

MAINE STATE LEGISLATURE

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H. P. 2234

House of Representatives, March 14, 1978

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EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

**AN ACT to Clarify and Define Certain Existing Provisions of the Maine Fair
Credit Reporting Act.**

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

Sec. 1. 10 MRSA § 1312, sub-§ 3, as enacted by PL 1977, c. 514, is amended to read:

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, credit history and employment status 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 **or other purposes authorized under section 1313.** 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 **or any report in which a person who has been requested by a 3rd party to make a specific extension of credit, directly or indirectly, to a consumer conveys his decision with**

respect to that request, if the 3rd party advises the consumer of the name and address of the person to whom the request was made and that person makes the disclosures to the consumer required under section 1320.

Sec. 2. 10 MRSA § 1312, sub-§ 4, as enacted by PL 1977, c. 514, is amended to read:

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.

For purposes of this chapter, the phrase “3rd party” shall not include an insurer to the extent consumer credit information or other information on consumers is furnished to the insurer by its own employee or licensed agent.

Sec. 3. 10 MRSA § 1312, sub-§ 8, as enacted by PL 1977, c. 514, is amended to read:

8. **Medical information.** “Medical information” means information ~~on a person’s medical history or condition or records~~ obtained, directly or indirectly and with the consent of the individual to whom it relates, from a licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility.

Sec. 4. 10 MRSA § 1314, as enacted by PL 1977, c. 514, is repealed and the following enacted in its place:

§ 1314. Preparation and procurement of investigative consumer reports

1. **Notice to consumer required.** A person may not procure of cause to be prepared an investigative consumer report on any consumer unless:

A. That 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 signed written authorization for each procurement or preparation; or

B. The report is to be used in connection with an investigation of an employee by that employee’s present employer involving an employment purpose for which the employee has not specifically applied.

2. **Contents of notice.** The notice to the consumer, which is required by the preceding subsection shall clearly and conspicuously:

A. Disclose to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics

and mode of living, whichever is applicable, may be made;

B. Inform the consumer that he may request and receive from the person who intends to procure such a report, within 5 business days of that person's receipt of his request, the name, address and telephone number of each consumer reporting agency making an investigative consumer report about him; and

C. Inform the consumer that he may request and promptly receive from all such consumer reporting agencies copies of any such investigative consumer reports.

Sec. 5. 10 MRSA § 1315, sub-§ 1, as enacted by PL 1977, c. 514, is amended to read:

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

A. All information in its files on the consumer at the time of the request, except that medical information, as defined in section 1312, subsection 8, may be withheld. The consumer shall be informed by the agency of the existence of any such medical information withheld and shall have a right to disclosure of such information upon written authorization from the consumer's attending physician have that information disclosed to a licensed physician of his choice. Nothing in this chapter shall be construed to prevent, or to authorize any consumer reporting agency to prevent, such a physician from subsequently disclosing that information to the consumer to whom it relates. The agency shall inform the consumer of the consumer's right to disclosure of such withheld information at the time the consumer makes a request to inspect all files pursuant to this section.

B. All itmes of information in its files on that consumer except that the sources of information need not be disclosed. However, in the event an action is brought under this chapter such sources shall be available to the consumer under appropriate discovery procedures in the court in which the action is brought.

C. The names and addresses of 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.

Sec. 6. 10 MRSA § 1316, sub-§ 2, as enacted by PL 1977, c. 514, is amended to read:

2. **Methods.** The disclosures required under section ~~1316~~ 1315 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 **and, upon his request, shall be furnished copies of any investigative consumer reports at a charge for photocopying not to exceed the agency's actual costs for that photocopying;**

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 promptly 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 and mailing not to exceed the agency's actual costs for such photocopying and mailing, plus a disclosure fee not to exceed \$3. ~~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.~~ The agency shall not be held responsible for improper disclosure of a consumer's file resulting from improper delivery by the United States Postal Service when the agency properly mailed the file correctly addressed to the consumer who is the subject of the file.

Sec. 7. 10 MRSA § 1317, as enacted by PL 1977, c. 514, is amended to read:

§ 1317. **Procedure for correcting inaccurate 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 ~~unreasonable~~ 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 ~~unreasonable~~ 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.

