

1 **CONSUMER PROTECTION ACTION AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel Hemmert**

5 House Sponsor: Mike K. McKell

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to consumer protection actions.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides that the attorney general may, in an action to enforce the Protection of
13 Personal Information Act or the Consumer Credit Protection Act, enter into a
14 confidentiality agreement under certain circumstances;

15 ▶ provides for the content of a confidentiality agreement entered into by the attorney
16 general pursuant to the Protection of Personal Information Act or the Consumer
17 Credit Protection Act;

18 ▶ provides that, in an action to enforce the Protection of Personal Information Act or
19 the Consumer Credit Protection Act, a court may issue a confidentiality order; and

20 ▶ provides for the handling of confidential information obtained by the attorney
21 general related to an enforcement action under the Protection of Personal
22 Information Act or the Consumer Credit Protection Act.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **13-44-301**, as last amended by Laws of Utah 2013, Chapter 187

30 **13-45-401**, as last amended by Laws of Utah 2015, Chapter 191



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

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

34 **13-44-301. Enforcement -- Confidentiality agreement -- Penalties.**

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

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

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

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

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

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

44 (4) (a) In addition to the penalties provided in Subsection (3), the attorney general may
45 seek, in an action brought under this chapter:

46 (i) injunctive relief to prevent future violations of this chapter ~~[in:];~~ and

47 (ii) attorney fees and costs.

48 (b) The attorney general shall bring an action under this chapter in:

49 ~~[(a)]~~ (i) the district court located in Salt Lake City; or

50 ~~[(b)]~~ (ii) the district court for the district in which resides a consumer who is affected by
51 the violation.

52 (5) The attorney general shall deposit any amount received under Subsection (3), (4), or
53 (10) into the Attorney General Litigation Fund created in Section [76-10-3114](#).

54 ~~[(5)]~~ (6) In enforcing this chapter, the attorney general may:

55 (a) investigate the actions of any person alleged to violate Section [13-44-201](#) or
56 [13-44-202](#);

57 (b) subpoena a witness;

- 58 (c) subpoena a document or other evidence;
- 59 (d) require the production of books, papers, contracts, records, or other information
- 60 relevant to an investigation; ~~[and]~~
- 61 (e) conduct an adjudication in accordance with Title 63G, Chapter 4, Administrative
- 62 Procedures Act, to enforce a civil provision under this chapter~~[-]; and~~
- 63 (f) enter into a confidentiality agreement in accordance with Subsection (7).
- 64 (7) (a) If the attorney general has reasonable cause to believe that an individual is in
- 65 possession, custody, or control of information that is relevant to enforcing this chapter, the
- 66 attorney general may enter into a confidentiality agreement with the individual.
- 67 (b) In a civil action brought under this chapter, a court may issue a confidentiality order
- 68 that incorporates the confidentiality agreement described in Subsection (7)(a).
- 69 (c) A confidentiality agreement entered into under Subsection (7)(a) or a confidentiality
- 70 order issued under Subsection (7)(b) may:
- 71 (i) address a procedure;
- 72 (ii) address testimony taken, a document produced, or material produced under this
- 73 section;
- 74 (iii) provide whom may access testimony taken, a document produced, or material
- 75 produced under this section;
- 76 (iv) provide for safeguarding testimony taken, a document produced, or material
- 77 produced under this section; or
- 78 (v) require that the attorney general:
- 79 (A) return a document or material to an individual; or
- 80 (B) notwithstanding Section [63A-12-105](#) or a retention schedule created in accordance
- 81 with Section [63G-2-604](#), destroy the document or material at a designated time.
- 82 ~~[(6)]~~ (8) A subpoena issued under Subsection ~~[(5)]~~ (6) may be served by certified mail.
- 83 ~~[(7)]~~ (9) A person's failure to respond to a request or subpoena from the attorney
- 84 general under Subsection ~~[(5)]~~ (6)(b), (c), or (d) is a violation of this chapter.
- 85 ~~[(8)]~~ (10) (a) The attorney general may inspect and copy all records related to the

86 business conducted by the person alleged to have violated this chapter, including records
87 located outside the state.

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

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

95 ~~[(d) The attorney general shall deposit any amounts received under this Subsection (8)~~
96 ~~in the Attorney General Litigation Fund established in Section 76-10-3114.]~~

97 ~~[(e)]~~ (d) To the extent an amount paid to the attorney general by a person who is found
98 to have violated this chapter is not expended by the attorney general, the amount shall be
99 refunded to the person who is found to have violated this chapter.

100 ~~[(f)]~~ (e) The Division of Corporations and Commercial Code or any other relevant
101 entity shall revoke any authorization to do business in this state of a person who fails to pay any
102 amount required under this Subsection ~~[(8)]~~ (10).

103 (11) (a) Subject to Subsection (11)(c), the attorney general shall keep confidential a
104 procedure agreed to, testimony taken, a document produced, or material produced under this
105 section pursuant to a subpoena, confidentiality agreement, or confidentiality order, unless the
106 individual who agreed to the procedure, provided testimony, produced the document, or
107 produced material waives confidentiality in writing.

