

1 **CONSUMER CREDIT PROTECTION ACT -**

2 **ATTORNEY GENERAL POWERS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

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

6 House Sponsor: Eric K. Hutchings

7

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses the attorney general's enforcement powers under Title 13, Chapter
11 44, Consumer Credit Protection Act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ addresses the attorney general's power to enforce Title 13, Chapter 44, Consumer
15 Credit Protection Act, including:
- 16 • investigative powers; and
 - 17 • adjudicative powers;
- 18 ▶ makes the refusal to comply with certain requests or subpoenas a violation of Title
19 13, Chapter 44, Consumer Credit Protection Act;
- 20 ▶ allows use of the Attorney General Litigation Fund to enforce the chapter; and
- 21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 **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

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

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

13-44-301. Enforcement.

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

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

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

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

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

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

(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.

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

(a) investigate the actions of any person alleged to violate Section 13-44-201 or 13-44-202;

(b) subpoena a witness;

(c) subpoena a document or other evidence;

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

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

(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 alleged to have violated this chapter, including records located outside
62 the state.

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

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

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

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

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

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

79 **76-10-922. Attorney General Litigation Fund.**

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

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

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

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

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

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

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