

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1538

H. P. 1350

House of Representatives, April 15, 1981

Submitted by the Department of Business Regulation pursuant to Joint Rule 24.

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

Cosponsor: Representative Jackson of Yarmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend the Fair Credit Reporting Act.

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

Sec. 1. 10 MRSA § 1311-A is enacted to read:

§ 1311-A. Statement of purpose

1. Findings. The Legislature finds and declares that the State has a substantial interest in protecting the privacy of its residents. This interest is advanced by regulating consumer reporting agencies and users of consumer reports to require that the information transmitted in consumer reports is accurate, timely and relevant to the purpose of the report requested.

2. Purposes. The purposes of this chapter are to:

A. Insure that consumer reporting agencies exercise their role in assembling and evaluating information on consumers with fairness, impartiality and a respect for a consumer's right to privacy;

B. Require consumer reporting agencies to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance and other information in a manner which is fair and equitable to the consumer, with

regard for confidentiality, accuracy, relevancy and proper utilization of such information in accordance with the requirements of this chapter; and

C. Supplement the provisions of the United States Fair Credit Reporting Act of the United States Consumer Credit Protection Act, Public Law 90-321, United States Code, Title 15, Section 1681 et seq.

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

2. Consumer. "Consumer" means an individual who is a resident of this State or who applies for an economic benefit in this State which results in a consumer report.

Sec. 3. 10 MRSA § 1312, sub-§ 3, as amended by PL 1977, c. 677, § 1, is repealed and the following enacted in its place:

3. Consumer report. "Consumer report" is defined according to the following provisions.

A. "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, debts, check writing experience, insurability, character, general reputation, personal characteristics, including, but not limited to, information regarding the consumer's medical history or condition, 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:

- (1) In connection with a credit transaction primarily for personal, family or household purposes involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;
- (2) In connection with an insurance transaction primarily for personal, family or household purposes involving the consumer;
- (3) In determining the consumer's eligibility or suitability for employment, promotion, reassignment or retention as an employee;
- (4) In determining the consumer's eligibility for a license or other benefit granted by a governmental instrumentality; or
- (5) In a business transaction involving the consumer primarily for personal, family or household purposes where the recipient has a legitimate business need for the information.

B. "Consumer report" does not include:

- (1) Any report containing information solely as to transactions or experiences between the consumer and the person making the report, provided that the term does include a report containing information obtained:

- (a) By physical surveillance of the consumer, other than through observation or supervision in the ordinary course of the relationship; or
- (b) Through examination of the consumer using a polygraph or other truth verification device;

(2) 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;

(3) Any transfer of information to the guarantor, insurer or other similar person participating in the same transaction if the transmitting party advises the consumer of the name and address of such other person and such other person makes any disclosure required by section 1320;

(4) Any transfer of information collected by a creditor in connection with a consumer's credit application to a subsequent purchaser of the transaction, if the purchaser agrees to use the information only in connection with the purchased transaction; or

(5) Any transfer of information collected by an insurer in connection with a consumer's insurance application or claim to a reinsurer or an insurer with potential liability under the same claim, if the recipient agrees to use the information only in connection with the insurance transaction.

C. A communication of information of the type described in this subsection is a consumer report notwithstanding the fact that:

(1) The information is used other than for a purpose referred to in paragraph A if the information was, in whole or in part, collected, used or expected to be used for a purpose referred to in paragraph A; or

(2) The information is maintained, collected or used only as a lead or alert signal to additional information, but is not used in whole or part to deny or increase the charge for credit, insurance, employment or other benefit.

Sec. 4. 10 MRSA § 1312, sub-§ 7, first sentence, as enacted by PL 1977, c. 514, is amended to read:

“Investigative consumer report” means a consumer report or portion thereof which includes information bearing on a consumer's character, general reputation, personal characteristics or mode of living which is obtained ~~through~~ **by any means from** personal interviews with neighbors, friends or associates of the consumer or with others with whom he is acquainted or who may have knowledge concerning any such items of information ~~or by other means~~.

