

ATTORNEY GENERAL ENFORCEMENT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions enforced by the attorney general.

Highlighted Provisions:

This bill:

- ▶ modifies the notification requirements following a breach of system security;
- ▶ amends the penalty for a violation of the Protection of Personal Information Act or the Consumer Credit Protection Act;
- ▶ establishes a statute of limitations for an enforcement action under the Protection of Personal Information Act or the Consumer Credit Protection Act;
- ▶ grants rulemaking authority to the attorney general;
- ▶ allows funds in the Attorney General Litigation Fund to be used for education and outreach on certain matters;
- ▶ modifies the available remedies in an action under the Utah Antitrust Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 13-44-202, as last amended by Laws of Utah 2009, Chapter 388
 29 13-44-301, as last amended by Laws of Utah 2017, Chapter 308
 30 13-45-401, as last amended by Laws of Utah 2017, Chapter 308
 31 76-10-3108, as renumbered and amended by Laws of Utah 2013, Chapter 187
 32 76-10-3109, as last amended by Laws of Utah 2013, Chapter 278 and renumbered and
 33 amended by Laws of Utah 2013, Chapter 187
 34 76-10-3114, as last amended by Laws of Utah 2013, Chapter 400 and renumbered and
 35 amended by Laws of Utah 2013, Chapter 187

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

38 Section 1. Section 13-44-202 is amended to read:

39 **13-44-202. Personal information -- Disclosure of system security breach.**

40 (1) ~~[(a)]~~ A person who owns or licenses computerized data that includes personal
 41 information concerning a Utah resident shall, when the person becomes aware of a breach of
 42 system security~~[, conduct in good faith a reasonable and prompt investigation to determine the~~
 43 ~~likelihood that personal information has been or will be misused for identity theft or fraud~~
 44 ~~purposes.]~~ that likely includes personal information concerning one or more residents of the
 45 state, notify:

46 ~~[(b) If an investigation under Subsection (1)(a) reveals that the misuse of personal~~
 47 ~~information for identity theft or fraud purposes has occurred, or is reasonably likely to occur,~~
 48 ~~the person shall provide notification to each affected Utah resident.]~~

49 (a) the Office of the Attorney General; and

50 (b) each affected resident of the state.

51 (2) A person required to provide notification under Subsection (1) shall provide the
 52 notification in the most expedient time possible without unreasonable delay:

53 (a) considering legitimate investigative needs of law enforcement, as provided in
 54 Subsection (4)(a);

55 (b) after determining the scope of the breach of system security; and

56 (c) after restoring the reasonable integrity of the system.

57 (3) (a) A person who maintains computerized data that includes personal information
 58 that the person does not own or license shall notify and cooperate with the owner or licensee of

59 the information of any breach of system security immediately following the person's discovery
60 of the breach if misuse of the personal information occurs or is reasonably likely to occur.

61 (b) Cooperation under Subsection (3)(a) includes sharing information relevant to the
62 breach with the owner or licensee of the information.

63 (4) (a) Notwithstanding Subsection (2), a person may delay providing notification
64 under Subsection (1) at the request of a law enforcement agency that determines that
65 notification may impede a criminal investigation.

66 (b) A person who delays providing notification under Subsection (4)(a) shall provide
67 notification in good faith without unreasonable delay in the most expedient time possible after
68 the law enforcement agency informs the person that notification will no longer impede the
69 criminal investigation.

70 (5) (a) A notification required by this section may be provided:

71 (i) in writing by first-class mail to the most recent address the person has for the
72 resident;

73 (ii) electronically, if the person's primary method of communication with the resident is
74 by electronic means, or if provided in accordance with the consumer disclosure provisions of
75 15 U.S.C. Section 7001;

76 (iii) by telephone, including through the use of automatic dialing technology not
77 prohibited by other law; or

78 (iv) for residents of the state for whom notification in a manner described in
79 Subsections (5)(a)(i) through (iii) is not feasible, by publishing notice of the breach of system
80 security:

81 (A) in a newspaper of general circulation; and

82 (B) as required in Section 45-1-101.

