

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.**

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
40 of:

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

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

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

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

48 (ii) attorney fees and costs.

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

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

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

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

55 ~~[(5)]~~ (6) In enforcing this chapter, the attorney general may:

56 (a) investigate the actions of any person alleged to violate Section [13-44-201](#) or
57 [13-44-202](#);

58 (b) subpoena a witness;

- 59 (c) subpoena a document or other evidence;
- 60 (d) require the production of books, papers, contracts, records, or other information
61 relevant to an investigation; ~~and~~
- 62 (e) conduct an adjudication in accordance with Title 63G, Chapter 4, Administrative
63 Procedures Act, to enforce a civil provision under this chapter~~[-]; and~~
- 64 (f) enter into a confidentiality agreement in accordance with Subsection (7).
- 65 (7) (a) If the attorney general has reasonable cause to believe that an individual is in
66 possession, custody, or control of information that is relevant to enforcing this chapter, the
67 attorney general may enter into a confidentiality agreement with the individual.
- 68 (b) In a civil action brought under this chapter, a court may issue a confidentiality order
69 that incorporates the confidentiality agreement described in Subsection (7)(a).
- 70 (c) A confidentiality agreement entered into under Subsection (7)(a) or a
71 confidentiality order issued under Subsection (7)(b) may:
- 72 (i) address a procedure;
- 73 (ii) address testimony taken, a document produced, or material produced under this
74 section;
- 75 (iii) provide whom may access testimony taken, a document produced, or material
76 produced under this section;
- 77 (iv) provide for safeguarding testimony taken, a document produced, or material
78 produced under this section; or
- 79 (v) require that the attorney general:
- 80 (A) return a document or material to an individual; or
- 81 (B) notwithstanding Section 63A-12-105 or a retention schedule created in accordance
82 with Section 63G-2-604, destroy the document or material at a designated time.
- 83 ~~[(6)]~~ (8) A subpoena issued under Subsection ~~[(5)]~~ (6) may be served by certified mail.
- 84 ~~[(7)]~~ (9) A person's failure to respond to a request or subpoena from the attorney
85 general under Subsection ~~[(5)]~~ (6)(b), (c), or (d) is a violation of this chapter.
- 86 ~~[(8)]~~ (10) (a) The attorney general may inspect and copy all records related to the
87 business conducted by the person alleged to have violated this chapter, including records
88 located outside the state.
- 89 (b) For records located outside of the state, the person who is found to have violated

90 this chapter shall pay the attorney general's expenses to inspect the records, including travel
91 costs.

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

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

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

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

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

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

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

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

121 investigated, to:

122 (i) a grand jury; or

123 (ii) a federal or state law enforcement officer, if the person from whom the information

124 was obtained is notified 20 days or greater before the day on which the information is

125 disclosed, and the federal or state law enforcement officer certifies that the federal or state law

126 enforcement officer will:

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

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

129 purpose.

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

131 **13-45-401. Enforcement.**

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

133 (2) A person who violates a provision of [~~Section 13-45-201, 13-45-202, 13-45-203,~~

134 ~~13-45-204, 13-45-205, or 13-45-301~~] this chapter is subject to a civil fine of:

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

136 consumer; and

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

138 than one consumer.

139 (3) (a) In addition to the penalties provided in Subsection (2), the attorney general may

140 seek, in an action brought under this chapter:

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

142 (ii) attorney fees and costs.

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

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

145 [~~(b)~~] (ii) the district court for the district in which resides a consumer who is the

146 subject of a credit report on which a violation occurs.

147 (4) The attorney general shall deposit any amount received under Subsection (2) or (3)

148 into the Attorney General Litigation Fund created in Section [76-10-3114](#).

149 (5) (a) If the attorney general has reasonable cause to believe that an individual is in

150 possession, custody, or control of information that is relevant to enforcing this chapter, the

151 attorney general may enter into a confidentiality agreement with the individual.

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

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

156 (i) address a procedure;

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

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

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

163 (v) require that the attorney general:

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

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

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

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

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

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

183 testimony, produced the document, or produced the material, or without the consent of an
184 individual being investigated, to:

185 (i) a grand jury; or

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel