

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1736

H.P. 1276

House of Representatives, March 22, 2001

An Act to Amend Maine Credit Laws.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative SULLIVAN of Biddeford.
Cosponsored by Senator DOUGLASS of Androscoggin and
Representatives: DUDLEY of Portland, GLYNN of South Portland, MARRACHE of
Waterville, MAYO of Bath, O'NEIL of Saco, Senator: LaFOUNTAIN of York.

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

2
4 **Sec. 1. 9-A MRSA §1-201, sub-§1, ¶B**, as amended by PL 1987, c.
129, §4, is further amended to read:

6 B. The creditor, wherever located, induces the consumer who
8 is a resident of this State to enter into the transaction or
 open-end credit plan by face-to-face, mail ~~or~~ telephone or
 electronic mail solicitation in this State.

10 **Sec. 2. 9-A MRSA §1-301, sub-§38-A, ¶B**, as enacted by PL 1997,
12 c. 66, §3, is amended to read:

14 B. A person, other than an insurance company or other
16 organization primarily engaged in an insurance business,
 that is subject to the supervision by an official or agency
 of a state or of the United States and is:

18 (1) Organized, chartered or holding an authorization
20 certificate under the laws of a state or of the United
 States that ~~authorize~~ authorizes the person both to
22 make loans and to receive deposits, including a
 savings, share, certificate or deposit account; ~~and or~~

24 (2) ~~Subject to supervision by an official or agency of~~
26 ~~a state or of the United States. A nondepository trust~~
 company, uninsured bank or merchant bank organized,
28 chartered or holding an authorization certificate under
 the laws of a state or of the United States that
30 authorizes the limited-purpose financial institution to
 make loans.

32 **Sec. 3. 9-A MRSA §2-303-A** is enacted to read:

34 **§2-303-A Temporary suspension of license**

36 Notwithstanding Title 5, sections 10003 and 10004 and Title
38 10, section 8003, if the public interest or the protection of
40 borrowers so requires, the administrator may, by order, suspend a
42 license to make supervised loans or postpone the effective date
44 of such a license. Upon entry of the order, the administrator
46 shall promptly notify the applicant or licensee that an order has
 been entered, of the reasons for the order and that, within 15
 days after the receipt of a written request by the applicant or
 licensee, the matter must be scheduled for hearing. Section
 2-303 applies to all subsequent proceedings.

48 **Sec. 4. 9-A MRSA §6-201**, as amended by PL 1997, c. 727, Pt.
50 B, §20, is further amended to read:

2
3 **§6-201. Applicability**

4 This Part applies to a person engaged in this State in
5 entering into consumer credit transactions and to a person having
6 an office or place of business in this State who takes
7 assignments of and undertakes direct collection of payments from
8 or enforcement of rights against debtors arising from these
9 transactions. In addition, this Part applies to a person,
10 wherever located, who takes assignments of and undertakes direct
11 collection of payments from or enforcement of rights against
12 debtors arising from a consumer credit sale of a motor vehicle
13 subject to this Title. This Part also applies to a person, other
14 than a supervised financial organization, wherever located, who
15 takes assignments of and undertakes direct collection of payments
16 from or enforcement of rights against debtors arising from a
17 consumer credit transaction subject to Article IX.

18 **Sec. 5. 9-A MRSA §10-102, sub-§1, ¶B,** as amended by PL 1997, c.
19 66, §5, is further amended to read:

20

21 B. "Credit services organization" does not include:

22

23 (1) A supervised financial organization as defined in
24 section 1-301, subsection 38-A;

25

26 (2) A supervised lender as defined in section 1-301,
27 subsection 39, except that, with respect to any
28 transaction in which a supervised lender is acting
29 solely as a credit services organization, section
30 10-302 applies;

31

32 (3) A person licensed by the Real Estate Commission to
33 the extent that the person is engaged in activities
34 regulated by that commission;

35

36 (4) A person currently admitted to the practice of law
37 in this State;

38

39 (5) Any nonprofit organization exempt from taxation
40 under the United States Internal Revenue Code, Section
41 501(c)(3) to the extent that the organization's
42 activities are consistent with those set forth in its
43 application for tax exemption to the Internal Revenue
44 Service; or

45

46 (6) A consumer reporting agency, as defined in the
47 Fair Credit Reporting Act, Title 10, chapter 210.

