

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2001

within the State or at such other times and places as may be agreed upon by the person served and the Attorney General. Any book, record, paper, memorandum or other information produced by any person pursuant to this section, unless otherwise ordered by a court of this State for good cause shown, may not be disclosed to any person other than the authorized agent or representative of the Attorney General unless with the consent of the person producing the same, except that such material or information may be disclosed by the Attorney General in court pleadings or other papers filed in court.

5. Motion for additional time, to modify or set aside or grant protective order. At any time prior to the date specified in the notice or within 21 days after the notice has been served, whichever period is shorter, the court upon motion for good cause shown may extend that reporting date or modify or set aside that demand or grant a protective order in accordance with the standards set forth in the Maine Rules of Civil Procedure, Rule 26(c). The motion may be filed in the Superior Court of the county in which the person served resides or has a usual place of business or in Kennebec County.

6. Information not to be used in criminal proceeding. A person is not excused from attending and testifying or from producing documentary material in compliance with this section on the ground or for the reason that the testimony or other information, documentary or otherwise, may tend to incriminate that person or subject that person to a penalty or forfeiture. Testimony and other information obtained under the authority of this section and information directly or indirectly derived from such testimony or other information may not be used against a natural person who has testified or produced information under oath in compliance with this section in any criminal case except a prosecution for perjury, giving a false statement or otherwise failing to comply with a notice served upon that person under this section.

7. Cost of court reporter. At the request of the person under investigation or that person's attorney, any testimony taken pursuant to a demand or notice under this section must be recorded on a recording device or taken before a court reporter authorized to serve as such under the laws of the State. Upon request of either party, all such testimony taken or recorded must be transcribed by an authorized court reporter, and in that case the original transcript of that testimony must be preserved by the Attorney General. The cost of the taking or recording and transcription must be paid by the State. In the event the Attorney General or some other party obtains judgment against the party whose testimony is taken for a violation of section 207, the cost of the court reporter or recording and transcription may be recovered by the State in such a judgment.

8. Authority not applicable in criminal proceedings. This section is not applicable to any criminal proceeding brought under the laws of this State.

Sec. 3. 5 MRSA §211, 2nd ¶, as amended by PL 1973, c. 648, is repealed.

Sec. 4. 5 MRSA §211, 3rd ¶, as amended by PL 1973, c. 334, is repealed.

Sec. 5. 5 MRSA §211, 4th ¶, as enacted by PL 1975, c. 529, is repealed.

See title page for effective date.

CHAPTER 371

H.P. 1276 - L.D. 1736

An Act to Amend Maine Credit Laws

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

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

B. The creditor, wherever located, induces the consumer who 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.

Sec. 2. 9-A MRSA §1-301, sub-§14, ¶B, as amended by PL 1987, c. 396, §7, is repealed and the following enacted in its place:

B. "Consumer loan" does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a credit card other than a lender credit card.

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

B. A person, other than an insurance company or other 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:

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

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

Sec. 4. 9-A MRSA §2-303-A is enacted to read:

§2-303-A Temporary suspension of license

Notwithstanding Title 5, sections 10003 and 10004 and Title 10, section 8003, if the public interest or the protection of borrowers so requires, the administrator may, by order, suspend a license to make supervised loans or postpone the effective date of such a license. Upon entry of the order, the administrator 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.

Sec. 5. 9-A MRSA §6-201, as amended by PL 1997, c. 727, Pt. B, §20, is further amended to read:

§6-201. Applicability

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

Sec. 6. 9-A MRSA §10-102, sub-§1, ¶B, as amended by PL 1997, c. 66, §5, is further amended to read:

B. "Credit services organization" does not include:

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

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

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

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

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

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

Sec. 7. 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:

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

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

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

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

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

B. ~~A~~ Except as provided in paragraph B-1, a person may not procure a consumer report or cause a consumer report to be procured for em-

ployment purposes with respect to any consumer, unless:

- (1) A clear and conspicuous disclosure has been made in writing to the consumer before the report is 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
- (2) The consumer has authorized in writing the procurement of the report by that person.

Sec. 8. 10 MRSA §1313-A, sub-§2, ¶¶B-1 and B-2 are enacted to read:

B-1. A person who procures a consumer report on a consumer described in paragraph B-2, subparagraph (1) for employment 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 consumer's rights under section 1320, subsection 1-B, paragraph C:

- (1) When the consumer applies for employment by mail; and
- (2) When the consumer has consented, orally, in writing or electronically, to the procurement of the report by that person.

