

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:

None



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 records maintained by a person that compromises the security or confidentiality
45 of personal information contained in the records.

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

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

50 (3) "Personal information" means:

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

52 (i) Social Security number;

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

54 (B) any required security code, access code, or password that would permit access to
55 the person's account;

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

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

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

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) A person possessing personal information shall, upon becoming aware of a
 87 breach of system security, conduct in good faith a reasonable and prompt investigation to

88 determine the likelihood that personal information has been or will be misused.

89 (b) If the investigation determines that the misuse of information about the resident of
90 the state occurs or is highly likely to occur, the person shall disclose the breach to the resident.

91 (2) If a person is required to notify more than 10,000 residents of this state of a breach
92 of system security under this section, the person shall also notify any consumer reporting
93 agency, as defined in 15 U.S.C. Section 1681a, that does business on a nationwide basis of the
94 circumstances surrounding the required notification, including:

95 (a) when the notification is made;

96 (b) to whom the notification is made; and

97 (c) the extent of the breach of system security.

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

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

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

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

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

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

111 (b) Notwithstanding Subsection (4)(a), if the cost of providing notification will exceed
112 \$150,000, the number of affected persons exceeds 100,000, or the person does not have
113 sufficient contact information for affected persons, the notice may be provided by:

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

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

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

117 (c) If a person possessing personal information maintains notification procedures
118 substantially similar to those required by this section, that person need not provide the

119 notification required by this section if the notification is nevertheless provided within the time
120 period prescribed in this section.

121 (d) A person possessing personal information who is required by federal law to
122 maintain procedures for a breach of system security is considered to be in compliance with this
123 chapter if the person notifies state residents of a breach of system security in accordance with
124 the federal procedures.

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

127 **Part 3. Enforcement**

128 **13-42-301. Enforcement.**

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

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

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

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

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

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

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

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

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

144 Section 6. **Appropriation.**

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

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

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

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

150 (a) the monies appropriated under Subsection (1)(a) be used to fund investigatory
151 activities that may lead to an enforcement action by the attorney general under Section
152 13-42-301; and

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