48

2 **Sec. 6. 10 MRSA §1313-A, sub-§2, ¶¶A and B**, as enacted by PL
1997, c. 155, Pt. B, §6 and affected by §13, are amended to read:

4 A. A consumer reporting agency may furnish a consumer
report for employment purposes only if:

6 (1) The person who obtains the report from the agency
8 certifies to the agency that:

10 (a) The person has complied with paragraph B with
12 respect to the consumer report, and the person
14 will comply with section 1320 with respect to the
consumer report if section 1320 becomes
applicable; and

16 (b) Information from the consumer report will not
18 be used in violation of any applicable federal or
state equal employment opportunity law or
regulation; and

20 (2) The consumer reporting agency provides with the
22 report, or has previously provided, a summary of the
24 consumer's rights under this Act as prescribed by the
Federal Trade Commission under 15 United States Code,
Section 1681g(c)(3).

26 B. A Except as provided in paragraph B-1, a person may not
28 procure a consumer report or cause a consumer report to be
30 procured for employment purposes with respect to any
consumer, unless:

32 (1) A clear and conspicuous disclosure has been made
34 in writing to the consumer before the report is
36 procured or caused to be procured, in a document that
consists solely of the disclosure, that a consumer
report may be obtained for employment purposes; and

38 (2) The consumer has authorized in writing the
40 procurement of the report by that person.

42 **Sec. 7. 10 MRSA §1313-A, sub-§2, ¶¶B-1 and B-2** are enacted to
read:

44 B-1. A person who procures a consumer report on a consumer
46 described in paragraph B-2, subparagraph (1) for employment
48 purposes shall provide to the consumer, by oral, written or
electronic means, notice that a consumer report may be
obtained for employment purposes and a summary of the

2 consumer's rights under section 1320, subsection 1-B,
paragraph C:

4 (1) When the consumer applies for employment by mail;
and

6 (2) When the consumer has consented, orally, in
8 writing or electronically, to the procurement of the
10 report by that person.

12 B-2. Paragraph B-1 applies to a person procuring a consumer
report on a consumer in connection with the consumer's
14 application for employment only if:

16 (1) The consumer is applying for a position over which
the federal Secretary of Transportation has the power
18 to establish qualifications and maximum hours of
service pursuant to the provisions of 49 United States
20 Code, Section 31502 or a position subject to safety
regulation by a state transportation agency; and

22 (2) As of the time at which the person procures the
consumer report or causes the report to be procured,
24 the only interaction between the consumer and the
person in connection with that employment application
26 has been by mail, telephone, computer or other similar
means.

28 **Sec. 8. 10 MRSA §1313-A, sub-§2, ¶C,** as enacted by PL 1997, c.
30 155, Pt. B, §6 and affected by §13, is amended to read:

32 **C.** In Except as provided in paragraph C-1, in using a
consumer report for employment purposes, before taking any
34 adverse action based in whole or in part on the report, the
person intending to take the adverse action shall provide to
36 the consumer to whom the report relates:

38 (1) A copy of the report; and

40 (2) A description in writing of the rights of the
consumer under ~~this Act~~ as prescribed by the Federal
42 Trade Commission under 15 United States Code, Section
44 1681g(c)(3).

46 **Sec. 9. 10 MRSA §1313-A, sub-§2, ¶¶C-1 and C-2** are enacted to
read:

48 C-1. If a consumer described in paragraph C-2 applies for
employment by mail, telephone, computer or other similar
50 means and if a person who has procured a consumer report on

2 the consumer for employment purposes takes adverse action on
3 the employment application based in whole or in part on the
4 report, then the person shall provide to the consumer to
5 whom the report relates, in lieu of the notices required
6 under paragraph B, subparagraph (1) and under section 1320,
7 within 3 business days of taking such action, an oral,
8 written or electronic notification:

9
10 (1) That adverse action has been taken based in whole
11 or in part on a consumer report received from a
12 consumer reporting agency;

13
14 (2) Of the name, address and telephone number of the
15 consumer reporting agency that furnished the consumer
16 report, including a toll-free telephone number
17 established by the agency if the agency compiles and
18 maintains files on consumers on a nationwide basis;

19
20 (3) That the consumer reporting agency did not make
21 the decision to take the adverse action and is unable
22 to provide to the consumer the specific reasons why the
23 adverse action was taken; and

24 (4) That the consumer may, upon providing proper
25 identification, request a free copy of a consumer
26 report and may dispute with the consumer reporting
27 agency the accuracy or completeness of any information
28 in a report.

29
30 If, under subparagraph (4), the consumer requests a copy of
31 a consumer report from the person who procured the report,
32 then, within 3 business days of receiving the consumer's
33 request together with proper identification, the person
34 shall send or provide to the consumer a copy of a report and
35 a summary of the consumer's rights as prescribed by the
36 Federal Trade Commission under 15 United States Code,
37 Section 1681g(c)(3).

