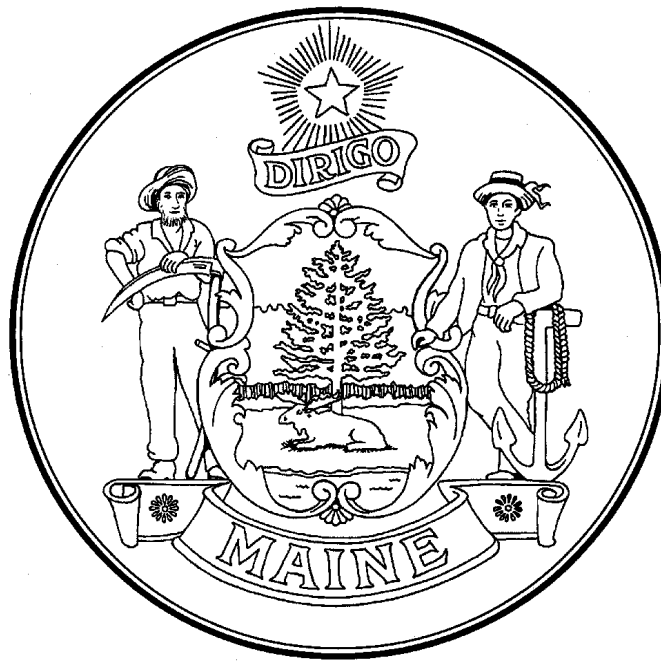


MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1526

H. P. 1262

House of Representatives, April 11, 1977

Referred to Committee on Business Legislation. Sent up for concurrence and 1,800 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Howe of South Portland.

Cosponsor: Mr. Higgins of Scarborough.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Establish the Fair Credit Reporting Act.

Be it enacted by the People of the State of Maine, as follows:

to MRSA c. 210 is enacted to read:

CHAPTER 210

FAIR CREDIT REPORTING ACT

§ 1311. Short title

This chapter may be cited as the "Fair Credit Reporting Act."

§ 1312. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Adverse information. "Adverse information" means information that is likely to have a negative effect upon the ability or eligibility of a consumer to obtain credit, credit insurance, employment or other benefits, goods or services.

2. Consumer. "Consumer" means an individual.

3. Consumer report. "Consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used

or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family or household purposes or employment purposes. This term does not include any report containing information solely as to transactions or experiences between the consumer and the person making the report or any authorization or approval of a specific extension of credit directly or indirectly by the issuance of a credit card or similar device.

4. Consumer reporting agency. "Consumer reporting agency" means any person who, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to 3rd parties.

5. Employment purposes. "Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

6. File. "File" when used in connection with information on any consumer means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

7. Investigative consumer report. "Investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with neighbors, friends or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. Such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

8. Merchant. "Merchant" means any person who receives a consumer report or investigative consumer report from a consumer reporting agency or who provides information to a consumer reporting agency pursuant to a contract or for a fee, or who otherwise regularly provides information to a consumer reporting agency.

9. Person. "Person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

10. User. "User" when used in connection with the use of a consumer report means any recipient of a consumer report or an investigative consumer report other than the subject thereof.

§ 1313. Permissible dissemination of reports

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

1. Response to court order. In response to the order of a court having jurisdiction to issue such an order; or

2. Consumer instructions. In accordance with the written instructions and authorization of the consumer to whom it relates.

§ 1314. Preparation and procurement of consumer reports

1. Requirements. A person may not procure or cause to be prepared a consumer report on any consumer unless such person has provided the consumer with clear and conspicuous written notice of the requested procurement or preparation and the consumer has, in turn, given a specific, dated and separately signed written authorization for each preparation or procurement.

2. Consumer notice. The notice to the consumer, which is required by the preceding subsection:

A. Shall inform the consumer of the names, addresses and telephone numbers of any and all consumer reporting agencies which will be requested to prepare or disseminate consumer reports about the particular consumer; and

B. Shall clearly and conspicuously inform the consumer that he may request and receive from all such consumer reporting agencies copies of any and all such consumer reports.

§ 1315. Preparation and procurement of investigative consumer reports

1. Notice to consumer required. A person may not procure or cause to be prepared an investigative consumer report on any consumer unless such person has provided the consumer with clear and conspicuous written notice of the requested procurement or preparation and the consumer has, in turn, given a specific, dated and separately signed written authorization for each preparation or procurement.

2. Notice of contents. The notice to the consumer, which is required by the preceding subsection:

A. Shall inform the consumer of the names, addresses and telephone numbers of any and all consumer reporting agencies which will be requested to prepare or disseminate consumer reports about the particular consumer;

B. Shall clearly and conspicuously inform the consumer that he may request and receive from all such consumer reporting agencies copies of any and all such investigative consumer reports;

C. Shall provide a list of all questions to be asked in the investigation and the likely sources to be contacted in the investigation; and

D. Shall provide a blank copy of any standard questionnaire or other similar form to be used in the investigation.

§ 1316. Disclosures to consumers

1. Required disclosures. Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

- A. All information in its files on the consumer at the time of the request;
- B. The sources of the information; and
- C. The recipients of any consumer report or investigative consumer report on the consumer which it has furnished:

(1) For employment purposes within the 2-year period preceding the request; and

(2) For any other purpose within the 6-month period preceding the request.

