

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

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Legislative Document

No. 1366

H.P. 943

House of Representatives, April 6, 2017

**An Act To Protect Maine Consumers by Creating a White-collar
Crime Registry**

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MASTRACCIO of Sanford.
Cosponsored by Representatives: DUNPHY of Old Town, GRANT of Gardiner,
HARRINGTON of Sanford, MARTIN of Sinclair, TUELL of East Machias.

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

2 **Sec. 1. 34-A MRSA c. 21** is enacted to read:

3 **CHAPTER 21**

4 **WHITE-COLLAR CRIME OFFENDER REGISTRATION ACT**

5 **§11501. Short title; purpose**

6 This chapter may be known and cited as "the White-collar Crime Offender
7 Registration Act." The purpose of this chapter is to protect the public from potentially
8 dangerous criminal offenders by enhancing access to information concerning those
9 criminal offenders.

10 **§11502. Definitions**

11 As used in this chapter, unless the context otherwise indicates, the following terms
12 have the following meanings.

13 **1. Bureau.** "Bureau" means the Department of Public Safety, Bureau of State
14 Police, State Bureau of Identification established in Title 25, section 1541.

15 **2. Offender.** "Offender" means a person required to register pursuant to this
16 chapter.

17 **3. Registrable offense.** "Registrable offense" means an offense under section
18 11505, subsection 1.

19 **4. Registry.** "Registry" means the registry of offenders under section 11504.

20 **§11503. Duties of State Bureau of Identification and prosecuting authorities**

21 **1. Duties of bureau.** The bureau shall develop and operate a system to collect,
22 analyze and disseminate information on offenders and make the information available to
23 the public in a registry. For each offender, the bureau shall collect from the Attorney
24 General and district attorneys under subsection 2 and other sources, including court
25 records, prison or jail booking records, driver's license records or other sources lawfully
26 and appropriately obtained by and available to the bureau, the following information:

27 A. Each crime for which the offender has been convicted;

28 B. A description of the offender's victims;

29 C. For each crime, the total value of amount stolen or defrauded; and

30 D. The information required by section 11504, subsection 4 and any other
31 information determined relevant by the bureau.

32 **2. Duties of Attorney General and district attorneys.** The Attorney General and a
33 district attorney shall, in the manner prescribed by the bureau, inform the bureau of a
34 person who is convicted of a registrable offense within 45 business days of the

1 conviction. The bureau shall enter the information received under this subsection into the
2 registry in a timely manner.

3 **§11504. White-collar crime offender registry**

4 **1. Bureau to maintain registry.** The bureau shall establish and maintain a registry
5 of persons convicted of so-called white-collar crimes as described in this section and
6 make the registry available on a publicly accessible website.

7 **2. Disclaimer.** The registry must have a disclaimer informing the public that:

8 A. The information contained on the registry is obtained from government records
9 when feasible, but the bureau does not guarantee the website's accuracy or
10 completeness;

11 B. A member of the public is not allowed to use the information on the registry to
12 harass or threaten an offender or a member of an offender's family; and

13 C. Harassing, stalking or making threats against an offender or a member of an
14 offender's family is prohibited and may violate the State's criminal laws.

15 **3. Registry construction.** The registry must:

16 A. Be indexed by the surnames of the offenders; and

17 B. Be constructed so that, before accessing registry information, a user must indicate
18 that the user has read and understands the disclaimer under subsection 2 and agrees to
19 comply with the disclaimer's terms.

20 **4. Registry information.** The registry must include the following information for
21 each offender:

22 A. All names and aliases by which the offender is or has been known, but not
23 including any online or Internet identifiers;

24 B. A physical description, including the offender's date of birth, height, weight and
25 eye and hair color;

26 C. A recent photograph of the offender taken by the bureau; and

27 D. The registrable offenses of which the offender has been convicted.

28 **5. Immunity.** The bureau and any person acting at the request or upon the direction
29 of the bureau in carrying out the provisions of this chapter are immune from civil liability
30 for damages and are presumed to be acting in good faith by reporting information.

31 **6. Redaction of personal information.** The bureau shall redact from information
32 included on the registry any name, address, phone number, social security number and
33 other information that, if disclosed, specifically identifies a victim of an offender.