38
39 C-2. Paragraph C-1 applies to a person procuring a consumer
40 report on a consumer in connection with the consumer's
41 application for employment only if:

42
43 (1) The consumer is applying for a position over which
44 the federal Secretary of Transportation has the power
45 to establish qualifications and maximum hours of
46 service pursuant to the provisions of 49 United States
47 Code, Section 31502 or a position subject to safety
48 regulation by a state transportation agency; and

2 (2) As of the time at which the person procures the
3 consumer report or causes the report to be procured,
4 the only interaction between the consumer and the
5 person in connection with that employment application
6 has been by mail, telephone, computer or other similar
7 means.

8 **Sec. 10. 10 MRSA §1313-A, sub-§§4 to 7** are enacted to read:

10 **4. Information regarding inquiries.** Except as provided in
11 section 1315, a consumer reporting agency may not furnish to any
12 person a record of inquiries in connection with a credit or
13 insurance transaction that are not initiated by a consumer.

14 **5. Election of consumer to be excluded from lists.** A
15 consumer may elect to have the consumer's name and address
16 excluded from any list provided by a consumer reporting agency
17 under subsection 3 in connection with a credit or insurance
18 transaction that is not initiated by the consumer by notifying
19 the agency in accordance with paragraph A that the consumer does
20 not consent to any use of a consumer report relating to the
21 consumer in connection with any credit or insurance transaction
22 that is not initiated by the consumer.

23 A. A consumer shall notify a consumer reporting agency:

24 (1) Through the notification system maintained by the
25 agency under paragraph D; or

26 (2) By submitting to the agency a signed notice of
27 election form issued by the agency for purposes of this
28 subparagraph.

29 B. Upon receipt of notification of the election by a
30 consumer through the notification system maintained by a
31 consumer reporting agency under paragraph D, the agency
32 shall:

33 (1) Inform the consumer that the election is effective
34 only for the 2-year period following the election if
35 the consumer does not submit to the agency a signed
36 notice of election form issued by the agency for
37 purposes of paragraph A, subparagraph (2); and

38 (2) Provide to the consumer a notice of election form,
39 if requested by the consumer, not later than 5 business
40 days after receipt of the notification of the election
41 through the notification system established under
42 paragraph D.

43

C. An election by a consumer under this subsection:

2
4 (1) Is effective with respect to a consumer reporting
6 agency beginning 5 business days after the date on
 which the consumer notifies the agency in accordance
 with paragraph A;

8 (2) Is effective with respect to a consumer reporting
10 agency:

12 (a) Subject to subparagraph (3), during the
14 2-year period beginning 5 business days after the
16 date on which the consumer notifies the agency of
 the election, in the case of an election for which
 a consumer notifies the agency only in accordance
 with paragraph A, subparagraph (1); or

18 (b) Until the consumer notifies the agency under
20 subparagraph (3), in the case of an election for
22 which a consumer notifies the agency in accordance
 with paragraph A, subparagraph (2);

24 (3) Is not effective after the date on which the
26 consumer notifies the agency, through the notification
 system established by the agency under paragraph D,
 that the election is no longer effective; and

28 (4) Is effective with respect to each affiliate of the
30 agency.

32 D. A consumer reporting agency shall establish a
 notification system.

34 (1) Each consumer reporting agency that, under
36 subsection 3, furnishes a consumer report in connection
 with a credit or insurance transaction that is not
 initiated by a consumer shall:

38 (a) Establish and maintain a notification system,
40 including a toll-free telephone number, that
42 permits any consumer whose consumer report is
44 maintained by the agency to notify the agency,
46 with appropriate identification, of the consumer's
 election to have the consumer's name and address
 excluded from a list of names and addresses
 provided by the agency for such a transaction; and

48 (b) Publish not less than annually, in a
50 publication of general circulation in the area
 served by the agency:

2 (i) A notification that information in
4 consumer files maintained by the agency may
 be used in connection with such transactions;
 and

6 (ii) The address and toll-free telephone
8 number for consumers to use to notify the
 agency of the consumer's election under this
10 subsection.

12 (2) An affiliate of a consumer reporting agency that
 establishes and maintains a notification system,
14 including a toll-free telephone number, and publishes
 information under subparagraph (b) on the agency's own
16 behalf and on behalf of any of its affiliates in
 accordance with this paragraph is considered to be in
18 compliance with this paragraph.

20 E. Each consumer reporting agency that compiles and
 maintains files on consumers on a nationwide basis shall
22 establish and maintain a notification system for purposes of
 paragraph D jointly with other such consumer reporting
24 agencies.