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

- (1) The consumer is applying for a position over which the federal Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of 49 United States Code, Section 31502 or a position subject to safety regulation by a state transportation agency; and
- (2) As of the time at which the person procures the consumer report or causes the report to be procured, the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer or other similar means.

Sec. 9. 10 MRSA §1313-A, sub-§2, ¶C, as enacted by PL 1997, c. 155, Pt. B, §6 and affected by §13, is amended to read:

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

- (1) A copy of the report; and
- (2) A description in writing of the rights of the consumer ~~under this Act~~ as prescribed by the Federal Trade Commission under 15 United States Code, Section 1681g(c)(3).

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

C-1. If a consumer described in paragraph C-2 applies for employment by mail, telephone, computer or other similar means and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person shall provide to the consumer to whom the report relates, in lieu of the notices required under paragraph B, subparagraph (1) and under section 1320, within 3 business days of taking such action, an oral, written or electronic notification:

- (1) That adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;
- (2) Of the name, address and telephone number of the consumer reporting agency that furnished the consumer report, including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis;
- (3) That the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and
- (4) That the consumer may, upon providing proper identification, request a free copy of a consumer report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

If, under subparagraph (4), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request together with proper identification, the person

shall send or provide to the consumer a copy of a report and a summary of the consumer's rights as prescribed by the Federal Trade Commission under 15 United States Code, Section 1681g(c)(3).

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

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

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

Sec. 11. 10 MRSA §1313-A, sub-§§4 to 7 are enacted to read:

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

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

A. A consumer shall notify a consumer reporting agency:

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

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

B. Upon receipt of notification of the election by a consumer through the notification system

maintained by a consumer reporting agency under paragraph D, the agency shall:

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

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

C. An election by a consumer under this subsection:

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

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

(a) Subject to subparagraph (3), during the 2-year period beginning 5 business days after the 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

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

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

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

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

(1) Each consumer reporting agency that, under subsection 3, furnishes a consumer report in connection with a credit or insur-

ance transaction that is not initiated by a consumer shall:

(a) Establish and maintain a notification system, including a toll-free telephone number, that permits any consumer whose consumer report is maintained by the agency to notify the agency, 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

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

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

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

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

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

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

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

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

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

Sec. 12. 10 MRSA §1313-B is enacted to read:

§1313-B. Requirements relating to information contained in 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 commencement of the delinquency that immediately preceded the collection activity, charge to profit and loss or similar action.

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

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

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

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

Sec. 13. 32 MRSA §6104, sub-§1, ¶D, as enacted by PL 1997, c. 155, Pt. A, §2, is amended to read:

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

mutual banks supervised financial organizations as defined in Title 9-A, section 1-301, subsection 38-A; and

Sec. 14. Application. That section of this Act that repeals and replaces the definition of consumer loan in the Maine Revised Statutes, Title 9-A, section 1-301, subsection 14, paragraph B applies to any consumer loan made by supervised financial organizations secured by an interest in land with a finance charge that does not exceed 12 1/4% entered into on or after January 1, 2002.

See title page for effective date.

CHAPTER 372

S.P. 545 - L.D. 1691

An Act Adopting and Implementing the National Crime Prevention and Privacy Compact

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

**Sec. 1. 25 MRSA §1541, sub-§3, ¶¶A and
B** are enacted to read:

A. Notwithstanding chapter 199, the commanding officer shall ensure that the fingerprints and descriptive information of any person that have been submitted to the Federal Bureau of Investigation for the purpose of conducting a criminal history record check for noncriminal justice purposes through the interstate identification index system, as defined in section 1703, subsection 12, are not retained by the Federal Bureau of Investigation, are used solely for the purpose of providing a response to the record check and are not disseminated prior to destruction. The commanding officer shall immediately report any retention or dissemination by the Federal Bureau of Investigation of the fingerprints or descriptive information of any person to the joint standing committee of the Legislature having jurisdiction over criminal justice matters, and upon the receipt of such a report, that committee shall meet to consider renunciation, pursuant to section 1710, of the State's participation in the National Crime Prevention and Privacy Compact, chapter 199.

B. Notwithstanding chapter 199, the fingerprints and descriptive information of any person that have been submitted to the Federal Bureau of Investigation for the purpose of conducting a criminal history record check for noncriminal justice purposes through the interstate identification index system, as defined in section 1703,