

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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Legislative Document

No. 1712

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H. P. 1727

Office of the Clerk of the House

Submitted by the Department of Business Regulation pursuant to Joint Rule 24. Reference to the Committee on Business Legislation suggested and 1,500 ordered printed. Approved for introduction by the Legislative Council pursuant to Joint Rule 26.

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EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

Cosponsor: Representative Jackson of Yarmouth.

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STATE OF MAINE

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

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AN ACT to Revise the Fair Credit Reporting Act and to Conform it to Recent Maine Judicial Decisions.

23

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

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

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§1311-A. Statement of purpose

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27

1. Findings. The Legislature makes the following findings.

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A. Creditors, insurers and prospective employers are dependent upon fair and accurate consumer reporting. Inaccurate consumer reports directly impair the efficiency of economic decisions, and unfair consumer re-

1 porting methods undermine the public confidence which
2 is essential to our economic system.

3 B. An elaborate mechanism has been developed for
4 investigating and evaluating the credit worthiness,
5 credit standing, credit capacity, character and general
6 reputation of consumers.

7 C. Consumer reporting agencies have assumed a vital
8 role in assembling and evaluating consumer credit and
9 other information on consumers.

10 D. There is a need to ensure that consumer reporting
11 agencies exercise their grave responsibilities with
12 fairness, impartiality and a respect for the consumer's
13 right to privacy.

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

15 A. Require consumer reporting agencies to adopt
16 reasonable procedures for meeting the needs of commerce
17 for consumer credit, personnel, insurance and other
18 information in a manner which is fair and equitable to
19 the consumer, with regard for confidentiality, accuracy,
20 relevancy and proper utilization of this information
21 in accordance with the requirements of this chapter;
22 and

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

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

29 2. Consumer. "Consumer" means an individual who is a
30 resident of this State or who applies in this State for an
31 economic benefit which results in a consumer report which is
32 primarily prepared by a consumer reporting agency, or an
33 office of a consumer reporting agency, located in this
34 State.

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

38 3. Consumer report. The term "consumer report" has
39 the following meaning.

1 A. "Consumer report" means any written, oral or other
2 communication of any information by a consumer reporting
3 agency bearing on a consumer's credit worthiness,
4 credit standing, credit capacity, debts, check-writing
5 experience, insurability, character, general reputation,
6 personal characteristics, including, but not limited to, information regarding the consumer's medical history or condition, which is used or expected to
7 be used or collected in whole or in part for the purpose of serving as a factor:

11 (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;

17 (2) In connection with an insurance transaction primarily for personal, family or household purposes involving the consumer;

20 (3) In determining the consumer's eligibility or suitability for employment, promotion, reassignment or retention as an employee;

23 (4) In determining the consumer's eligibility for a license or other benefit granted by a governmental instrumentality; or

26 (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.

30 B. The term does not include:

31 (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:

36 (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 specific extension of credit directly or indirectly to a consumer, conveys his decision with respect to the 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 the other person and that 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 by 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 to alert the user to the need for further investigation, but is not intended to be used in whole or part to deny or increase the charge for credit, insurance, employment or other benefit.

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

3 "Investigative consumer report" means a consumer report or
4 portion thereof which includes information bearing on a con-
5 sumer's character, general reputation, personal characteris-
6 tics or mode of living which is obtained through personal or
7 telephone interviews with neighbors, friends or associates
8 of the consumer or with others with whom he is acquainted or
9 who may have knowledge concerning any such items of informa-
10 tion or by other means.

11 Sec. 5. 10 MRSA §1313, as enacted by PL 1977, c. 514,
12 is repealed and the following enacted in its place:

13 §1313. Permissible purposes of consumer reports

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

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

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

25 3. To certain persons. To a person who it has reason
26 to believe intends to use the report for the purposes
27 enumerated in section 1312, subsection 3;

28 4. Administrative enforcement. Pursuant to the provi-
29 sions of section 1328; or

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

34 Sec. 6. 10 MRSA §1314, sub-1, as repealed and replaced
35 by PL 1977, c. 677, §4, is repealed and the following
36 enacted in its place:

37 1. Notice to consumer required. A person may not pro-
38 cure or cause to be prepared an investigative consumer

1 report on any consumer, except a report relating to an
2 insurance claim, unless:

3 A. That person has provided the consumer with a clear
4 and conspicuous written notice as required by subsection
5 2 and delivered to the consumer either at the time
6 of the application or any time not less than 3 business
7 days before the date on which the requested investiga-
8 tion is begun, provided that delivery shall be accom-
9 plished personally or by mail and, if by mail, shall be
10 sufficient upon compliance with Title 9-A, section
11 5-110, subsection 1.