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~~ inaccurate or that it can no longer be verified, it shall:

A. Promptly expunge the item and otherwise correct the file; **and**

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.~~

Notwithstanding anything is this section, if a consumer reporting agency is requested to act pursuant to this subsection, it may retain the report that is found to be inaccurate; provided that the report is kept separate from other reports about the consumer, that it is conspicuously marked as containing inaccurate information which shall not be disclosed, and that it shall not be disclosed by the consumer reporting agency except in connection with its defense to a civil action brought pursuant to sections 1322 and 1323.

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 ~~200~~ 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 change. 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. When a consumer reporting agency must act pursuant to subsections 4 or 5, it shall notify the consumer in writing that it will notify each person whom the consumer designates who has received the item of information during the previous 2 years for employment purposes or during the previous 6 months for any other purpose that the item is inaccurate, can no longer be verified or that it is disputed and that it will furnish them with the corrected information, and the consumer reporting agency shall notify each person designated by the consumer who has received the item of information during the previous 2 years from employment purposes or during the previous 6 months for any other purpose, that the item is inaccurate, can no longer be verified or that it is disputed, and shall furnish those persons with the corrected information and, where applicable, with a copy of the consumer's statement.~~

Sec. 8. 10 MRSA § 1318, sub-§ 1, as enacted by PL 1977, c. 514, is amended to read:

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~~ **substance of the public record information that** 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

Sec. 9. 10 MRSA § 1319, as enacted by PL 1977, c. 514, is amended to read:

§ 1319. **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 ~~6-month~~ **3-month** period preceding the date ~~the~~ **that** 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 2 years following its completion if it has been compiled or reported for employment purposes, or for a period of at least 6 months for other purposes. The sources of information in the file need not be disclosed to the consumer except pursuant to the process of discovery in a lawsuit.

1. **Procedures when action taken because of consumer report information.** ~~Whenever and adverse action is taken wholly or partly credit or~~

insurance for personal, family or household purposes, or employment involving a consumer is denied or the charge for that credit or insurance is increased because of information contained in a consumer report or investigative consumer report, or partly because of information contained in a consumer report or investigative 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:

~~The reason for taking such adverse action and, upon request of the consumer, identify the particular item or items of information contained in the report upon which such adverse action has been wholly or partly based~~

(1) A statement that its action was based in whole or in part on such a consumer report;

(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 1316~~
informing the consumer of the right to inspect and receive a copy of that report by contacting the credit reporting agency.

Sec. 11. 10 MRSA § 1312, sub-§§ 1, 2 and 3, as enacted by PL 1977, c. 514, are repealed and the following enacted in their place:

1. **Reporting agencies. No consumer reporting agency shall prepare, use or report information:**

A. **Relative to a consumer's race, religion, color, ancestry, ethnic origin, sexual preference or orientation, political affiliation or political beliefs, except to the extent required by governmentally imposed record-keeping requirements or to the extent necessary to prepare, use or report information relative to an arrest or criminal charge, as provided in paragraph B, or a consumer's marital status; or**

B. **Relative to an arrest or a criminal charge or admission of wrongdoing in connection with a detention pursuant to Title 17, section 3521, unless there has been a criminal conviction for that offense or unless the charge is still pending, and, additionally, when the informaton reflects sexual preference or orientation, unless the conduct which is the basis of the arrest or criminal charge constitutes an offense under the provisions of the Maine Criminal Code or comparable law of another jurisdiction.**

2. **Irrelevant or inaccurate infomation. A consumer reporting agency shall**

not prepare, use or report information which it has reason to believe is inaccurate or not relevant to the purpose for which it is sought.

3. Procedures to insure report accuracy. A consumer reporting agency shall adopt and follow reasonable procedures designed to assure maximum possible accuracy of the information concerning the individual to whom the report relates and exclude from its file inaccurate information, information which cannot be verified, and information which it has no reason to believe is not relevant to the purpose for which it is sought.

Sec. 12. 10 MRSA § 1321, sub-§ 4, as enacted by PL 1977, c. 514, is amended to read:

4. Items prohibited in reports

A. Except as authorized under paragraph B, no consumer reporting agency may make any consumer report or investigative 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 the 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 arrest or of conviction of crime which, from date of disposition, release or parole, antedate the report by more than 7 years ~~provided that this shall not apply to financial institutions for employment purposes;~~
- (6) Information regarding drug or alcoholic addiction unless such information is provided by a licensed practicing physician and the information relating to such ~~additions~~ **addictions** does not antedate the consumer report of 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 **except that the provisions of paragraph A, subparagraphs 6 and 7 are not applicable in connection with the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$25,000 or more; ~~or~~**
- (2-A) **The underwriting of disability income insurance involving, or which reasonably may be expected to involve, an indemnity for total disability of \$1,000 per month 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~~ \$20,000 or more.**

Sec. 13. 10 MRSA § 1323, sub-§ 2, as enacted by PL 1977, c. 514, is repealed and the following enacted in its place:

2. Additional damages. Such amount of additional damages as the court may allow, but not less than \$100 for each violation of this chapter involving negligence, and for each consumer report containing any item of information that was inaccurate or that the consumer reporting agency had reason to believe was not relevant to the purpose for which it was sought and that contributed in whole or in part to the decision to take adverse action against the consumer.

