

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: _____

7
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:
- 19 • the attorney general; and
- 20 • an affected consumer.

21 **Monies Appropriated in this Bill:**

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

- 23 ▶ as an ongoing appropriation subject to future budget constraints, \$178,809 for fiscal
- 24 year 2006-07; and
- 25 ▶ \$46,968 for fiscal year 2006-07 only.

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **13-42-101**, Utah Code Annotated 1953

31 **13-42-102**, Utah Code Annotated 1953

32 **13-42-201**, Utah Code Annotated 1953

33 **13-42-202**, Utah Code Annotated 1953

34 **13-42-301**, Utah Code Annotated 1953



35
36 *Be it enacted by the Legislature of the state of Utah:*

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

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

39 **Part 1. General Provisions**

40 **13-42-101. Title.**

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

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

43 **13-42-102. Definitions.**

44 As used in this chapter:

45 (1) (a) "Breach of system security" means an unauthorized acquisition of records
46 maintained by a person that compromises the security or confidentiality of personal
47 information contained in the records.

48 (b) "Breach of system security" does not include the acquisition of personal
49 information by an employee or agent of the person possessing records unless the personal
50 information is used or disclosed in an unauthorized manner.

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

52 (3) "Personal information" means:

53 (a) a person's name, address, or telephone number combined with the person's:

54 (i) Social Security number;

55 (ii) (A) financial account, 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;

58 (iii) driver license number or other government-issued identification number;

- 59 (iv) consumer report;
- 60 (v) employee number;
- 61 (vi) faculty or student identification number;
- 62 (vii) United States Armed Forces serial number; or
- 63 (viii) genetic or biometric information; or
- 64 (b) any of the information listed in Subsections (3)(a)(i) through (viii) without the
- 65 person's name, address, or telephone number if the information is sufficient to allow a person
- 66 to obtain money, credit, or services through unauthorized use of the information.

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

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

69 **13-42-201. Protection of personal information.**

70 (1) Any person who conducts business in the state and maintains personal information
71 shall:

72 (a) implement and maintain reasonable procedures to prevent unlawful use or
73 disclosure of personal information collected or maintained in the regular course of business;
74 and

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

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

78 (a) shredding;

79 (b) erasing; or

80 (c) otherwise modifying the personal information to make the information
81 indecipherable.

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

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

85 **13-42-202. Personal information -- Disclosure of system security breach.**

86 (1) A person possessing personal information shall disclose a breach of system security
87 to any resident of this state if the resident's personal information is, or reasonably could be,
88 acquired by an unauthorized person because of the breach of system security.

89 (2) If a person is required to notify more than 10,000 residents of this state of a breach

90 of system security under this section, the person shall also notify any consumer reporting
91 agency, as defined in 15 U.S.C. Section 1681a, that does business on a nationwide basis of the
92 circumstances surrounding the required notification, including:

- 93 (a) when the notification is made;
94 (b) to whom the notification is made; and
95 (c) the extent of the breach of system security.

96 (3) (a) A person required to provide notification under Subsection (1) shall provide the
97 notification as soon as possible after determining the scope of the breach of system security and
98 restoring the integrity of the personal information in the person's possession.

99 (b) (i) Notwithstanding Subsection (3)(a), a person may delay providing a notification
100 required by Subsection (1) at the request of a law enforcement agency that determines that
101 notification could impede a criminal investigation.

102 (ii) A person who delays providing notification under Subsection (3)(b)(i) shall provide
103 notice immediately after the law enforcement agency informs the person that notification will
104 no longer impede the criminal investigation.

105 (4) (a) A notification required by this section may be provided:

- 106 (i) in writing by first-class mail; or
107 (ii) electronically, if provided in accordance with the consumer disclosure provisions of
108 15 U.S.C. Section 7001.

109 (b) Notwithstanding Subsection (4)(a), if the cost of providing notification will exceed
110 \$150,000, the number of affected persons exceeds 100,000, or the person does not have
111 sufficient contact information for affected persons, the notice may be provided by:

- 112 (i) electronic mail, if the person has an electronic mail address for the affected person;
113 (ii) conspicuous posting on the person's Internet website; or
114 (iii) publishing and broadcasting notice in major, statewide media.

115 (c) If a person possessing personal information maintains notification procedures
116 substantially similar to those required by this section, that person need not provide the
117 notification required by this section if the notification is nevertheless provided within the time
118 period prescribed in this section.

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

Part 3. Enforcement

13-42-301. Enforcement.

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

(2) (a) A consumer has a private right of action against a person who violates this chapter if that person's violation causes damage to the consumer.

(b) In an action by a consumer under Subsection (2)(a), the consumer may recover actual damages and court costs.

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

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

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

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

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

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

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

Section 6. Appropriation.

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

(a) as an ongoing appropriation, subject to future budget constraints, \$178,809 for fiscal year 2006-07; and

(b) \$45,968 for fiscal year 2006-07 only.

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

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

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

Legislative Review Note

as of 1-17-06 9:48 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

The bill provides a one-time General Fund appropriation of \$45,968 for FY 2007 and an ongoing General Fund appropriation of \$178,809 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	\$224,777	\$178,809	\$0	\$0
TOTAL	\$224,777	\$178,809	\$0	\$0

Individual and Business Impact

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