

Senator Carlene M. Walker proposes the following substitute bill:

CONSUMER CREDIT PROTECTION

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carlene M. Walker

House Sponsor: David Clark

LONG TITLE

General Description:

This bill addresses consumer credit protections.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows a consumer to place a security freeze on the consumer's credit report;
- ▶ outlines the method for placing and removing a security freeze;
- ▶ provides exceptions;
- ▶ prohibits the release of a credit report that is subject to a security freeze, except in certain instances;
- ▶ allows certain fees to be charged in connection with a security freeze;
- ▶ governs changes to a credit report that is subject to a security freeze;
- ▶ prohibits some uses of a consumer's personal information; and
- ▶ provides for enforcement.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.



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 **13-42-203**, Utah Code Annotated 1953

33 **13-42-204**, Utah Code Annotated 1953

34 **13-42-205**, Utah Code Annotated 1953

35 **13-42-301**, Utah Code Annotated 1953

36 **13-42-401**, Utah Code Annotated 1953



37
38 *Be it enacted by the Legislature of the state of Utah:*

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

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

41 **Part 1. General Provisions**

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

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

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

45 **13-42-102. Definitions.**

46 As used in this chapter:

47 (1) "Consumer" means a natural person.

48 (2) "Consumer reporting agency" means a person who, for fees, dues, or on a
49 cooperative basis, regularly engages in whole or in part in the practice of assembling or
50 evaluating information concerning a consumer's credit or other information for the purpose of
51 furnishing a credit report to another person.

52 (3) "Credit report" means a consumer report, as defined in 15 U.S.C. Sec. 1681a, that is
53 used or collected in whole or part for the purpose of serving as a factor in establishing a
54 consumer's eligibility for credit for personal, family, or household purposes.

55 (4) (a) "Personal information" means personally identifiable financial information:

56 (i) provided by a consumer to another person;

57 (ii) resulting from any transaction with the consumer or any service performed for the
58 consumer; or

59 (iii) otherwise obtained by another person.

60 (b) "Personal information" does not include:

61 (i) publicly available information, as that term is defined by the regulations prescribed
62 under 15 U.S.C. Sec. 6804; or

63 (ii) any list, description, or other grouping of consumers, and publicly available
64 information pertaining to the consumers, that is derived without using any nonpublic personal
65 information.

66 (c) Notwithstanding Subsection (4)(b), "personal information" includes any list,
67 description, or other grouping of consumers, and publicly available information pertaining to
68 the consumers, that is derived using any nonpublic personal information other than publicly
69 available information.

70 (5) "Security freeze" means a prohibition, consistent with Section 13-42-201, on a
71 consumer reporting agency's furnishing of a consumer's credit report to a third party intending
72 to use the credit report to determine the consumer's eligibility for credit.

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

74 **Part 2. Security Freeze**

75 **13-42-201. Security freeze.**

76 (1) A consumer may place a security freeze on the consumer's credit report by:

77 (a) making a request to a consumer reporting agency in writing by certified mail;

78 (b) providing proper identification; and

79 (c) paying the fee required by the consumer reporting agency in accordance with
80 Section 13-42-204.

81 (2) If a security freeze is in place, a consumer reporting agency may not release a
82 consumer's credit report, or information from the credit report, to a third party that intends to
83 use the information to determine a consumer's eligibility for credit without prior authorization
84 from the consumer.

85 (3) (a) Notwithstanding Subsection (2), a consumer reporting agency may
86 communicate to a third party requesting a consumer's credit report that a security freeze is in
87 effect on the consumer's credit report.

88 (b) If a third party requesting a consumer's credit report in connection with the
89 consumer's application for credit is notified of the existence of a security freeze under
90 Subsection (3)(a), the third party may treat the consumer's application as incomplete.

91 (4) Upon receiving a request from a consumer under Subsection (1), the consumer
92 reporting agency shall:

93 (a) place a security freeze on the consumer's credit report within five business days
94 after receiving the consumer's request;

95 (b) send a written confirmation of the security freeze to the consumer within ten
96 business days after placing the security freeze; and

97 (c) provide the consumer with a unique personal identification number or password to
98 be used by the consumer when providing authorizations for removal or temporary removal of
99 the security freeze under Section 13-42-202.

100 (5) A consumer reporting agency shall require proper identification of the consumer
101 requesting to place, remove, or temporarily remove a security freeze.

102 (6) (a) A consumer reporting agency shall develop a contact method to receive and
103 process a consumer's request to place, remove, or temporarily remove a security freeze.

104 (b) A contact method under Subsection (6)(a) shall include:

105 (i) a postal address; and

106 (ii) an electronic contact method chosen by the consumer reporting agency, which may
107 include the use of telephone, fax, Internet, or other electronic means.