2. **Exceptions.** The requirements of subsection 1 respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this chapter, except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

3. **Agency compliance with request.** A consumer reporting agency shall not require a consumer to do anything other than furnish identification in order that the consumer may have access to information required to be disclosed by subsection 1.

§ 1317. Methods and conditions of disclosure to consumers

1. **Conditions.** A consumer reporting agency shall make the disclosures required under section 1316 during normal business hours and on reasonable notice.

2. **Methods.** The disclosures required under section 1316 shall be made to the consumer by one or more of the following methods:

A. In person, if he appears in person and furnishes proper identification, and in any such case, the consumer shall be permitted a personal visual inspection of his file;

B. By telephone, if he has made a written request with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer. In the event the telephone call is made after an adverse consumer determination, the cost of such call shall be paid by the consumer reporting agency; or

C. By mailing a copy of the consumer's file to him, if he has made a written request with proper identification, at a charge for photocopying not to exceed 10¢ per page. In the event that the request for a copy of the consumer's file is made after an adverse consumer determination, the cost of such disclosure shall be paid by the consumer reporting agency.

3. **Agency personnel to supply information to consumer.** Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him either by personal interview or telephone communication and information furnished by mail shall be accompanied by an explanation of such information if provided in code or trade terminology.

4. Consumer seeking disclosure by personal interview. The consumer who seeks disclosure by means of a personal interview pursuant to subsection 2, paragraph A, shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

§ 1318. Procedure for correcting inaccurate, irrelevant and misleading information

1. Agency procedures for corrections. A consumer reporting agency shall adopt reasonable procedures to enable a consumer to correct any inaccurate, irrelevant or misleading information in his file.

2. Reinvestigation by consumer reporting agency. If a consumer disputes any item of information contained in his file on the ground that it is inaccurate, irrelevant or misleading and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall promptly reinvestigate and record the current status of such information, unless it has reasonable grounds to believe that the dispute by the consumer is frivolous, and it shall promptly notify the consumer of the result of its investigation and his rights pursuant to subsections 4, 5 and 6. The presence of contradictory information in a consumer's file shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous.

3. Agency to record efforts in consumer file. Upon reinvestigation, the consumer reporting agency shall record in the consumer's file the efforts undertaken to reinvestigate the dispute, including, but not limited to, the names of the person or persons conducting the reinvestigation and the names of the persons who provided information in connection with the reinvestigation.

4. Agency action, if error. If, after conducting the reinvestigation prescribed by subsection 2, the consumer reporting agency finds that an item is in error or that it can no longer be verified, it shall:

- A. Promptly expunge the item and otherwise correct the file;
- B. Refrain from reporting the item in subsequent consumer reports; and
- C. Promptly notify all persons who have received information regarding the item during the previous 2 years that an error existed and furnish them with the corrected information.

5. Agency inability to resolve difference. If, after conducting the reinvestigation prescribed by subsection 2, the consumer reporting agency is unable to resolve any difference still remaining between the allegations made by its sources and the consumer, it shall:

- A. Promptly indicate in the file that the item is disputed;
- B. Permit the consumer to file a statement containing the nature of the dispute. The agency may limit such statements to not more than 100

words if it provides the consumer with assistance in writing a clear summary of the dispute;

C. Include the consumer's statement of the dispute in all subsequent credit reports containing the information in question; and

D. Clearly note in all subsequent consumer reports that the item is disputed by the consumer.

6. Agency notification of deletion. Following any deletion of information which is found to be inaccurate or the accuracy of which can no longer be verified or any notation as to disputed information, the consumer reporting agency shall furnish notification that the item has been deleted and included a copy of the consumer's statement, where applicable, in accordance with subsection 5, to any person who has received a consumer report within 2 years prior thereto.

§ 1319. Public record information for employment purposes

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

1. Notification to consumer of report. At the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

2. Strict procedures. Maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up-to-date. For purposes of this subsection, items of public record relating to convictions, suits, tax liens and outstanding judgments shall be considered up-to-date if the current public record status of the item at the time of the report is reported.

§ 1320. Restrictions on investigative consumer reports

1. Inclusion of adverse information in subsequent report. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report, other than information which is a matter of public record, may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report or the adverse information was received within the 3-month period preceding the date the subsequent report is furnished.

2. Report to be in writing. Each investigative consumer report shall be in writing, shall identify the sources of all information contained therein and shall be retained in the file of the consumer to whom it relates for a period of one year following its completion.