34 **7. Consent to public posting.** An offender is considered to have consented to the
35 public posting of the images and records specified in subsection 4 if the offender:

1 A. Fails to register as required by section 11506, subsection 2 within 30 days of
2 conviction of a registrable offense; or

3 B. Fails to appear at the request of the bureau to have a current photograph taken.

4 **§11505. Registrable offenses**

5 **1. Registrable offenses.** A person is required to register with the bureau for a
6 conviction of an offense listed in subsection 2 or a comparable offense in another
7 jurisdiction:

8 A. When the value of the property of which the offender exercised unauthorized
9 control or deprived the victim is \$500 or more;

10 B. Upon the 3rd conviction of any offense or combination of offenses under
11 subsection 2; or

12 C. When the offense is a Class C crime or higher.

13 **2. List of offenses.** The offenses with respect to which a person is required to
14 register under subsection 1 include:

15 A. Title 17-A, section 354;

16 B. Title 17-A, section 354-A;

17 C. Title 17-A, section 359 when the stolen property is currency;

18 D. Title 17-A, section 901;

19 E. Title 17-A, section 901-A;

20 F. Title 17-A, section 902;

21 G. Title 17-A, section 903; and

22 H. Title 32, section 16508, subsection 1.

23 **3. Exceptions.** A person is not required to register under subsection 1 upon the first
24 conviction of a registrable offense if the person has:

25 A. Complied with all court orders at the time of sentencing; and

26 B. Paid in full all court-ordered amounts of restitution to victims.

27 **§11506. Registration of offenders**

28 **1. Notification by court, department, bureau or law enforcement agency.** An
29 offender has a duty to register under this chapter after notification has been given to the
30 offender by a court of jurisdiction, the department, the bureau or a law enforcement
31 agency. The court shall notify the offender at the time of sentencing of the duty to
32 register pursuant to this chapter. Additional notification of the duty to register under this
33 chapter may be given to the offender at any time after the imposition of sentence.

34 **2. When duty to register must be exercised.** Following notification by a court, the
35 department, the bureau or a law enforcement agency under subsection 1, an offender shall
36 register as follows.

1 A. If the offender is sentenced to a wholly suspended sentence with probation or
2 administrative release, or to a punishment alternative not involving imprisonment, the
3 duty to register is triggered at the time the person commences in actual execution of
4 the wholly suspended sentence or at the time of sentence imposition when no
5 punishment alternative involving imprisonment is imposed, unless the court orders a
6 stay of execution, in which event the duty to register is triggered by the termination
7 of the stay.

8 B. If the offender is sentenced to a straight term of imprisonment or to a split
9 sentence, the duty to register is triggered by discharge or conditional release.

10 C. If the offender is committed under Title 15, section 103, the duty to register is
11 triggered by discharge or conditional release under Title 15, section 104-A.

12 D. If the circumstance requiring registration in paragraph A, B or C has passed, the
13 offender must register within 3 days after having received notice of that duty from a
14 court, the department, the bureau or a law enforcement agency.

15 E. Proof that the name and date of birth of the person notified of the duty to register
16 pursuant to this chapter are the same as those of a person who has been found not
17 guilty by reason of insanity or convicted of an offense requiring registration pursuant
18 to this chapter gives rise to a permissible inference under the Maine Rules of
19 Evidence, Rule 303 that the person notified of the duty to register is the same person
20 as that person convicted of the offense requiring registration.

21 **3. Length of registration.** An offender who has been convicted of and sentenced
22 for a registrable offense on or after October 1, 2017 must register for:

23 A. A period of 10 years for the first conviction of a registrable offense;

24 B. A 2nd period of 10 years for a 2nd conviction of a registrable offense; and

25 C. The duration of that offender's life for the 3rd conviction of a registrable offense.

26 At any time, the bureau may correct the term of a registration erroneously assigned to an
27 offender. In such instances, the bureau shall notify the offender, the Attorney General or
28 district attorney and the court in the jurisdiction where the conviction occurred and the
29 law enforcement agency having jurisdiction where the offender is domiciled, resides, is
30 employed or attends college or school, if applicable.

31 **§11507. Removal from registry**

32 **1. Petition court.** An offender may petition the court where the offender was
33 convicted of the registrable offense for which registration on the registry is required for
34 an order to remove the offender from the registry or to decrease the length of registration,
35 if:

36 A. Five years have passed since the completion of the offender's sentence;

37 B. The offender has successfully completed all treatment, if any, ordered by the court
38 relating to the offense;

39 C. The offender has not been convicted of any other crime, excluding a traffic
40 offense other than an offense under Title 29-A, section 2411 or 2413;

1 D. The offender has paid all restitution ordered by the court relating to the offense;
2 and

3 E. The offender has not been found to be civilly liable in any case not related to the
4 offense in which fraud, misrepresentation, deceit, breach of fiduciary duty or the
5 misuse or misappropriation of funds is an element.