83 (b) If a person maintains the person's own notification procedures as part of an
84 information security policy for the treatment of personal information the person is considered
85 to be in compliance with this chapter's notification requirements if the procedures are otherwise
86 consistent with this chapter's timing requirements and the person notifies each affected Utah
87 resident in accordance with the person's information security policy in the event of a breach.

88 (c) A person who is regulated by state or federal law and maintains procedures for a
89 breach of system security under applicable law established by the primary state or federal

90 regulator is considered to be in compliance with this part if the person notifies each affected
91 Utah resident in accordance with the other applicable law in the event of a breach.

92 (6) A waiver of this section is contrary to public policy and is void and unenforceable.

93 Section 2. Section **13-44-301** is amended to read:

94 **13-44-301. Enforcement -- Confidentiality agreement -- Penalties.**

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

96 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
97 attorney general may make rules necessary to enforce the provisions of this chapter.

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

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

101 (3) A person who violates this chapter's provisions is subject to a civil penalty of~~[(a)]~~
102 no greater than \$2,500 for a violation or series of violations concerning a specific consumer~~;~~
103 ~~and].~~

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

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

- 108 (i) injunctive relief to prevent future violations of this chapter; and
- 109 (ii) attorney fees and costs.

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

- 111 (i) the district court located in Salt Lake City; or
- 112 (ii) the district court for the district in which resides a consumer who is affected by the
113 violation.

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

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

- 117 (a) investigate the actions of any person alleged to violate Section [13-44-201](#) or
118 [13-44-202](#);
- 119 (b) subpoena a witness;
- 120 (c) subpoena a document or other evidence;

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

123 (e) conduct an adjudication in accordance with Title 63G, Chapter 4, Administrative
124 Procedures Act, to enforce a civil provision under this chapter; and

125 (f) enter into a confidentiality agreement in accordance with Subsection (7).

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

129 (b) In a civil action brought under this chapter, a court may issue a confidentiality order
130 that incorporates the confidentiality agreement described in Subsection (7)(a).

131 (c) A confidentiality agreement entered into under Subsection (7)(a) or a
132 confidentiality order issued under Subsection (7)(b) may:

133 (i) address a procedure;

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

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

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

140 (v) require that the attorney general:

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

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

144 (8) A subpoena issued under Subsection (6) may be served by certified mail.

145 (9) A person's failure to respond to a request or subpoena from the attorney general
146 under Subsection (6)(b), (c), or (d) is a violation of this chapter.

147 (10) (a) The attorney general may inspect and copy all records related to the business
148 conducted by the person alleged to have violated this chapter, including records located outside
149 the state.

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

152 costs.

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

157 (d) To the extent an amount paid to the attorney general by a person who is found to
158 have violated this chapter is not expended by the attorney general, the amount shall be refunded
159 to the person who is found to have violated this chapter.

160 (e) The Division of Corporations and Commercial Code or any other relevant entity
161 shall revoke any authorization to do business in this state of a person who fails to pay any
162 amount required under this Subsection (10).

163 (11) (a) Subject to Subsection (11)(c), the attorney general shall keep confidential a
164 procedure agreed to, testimony taken, a document produced, or material produced under this
165 section pursuant to a subpoena, confidentiality agreement, or confidentiality order, unless the
166 individual who agreed to the procedure, provided testimony, produced the document, or
167 produced material waives confidentiality in writing.

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

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

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

181 (i) a grand jury; or

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

183 was obtained is notified 20 days or greater before the day on which the information is
 184 disclosed, and the federal or state law enforcement officer certifies that the federal or state law
 185 enforcement officer will:

- 186 (A) maintain the confidentiality of the testimony, document, or material; and
 187 (B) use the testimony, document, or material solely for an official law enforcement
 188 purpose.

189 (12) (a) An administrative action filed under this chapter shall be commenced no later
 190 than 10 years after the day on which the alleged breach of system security last occurred.