Sec. 5. 10 MRSA § 1313, sub-§ 2, as enacted by PL 1977, c. 514, is amended to read:

2. In accordance with the specific written instruction of the consumer. In accordance with the specific written instructions of the consumer to whom ~~it~~ the report relates, stating the name of the person to receive it and valid for a period not exceeding one year, provided that the consumer reporting agency may, at its option, send a copy of the report directly to the consumer;

Sec. 6. 10 MRSA § 1313, sub-§ 3, ¶¶ C and D, as enacted by PL 1977, c. 514, are amended to read:

C. Intends to use the information in connection with the underwriting of insurance involving the consumer; or

D. Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; ~~or~~

Sec. 7. 10 MRSA § 1313, sub-§ 3, ¶ E, as enacted by PL 1977, c. 514, is repealed.

Sec. 8. 10 MRSA § 1313, sub-§§ 4 and 5 are enacted to read:

4. Administrative enforcement. Pursuant to section 1328; or

5. To another consumer reporting agency. To another consumer reporting agency if such other agency certifies that it will limit its use or disclosure of the information to the purposes permitted by this section.

Sec. 9. 10 MRSA § 1314, sub-§ 1, ¶ A, as repealed and replaced by PL 1977, c. 677, § 4, is amended to read:

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 as required in subsection 2 and delivered to the consumer not less than 3 business days before the date on which the requested investigation is begun;~~ or

Sec. 10. 10 MRSA § 1314, sub-§ 2, ¶ B, as repealed and replaced by PL 1977, c. 677, § 4, is amended to read:

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 of the appropriate name, address and telephone number of each for that unit of the consumer reporting agency making an investigative consumer report about him; and~~

Sec. 11. 10 MRSA § 1315, sub-§ 2, as enacted by PL 1977, c. 514, is repealed.

Sec. 12. 10 MRSA § 1317, sub-§ 1, as amended by PL 1977, c. 677, § 7, is further amended by adding at the end a new sentence to read:

For the purposes of this section, "inaccurate information" includes misleading information.

Sec. 13. 10 MRSA § 1320, sub-§ 1, ¶ A, sub-¶ (2), as enacted by PL 1977, c. 514, is amended to read:

(2) The name, street ~~address and mailing addresses~~ and telephone number ~~for that unit~~ of the consumer reporting agency making the report; and

Sec. 14. 10 MRSA § 1320, sub-§ 3, as enacted by PL 1977, c. 514, is amended by adding at the end a new sentence to read:

Notwithstanding this subsection, a consumer reporting agency may not be contract or otherwise prohibit a user of any consumer report from disclosing the contents of a consumer report to the consumer to whom it relates.

Sec. 15. 10 MRSA § 1320, sub-§ 5 is enacted to read:

5. Procedures when benefit denied. Whenever a benefit, other than credit, employment or insurance, for personal, family or household purposes is denied to a consumer or the charge increased, either wholly or partly because of information contained in a consumer report, the user of such report shall so advise the consumer and supply the disclosures required in subsection 1, paragraph A.

Sec. 16. 10 MRSA § 1321, sub-§ 1, as repealed and replaced by PL 1977, c. 677, § 11, is repealed and the following enacted in its place:

1. Reporting agencies. No consumer reporting agency may report information which the user of that report is prohibited from relying upon as a basis for granting or denying a benefit pursuant to the Maine Human Rights Act, Title 5, chapter 337, or the United States Equal Credit Opportunity Act, Public Law 90-321, United States Code, Title 15, Section 1601 et seq.

Sec. 17. 10 MRSA § 1321, sub-§ 2, as repealed and replaced by PL 1977, c. 677, § 11, is repealed.

Sec. 18. 10 MRSA § 1321, sub-§ 3, as repealed and replaced by PL 1977, c. 677, § 11, is amended to read:

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 and misleading information and 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. 19. 10 MRSA § 1321, sub-§ 4, as amended by PL 1977, c. 677, § 12, is repealed.