Sec. 14. 10 MRSA § 1326, as enacted by PL 1977, c. 514, is amended to read:
§ 1326. Unauthorized disclosures by officers or employees

Notwithstanding the provisions of Title 17-A, section 4-A, 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, **within the meaning of sections 1313 and 1314 subsection 1**, to receive that information shall be fined not more than \$5,000 or imprisoned for not more than one year, or both.

STATEMENT OF FACT

The Fair Credit Reporting Act is amended in numerous ways by this new draft. The provisions are summarized below.

Section 1 excludes from the definition of "consumer report" and report containing the decision of a person who has been asked by a 3rd party to extend

credit to the consumer, as long as the 3rd party tells the consumer that person's identity and that person makes the disclosures required by section 1320.

Section 2 excluded from the definition of "consumer reporting agency" any insurance company whose employees or agents collect information about consumers for the company.

Section 3 redefines "medical information" to mean medical information that is obtained with the consent of the person who is the subject of the report.

Section 4 reorganizes section 1314 concerning preparation and procurement of investigative consumer reports and specifically exempts from that section's notice requirement in situations where an employer asks for a report on an employee being considered for an unsolicited promotion.

Section 5 deletes the requirement that a consumer's physician authorize the disclosure of medical information withheld from the consumer and substitutes the consumer's right to have the information disclosed to a physician of his choice, who may then disclose the information to the consumer.

Section 6 requires that a consumer be given a copy of any investigative report about him if he asks for it when he appears in person to inspect his file. It also deletes the requirement that a consumer reporting agency pay for long distance telephone calls from a consumer and costs of mailing reports to a consumer if the agency has sent out a report resulting in a determination adverse to that consumer.

Section 7 deletes the ambiguous and unnecessary words "irrelevant" and "misleading" from section 1317 concerning the procedure for correcting erroneous information, and it changes the standard to be used by a consumer reporting agency for ignoring a consumer dispute from "unreasonable" to "frivolous". It also permits a consumer reporting agency to keep a copy of any report it finds to be inaccurate as long as it marks the report as inaccurate, keeps it in a separate file, and does not disclose it except in order to defend against a consumer's civil suit. Finally, section 7 reorganizes that part concerning the notice of change an agency must give to users of an inaccurate report and brings that part into conformity with section 1315 concerning required disclosures.

Section 8 adds the requirement that, if an agency is preparing a report on a consumer for a prospective employer and is using adverse public record information, the agency must tell the consumer the substance of the information.

Section 9 requires, in part, that adverse information once used in an investigative report must be verified by the consumer reporting agency before it is used again, unless it has been received within 6 months of the time the agency wants to use it again. Section 9 shortens that period to 3 months and also brings

that part of section 1319 concerning the retention of investigative reports by an agency into conformity with section 1315 concerning required disclosures.

Section 10 clarifies the circumstances under which a user of a report must make the disclosures required in section 1320 of the Act.

Section 11 removes “merchants” from the requirements and prohibitions of section 1321 concerning prohibited, inaccurate or irrelevant information. It also adds “sexual preference or orientation” to the list of kinds of information which may not be reported and prohibits reporting of sex offense unless the offense is a crime under Maine law or comparable law in another state.

Section 12 deletes the exception for financial institutions when hiring personnel from the prohibition against reporting arrests or criminal convictions more than 7 years old. It also permits information about drug addiction, alcoholism and confinement in mental institutions to be reported to a life insurance company writing a policy with a face amount of \$25,000 or more. Finally, it permits a consumer reporting agency to report the kinds of information prohibited in section 1321, subsection 4, to an insurance company writing a disability income insurance policy providing for \$1,000 per month or more.

Sections 13 changes “special damages” to “additional damages” and redefines the circumstances under which additional damages may be awarded.

Section 14 clarifies the meaning of “authorized” in section 1326 concerning unauthorized disclosures by officers or employees.