) costs.
173 (3) In addition to the damages assessed under Subsections (1) and (2), if ten days after the
174 entry of any judgment for damages, any disputed inaccurate entry in the consumer's file is not
175 corrected by the consumer reporting agency, the assessed damages shall be increased to \$1,000 per
176 day per inaccurate entry that remains in the consumer's file until the inaccurate entry is corrected.

Legislative Review Note
as of 2-15-00 1:42 PM

This legislation raises the following constitutional or statutory concerns:

This bill addresses required disclosures, resolution of disputes, and penalties related to consumer credit information. The federal Fair Credit Reporting Act regulates credit reporting but generally does not annual, alter, affect, or exempt any person from complying with state laws with respect to the collection, distribution, or use of consumer credit information except to the extent that those laws are inconsistent with the federal act. Moreover, the federal act specifically preempts state law in some cases. In some circumstances courts have upheld state laws that provide greater protection to consumers than the federal act. If challenged, a court would have to determine whether this bill is inconsistent with the federal act and therefore preempted.

Office of Legislative Research and General Counsel