191 (b) A civil action under this chapter shall be commenced no later than five years after
 192 the day on which the alleged breach of system security last occurred.

193 Section 3. Section **13-45-401** is amended to read:

194 **13-45-401. Enforcement -- Confidentiality agreement -- Penalties.**

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

196 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 197 attorney general may make rules necessary to enforce the provisions of this chapter.

198 (2) A person who violates a provision of this chapter is subject to a civil fine of~~[(a)]~~
 199 no greater than \$2,500 for a violation or series of violations concerning a specific consumer~~;~~
 200 ~~and~~].

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

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

- 205 (i) injunctive relief to prevent future violations of this chapter; and
 206 (ii) attorney fees and costs.

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

- 208 (i) the district court located in Salt Lake City; or
 209 (ii) the district court for the district in which resides a consumer who is the subject of a
 210 credit report on which a violation occurs.

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

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

214 possession, custody, or control of information that is relevant to enforcing this chapter, the
215 attorney general may enter into a confidentiality agreement with the individual.

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

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

220 (i) address a procedure;

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

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

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

227 (v) require that the attorney general:

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

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

231 (6) (a) Subject to Subsection (6)(c), the attorney general shall keep confidential a
232 procedure agreed to, testimony taken, a document produced, or material produced under this
233 section pursuant to a subpoena, confidentiality agreement, or confidentiality order, unless the
234 individual who agreed to the procedure, provided testimony, or produced the document or
235 material waives confidentiality in writing.

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

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

245 (d) The attorney general may disclose testimony taken, a document produced, or
246 material produced under this section, without consent of the individual who provided the
247 testimony, produced the document, or produced the material, or without the consent of an
248 individual being investigated, to:

249 (i) a grand jury; or

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

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

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

257 (7) A civil action filed under this chapter shall be commenced no later than five years
258 after the day on which the alleged violation last occurred.

259 Section 4. Section **76-10-3108** is amended to read:

260 **76-10-3108. Attorney general may bring action for injunctive relief, damages, or**
261 **civil penalty.**

262 (1) The attorney general may bring an action for appropriate injunctive relief, [~~and for~~
263 ~~damages or~~] a civil penalty, and damages in the name of the state, any of its political
264 subdivisions or agencies, or as parens patriae on behalf of natural persons in this state, for a
265 violation of this act. Actions may be brought under this section regardless of whether the
266 plaintiff dealt directly or indirectly with the defendant. This remedy is an additional remedy to
267 any other remedies provided by law. It may not diminish or offset any other remedy.

268 (2) Any individual who violates this act is subject to a civil penalty of not more than
269 \$100,000 for each violation. Any person, other than an individual, who violates this act is
270 subject to a civil penalty of not more than \$500,000 for each violation.

271 Section 5. Section **76-10-3109** is amended to read:

272 **76-10-3109. Person may bring action for injunctive relief and damages -- Treble**
273 **damages -- Recovery of actual damages or civil penalty by state or political subdivisions**
274 **-- Immunity of political subdivisions from damages, costs, or attorney fees.**

275 (1) (a) A person who is a citizen of this state or a resident of this state and who is

276 injured or is threatened with injury in his business or property by a violation of the Utah
277 Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the
278 person dealt directly or indirectly with the defendant. This remedy is in addition to any other
279 remedies provided by law. It may not diminish or offset any other remedy.

280 (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three
281 times the amount of damages sustained, plus the cost of suit and a reasonable attorney fees, in
282 addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.

283 (2) (a) If the court determines that a judgment in the amount of three times the damages
284 awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the
285 court shall reduce the amount of judgment to the highest sum that would not cause the
286 defendant's insolvency.

287 (b) The court may not reduce a judgment to an amount less than the amount of
288 damages sustained plus the costs of suit and reasonable attorney fees.

289 (3) The state or any of its political subdivisions may recover [~~the actual~~] three times the
290 amount of damages it sustains[~~, or~~] and the civil penalty provided by the Utah Antitrust Act, in
291 addition to injunctive relief, costs of suit, and reasonable attorney fees.