108 (b) Subject to Subsections (11)(c) and (11)(d), the attorney general may use, in an
109 enforcement action taken under this section, testimony taken, a document produced, or material
110 produced under this section to the extent the use is not restricted or prohibited by a
111 confidentiality agreement or a confidentiality order.

112 (c) The attorney general may use, in an enforcement action taken under this section,
113 testimony taken, a document produced, or material produced under this section that is restricted

114 or prohibited from use by a confidentiality agreement or a confidentiality order if the individual
115 who provided testimony or produced the document or material waives the restriction or
116 prohibition in writing.

117 (d) The attorney general may disclose testimony taken, a document produced, or
118 material produced under this section, without consent of the individual who provided the
119 testimony or produced the document or material, or the consent of an individual being
120 investigated, to:

121 (i) a grand jury; or

122 (ii) a federal or state law enforcement officer, if the person from whom the information
123 was obtained is notified 20 days or greater before the day on which the information is disclosed,
124 and the federal or state law enforcement officer certifies that the federal or state law
125 enforcement officer will:

126 (A) maintain the confidentiality of the testimony, document, or material; and

127 (B) use the testimony, document, or material solely for an official law enforcement
128 purpose.

129 Section 2. Section **13-45-401** is amended to read:

130 **13-45-401. Enforcement -- Confidentiality agreement -- Penalties.**

131 (1) The attorney general may enforce the provisions of this chapter.

132 (2) A person who violates a provision of [~~Section 13-45-201, 13-45-202, 13-45-203,~~
133 ~~13-45-204, 13-45-205, or 13-45-301~~] this chapter is subject to a civil fine of:

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

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

138 (3) (a) In addition to the penalties provided in Subsection (2), the attorney general may
139 seek, in an action brought under this chapter:

140 (i) injunctive relief to prevent future violations of this chapter [in:]; and

141 (ii) attorney fees and costs.

142 (b) The attorney general shall bring an action under this chapter in:
143 [(a)] (i) the district court located in Salt Lake City; or
144 [(b)] (ii) the district court for the district in which resides a consumer who is the subject
145 of a credit report on which a violation occurs.

146 (4) The attorney general shall deposit any amount received under Subsection (2) or (3)
147 into the Attorney General Litigation Fund created in Section [76-10-3114](#).

148 (5) (a) If the attorney general has reasonable cause to believe that an individual is in
149 possession, custody, or control of information that is relevant to enforcing this chapter, the
150 attorney general may enter into a confidentiality agreement with the individual.

151 (b) In a civil action brought under this chapter, a court may issue a confidentiality order
152 that incorporates the confidentiality agreement described in Subsection (5)(a).

153 (c) A confidentiality agreement entered into under Subsection (5)(a) or a confidentiality
154 order issued under Subsection (5)(b) may:

155 (i) address a procedure;

156 (ii) address testimony taken, a document produced, or material produced under this
157 section;

158 (iii) provide whom may access testimony taken, a document produced, or material
159 produced under this section;

160 (iv) provide for safeguarding testimony taken, a document produced, or material
161 produced under this section; or

162 (v) require that the attorney general:

163 (A) return a document or material to an individual; or

164 (B) notwithstanding Section [63A-12-105](#) or a retention schedule created in accordance
165 with Section [63G-2-604](#), destroy the document or material at a designated time.

166 (6) (a) Subject to Subsection (6)(c), the attorney general shall keep confidential a
167 procedure agreed to, testimony taken, a document produced, or material produced under this
168 section pursuant to a subpoena, confidentiality agreement, or confidentiality order, unless the
169 individual who agreed to the procedure, provided testimony, or produced the document or

170 material waives confidentiality in writing.

171 (b) Subject to Subsections (6)(c) and (6)(d), the attorney general may use, in an
172 enforcement action taken under this section, testimony taken, a document produced, or material
173 produced under this section to the extent the use is not restricted or prohibited by a
174 confidentiality agreement or a confidentiality order.

175 (c) The attorney general may use, in an enforcement action taken under this section,
176 testimony taken, a document produced, or material produced under this section that is restricted
177 or prohibited from use by a confidentiality agreement or a confidentiality order if the individual
178 who provided testimony, produced the document, or produced the material waives the
179 restriction or prohibition in writing.

180 (d) The attorney general may disclose testimony taken, a document produced, or
181 material produced under this section, without consent of the individual who provided the
182 testimony, produced the document, or produced the material, or without the consent of an
183 individual being investigated, to:

184 (i) a grand jury; or

185 (ii) a federal or state law enforcement officer, if the person from whom the information
186 was obtained is notified 20 days or greater before the day on which the information is disclosed,
187 and the federal or state law enforcement officer certifies that the federal or state law
188 enforcement officer will:

189 (A) maintain the confidentiality of the testimony, document, or material; and

190 (B) use the testimony, document, or material solely for an official law enforcement
191 purpose.