§ 1321. Requirements on users of consumer reports

1. Procedures when adverse action taken because of consumer report information. Whenever any adverse action is taken either wholly or partly because of information contained in a consumer report or partly because of information contained in a consumer report from a consumer reporting agency, the user taking such action shall:

A. Disclose in writing to the consumer against whom such adverse action has been taken:

(1) The reason for taking such adverse action, including reference to the particular item or items of information contained in the consumer report upon which such adverse action has been wholly or partly based;

(2) The name, street address and telephone number of the consumer reporting agency making the report; and

(3) A statement of the fact that the consumer is entitled to obtain the specific methods of disclosure of his file provided for in section 1317; and

B. Furnish a copy of the consumer report if the consumer report was written, or furnish a copy of a summary if the consumer report was oral.

2. Procedures when credit or insurance desired. Whenever credit or insurance for personal, family or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, the user of such information shall disclose in writing to the consumer at the time such action is taken the reason for such adverse action and the nature of the information.

3. Compliance by report user required. Whenever a user or potential user of consumer reports procures or causes to be prepared a consumer report on any consumer, such user or potential user shall be required to comply with the requirements of this chapter.

4. Dissemination of consumer report information prohibited. Every user of a consumer report or an investigative consumer report shall be prohibited from disseminating any such report to any other person.

§ 1322. Prohibited information, accuracy, relevancy and obsolescence of information in reports

1. Information relative to criminal charges. Neither a consumer reporting agency nor a merchant shall collect, evaluate, prepare, use or report information which is not reasonably relevant to the purpose for which it is sought.

Neither a consumer reporting agency nor a merchant shall collect, evaluate, prepare, use or report information relative to an arrest or a criminal charge unless there has been a criminal conviction for such offense, or information based on uncorroborated hearsay, or information about a consumer's race, religion, color, ancestry, ethnic origin, personal life style, philosophy or political affiliation.

2. Irrelevant information. Neither a consumer reporting agency nor a merchant shall collect, evaluate, prepare, use or report information which is obsolete or which it has reason to know is inaccurate or irrelevant.

3. Procedures to insure report accuracy. A consumer reporting agency and a merchant shall adopt and follow reasonable procedures designed to:

- A. Assure maximum possible accuracy of the information concerning the individual about whom the report relates;
- B. Verify the accuracy and the relevancy of such information; and
- C. Exclude inaccurate and irrelevant information from their files.

4. Items prohibited in reports.

A. Except as authorized under paragraph B, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than 14 years;

(2) Suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

(3) Paid tax liens which, from date of payment, antedate the report by more than 7 years;

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

(5) Records of conviction of crime which, from date of disposition, release or parole, antedate the report by more than 7 years;

(6) Information regarding drug or alcoholic addiction when the last reported incident relating to such addiction antedates the consumer report or investigative consumer report by more than 7 years;

(7) Information relating to past confinement in a mental institution when the date of last confinement antedates the report by more than 7 years; and

(8) Any other adverse item of information which antedates the report by more than 7 years.

B. The provisions of paragraph A are not applicable in the case of any consumer credit report to be used in connection with:

(1) A credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$50,000 or more;

(2) The underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$50,000 or more; or

(3) The employment of any individual at an annual salary which equals, or which may reasonably be expected to equal, \$25,000 or more.

5. Listing of denial of credit prohibited in certain situation. No consumer reporting agency shall issue a consumer report which lists a person as having been denied credit if the sole reason for such denial is lack of sufficient information to grant credit, unless the report states that the denial was for such reason.

§ 1323. Civil liability for willful noncompliance

Any consumer reporting agency or user of information which willfully and knowingly fails to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Actual damages. Any actual damages sustained by the consumer as a result of the failure;

2. Punitive damages. Such amount of punitive damages as the court may allow; and

3. Costs of attorney's fees. In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 1324. Civil liability for negligent noncompliance

Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Actual damages. Any actual damages sustained by the consumer as a result of the failure;

2. Special damages. Such amount of special damages as the court may allow, but not less than \$100 for each item of erroneous information reported; and

3. Costs and attorney's fees. In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 1325. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this chapter may be brought in any court of competent jurisdiction, within 2 years from the date on which the liability arises, except that when a defendant has materially and willfully misrepresented any information required under this Title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this chapter, the action may be brought at any time within 2 years after the discovery by the individual of misrepresentation.

§ 1326. Obtaining information under false pretenses

Notwithstanding the provisions of Title 17-A, section 4, any person who knowingly and intentionally obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned for not more than one year, or both.

§ 1327. Unauthorized disclosures by officers or employees

Notwithstanding the provisions of Title 17-A, section 4, any officer or employee of a consumer reporting agency who knowingly and intentionally provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than \$5,000 or imprisoned for not more than one year, or both.

§ 1328. Merchant harassment

Notwithstanding the provisions of Title 17-A, section 4, no merchant shall threaten any consumer with consequences adverse to his credit standing by reason of a report to be made by the merchant to a consumer reporting agency. Nothing in this section shall prohibit a merchant from reporting information to a consumer reporting agency in conformity with this chapter.

STATEMENT OF FACT

This bill is introduced in order to limit intrusive abridgement of the right of privacy, while correspondingly preserving the interest in free inquiry and proper dissemination of appropriate information. It is intended to strengthen serious deficiencies in the Federal Fair Credit Reporting Act.