108 (7) A security freeze placed under this section may be removed only in accordance
109 with Section 13-42-202.

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

111 **13-42-202. Removal of security freeze -- Requirements and timing.**

112 (1) (a) A consumer reporting agency may remove a security freeze from a consumer's
113 credit report only if:

114 (i) (A) the consumer reporting agency receives the consumer's request through the
115 contact method chosen by the consumer ~~§~~→ [reporting agency] ←~~§~~ in accordance with Subsection
116 13-42-201(6); and

117 (B) the consumer provides the customer's personal identification number or password;

118 or

119 (ii) the consumer makes a material misrepresentation of fact in connection with the
120 placement of the security freeze.

121 (b) A consumer reporting agency may require proper identification other than the
122 consumer's personal identification number or password if the consumer fails to provide the
123 consumer's correct personal identification number or password.

124 (2) Within ten business days after the day on which a consumer reporting agency
125 removes a security freeze from a consumer's credit report, the consumer reporting agency shall
126 send a written confirmation of the removal of the security freeze to the consumer.

127 (3) (a) A consumer reporting agency shall temporarily remove a security freeze upon
128 receipt of:

129 (i) the consumer's request through the contact method chosen by the consumer

130 ↯→ [reporting agency] ←↯ in accordance with Subsection 13-42-201(6);

131 (ii) the consumer's proper identification or personal identification number or password;
132 and

133 (iii) a specific designation of the period of time for which the security freeze is to be
134 removed.

135 (b) A consumer reporting agency shall remove a security freeze from a consumer's
136 credit report within:

137 (i) three business days after the business day on which the consumer's written request
138 to remove the security freeze is received by the consumer reporting agency at the postal address
139 chosen by the consumer reporting agency in accordance with Subsection 13-42-201(6); or

140 (ii) 15 minutes after the consumer's request is made to the consumer reporting agency
141 through the electronic contact method chosen by the consumer reporting agency in accordance
142 with Subsection 13-42-201(6) and includes the consumer's correct personal identification
143 number or password.

144 (4) A consumer reporting agency need not remove a security freeze within the time
145 provided in Subsection (3)(b)(ii) if:

146 (a) the consumer fails to meet the requirements of Subsection 13-42-202(1); or

147 (b) the consumer reporting agency's ability to remove the security freeze within 15
148 minutes is prevented by the failure of redundant systems due to:

149 (i) an act of God, including fire, earthquakes, hurricanes, storms, or similar natural

150 disaster or phenomena;

151 (ii) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot,
152 vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

153 (iii) operational interruption, including electrical failure, unanticipated delay in
154 equipment or replacement part delivery, computer hardware or software failures inhibiting
155 response time, or similar disruption;

156 (iv) governmental action, including emergency orders or regulations, judicial or law
157 enforcement action, or similar directives;

158 ~~§→ [(v) regularly scheduled maintenance of, or updates to, the consumer reporting agency's~~
159 ~~systems;] ←§~~

160 (vi) commercially reasonable maintenance of, or repair to, the consumer reporting
161 agency's systems that is unexpected or unscheduled; or

162 ~~§→ [(vii) any other event or cause beyond the consumer reporting agency's control.] ←§~~

163 (5) A consumer reporting agency complies with Subsection (3)(b)(ii) if it maintains
164 and utilizes a redundant system that implements a consumer's request to temporarily remove a
165 security freeze within 15 minutes after the consumer's request is sent to the consumer reporting
166 agency.

167 Section 5. Section **13-42-203** is enacted to read:

168 **13-42-203. Exceptions.**

169 (1) Notwithstanding Section 13-42-201, a consumer reporting agency may furnish a
170 consumer's credit report to a third party if:

171 (a) (i) the purpose of the credit report is to:

172 (A) review the consumer's account with the third party, including for account
173 maintenance or monitoring, credit line increases, or other upgrades or enhancements; or

174 (B) collect on a financial obligation owed by the consumer to the third party requesting
175 the credit report; or

176 (ii) (A) the purpose of the credit report is to:

177 (I) review the consumer's account with another person; or

178 (II) collect on a financial obligation owed by the consumer to another person; and

179 (B) use the credit report for purposes permitted under 15 U.S.C. Sec. 1681b(c); or

180 (b) the third party requesting the credit report is a subsidiary, affiliate, agent, assignee,

181 or prospective assignee of the person holding the consumer's account or to whom the consumer
182 owes a financial obligation;

183 (2) (a) The consumer's request for a security freeze does not prohibit the consumer
184 reporting agency from disclosing the consumer's credit report for other than credit related
185 purposes consistent with 15 U.S.C. Sec. 1681a, et seq.

