

MAINE STATE LEGISLATURE

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New Draft of: H. P. 1734, L. D. 1852
(New Title)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1926

H. P. 1814

House of Representatives, February 8, 1980

Reported by Mr. Howe from the Committee on Business Legislation. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk of the House

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT Authorizing the Bureau of Consumer Protection to Inform and Advise the Public and to Investigate and Prosecute Complaints Under the Fair Credit Reporting Act.

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

Sec. 1. 10 MRSA § 1312, sub-§ 1-A is enacted to read:

1-A. Administrator. "Administrator" means the Superintendent of the Bureau of Consumer Protection.

Sec. 2. 10 MRSA § 1328 is enacted to read:

§ 1328. Administrative enforcement

1. Authority. The administrator, within the limits provided by law, may:

A. Receive and act on complaints, take action designed to obtain voluntary compliance with this Act or refer cases to the Attorney General who shall appear for and represent the administrator in court;

B. Counsel groups and persons on their rights and duties under this Act;

C. Establish programs for the education of consumers with respect to the provisions of this Act;

D. Make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public;

E. Issue advisory rulings designed to clarify the applicability of any statutory provision; and

F. Maintain a public file of all enforcement proceedings instituted and of their disposition, including all assurances of voluntary compliance accepted and their terms and the pleadings and briefs in all actions in which the administrator is a party.

2. Investigatory powers.

A. The administrator may annually investigate any person whom he believes has engaged in conduct governed by this Act; provided that the administrator may, at any time, investigate any person he believes to be a consumer reporting agency. If the administrator has reasonable cause to believe that any person has violated this Act, he may investigate that person at any time. During any investigation, the administrator may administer oaths or affirmations and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. If the administrator finds a violation of this Act, he shall so notify all parties to the transactions involved.

B. If the person's records are located outside this State, the person, at the administrator's option, may either make the original records or facsimiles thereof available to the administrator at a convenient location within this State or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the State in which the records are located or federal officials, to inspect them on his behalf.

C. The expenses of the administrator necessarily incurred in the examination of persons subject to this chapter shall be chargeable to that person in the same manner and for the same expenses set forth in Title 9-A, section 6-203, subsection 4.

3. Administrative enforcement orders. After notice and hearing, the administrator may order any person to cease and desist from engaging in violations of this Act. The administrator may also order affirmative action designed to correct past or future violations of this Act. Any hearing held under this subsection shall be conducted in accordance with the procedures of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. A respondent aggrieved by an order of the administrator may obtain judicial review of the order

and the administrator may, through the Attorney General, obtain an order of the court for enforcement of its order in the Superior Court. The proceedings for review or enforcement shall be initiated and conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

4. Assurance of discontinuance. If it is claimed that a person has engaged in conduct which could be subject to any order by the administrator, the administrator shall first attempt to negotiate an assurance in writing that the person will not engage in the same or similar conduct in the future, prior to initiating an enforcement order under subsection 3. The assurance may include, but is not limited to, admissions of past specific acts by the person or that such acts violated this Act or other statutes. A violation of an assurance of discontinuance shall be a violation of this Act.

5. Civil action. The administrator, through the Attorney General, may bring a civil action against a person to recover a civil penalty for knowingly violating this Act or violating an assurance of discontinuance, and if the court finds that the defendant has engaged in a knowing violation of this Act or a violation of an assurance of discontinuance, it may assess a civil penalty of not more than \$5,000.

If the defendant establishes by a preponderance of evidence that repeated violations were the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under this subsection.

6. Remedies not affected. The grant of powers to the administrator in this section does not affect remedies available to the Attorney General or to consumers under this Act or under other principles of law or equity.

7. Venue. The administrator, through the Attorney General, may bring actions or proceedings in a court in a county or division in which an act on which the action or proceeding is based occurred or in a county or division in which a respondent resides or transacts business.

STATEMENT OF FACT

The purpose of this new draft is to add administrative oversight and enforcement to the Fair Credit Reporting Act. There is currently no provision in the law for consumer education, arbitration or disputes or counseling and enforcement by an administrative agency. Because of jurisdiction and expertise of the Bureau of Consumer Protection in consumer credit laws, this authority properly belongs there. No additional costs are anticipated. The administrative powers contained in this new draft are modeled after those given the superintendent to enforce the Maine Consumer Credit Code, Title 9-A.