292 (4) No damages, costs, or attorney fees may be recovered under this section:

293 (a) from any political subdivision;

294 (b) from the official or employee of any political subdivision acting in an official
295 capacity; or

296 (c) against any person based on any official action directed by a political subdivision or
297 its official or employee acting in an official capacity.

298 (5) Subsection (4) does not apply to cases filed before April 27, 1987, unless the
299 defendant establishes and the court determines that in light of all the circumstances, including
300 the posture of litigation and the availability of alternative relief, it would be inequitable not to
301 apply Subsection (4) to a pending case.

302 (6) When a defendant has been sued in one or more actions by both direct and indirect
303 purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a
304 partial or complete defense to a claim for damages that the damages incurred by the plaintiff or
305 plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication
306 of recovery of damages. In an action by indirect purchasers, any damages or settlement

307 amounts paid to direct purchasers for the same alleged antitrust violations shall constitute a
308 defense in the amount paid on a claim by indirect purchasers under this chapter so as to avoid
309 duplication of recovery of damages.

310 (7) It shall be presumed, in the absence of proof to the contrary, that the injured
311 persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall,
312 therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the
313 absence of proof to the contrary, that the injured persons who dealt indirectly with the
314 defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the
315 awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured
316 persons determined by the court as most likely to have absorbed the damages.

317 (8) There is a presumption, in the absence of proof to the contrary and subject to
318 Subsection (7), that each level in a product's or service's distribution chain passed on any and
319 all increments in its cost due to an increase in the cost of an ingredient or a component product
320 or service that was caused by a violation of this chapter. This amount will be presumed, in the
321 absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents,
322 of the ingredient, component product, or service to its first purchaser.

323 (9) The attorney general shall be notified by the plaintiff about the filing of any class
324 action involving antitrust violations that includes plaintiffs from this state. The attorney
325 general shall receive a copy of each filing from each plaintiff. The attorney general may, in his
326 or her discretion, intervene or file amicus briefs in the case, and may be heard on the question
327 of the fairness or appropriateness of any proposed settlement agreement.

328 (10) If, in a class action or parens patriae action filed under this chapter, including the
329 settlement of any action, it is not feasible to return any part of the recovery to the injured
330 plaintiffs, the court shall order the residual funds be applied to benefit the specific class of
331 injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds
332 into the Attorney General Litigation Fund created by Section 76-10-3114, or both.

333 (11) In any action brought under this chapter, the court shall approve all attorney fees
334 and arrangements for the payment of attorney fees, including contingency fee agreements.

335 Section 6. Section 76-10-3114 is amended to read:

336 **76-10-3114. Attorney General Litigation Fund.**

337 (1) (a) There is created an expendable special revenue fund known as the Attorney

338 General Litigation Fund for the purpose of providing funds to pay for:

339 (i) any costs and expenses incurred by the state attorney general in relation to actions
340 under state or federal antitrust, criminal laws, or civil proceedings under Title 13, Chapter 44,
341 Protection of Personal Information Act[-]; and

342 (ii) citizen education and outreach related to any item described in Subsection (1)(a)(i).

343 (b) [~~These~~] The funds described in Subsection (1)(a) are in addition to other funds as
344 may be appropriated by the Legislature to the attorney general for the administration and
345 enforcement of the laws of this state.

346 [~~(b)~~] (c) At the close of any fiscal year, any balance in the fund in excess of
347 [~~\$2,000,000~~] \$4,000,000 shall be transferred to the General Fund.

348 [~~(c)~~] (d) The attorney general may expend money from the Attorney General Litigation
349 Fund for the purposes in Subsection (1)(a).

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

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

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

360 [~~(3) The Division of Finance shall transfer any money remaining in the Antitrust~~
361 ~~Revolving Account on July 1, 2002, to the Attorney General Litigation Fund created in~~
362 ~~Subsection (1).]~~