Sec. 20. 10 MRSA § 1323, sub-§ 2, as repealed and replaced by PL 1977, c. 677, § 13, is amended to read:

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.

STATEMENT OF FACT

Section 1 adds a statement of purpose to the Fair Credit Reporting Act similar to the purposes set forth in the Federal Act. The lack of such a statement emphasizing the protection of privacy resulted, in part, in the ruling that certain provisions of the Act were unconstitutional by the Supreme Judicial Court in *Equifax Services, Inc. v. Cohen*, 420 A. 2d 189 (Me. 1980), review denied by the United States Supreme Court, February 23, 1981.

Section 2 amends the definition of "consumer" to establish the jurisdictional reach of the Act: Residency in Maine or applying for the economic benefit in Maine.

Section 3 revises the definition of "consumer report" to set forth the permissible uses, derived from Title 10, section 1313, and clarifies the following issues: (1) Includes information regarding the consumer's check-writing experiences for check authorization purposes; (2) the exclusion for information about transactions between a creditor and consumer is amended to make clear the exclusion does not apply to covert physical surveillance or polygraph examination results; (3) exclusions are added for a transfer of information to joint users of a consumer report, subsequent purchasers of an obligation and information reported to guarantors, coinsurers and the like; (4) information collected with the intent to use it as a consumer report is brought into the Act even if the use to which the information is put does not fall within the definition of consumer report; and (5) "lead" or "alert" information included.

Section 4 clarifies the definition of "investigative consumer report" so as to include information derived by telephone as well as personal interviews.

Section 5 to 8 amend the statutory purposes for which a consumer report can be provided. Section 5 establishes greater specificity in the current provision which allows the consumer to give written authorization for the release of a consumer report. This is to ensure that authorizations are meaningfully given and are not blanket waivers. Sections 6 and 7 repeal the provision which allows "legitimate business need" as an automatically permissible purpose, although this purpose is included in the definition of "consumer report." If a recipient has a legitimate business need not otherwise listed in Title 10, section 1313, the consumer may sign an authorization. Section 8 adds 2 new permissible purposes: Pursuant to administrative enforcement and pursuant to a request from one consumer reporting agency to another under certain safeguards.

Section 9 strikes the requirement for written authorization by the consumer prior to obtaining an investigative consumer report to conform the law to the

decision in *Equifax Services, Inc. v. Cohen*. A substitute disclosure notice is required to be delivered to the consumer 3 days prior to an investigation.

Section 10 requires the disclosure notice to contain the address of the local unit of the agency, as opposed to the current practice of disclosing the national headquarters, making the investigative consumer report.

Section 11 repeals an unnecessary provision.

Section 12 extends the consumer right to dispute inaccurate information to misleading information as well. This will allow the consumer to contend that certain essential facts are missing, such as whether or not a conviction was obtained after an arrest.

Section 13 inserts the same wording as section 10 to identify the local unit for the consumer.

Section 14 corrects an obviously unintended result. Title 10, section 1320, subsection 3, prohibits a user of a consumer report from disseminating that consumer report. The amendment ensures that this prohibition does not affect the consumer who is the subject of the report.

Section 15 establishes procedures for disclosure to the consumer when a consumer report has been used to deny an economic benefit not otherwise covered by Title 10, section 1320, subsection 1.

Section 16 repeals, again because of the ruling in *Equifax*, the content restrictions in a consumer report. However, the substitute language prohibits a consumer reporting agency from reporting information which the user cannot rely upon pursuant to the Maine Human Rights Act or the United States Equal Credit Opportunity Act.

Sections 17 to 19 repeal those provisions which prohibit irrelevant consumer report information, again, as a result of the *Equifax* decision.

Section 19 repeals the limitations on retaining "old" information in a consumer's file as required by the *Equifax* decision. It is intended that consumer reporting agencies will continue to be governed by similar requirements of the United States Fair Credit Reporting Act, Section 605.