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CONSUMER CREDIT PROTECTION ACT -

ATTORNEY GENERAL POWERS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carlene M. Walker

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill addresses the attorney general's enforcement powers under Title 13, Chapter 44, Consumer Credit Protection Act.

Highlighted Provisions:

This bill:

- ▶ addresses the attorney general's power to enforce Title 13, Chapter 44, Consumer Credit Protection Act, including:
 - investigative powers; and
 - adjudicative powers;
- ▶ makes the refusal to comply with certain requests or subpoenas a violation of Title 13, Chapter 44, Consumer Credit Protection Act;
- ▶ allows use of the Attorney General Litigation Fund to enforce the chapter; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 13-44-301, as enacted by Laws of Utah 2006, Chapter 343
29 76-10-922, as last amended by Laws of Utah 2002, Chapters 256 and 328



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

32 Section 1. Section 13-44-301 is amended to read:

33 **13-44-301. Enforcement.**

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

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

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

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

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

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

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

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

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

48 (5) In enforcing this chapter, the attorney general may:

49 (a) investigate the actions of any person alleged to violate Section

49a 13-44-201 or

50 13-44-202;

51 (b) subpoena a witness;

52 (c) subpoena a document or other evidence;

53 (d) require the production of books, papers, contracts, records, or other information
54 relevant to an investigation; and

55 (e) conduct an adjudication in accordance with Title 63, Chapter 46b, Administrative
56 Procedures Act, to enforce a civil provision under this chapter.

57 (6) A subpoena issued under Subsection (5) may be served by certified mail.

58 (7) A person's failure to respond to a request or subpoena from the attorney general

59 under Subsection (5)(b), (c), or (d) is a violation of this chapter.

60 (8) (a) The attorney general may inspect and copy all records related to the business
 61 conducted by the person ~~§~~ ~~H~~ [f] ~~alleged~~ [f] ~~[who is found]~~ ~~H~~ ~~§~~ to have violated this
 61a1 chapter, including
 61a records located outside
 62 the state.

63 (b) For records located outside of the state, the person ~~§~~ ~~[alleged]~~ ~~who is found~~ ~~§~~ to
 63a have violated this
 64 chapter shall pay the attorney general's expenses to inspect the records, including travel costs.

65 (c) Upon notification from the attorney general of the attorney general's intent to
 66 inspect records located outside of the state, the person ~~§~~ ~~[alleged]~~ ~~who is found~~ ~~§~~ to have
 66a violated this chapter
 67 shall pay the attorney general \$500, or a higher amount if \$500 is estimated to be insufficient,
 68 to cover the attorney general's expenses to inspect the records.

69 (d) The attorney general shall deposit any amounts received under this Subsection (8)
 70 in the Attorney General Litigation Fund established in Section 76-10-922.

71 (e) To the extent an amount paid to the attorney general by a person ~~§~~ ~~[alleged]~~ ~~who is~~
 71a ~~found~~ ~~§~~ to have
 72 violated this chapter is not expended by the attorney general, the amount shall be refunded to
 73 the person ~~§~~ ~~[alleged]~~ ~~who is found~~ ~~§~~ to have violated this chapter.

74 (f) The Division of Corporations and Commercial Code or any other relevant entity
 75 shall revoke any authorization to do business in this state of a person who fails to pay any
 76 amount required under this Subsection (8).

77 Section 2. Section **76-10-922** is amended to read:

78 **76-10-922. Attorney General Litigation Fund.**

79 (1) (a) There is created a special revenue fund known as the Attorney General Litigation
 80 Fund for the purpose of providing funds to pay for any costs and expenses incurred by the state
 81 attorney general in relation to actions under state or federal antitrust [or], criminal laws, or civil
 82 proceedings under Title 13, Chapter 44, Consumer Credit Protection Act. These funds are in
 83 addition to other funds as may be appropriated by the Legislature to the attorney general for the
 84 administration and enforcement of the laws of this state.

85 (b) At the close of any fiscal year, any balance in the fund in excess of \$2,000,000 shall
 86 be transferred to the General Fund.

87 (c) The attorney general may expend monies from the Attorney General Litigation
 88 Fund for the purposes in Subsection (1)(a).

89 (2) (a) All monies received by the state or its agencies by reason of any judgment,

90 settlement, or compromise as the result of any action commenced, investigated, or prosecuted
91 by the attorney general, after payment of any fines, restitution, payments, costs, or fees
92 allocated by the court, shall be deposited in the Attorney General Litigation Fund, except as
93 provided in Subsection (2)(b).

94 (b) (i) Any expenses advanced by the attorney general in any of the actions under
95 Subsection (1)(a) shall be credited to the Attorney General Litigation Fund.

96 (ii) Any monies recovered by the attorney general on behalf of any private person or
97 public body other than the state shall be paid to those persons or bodies from funds remaining
98 after payment of expenses under Subsection (2)(b)(i).

99 (3) The Division of Finance shall transfer any monies remaining in the Antitrust
100 Revolving Account on July 1, 2002, to the Attorney General Litigation Fund created in
101 Subsection (1).

Legislative Review Note
as of 1-14-08 2:15 PM

Office of Legislative Research and General Counsel

S.B. 132 - Consumer Credit Protection Act - Attorney General Powers

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