12 Sec. 7. 10 MRSA §1314, sub-§2, ¶B, as repealed and
13 replaced by PL1977, c. 677, §4, is amended to read:

14 B. Inform the consumer that he may request and receive
15 from the person who intends to procure such a report,
16 within 5 business days of that person's receipt of his
17 request, the name, address and telephone number of the
18 nearest unit designated to handle inquiries of each
19 consumer reporting agency making issuing an investiga-
20 tive consumer report about him; and

21 Sec. 8. 10 MRSA §1317, sub-§1, as amended by PL 1977,
22 c. 677, §7, is further amended by adding at the end a new
23 sentence to read:

24 For the purposes of this section, "inaccurate information"
25 includes materially incomplete information within the scope
26 of the report requested.

27 Sec. 9. 10 MRSA §1320, sub-§1, first sentence, as
28 amended by PL 1977, c. 677, §10, is further amended to read:

29 Whenever credit or insurance for personal, family or house-
30 hold purposes, or employment involving a consumer is denied
31 or the charge for that credit or insurance is increased a
32 charge is increased or a benefit denied by a user because of
33 information contained in a consumer report or investigative
34 consumer report, or partly because of information contained
35 in a consumer report or investigative consumer report from a
36 consumer reporting agency, the user taking such action
37 shall:

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

(2) The name, street address and telephone number for the nearest unit designated to handle inquiries of the consumer reporting agency making issuing the report; and

Sec. 11. 10 MRSA §1320, sub-§3, as enacted by PL 1977, c. 514, is further amended by adding at the end a new sentence to read:

8 Notwithstanding this subsection, a consumer reporting agency
9 may not by contract or otherwise prohibit a user of any con-
10 sumer report from disclosing the contents, subject to the
11 optional exclusions of section 1315, subsection 1, of a con-
12 sumer report to the consumer to whom it relates.

13 Sec. 12. 10 MRSA §1321, as amended by PL 1977, c. 677,
14 §§11 and 12, is repealed and the following enacted in its
15 place:

16 §1321. Prohibited information, accuracy of information in
17 reports

18 1. Procedures to avoid violations. Every consumer re-
19 porting agency shall maintain reasonable procedures designed
20 to limit the furnishing of consumer reports to the purposes
21 listed under section 1313. These procedures shall require
22 that prospective users of the information identify them-
23 selves, certify the purposes for which the information is
24 sought, and certify that the information will be used for no
25 other purpose. Every consumer reporting agency shall make a
26 reasonable effort to verify the identity of a new prospec-
27 tive user and the uses certified by such prospective user
28 prior to furnishing such user a consumer report. No con-
29 sumer reporting agency may furnish a consumer report to any
30 person if it has reasonable grounds for believing that the
31 consumer report will not be used for a purpose listed in
32 section 1313.

33 2. Accuracy. Whenever a consumer reporting agency
34 prepares a consumer report, it shall follow reasonable
35 procedures to assure maximum possible accuracy of the infor-
36 mation concerning the individual about whom the report
37 relates and refrain from reporting inaccurate information
38 and information which cannot be verified.

39 3. Listing of denial of credit prohibited in certain
40 situations. No consumer reporting agency may issue a con-
41 sumer report which lists a person as having been denied
42 credit if the sole reason for that denial is lack of suffi-

1 cient information to grant credit, unless the report states
2 that the denial was for that reason.