6 **2. Certificate from bureau.** An offender seeking removal from the registry must
7 apply for a certificate of eligibility from the bureau that certifies the offender has met the
8 requirements of subsection 1, paragraphs A to D. An offender who intentionally or
9 knowingly provides any false or misleading information to the bureau when applying for
10 a certificate of eligibility is guilty of a Class D crime and subject to prosecution under
11 Title 17-A, section 453 and may not receive a certificate of eligibility from the bureau
12 under this subsection.

13 **3. Duties of bureau.** On receiving an application from an offender under subsection
14 2, the bureau shall check the records of governmental agencies, including national
15 criminal databases, to determine whether an offender is eligible to receive a certificate
16 under subsection 2. If the bureau determines that an offender is eligible to receive a
17 certificate, the bureau shall issue to the offender a certificate that is valid for 90 days from
18 the date the certificate is issued. The bureau may charge a fee of \$100 at the time the
19 application is made, and, if the bureau issues a certificate, the bureau shall refund the
20 application fee. All unrefunded application fees under this subsection must be placed in a
21 dedicated account to cover the bureau's costs under this subsection.

22 **4. Petition requirements.** A petition under subsection 1 must contain the following
23 information:

24 A. The petition;

25 B. The original charging, conviction and sentencing documents regarding the
26 registrable offense;

27 C. The court docket of the registrable offense;

28 D. An affidavit certifying that the offender is in compliance with subsection 1; and

29 E. A valid certificate of eligibility under subsection 2.

30 At the same time the petition is filed with the court, a copy of the information required
31 under this subsection must be delivered to the prosecutor who prosecuted the offense.

32 **5. Prosecutor's duties.** Upon receipt of the information under subsection 4, the
33 prosecutor shall provide notice of the petition by first-class mail to every victim of the
34 registrable offense at the most recent address of the victim on file. A notice under this
35 subsection must:

36 A. Include a copy of the information required under subsection 4;

37 B. State that the victim may object to the removal of the offender from the registry;
38 and

39 C. Provide instructions for filing a recommendation or objection with the court.

1 6. Answer by prosecutor. Within 30 days of receipt of the information under
2 subsection 4, the prosecutor shall answer the petition and provide the court with, if
3 available:

4 A. A presentence report prepared for the offense;

5 B. An evaluation done as part of sentencing for the offense; and

6 C. Any other information the office of the prosecutor determines the court should
7 consider.

8 A prosecutor may request a hearing as part of an answer under this subsection.

9 7. Victim's response. A victim who receives a notice under subsection 5 may
10 respond to the petition by filing a recommendation or objection with the court within 45
11 days after the mailing of the notice to the victim. A victim may request a hearing as part
12 of a response under this subsection.

13 8. Duties of court. Upon receipt and review of the petition under subsection 1,
14 answer of prosecutor under subsection 6 and responses of victims under subsection 7, if
15 any, the court shall hold a hearing if requested by the prosecutor or the victim. After
16 reviewing all of the filings and hearing the arguments if a hearing is requested, if the
17 court determines that it is not contrary to the interests of the public, the court may grant
18 the petition and order removal of the offender from the registry or decrease the length of
19 registration if applicable. If the court grants the petition, the court shall forward a copy of
20 the order to the bureau and the prosecutor who prosecuted the offense. Upon receipt of
21 the order, the bureau shall remove the offender from the registry or decrease the length of
22 registration and the prosecutor shall notify each victim of the court's decision by first-
23 class mail.

24 9. Removal due to pardon or expungement of registrable offense. If an offender
25 receives a pardon for or expungement of a registrable offense that is the basis for
26 registration under section 11505, subsection 1 or that extends the length of registration
27 under section 11506, subsection 3, paragraph B or C, the bureau shall remove the
28 offender from the registry or reduce the length of registration, as appropriate, upon
29 receipt of satisfactory evidence from the offender of the pardon or expungement.

30 §11508. Rules

31 The bureau may adopt routine technical rules as defined in Title 5, chapter 375,
32 subchapter 2-A to carry out the provisions of this chapter.

33 SUMMARY

34 This bill establishes the White-collar Crime Offender Registration Act, which creates
35 a crime registry that requires offenders who commit certain criminal offenses involving
36 fraud or theft to register with the Department of Public Safety, Bureau of State Police,
37 State Bureau of Identification for 10 years to life depending on how many registrable
38 offenses they commit. The bill requires the bureau to post the registry on a publicly

1 accessible website and allows an offender to be removed from the registry if the offender
2 meets various criteria or if the registrable offense has been pardoned or expunged.