

1 **PROTECTION OF INFORMATION IN**
2 **CONSUMER CREDIT DATABASES**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Carlene M. Walker**

6 House Sponsor: David Clark

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses the integrity of consumer credit databases.

11 **Highlighted Provisions:**

12 This bill:

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

19 **Monies Appropriated in this Bill:**

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

- 21 ▶ as an ongoing appropriation subject to future budget constraints, \$89,400 for fiscal
- 22 year 2006-07; and
- 23 ▶ \$23,000 for fiscal year 2006-07 only.

24 **Other Special Clauses:**

25 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 computerized
 44 data maintained by a person that compromises the security, confidentiality, or integrity of
 45 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 for an unlawful purpose or disclosed in an unauthorized
 49 manner.

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

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

55 (i) Social Security number;

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

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

58 the person's account; or

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

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

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

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

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

67 **13-42-201. Protection of personal information.**

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

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

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

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

75 (a) shredding;

76 (b) erasing; or

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

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

80 Section 6809.

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

82 **13-42-202. Personal information -- Disclosure of system security breach.**

83 (1) (a) A person who owns or licenses computerized data that includes personal
84 information concerning a Utah resident shall, when the person becomes aware of a breach of
85 system security, conduct in good faith a reasonable and prompt investigation to determine the

86 likelihood that personal information has been or will be misused for identity theft or fraud
87 purposes.

88 (b) If an investigation under Subsection (1)(a) reveals that the misuse of personal
89 information for identity theft or fraud purposes has occurred, or is reasonably likely to occur,
90 the person shall provide notification to each affected Utah resident.

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

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

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

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

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

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

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

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

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

111 (i) in writing by first-class mail to the most recent address the person has for the
112 resident;

113 (ii) electronically, if the person's primary method of communication with the resident is

114 by electronic means, or if provided in accordance with the consumer disclosure provisions of
115 15 U.S.C. Section 7001;

116 (iii) by telephone, including through the use of automatic dialing technology not
117 prohibited by other law; or

118 (iv) by publishing notice of the breach of system security in a newspaper of general
119 circulation.

120 (b) If a person maintains the person's own notification procedures as part of an
121 information security policy for the treatment of personal information the person is considered
122 to be in compliance with this chapter's notification requirements if the procedures are otherwise
123 consistent with this chapter's timing requirements and the person notifies each affected Utah
124 resident in accordance with the person's information security policy in the event of a breach.

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

129 (6) A waiver of this section is contrary to public policy and is void and unenforceable.

130 Section 5. Section **13-42-301** is enacted to read:

131 **Part 3. Enforcement**

132 **13-42-301. Enforcement.**

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

134 (2) (a) Nothing in this chapter creates a private right of action.

135 (b) Nothing in this chapter affects any private right of action existing under other law,
136 including contract or tort.

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

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

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

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

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

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

147 **Section 6. Appropriation.**

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

149 (a) as an ongoing appropriation, subject to future budget constraints, \$89,400 for fiscal
150 year 2006-07; and

151 (b) \$23,000 for fiscal year 2006-07 only.

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

153 (a) the monies appropriated under Subsection (1)(a) be used to fund investigatory
154 activities that may lead to an enforcement action by the attorney general under Section
155 13-42-301; and

156 (b) the monies appropriated under Subsection (1)(b) be used to purchase equipment
157 required for investigatory activities that may lead to an enforcement action by the attorney
158 general under Section 13-42-301.

159 **Section 7. Effective date.**

160 This bill takes effect on January 1, 2007.