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

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

13 Statement of Fact

14 The purpose of this bill is to clarify certain provi-
15 sions of the Maine Fair Credit Reporting Act and respond to
16 the ruling of the Supreme Judicial Court in Equifax Ser-
17 v. Cohen, 420 A. 2d 189 (Me. 1980). The court
18 ruled that certain provisions of the Act were unconstitu-
19 tional. The Fair Credit Reporting Act regulates the consumer
20 reporting industry which collects and distributes informa-
21 tion on consumers when they apply for credit, insurance or
22 employment.

23 Sections 6, 12 and 13 respond directly to the Equifax
24 ruling by either deleting the unconstitutional language or
25 proposing alternate language that conforms to the Federal
26 Fair Credit Reporting Act. Other sections of the bill seek
27 to either clarify the intent of certain provisions of the
28 Act or respond to recent developments in the credit report-
29 ing industry which were not addressed by the original Act.

30 Section 1 adds a Statement of Purpose to the Fair
31 Credit Reporting Act similar to the purposes set forth in
32 the Federal Act.

33 Section 2 amends the definition of "consumer" to estab-
34 lish the jurisdictional reach of the Act: Residency in
35 Maine or applying for an economic benefit in Maine.

36 Section 3 revises the definition of "consumer report"
37 to set forth the permissible uses from the current law and
38 clarifies the following issues: (1) Includes information
39 regarding the consumer's check writing experiences for check
40 authorization purposes; (2) the exclusion for information
41 about transactions between a creditor and consumer is

1 amended to make clear the exclusion does not apply to covert
2 physical surveillance or polygraph examination results;
3 (3) exclusions are added for a transfer of information to
4 joint users of a consumer report, subsequent purchasers of
5 an obligation, and information reported to guarantors, coin-
6 surers, and the like; (4) information collected with the
7 intent to use it as a consumer report is brought into the
8 Act even if the use to which the information is put does not
9 fall within the definition of consumer report; and
10 (5) "lead" or "alert" information is included.

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

14 Section 5 establishes greater specificity in the cur-
15 rent provision which allows the consumer to give written
16 authorizaton for the release of a consumer report. This is
17 to ensure that authorizations are meaningfully given and are
18 not blanket waivers. It also adds 2 new permissible pur-
19 poses for a consumer report: Pursuant to administrative
20 enforcement and pursuant to a request from one consumer re-
21 porting agency to another under certain safeguards.

22 Section 6 strikes the requirement for written authori-
23 zation by the consumer prior to obtaining an investigative
24 consumer report to conform the law to the decision in
25 Equifax Services, Inc. v. Cohen. A substitute disclosure
26 notice is required to be delivered to the consumer at the
27 time of the credit or insurance application or no later than
28 3 days prior to an investigation.

29 Section 7 requires the disclosure notice to the con-
30 sumer to contain the address of the local unit of the
31 agency, as opposed to the current practice of disclosing the
32 national headquarters, making the investigative consumer
33 report.

34 Section 8 extends the consumer right to dispute inaccur-
35 ate information to materially incomplete information as
36 well. This will allow the consumer to contend that certain
37 essential facts are missing, such as whether or not a con-
38 viction was obtained after an arrest. The consumer's right
39 to require the consumer reporting agency to include missing
40 information is limited to information necessary to the scope
41 of the report requested by the creditor, insurer or
42 employer.

1 Section 9 corrects a loophole in the current law by re-
2 quiring that the consumer is informed of the source of
3 adverse action when a report is ordered for any of the
4 permissible purposes of section 1313 of the Act. Current
5 law would require this notice only if credit, insurance or
6 employment is requested.

7 Section 10 inserts the same wording as section 7 to
8 indentify the local unit for the consumer.

9 Section 11 corrects an unintended result. Current law
10 prohibits a user of a consumer report from disseminating
11 that consumer report. The amendment ensures that this pro-
12 hibition does not affect the consumer who is the subject of
13 the report.

14 Section 12 repeals, again because of the ruling in
15 Equifax, the content restrictions in a consumer report.
16 Language is added from the federal law which requires a con-
17 sumer reporting agency to adopt reasonable procedures to
18 assure compliance with the Act.

19 Section 13 repeals the reference to "relevant" informa-
20 tion because of the Equifax ruling.