26 6. Certain use or obtaining of information prohibited. A
 person may not use or obtain a consumer report for any purpose
28 unless:

30 A. The consumer report is to be obtained for a purpose for
 which the consumer report is authorized to be furnished
32 under this section; and

34 B. The purpose is certified in accordance with section 1321
 by a prospective user of the report through a general or
36 specific certification.

38 7. Furnishing reports containing medical information. A
 consumer reporting agency may not furnish for employment purposes
40 or in connection with a credit or insurance transaction or a
 direct marketing transaction a consumer report that contains
42 medical information about a consumer unless the consumer consents
 in writing to the furnishing of the report.

44 Sec. 11. 10 MRSA §1313-B is enacted to read:

46 §1313-B. Requirements relating to information contained in
48 consumer reports

1. Information excluded from consumer reports; prohibited items. Except as authorized under subsection 2, a consumer reporting agency may not make any consumer reports containing any of the following items of information:

A. Cases under federal law, Title 11 or under the federal Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years;

B. Civil suits, civil judgments and records of arrest that, 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;

C. Paid tax liens that, from date of payment, antedate the report by more than 7 years;

D. Accounts placed for collection or charged to profit and loss that antedate the report by more than 7 years; or

E. Any other adverse item of information, other than records of conviction of crimes, that antedates the report by more than 7 years.

2. Exempted cases. The provisions of subsection 1 are not applicable in the case of any consumer credit report to be used in connection with:

A. A credit transaction involving, or that may reasonably be expected to involve, a principal amount of \$150,000 or more;

B. The underwriting of life insurance involving, or that may reasonably be expected to involve, a face amount of \$150,000 or more; or

C. The employment of any individual at an annual salary that equals, or that may reasonably be expected to equal, \$75,000 or more.

3. Running of reporting period. The reporting period for consumer reports runs as follows.

A. The 7-year period referred to in subsection 1, paragraphs D and E begins with respect to any delinquent account that is placed for collection, internally or by referral to a 3rd party, whichever is earlier, charged to profit and loss or subjected to any similar action upon the expiration of a 180-day period beginning on the date of the

2 commencement of the delinquency that immediately preceded
3 the collection activity, charge to profit and loss or
4 similar action.

5 B. Paragraph A applies only to items of information added
6 to the file of a consumer on or after December 30, 1997.

7 4. Information required to be disclosed. Any consumer
8 reporting agency that furnishes a consumer report that contains
9 information regarding any case involving a consumer that arises
10 under federal law or Title 11 shall include in the report an
11 identification of the chapter of Title 11 under which the case
12 arises if provided by the source of the information. If any case
13 arising or filed under Title 11 is withdrawn by the consumer
14 before a final judgment, the consumer reporting agency shall
15 include in the report that the case or filing was withdrawn upon
16 receipt of documentation certifying the withdrawal.

17 5. Indication of closure of account by consumer. If a
18 consumer reporting agency is notified pursuant to section 1320-A,
19 subsection 4 that a credit account of a consumer was voluntarily
20 closed by the consumer, the agency shall indicate that fact in
21 any consumer report that includes information related to the
22 account.

23 6. Indication of dispute by consumer. If a consumer
24 reporting agency is notified pursuant to section 1320-A,
25 subsection 3 that information regarding a consumer that was
26 furnished to the agency is disputed by the consumer, the agency
27 shall indicate that fact in each consumer report that includes
28 the disputed information.

29 **Sec. 12. 32 MRSA §6104, sub-§1, ¶D,** as enacted by PL 1997, c.
30 155, Pt. A, §2, is amended to read:

31 D. Banks,--bank-holding-companies,--credit-unions,--building
32 and--loan--associations,--savings--and--loan--associations,
33 savings-banks-or-mutual-banks-organized-under-the-laws-of
34 any-state-or-the-United-States,--provided-that Supervised
35 financial organizations as defined in Title 9-A, section
36 1-301, subsection 38-A as long as they do not engage in the
37 business of issuing or selling payment instruments through
38 authorized delegates who are not banks,--bank--holding
39 companies,--credit-unions,--building-and-loan-associations,
40 savings-and-loan-associations,--savings-banks-or-mutual-banks
41 supervised financial organizations as defined in Title 9-A,
42 section 1-301, subsection 38-A; and

SUMMARY

2
4 This bill amends various laws administered by the Office of
Consumer Credit Regulation. This bill clarifies that
6 transactions entered into following electronic mail solicitations
by lenders and creditors are subject to the Maine Consumer Credit
Code. The bill excludes limited-purpose financial institutions
8 from certain provisions of the Maine Consumer Credit Code. The
bill grants to the Director of the Office of Consumer Credit
10 Regulation the power to issue a temporary order suspending the
license of a supervised lender under circumstances in which
12 delaying such an order would result in harm to consumers.