186 (b) A security freeze does not apply to a credit report released to a third party if:

187 (i) the third party is acting under a court order, warrant, or subpoena requiring release
188 of the credit report;

189 (ii) the third party is a child support agency, or its agent or assignee, acting under Part
190 D, Title IV of the Social Security Act or a similar state law;

191 (iii) the federal Department of Health and Human Services or a similar state agency, or
192 its agent or assignee, investigating Medicare or Medicaid fraud;

193 (iv) (A) the purpose of the credit report is to investigate or collect delinquent taxes,
194 assessments, or unpaid court orders; and

195 (B) the third party is:

196 (I) the federal Internal Revenue Service;

197 (II) a state taxing authority;

198 (III) the Department of Motor Vehicles;

199 (IV) a county, municipality, or other entity with taxing authority;

200 (V) a federal, state, or local law enforcement agency; or

201 (VI) the agent or assignee of any entity listed in Subsection (1)(e)(ii)(A) through (E);

202 (v) the third party is administering a credit file monitoring subscription to which the
203 consumer has subscribed; or

204 (vi) the third party requests the credit report for the sole purpose of providing the
205 consumer with a copy of the consumer's credit report or credit score upon the consumer's
206 request.

207 (3) Section 13-42-201 does not apply to:

208 (a) a consumer reporting agency, the sole purpose of which is to resell credit
209 information by assembling and merging information contained in the database of another
210 consumer reporting agency and that does not maintain a permanent database of credit
211 information from which a consumer's credit report is produced;

212 (b) a check services or fraud prevention services company that issues:
213 (i) reports on incidents of fraud; or
214 (ii) authorizations for the purpose of approving or processing negotiable instruments,
215 electronic funds transfers, or similar methods of payment; or
216 (c) a deposit account information service company that issues reports concerning
217 account closures based on fraud, substantial overdrafts, automated teller machine abuse, or
218 similar information concerning a consumer to a requesting financial institution for the purpose
219 of evaluating a consumer's request to create a deposit account.

220 (4) Nothing in this chapter prohibits a person from obtaining, aggregating, or using
221 information lawfully obtained from public records in a manner that does not otherwise violate
222 this chapter.

223 Section 6. Section **13-42-204** is enacted to read:

224 **13-42-204. Fees for security freeze.**

225 (1) Except as provided in Subsection (2), a consumer reporting agency may charge a
226 reasonable fee to a consumer for placing a security freeze.

227 (2) A consumer reporting agency may not charge a fee for placing or removing a
228 security freeze if:

229 (a) the consumer is a victim of identity fraud under Section 76-6-1102; and

230 (b) the consumer provides the consumer reporting agency with a valid copy of a police
231 report or police case number documenting the identity fraud.

232 Section 7. Section **13-42-205** is enacted to read:

233 **13-42-205. Changes to information in a credit report subject to a security freeze.**

234 (1) If a credit report is subject to a security freeze, a consumer reporting agency shall
235 notify the consumer who is the subject of the credit report within 30 days if the consumer
236 reporting agency changes the consumer's:

237 (a) name;

238 (b) date of birth;

239 (c) Social Security number; or

240 (d) address.

241 (2) (a) Notwithstanding Subsection (1), a consumer reporting agency may make
242 technical modifications to information in a credit report that is subject to a security freeze

243 without providing notification to the consumer.

244 (b) Technical modifications under Subsection (2)(a) include:

245 (i) the addition or subtraction of abbreviations to names and addresses; and

246 (ii) transpositions or corrections of incorrect numbering or spelling.

247 (3) When providing notice of a change of address under Subsection (1), the consumer
248 reporting agency shall provide notice to the consumer at both the new address and the former
249 address.

250 Section 8. Section **13-42-301** is enacted to read:

251 **Part 3. Protection of Personal Information**

252 **13-42-301. Protection of personal information.**

253 (1) Except as allowed by other law, a person may not display a Social Security number
254 in a manner or location that is likely to be open to public view.

255 (2) The state, or a branch, agency, or political subdivision of the state, may not employ
256 or contract for the employment of an inmate in any Department of Corrections facility or
257 county jail in any capacity that would allow any inmate access to any other person's personal
258 information.

259 Section 9. Section **13-42-401** is enacted to read:

260 **Part 4. Enforcement**

261 **13-42-401. Enforcement.**

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

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

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

266 (b) no greater than \$100,000 in the aggregate for related violations concerning more
267 than one consumer.

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

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

271 (b) the district court for the district in which resides a consumer who is the subject of a
272 credit report on which a violation occurs.

273 Section 10. **Effective date.**

274

This bill takes effect on September 1, 2007.

Fiscal Note
Bill Number SB0071S02

Consumer Credit Protection

09-Feb-06

3:50 PM

State Impact

No fiscal impact.

Individual and Business Impact

Persons acting under the provisions of this bill will pay reasonable fees.

Office of the Legislative Fiscal Analyst